
(2015) 09 SHI CK 0042
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 254 of 2009

State of Himachal Pradesh	Vs	APPELLANT
Surjan Singh and Others		RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313, 315, 378
Evidence Act, 1872 — Section 59
Penal Code, 1860 (IPC) — Section 148, 149, 323, 325, 341

Citation : (2015) 3 ShimLC 1785

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Ashok Chaudhary, V.S. Chauhan, Additional Advocate Generals and J.S. Guleria, Assistant Advocate General, for the Appellant; Lalit K. Sharma, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Piar Singh Rana, J—Present appeal is filed against the judgment passed by learned Additional Sessions Judge Shimla Camp at Rohru in Sessions Trial No. 24-R/7 of 2007 titled Surjan Singh and others v. State of H.P. decided on dated 18.10.2008.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by prosecution are that Partap Singh son of Kalgi Ram purchased immovable land comprised in Khasra No. 127, 132 and 133 situated in village Haunchali Tehsil Chirgaon District Shimla H.P. from one Bahadur Singh by way of registered sale deed. It is alleged by prosecution that in December 2006 Partap Singh had constructed a house and shed on the land so purchased and thereafter his parents started living in the house and shed. It is alleged by prosecution that on dated 19.3.2007 at 9 AM all accused persons arrived at land purchased by Pratap Singh by way of sale deed. It is alleged by

prosecution that co-accused Rakeshwar was having a gun and he pointed out the gun at Partap Singh's father namely Kalgi Ram injured aged 70 years. It is alleged by prosecution that thereafter wife of Kalgi Ram started to proceed to inform Partap Singh her son about arrival of accused persons and when she was proceeding from residential house co-accused Rakeshwar @ Rakesh pointed the gun at her. It is alleged by prosecution that thereafter accused persons tied Kalgi Ram injured aged 70 years with ropes and gave lever (Jhabbal) blow on foot of Kalgi. It is alleged by prosecution that thereafter co-accused Rakeshwar had given a blow on head of Kalgi injured aged 70 years with butt of gun. It is alleged by prosecution that other accused persons put chilli powder in eyes of injured Kalgi aged 70 years. It is alleged by prosecution that accused persons have also dismantled the house and shed constructed by son of injured Kalgi. It is alleged by prosecution that accused persons have also put Kalgi injured's son house on fire. It is alleged by prosecution that thereafter Kalgi Ram reported the matter to Amar Singh Pardhan and his neighbour Shakti Lal. It is alleged by prosecution that Kalgi Ram injured 70 years was advised to report the matter to police station and police officials were informed telephonically. It is alleged by prosecution that FIR Ext. PW1/A was filed and Kalgi Ram injured aged 70 years was medically examined and his MLC Ext. PW8/B was obtained. It is alleged by prosecution that Partap Singh produced photographs of house and shed Ext. PW1/A and Ext. PW4/B and also produced copy of application filed to SDM Ext. PW1/E and also placed on record the order of Civil Court Ext. PW1/D, copy of daily diary report No. 29 dated 8.7.2006 Ext. PW1/F and also produced jamabandi Ext. PW1/K which were taken into possession vide seizure memo Ext. PW1/D. It is alleged by prosecution that Investigating agency took into possession 14 burnt iron sheets vide memo Ext. PW13/A and I.O. also took photographs Ext. PW16/B-1 to Ext. PW16/B-5 and negatives of which are Ext. PW16/B-6 to Ext. PW16/B-10. It is alleged by prosecution that I.O. also prepared site plan Ext. PW16/A. It is alleged by prosecution that co-accused Surjan and co-accused Rakeshwar identified the place of incident. It is alleged by prosecution that I.O. also took coal, ash etc from the spot vide memo Ext. PW1/C. It is alleged by prosecution that I.O. also took into possession burnt utensils from the spot vide memo Ext. PW1/B. It is alleged by prosecution that co-accused Rakeshwar produced two ropes which were taken into possession vide seizure memo Ext. PW1/M. It is alleged by prosecution that co-accused Surjan produced 12 bore gun and its licence which were taken into possession vide seizure memo Ext. PW1/N. It is alleged by prosecution that kata (Sharp edged weapon) Ext. P16, jhabbal (Sharp edged weapon) Ext. P13 and gas lighter were taken into possession vide seizure memo Ext. PW1/P. It is alleged by prosecution that on dated 22.3.2007 co-accused Brijeshwar produced Kilwari Ext. P14 which was taken into possession vide memo Ext. PW1/Q. It is alleged by prosecution that demarcation report of Khasra Nos. 127, 132 and 133 was conducted by Naib Tehsildar on dated 16.6.2006 and he submitted his report Ext. PW1/H. It is alleged by prosecution that Civil Court in case titled Partap Singh v. Surjan Singh passed the order for demarcation of land bearing Khasra Nos. 127, 132 and 133 and demarcation

report is Ext. PW1/R.

3. Charge was framed against the accused persons by learned trial Court on dated 10.12.2007 under Sections 148, 341, 447, 452, 323, 325, 436, 506 read with Section 149 IPC and under Section 27 of Arms Act 1959 read with Section 149 of Indian Penal Code. Accused persons did not plead guilty and claimed trial.

4. Prosecution examined the following oral witnesses in support of its case:--

4.1 Prosecution also produced following piece of documentary evidence in support of its case:--

5. Learned trial Court acquitted all accused persons on dated 18.10.2008. Feeling aggrieved against the judgment passed by learned trial Court dated 18.10.2008 State of H.P. filed present appeal under Section 378 of Code of Criminal Procedure.

6. We have heard learned Additional Advocate General appearing on behalf of the State of H.P. and learned Advocate appearing on behalf of accused persons and also perused the entire record carefully.

7. Point for determination in present appeal is whether learned trial Court did not properly appreciate oral as well as documentary evidence placed on record and whether learned trial Court had caused miscarriage of justice to the State of H.P.

8. ORAL EVIDENCE ADDUCED BY PROSECUTION:

8.1. PW1 Pratap Singh has stated that he has six and half bighas of land in Mandloch which is near village Haunchali. He has stated that he constructed a single storeyed house in the month of December 2006. He has stated that after construction of house his parents started living in the house. He has stated that on dated 19.3.2007 Amar Nath telephonically informed that some persons were removing the sheets of roof of house at Mandloch. He has stated that he and his wife moved to Mandloch and when they were proceeding to Mandloch on the way his mother met him and told him not to proceed further because accused persons Rakesh, Rajesh, Brijeshwar and their servant Bandhu were hiding themselves in bushes. He has stated that his mother also told that co-accused Rakeshwar @ Rakesh pointed out gun towards his mother and asked his mother to leave the land. He has stated that his mother told that accused persons threatened his mother to kill her in case she would not leave the place. He has stated that thereafter he and his wife went to police station and lodged the report. He has stated that FIR Ext. PW1/A bears his signatures. He has stated that when he was still in police station his injured father reached and his injured father had narrated entire incident to police. He has stated that his injured father was medically examined by investigating Agency. He has stated that investigating Agency also visited the spot and when they reached at the spot they saw that residential house alongwith articles were gutted in fire. He has stated that there were bedding, utensils, trunks and other valuable articles amounting to Rs. 80-90 thousands in the residential house. He has stated that

police officials also took into possession the pieces of tins sheets, burnt ashes etc. vide seizure memos Ext. PW1/B and Ext. PW1/C. He has stated that civil suit is also pending and civil Court has granted ad-interim injunction in favour of complainant and against accused persons. He has stated that he produced the copy of ad-interim injunction order, copy of demarcation report and copy of registered sale deed and copy of jamabandi to the Investigating Agency. He has stated that documents which he produced to Investigating Agency are Ext. PW1/E to Ext. PW1/H and Ext. PW1/J, Ext. PW1/K and Ext. PW1/L. He has stated that his father had also suffered injuries. He has stated that on dated 22.3.2007 co-accused Rakesh produced to Investigating Agency the lighter and jhabbal (Lever). He has stated that co-accused Brijeshwar produced Kilwari. He has stated that co-accused Rajeshwar produced two ropes and co-accused Surjan produced gun along with licence to investigating Agency. He has stated that copy of demarcation report is Ext. PW1/R which was took into possession by police officials. He has stated that coal is Ext. P1 and trunk is Ext. P2 and household articles are Ext. P3 to Ext. P10 and further stated that rope is Ext. P11 and lighter is Ext. P12 and lever is Ext. P13, Kilwari is Ext. P14, gun licence is Ext. P15 and plastic bag is Ext. P16. He has stated that he had purchased the land from Bahadur Singh through registered sale deed on dated 19.11.2005 and further stated that Khasra numbers are 127, 132 and 133. He has stated that possession was also handed over to him by vendor. He has stated that he does not know that Bahadur Singh had delivered the possession of above said Khasras to co-accused Surjan Singh in the year 1977. He has denied suggestion that since 1977 co-accused Surjan was raising the plants. He has denied suggestion that possession was took forcibly at the spot during the time when accused persons were in police custody. He has denied suggestion that possession of land was with co-accused Surjan till 19.3.2007.

8.2 PW2 Kalgi Ram injured has stated that his son had purchased the land at Haunchali from Bahadur Singh and house was constructed. He has stated that he and his wife were living in the house. He has stated that co-accused Rakeshwar alias Rakesh, Brijeshwar and Gorkha Bandhoo came. He has stated that accused co-accused Surjan and Daropdi were hiding themselves in bushes. He has stated that co-accused Rakesh was in possession of gun. He has stated that co-accused Rakeshwar @ Rakesh pointed out the gun at him. He has stated that when his wife came then co-accused Rakeshwar @ Rakesh also pointed out gun at her. He has stated that thereafter co-accused Brijeshwar directed co-accused Bandhu to bring ropes from the bag and thereafter he was tied with two ropes by four persons namely Rakeshwar @ Rakesh, Rajeshwar, Brijeshwar and Bandhu and thereafter blow was given upon his feet with jhabbal (Sharp edged weapon). He has stated that co-accused Rakeshwar @ Rakesh had given the blow on his head with butt of gun. He has stated that thereafter accused persons dismantled his house and co-accused Rakeshwar @ Rakesh tried to throw chilli powder on his eyes. He has stated that residential house was put on fire. He has stated that thereafter he went to Pardhan and told him about incident. He has stated that

Pardhan told him to file criminal complaint in police station. He has stated that thereafter he came to police station. He has further stated that when he came to police station his son was already present in police station. He has stated that due to fire in residential house all household articles were burnt and damaged. He has stated that he had sustained injuries on his feet and head and he was medically examined. He has stated that police also took into possession the ashes and burnt and damaged household articles and police also took into possession rope, jhabbal (Sharp edged weapon) and kilwari from accused persons. He has stated that rope Ext. P11 is same through which he was tied. He has stated that jhabbal (Sharp edged weapon) Ext. P13 is the same through which blow was given on his feet. He has stated that residential house was dismantled with jhabbal (Sharp edged weapon). He has denied suggestion that land was in possession of co-accused Surjan Singh for the last 30-31 years. He has denied suggestion that false FIR was filed against accused persons. He has denied suggestion that his eye sight was weak and he could not identify the persons standing at the distance of 6-7 feet.

8.3 PW3 Amar Nath Ex-Pardhan of Gram Panchayat has stated that parties are known to him and on dated 19.3.2007 at about 8.30/9 AM he heard the sound of throwing of tin sheets. He has stated that Shakti is his neighbour and he was called. He has stated that in the meanwhile he saw that some smoke was rising. He has stated that persons throwing the tin sheets were also visible but they could not be identified from the distance. He has stated that at about 10.30 to 11 AM Kalgi Ram came to his house in injured condition. He has stated that Kalgi Ram told that he was tied by accused persons. He has stated that Kalgi Ram told that his house was dismantled by accused persons and was put on fire. He has stated that Kalgi Ram also disclosed that accused persons had a gun and thereafter he contacted the telephone call to Partap son of Kalgi Ram and thereafter he advised Kalgi Ram to file the criminal report in police station. He has stated that in the evening police arrived and he and Shakti were asked to accompany them to spot. He has stated that on spot police handed over the burnt tin sheets to Kalgi Ram and memo Ext. PW3/A was prepared and memo bears his signatures. He has stated that Partap also produced some documents to police regarding which memo Ext. PW1/D was prepared. He has stated that land was in shape of barren and he could not state in whose possession the land was since 1977.

8.4 PW4 Ashok Kumar has stated that Partap Singh is his cousin. He has stated that Partap son of Kalgi Ram had purchased the land near Haunchalli and constructed residential house and shed in the month of February or March 2007. He has stated that residential house was put on fire about 15-20 days or about month after completion. He has stated that he also worked as labourer during construction of residential house. He has stated that residential house was put on fire and Investigating Agency visited the spot and took into possession ashes and some burnt household articles. He has denied suggestion that he did not work during construction of residential house.

8.5 PW5 Ram Lal has stated that on dated 22.3.2007 he was present and residential house of Partap complainant was gutted in fire. He has stated that police also took into possession burnt articles of residential house. He has stated that police also took into possession two ropes and co-accused Surjan produced a gun. He has stated that plastic bag, jhabbal (Sharp edged weapon), gas lighter and Kilwari were also took into possession vide seizure memo. He has denied suggestion that wife of complainant Partap is his real niece. He has stated that he was directed by police to come at the spot.

8.6 PW6 Raj Bahadur has stated that he had constructed residential house of Partap at place near Haunchali. He has stated that five Nepali labourers and three local labourers were employed for construction of residential house. He has stated that Partap complainant paid him Rs. 200/- per day. He has stated that residential house and shed which were constructed are visible in photographs Ext. PW4/A and Ext. PW4/B. He has stated that complainant Partap told that land belonged to him. He has denied suggestion that he had raised construction in March 2007.

8.7 PW7 Dinesh Kumar has stated that Partap is known to him. He has stated that in the month of November/December 2006 he and some labourers extracted stones for complainant Partap Singh and carried them upto the place where he was constructing residential house. He has stated that complainant Partap Singh had paid labour charges and he worked for 20 days. He has stated that complainant Partap is originally belonged to Rohal. He has denied suggestion that he did not extract any stone for complainant Partap Singh.

8.8 PW8 Dr. Rakesh Malhotra has stated that he was working as medical officer in CHC Chirgaon at Sandasu since January 2005 and he medically examined Kalgi Ram aged 70 years injured on dated 19.3.2007 at 2.15 PM. He has stated that patient was beaten by one co-accused Rakesh and his associate on dated 19.3.2007. He has stated that on examination he found the following injuries. (1) There was tenderness over the right shoulder joint (Dorsal aspect) and there was no mark of external injury. He advised X-ray of right shoulder. (2) There was haematoma over left medio lateral aspects occiput about 3.0 cm diameter and there was swelling. (3) There was tenderness over left gastronemia muscles left leg and swelling positive was found all over the muscles. (4) There was painful swelling over the ventral aspect right foot extending laterally to the lateral malleolus. He advised X-ray of right foot and right ankle. He has stated that as per radiologist report there was a fracture of lower end of fibula and injury No. 3 was found grievous. He has stated that he has issued MLC Ext. PW8/B. He has stated that injury No. 3 was possible when some object like a stone fall on one's foot and further stated that injury Nos. 1, 2 and 4 are possible by fall.

8.9 PW9 Bahadur Singh has stated that about three years back he sold his land in Chak Haunchali to Partap Singh for consideration amount of Rs. 40,000/- (Rupees forty thousand only). He has stated that sale deed was registered at Chirgaon and he handed over the possession to Partap Singh complainant. He

has admitted that about 30-35 years back he also sold land to co-accused Surjan Singh. He has stated that he sold separate parcel of land to co-accused Surjan. He has stated that land sold to co-accused Surjan is situated at far away distance from the land which was sold to Partap complainant. He has stated that co-accused Surjan did not plant apple trees on land at Mandloch.

8.10 PW10 Jia Lal Naib Tehsildar Chirgaon has stated that SDM Rohru appointed him as local commissioner and directed him to demarcate the land comprised in Khasra No. 127, 132 and 133. He has stated that he demarcated the land and sent his demarcation report to SDM Rohru and his demarcation report is Ext. PW1/H. He has denied suggestion that at the time of demarcation khasra numbers 127, 132 and 133 were found in possession of co-accused Surjan Singh. He has stated that land was barren. He has denied suggestion that there were some apple plants. He has stated that he had recorded statements of Belmu, Partap Singh, Rajesh Kumar and Rakesh Kumar at the time of demarcation. He has stated that copies of same are Ext. DX, Ext. DY and Ext. DZ.

8.11 PW11 Ramesh Kumar has stated that he is working as office Kanungo in Tehsil Chirgaon since March 2006. He has stated that he received the order from Civil Judge Court Rohru to demarcate the land bearing Khasra No. 868, 869 and 725 in Chak Haunchali. He has stated that he demarcated the land at the spot and submitted the report to Civil Judge Court Rohru and demarcation report is Ext. PW11/A.

8.12 PW12 Prem Chand Negi has stated that he is working as Naib Tehsildar Rohru since August 2003. He has stated that as per court order he visited spot at village Haunchali on dated 5.5.2007 and conducted the demarcation of disputed land. He has stated that thereafter he presented the demarcation report to Civil Court. He has stated that copy of demarcation report is Ext. PW1/R. He has stated that demarcation was conducted as per instructions issued by Financial Commissioner and Secretary Revenue and demarcation report is correct as per factual position at spot.

8.13 PW13 Vinod Kumar has stated that he is working as Civil Ahalmad in Court No. 1 Rohru since 2007. He has stated that he has brought the file of civil suit titled Partap Singh v. Surjan Singh and local commissioner was appointed in the suit and report is Ext. PW1/R. He has stated that local commissioner also recorded statements of persons and Ext. PW13/A to Ext. PW13/C are copies of statements of Partap Singh, joint statement of Kundan Lal and Sohan Dass and joint statement of Surjan Singh and Rakeshwar Singh. He has stated that Court had issued ad-interim injunction order on dated 17.1.2006 and copy of order is Ext. PW1/F. He has stated that documents Ext. D1 to Ext. D6 are placed on summoned file.

8.14 PW14 Rajeev Chauhan has stated that he is working as Civil Ahalmad in Court No. 2 Rohru since 2004 and he has brought the case file of suit titled as Surjan Singh v. Bahadur Singh No. 227/1 of 2006. He has stated that original

demarcation report is on file and same is Ext. PW11/A. He has stated that demarcation report is not exhibited in evidence and civil suit was dismissed as withdrawn on dated 28.8.2007.

8.15 PW15 HC Tanjen Cherring has stated that he is working as MHC in P.S. Chirgaon since 2006 to June 2008 and on dated 19.3.2007 Partap Singh arrived at police station and lodged report Ext. PW1/A which is in his hand and bears his signatures. He has stated that in the year 2006 Ropti Devi lodged FIR No. 38 of 2006 Ext. PW15/A. He has denied suggestion that police did not take any action in FIR No. 38 of 2007. Self stated that after investigation cancellation report was prepared on dated 25.6.2006 and cancellation report was accepted in Judicial Court on dated 19.4.2007.

8.16 PW16 Ramesh Chand has stated that during the year 2007 he was working as I.O. in P.S. Chirgaon and on dated 19.3.2007 file was handed over to him for investigation. He has stated that he went to spot and prepared spot map Ext. PW16/A. He has stated that he took photographs of spot with help of police camera and photographs are Ext. PW16/B-1 to Ext. PW16/B-5 and negatives of photographs are Ext. PW16/B-6 to Ext. PW16/B-10. He has stated that he took into possession 14 iron sheets and seizure memo Ext. PW3/A was prepared. He has stated that iron sheets were handed over to Kalgi Ram on supurdari. He has stated that complainant Partap Singh produced the documents i.e. order of SDM, jamabandi, mussabi, copy of rapat and photographs etc. which were took into possession vide seizure memo Ext. PW1/D. He has stated that he recorded statements of witnesses at the spot and accused persons Surjan and Rajeshwar were arrested on dated 30.3.2007 and thereafter he further handed over the file to SHO for further action. He has stated that disputed land is near village Haunchali and there are 35-40 families in village Haunchali. He has stated that disputed land is at walking distance of 15-20 minutes from village Haunchali. He has admitted that near disputed land there is house of Belmu in which he lived with his family. He has denied suggestion that he recorded statements of prosecution witnesses as per his own version. He has denied suggestion that it came to his notice that disputed land remained in possession of co-accused Surjan Singh since 1977 till 20.3.2007.

8.17 PW17 SI/SHO Pritam Singh has stated that during the year 2006-2007 he remained posted as SHO P.S. Chirgaon and on dated 21.3.2007 he arrested Ropti Devi, Rakeshwar, Brijeshwar and Bandhu. He has stated that on dated 22.3.2007 on the identification by accused persons Surjan Singh and Rajeshwar he prepared identification memo Ext. PW17/A and from place of occurrence he took into possession ashes, coal and pieces of burnt wood vide memo Ext. PW1/C. He has stated that he took into possession the burnt trunk, utensils vide seizure memo Ext. PW1/B and rope used at the time of offence was produced by co-accused Rajeshwar and same was took into possession vide memo Ext. PW1/M. He has stated that gun used for commission of offence was produced to him by co-accused Surjan along with gun licence. He has stated that co-accused

Rakeshwar and Brijeshwar identified the place of incident. He has stated that Brijeshwar produced to him Kilwari which was used for commission of offence. He has stated that co-accused Rakeshwar produced jhabbal (Lever) and gas lighter. He has stated that instruments which were used for commission of offence were brought in a bag. He has stated that after completion of investigation he prepared challan and filed the same in Court. He has stated that dispute was about three khasra Nos. 127, 132 and 133. He has stated that disputed khasra numbers of immovable land are situated at one place and their boundaries are adjoining with each other. He has admitted that co-accused Ropti Devi had lodged FIR No. 38 of 2006 and same was cancelled because co-accused Ropti was not found owner of disputed land. He has stated that Haunchali village is situated at a distance of 3 K.m. from the disputed land. He has denied suggestion that during investigation it came to his notice that Partap took possession of disputed land when accused were arrested. He has denied suggestion that during investigation it was observed that on dated 19.3.2007 co-accused Surjan and Ropti were in their house throughout the day as they had engaged Jai Chand and Vijay Nand as carpenters for construction of their house. He has stated that co-accused Brijeshwar is a teacher in middle school Mangauri. He has denied suggestion that co-accused Rajeshwar was at his shop on dated 19.3.2007 throughout the day. He has denied suggestion that all proceedings were conducted by him while sitting in police station.

9. Statements of accused recorded under Section 313 Cr.P.C. Accused have stated that land is in their possession and complainant party wanted to snatch possession of the land forcibly and they have filed a false case.

10. Defence evidence adduced by accused persons

10.1. DW1 Surjan Singh co-accused had appeared as witness under Section 315 of Code of Criminal Procedure. DW1 has stated that he purchased the land from Bahadur Singh in the year 1977 at Haunchali Chak and Bahadur Singh had handed over the possession of land known as Mandloch. He has stated that thereafter he raised the plants upon the land from time to time and he used to grow wheat and sometime barley on the land. He has stated that in the year 2005 Bahadur sold disputed land to Partap Singh complainant. He has stated that thereafter complainant Partap filed civil suit against him restraining accused persons from cultivating disputed land. He has stated that he filed application for appointment of local commissioner to ascertain factual position of possession of disputed land. He has stated that thereafter B.C. Negi Naib Tehsildar Rohru was appointed as local commissioner and local commissioner told them that he would visit spot on dated 22.3.2007. He has stated that before Local Commissioner could arrive at the spot complainant Partap Singh filed a false complaint against him and he was arrested. He has stated that thereafter complainant Partap Singh forcibly took the possession of land on dated 20.3.2007. He has stated that on dated 19.3.2007 he and his wife were present at home throughout the day as Jai Chand carpenter was working in his house. He has stated that his son

Rakeshwar, Bandhu Nepali and Surat Ram on that day were planting apple plants in village Maktot. He has stated that his son co-accused Rajeshwar is running a shop at Chirgaon and on that day he was at Chirgaon and further stated that he lived in Chirgaon itself. He has stated that his another son Brijeshwar co-accused is employed as teacher in the school. He has further stated that he lived in Mangiari in rented premises of Amar Singh. He has stated that on that day he was at Mangiari. He has stated that complainant Partap Singh had filed false case against him. He has denied suggestion that there was residential house over disputed land prior to incident. He has stated that he visited the disputed land lastly on 17.3.2007. He has admitted that civil suit is pending qua disputed land between complainant and accused persons. He has admitted that complainant Partap got demarcated the land in the month of June 2006. He has admitted that in the year 2007 Naib Tehsildar Rohru had demarcated the land as local commissioner. He has admitted that he is owner of gun and gun was took into possession by police in connection with present case. He has stated that he retired on dated 31.12.2006 and after retirement he resides in his home. He has denied suggestion that residential house of Partap Singh complainant was set on fire by accused persons. He has denied suggestion that he had given beatings to parents of Partap Singh complainant. He has denied suggestion that he received ad-interim injunction order from civil Court directing him not to enter in suit land.

10.2 DW2 Jai Chand has stated that he knows co-accused Surjan Singh and last year he did some repair work in the house of co-accused Surjan. He has stated that he used to reach at work site at 9 AM and used to remain there till 5 PM. He has stated that during that whole day co-accused Surjan and his wife were present with him. He has stated that he worked for 15-20 days. He has stated that he worked on contract and not on daily wages. He has admitted that on contract the working hours are not fixed.

10.3 DW3 Brijeshwar co-accused has appeared as witness under Section 315 of Code of Criminal Procedure. DW3 has stated that he is working as TGT in Mangiari school since September 2006 and Mangiari is 10-12 K.m. away from his village Maktot. He has stated that he has taken the house on rent from Amar Singh in village Mangiari. He has stated that from 18.3.2007 to 20.3.2007 he was in village Mangiari. He has stated that he asked from Headmaster of school to issue certificate about his presence but Headmaster refused to issue the certificate. He has stated that he was arrested on dated 21.3.2007 and he did not move application in Court for production of attendance register. He has denied suggestion that he remained absent from school without obtaining leave. He has denied suggestion that allegations levelled against him are true. He has denied suggestion that shed and residential house of complainant Pratap visible in photographs Ext. PW4/A were set on fire by accused persons.

10.4 DW4 Rajeshwar co-accused has appeared as witness under Section 315 of Code of Criminal Procedure 1973. DW4 has stated that he is running a shop of insecticides in Chirgaon for the last 3-4 years. He has stated that in building

there are two shops, one shop is possessed by him and another shop is in possession of Deepak Thakur. He has stated that building adjoining to his shop is that of Mohan Singh Thakur in which he runs his own shop. He has stated that his residence is situated in village Chirgaon in the house of one Deepak Surian. He has stated that Maktot is about 10-12 K.m. away from Chirgaon and upto a distance of 6 Kms. there is a road from Chirgaon and thereafter one has to travel on foot upto Maktot. He has stated that entire market in Chirgaon remains open on Sunday and in March of 18th, 19th and 20th 2007 he was present in Chirgaon and on dated 20.3.2007 he was called to police station from his shop and thereafter he was arrested. He has stated that allegations levelled against him were that he set on fire residential house and shed of Partap Singh complainant. He has stated that his neighbour shopkeepers knew that on 18th and 19th March 2007 he was present at his shop at Chirgaon. He has stated that he does not know about dispute with Partap Singh complainant. He has stated that dispute is relating to land. He has stated that he did not see any residential house or shed over disputed land. He has stated that his father is owner of gun. He has denied suggestion that on dated 19.3.2007 he accompanied his brother, father and one Bandhu Nepali and set the residential house and shed of Partap Singh complainant on fire and also pointed gun towards Kalgi Ram father of Partap complainant. He has denied suggestion that he deposed falsely in order to save himself and his family members.

10.5 DW5 Rakeshwar Singh alias Rakesh co-accused has also appeared as witness under Section 315 of Code of Criminal Procedure 1973. DW5 has stated that he is horticulturist and agriculturist and on dated 19.3.2007 he was planting apple plants at place Mathal which is at a walking distance of about 15 minutes from village Maktot. He has stated that Bandhu Nepali servant and Surat Ram labourer of village Hatgaon were with him. He has stated that he proceeded at 7 AM from Maktot and returned home at 5/6 PM. He has stated that his parents were at village Maktot as carpenter was employed. He has stated that co-accused Rajeshwar was at Chirgaon at his shop and co-accused Brijeshwar was at Mangiari in school. He has stated that on dated 21.3.2007 he was arrested and when he inquired about grounds of arrest he was informed that he had set on fire residential house of Partap Singh complainant. He has stated that disputed land is seen by him and further stated that accused persons have planted apple trees in the year 2005 and also planted apple trees prior to 2005. He has stated that in the year 2006 some pits were dug for plantation of apple trees. He has stated that during the year 2005 land was cultivated. He has stated that Partap Singh complainant is not in possession of land in dispute and Partap Singh has no residential house and shed upon the land in dispute. He has stated that allegations levelled against him are false. He has admitted that land was demarcated by Tehsildar Chirgaon on dated 8.6.2006. He has stated that again the land was demarcated by Naib Tehsildar Rohru in the month of May 2007. He has stated that he visited the disputed place lastly on dated 14/15th March 2007. He has stated that there was no residential house or shed on disputed land. He

has stated that co-accused Bandhu had died. He has denied suggestion that accused persons have set on fire residential house and shed belonging to Partap complainant. He has denied suggestion that he is deposing falsely in order to save accused persons.

10.6 DW6 Surat Ram has stated that co-accused Surjan is known to him. He has stated that apple trees were planted and he dug pits. He has stated that he worked from 15th March upto 20th of March and Rakeshwar and Bandhu used to be at work along with him every day. He has stated that they used to come to spot at 8 AM and used to return after 5 PM. He has stated that on 19th March Bandhu and Rakeshwar were with him at the place of work. He has stated that they dug about 150 pits. He has stated that he used to come to the house of accused persons in the morning and after consuming breakfast he used to go to the fields. He has stated that in those days a carpenter was also at work in the house of accused and carpenter remained at work till 20th March. He has denied suggestion that on dated 19.3.2007 he, co-accused Rakeshwar and Bandhu were not in the fields of co-accused Surjan.

10.7 DW7 Deepak Kumar has stated that co-accused Rajeshwar is known to him as he is running the shop at Chirgaon. He has stated that co-accused Surjan is also known to him and on dated 19.3.2007 co-accused Rajeshwar opened his shop at about 8-30 AM and closed his shop at 7-30 PM and throughout the day co-accused Rajeshwar was present at his shop. He has stated that even on dated 20.3.2007 he was present at his shop. He has stated that at 5.30 PM police officials arrived at his shop and took him. He has stated that later on co-accused Rajeshwar told him by way of telephone that one Partap had filed criminal case against him and his family members. He has denied suggestion that on dated 19.3.2007 co-accused Rajeshwar was not present at village Chirgaon at his shop. He has denied suggestion that in order to save co-accused Rajeshwar he is deposing falsely.

11. Submission of learned Additional Advocate General appearing on behalf of the State that criminal offence against co-accused Rakeshwar @ Rakesh son of Surjan Singh under Section 325 IPC is proved on record beyond reasonable doubt is accepted for the reasons to be recorded hereinafter. It is proved on record that complainant Partap Singh and co-accused Surjan Singh have purchased the land from one vendor namely Bahadur Singh. It is proved on record that co-accused Surjan had purchased the land from vendor Bahadur Singh in the year 1977 and complainant Partap Singh had purchased the land from Bahadur Singh vendor in the year 2005. It is proved on record that complainant Pratap and co-accused Surjan have purchased different plots from same vendor Bahadur Singh by way of registered sale deeds. We have perused the copy of jamabandi Ext. PW1/K placed on record carefully for the year 2003-2004. There is positive entry in copy of jamabandi for the year 2003-04 placed on record that Partap Singh son of Kalgi Ram complainant had purchased Khasra Nos. 127, 132 and 133 by way of sale deed and mutation No. 135 was

sanctioned on dated 19.11.2005 in favour of Partap Singh son of Kalgi Ram complainant qua Khasra No. 127, 132 and 133. Names of accused persons did not figure in ownership column or in possession column of Khasra No. 127, 132 and 133 as per jamabandi Ext. PW1/K which is record of right prepared by revenue agency as per H.P. Land Revenue Act 1954. As per sale deed Ext. D6 placed on record it is proved beyond reasonable doubt that co-accused Surjan Singh son of Hari Nand had purchased the land from vendor Bahadur Singh comprised in Khasra Nos. 325 and 468 on dated 21.11.1977 in consideration amount of Rs. 1,000/- (Rupees one thousand only). Sale deed Ext. D6 placed on record remains unrebutted. Dispute inter se the complainant and accused persons are relating to land comprised in Khasra Nos. 127, 132 and 133. Co-accused Surjan did not purchase land comprised in Khasra Nos. 127, 132 and 133 which is in dispute in present case. PW2 injured Kalgi Ram has specifically stated when he appeared in witness box in positive cogent and reliable manner that his son namely Partap Singh complainant had purchased the land at Hanchauli from vendor Bahadur Singh and thereafter residential house was built. PW2 Kalgi Ram has specifically stated in positive manner that he and his wife Pusmi Devi were living in residential house and co-accused Rakeshwar alias Rakesh came with possession of a 12 bore gun and he pointed 12 bore gun at PW2 Kalgi Ram injured aged 70 years. He has stated that when his wife Pusmo Devi came down co-accused Rakeshwar @ Rakesh also pointed gun at her. PW2 Kalgi Ram injured has stated in positive manner that co-accused Rakeshwar @ Rakesh had given a blow on his head with butt of 12 bore gun. PW2 has specifically stated in positive manner that co-accused Rakeshwar @ Rakesh tried to put chilli powder in his eyes.

12. Testimony of PW2 injured aged 70 years is also corroborated by medical officer Dr. Rakesh Malhotra PW8 who has stated in positive manner that injured Kalgi Ram had sustained four injuries. (1) There was tenderness over the right shoulder joint (Dorsal aspect). (2) There was haematoma over left medio lateral aspects occiput about 3.0 cm diameter and there was swelling. (3) There was tenderness over left gastronemia muscles left leg and swelling positive was found all over the muscles right foot which was grievous in nature. (4) There was swelling over ventral aspect. It is proved beyond reasonable doubt that PW2 Kalgi Ram injured had sustained four injuries cited supra out of which injury No. 3 was grievous in nature. In present case incident took place on dated 19.3.2007 at 9 AM and medical examination of injured Kalgi Ram aged 70 years was conducted on dated 19.3.2007 at 2.15 PM. Testimony of medical officer is also corroborated by medical certificate Ext. PW8/B. Testimony of PW2 is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of PW2 injured Kalgi Ram aged 70 years who is senior citizen of India. It is held that co-accused Rakeshwar @ Rakesh had caused grievous hurt to injured Kalgi Ram aged 70 years with 12 bore gun.

13. Another submission of learned Additional Advocate General appearing on behalf of State that offence under Section 27 of Arms Act 1959 is also proved

against co-accused Rakeshwar @ Rakesh son of Surjan is accepted for the reasons to be recorded hereinafter mentioned. PW2 injured has specifically stated in positive manner that co-accused Rakeshwar @ Rakesh was in possession of 12 bore gun and he pointed gun towards Kalgi Ram. PW2 injured has specifically stated in positive manner that co-accused Rakeshwar @ Rakesh has also pointed out 12 bore gun towards his wife Pusmo Devi. PW2 has specifically stated in positive manner that thereafter co-accused Rakeshwar @ Rakesh had given a blow on head of Kalgi Ram with butt of 12 bore gun. Testimony of PW2 to this effect is trustworthy reliable and inspires confidence of Court. It is proved on record beyond reasonable doubt that co-accused Rakesh Kumar @ Rakeshwar had used arm in commission of criminal offence and committed offence under Section 27 of Arms Act 1959.

14. Even recovery of 12 bore armed gun is also proved beyond reasonable doubt as per seizure memo Ext. PW1/N. PW1 Partap Singh has specifically stated in positive manner when he appeared in witness box that 12 bore armed gun was recovered as per seizure memo Ext. PW1/N placed on record. PW5 Ram Lal another witness of seizure memo of recovery of 12 bore gun also stated in positive manner that 12 bore gun No. HPM 14902 was recovered in his presence. Testimonies of PW1 Partap Singh and PW5 Ram Lal qua recovery of gun are trustworthy reliable and inspire confidence of Court.

15. Another submission of learned Additional Advocate General appearing on behalf of State that criminal offence against other accused persons is also proved beyond reasonable doubt as alleged by prosecution is rejected being devoid of any force for the reasons hereinafter mentioned. PW2 injured has specifically stated that co-accused Surjan and Ropti were hiding themselves in the bushes. As per testimony of PW2 co-accused Surjan and Ropti Devi did not come at the spot but they were hiding themselves in bushes on the date of incident. It is proved on record that co-accused Rajeshwar was running the shop of insecticides at Chirgaon. DW7 Deepak Kumar has specifically stated that co-accused Rajeshwar is running the shop at Chirgaon adjoining to his shop. DW7 has specifically stated in positive manner that on dated 19.3.2007 co-accused Rajeshwar opened his shop at Chirgaon at about 8.30 AM and closed his shop at about 7.30 PM. DW1 has stated in positive manner that co-accused Rajeshwar throughout the day was present at the shop. DW3 Brijeshwar has stated in positive manner that w.e.f. 18.3.2007 to 20.3.2007 co-accused Brijeshwar had attended the school and had resided in the rented house of Amar Singh at village Mangiari. Prosecution did not examine any official from school in order to prove that co-accused Brijeshwar was not in school during the period w.e.f. 18th to 20th March 2007. Even prosecution did not examine Amar Singh owner of house in order to prove that co-accused Brijeshwar was not present at village Mangiari w.e.f. 18.3.2007 to 20.3.2007.

16. Submission of learned Additional Advocate General appearing on behalf of State that it is proved on record that house and shed constructed by vendee

Partap Singh over immovable land comprised in Khasra No. 127, 132 and 133 situated in Chak Hanchauli Tehsil Chirgaon District Shimla was destroyed which was used as a human dwelling place and on this ground accused persons be convicted under Section 436 IPC is rejected being devoid of any force for the reasons hereinafter mentioned. There is no positive cogent and reliable evidence on record in order to prove that which of the co-accused had destroyed residential house and shed constructed by PW1 Partap Singh over the land comprised in Khasra Nos. 127, 132 and 133 and on this ground we acquit all accused persons relating to offence punishable under Section 436 IPC by way of giving them benefit of doubt.

17. Submission of learned Advocate appearing on behalf of co-accused Rakeshwar @ Rakesh that civil case is pending between complainant and accused persons relating to Khasra No. 127, 132 and 133 before civil Court and on this ground co-accused Rakeshwar @ Rakesh cannot be convicted qua criminal offence under Section 325 IPC and under Section 27 of Arms Act 1959 is rejected being devoid of any force for the reasons hereinafter mentioned. We are of the opinion that pendency of civil suit does not give the licence to co-accused Rakeshwar @ Rakesh to commit criminal offence with 12 bore gun despite ad-interim injunction passed by civil Court against co-accused Surjan Singh and his family members. It is well settled law that proceedings of civil Court and proceedings of criminal Court are independent proceedings.

18. Submission of learned Advocate appearing on behalf of co-accused Rakeshwar @ Rakesh that co-accused Surjan Singh had purchased the land from vendor Bahadur Singh in the year 1977 and w.e.f. 1977 Surjan Singh along with his family members was in settled possession of Khasra No. 127, 132 and 133 and on this ground no criminal offence is proved against co-accused Rakeshwar @ Rakesh son of Surjan Singh under Section 325 IPC and under Section 27 of Arms Act 1959 is rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused the sale deed Ext. D6 executed in favour of co-accused Surjan placed on record. As per sale deed Ext. D6 Surjan Singh co-accused father of Rakeshwar @ Rakesh did not purchase land from Khasra Nos. 127, 132 and 133 on dated 21.11.1977 but purchased the land from Khasra No. 325 and 468 kita 2 situated in Chak Haunchali Tehsil Chirgaon District Shimla H.P. which is different plot and is situated at far distance from Khasra Nos. 127, 132 and 133. In present case dispute is not relating to Khasra No. 325 and 468 but dispute is relating to Khasra Nos. 127, 132 and 133 which was purchased by Partap Singh complainant son of Kalgi Ram from vendor Bahadur Singh. Even names of accused persons did not record in ownership as well as in cultivation column of Khasra No. 127, 132 and 133 at any point of time in record of rights prepared under H.P. Land Revenue Act 1954 by public official in discharge of official duty.

19. Another submission of learned Advocate appearing on behalf of co-accused Rakesh @ Rakeshwar that vendor Bahadur Singh had shown wrong location of

Khasra number purchased by co-accused Surjan Singh vide sale deed dated 21.11.1977 and on this ground co-accused Rakeshwar @ Rakesh cannot be convicted under Section 325 IPC and under Section 27 of Arms Act 1959 is also rejected being devoid of any force for the reasons hereinafter mentioned. PW9 Bahadur Singh vendor had entered in witness box in present case and Bahadur Singh has specifically stated when he appeared in witness box that he had sold his land comprised in Khasra Nos. 127, 132 and 133 to Partap Singh complainant situated in Chak Hanchauli in consideration amount of Rs. 40,000/- (Rupees forty thousand only). He has stated that he had sold separate land to co-accused Surjan Singh at Hanchauli. PW9 has specifically stated in positive manner that land which he had sold to Surjan Singh co-accused is situated far away from land comprised in Khasra Nos. 127, 132 and 133. We are of the opinion that vendee is under legal obligation to locate the actual immovable land purchased by vendee through the assistance of halqua patwari and field kanungo. In present case it is proved on record that civil suit relating to Khasra Nos. 127, 132 and 133 titled Partap Singh v. Surjan Singh is pending before Civil Judge (Junior Division) Rohru and Civil Judge (Junior Division) Rohru had passed ad interim injunction Ext. PW1/F restraining Surjan Singh and his family members from interference in any manner over suit land comprised in Khasra Nos. 127, 132 and 133 situated in Chak Haunchali Tehsil Chirgaon District Shimla till further order. Ex-parte ad-interim order was passed by learned Civil Judge (Junior Division) Rohru on dated 17.1.2006 prior to the incident. It is well settled law that ad-interim injunction passed by learned Civil Judge was operating against accused persons even on dated 19.3.2007. There is no evidence on record that ad-interim injunction dated 17.1.2006 was modified or set aside by any competent Court of law. In view of the fact that Civil Court had also restrained the accused persons from interfering over suit land comprised in Khasra Nos. 127, 132 and 133 situated in Chak Haunchali Tehsil Chirgaon District Shimla on dated 17.1.2006 we are of the opinion that accused persons cannot be allowed to flout ad-interim injunction passed by Civil Court. We are of the opinion that if ad-interim injunction of Civil Court is allowed to be flouted then anarchy shall prevail in the society. It is well settled law that all persons are under legal obligation to comply the directions of Civil Courts in order to maintain majesty of law and in order to maintain harmony in the society. In the present case there is no oral or documentary evidence on record in order to prove that Surjan or his family members have acquired title over immovable land comprised in Khasra Nos. 127, 132 and 133. On the contrary title of immovable land comprised in Khasra Nos. 127, 132 and 133 is in favour of complainant Pratap as per oral as well as documentary evidence placed on record. Even FIR No. 38 of 2006 Ext. PW15/A filed by co-accused Ropti Devi wife of co-accused Surjan Singh against Pratap Singh complainant relating to Khasra Nos. 127, 132 and 133 was not proved to be true and cancellation report was filed by investigating agency on dated 25.6.2006 which was accepted by learned Judicial Magistrate on dated 19.4.2007.

20. Another submission of learned Advocate appearing on behalf of co-accused Rakesh @ Rakeshwar that conviction cannot be given to co-accused Rakeshwar @ Rakesh under Section 325 IPC and under Section 27 of Arms Act 1959 on testimony of injured PW2 in present case is rejected being devoid of any force for the reasons hereinafter mentioned. We are of the opinion that testimony of injured PW2 is trustworthy reliable and inspires confidence of Court relating to co-accused Rakeshwar @ Rakesh. Testimony of injured PW2 Kalgi Ram is also corroborated with MLC placed on record. As per Section 59 of Indian Evidence Act 1872 facts can be proved by way of oral evidence. It is well settled law that conviction could be based on honest and trustworthy evidence of a single witness in criminal case if it inspires confidence of Court. (See Jose alias Kolli Jose Vs. The State of Kerala, AIR 1973 SC 944 : (1973) CriLJ 687 : (1973) 3 SCC 472 : (1973) SCC(Cri) 372 It was held in case reported in HLJ 2003 (1) H.P. page 541 titled State of H.P. v. Om Prakash and others that conviction can be based on sole testimony of injured if it inspires confidence of Court. It was held that injured cannot be said to be interested witness requiring corroboration.

21. Another submission of learned Advocate appearing on behalf of co-accused Rakesh @ Rakeshwar that there is material contradiction and improvement in prosecution case and on this ground co-accused Rakeshwar @ Rakesh could not be convicted under Section 325 IPC and under Section 27 of Arms Act 1959 is also rejected being devoid of any force for the reasons hereinafter mentioned. In present case incident took place on dated 19.3.2007 at 9 AM and prosecution witnesses were recorded on dated 10.3.2008, 11.3.2008, 12.3.2008, 13.3.2008, 17.7.2008 and 18.7.2008. It is well settled law that minor contradictions are bound to come in criminal case when testimonies of prosecution witnesses are recorded after a gape of sufficient time. We are of the opinion that in present case learned Advocate appearing on behalf of co-accused Rakeshwar @ Rakesh did not point out any material contradiction which goes to the root of case. It was held in case reported in C. Muniappan and Others Vs. State of Tamil Nadu, AIR 2010 SC 3718 : (2010) 9 JT 95 : (2010) 9 SCC 567 : (2010) 10 SCR 262 that even if there are some omissions contradictions and discrepancies then entire evidence would not be discarded. It was held that undue importance should not be given to omissions, contradictions and discrepancies which do not go to the root of the case. (See: Sohrab and Another Vs. The State of Madhya Pradesh, AIR 1972 SC 2020 : (1972) CriLJ 1302 : (1972) 3 SCC 751 : (1972) SCC(Cri) 819 : (1973) 1 SCR 472 : (1973) 5 UJ 43 , See: State of U.P. Vs. M.K. Anthony, AIR 1985 SC 48 : (1985) CriLJ 493 : (1984) 2 SCALE 728 : (1985) 1 SCC 505 ; See: Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753 : (1983) CriLJ 1096 : (1983) 2 Crimes 232 : (1983) 1 SCALE 665 : (1983) 3 SCC 217 : (1983) 3 SCR 280 ; See: State of Rajasthan Vs. Om Prakash, AIR 2007 SC 2257 : (2007) 8 JT 620 : (2007) 8 SCALE 576 : (2007) 8 SCR 1000 : (2007) AIRSCW 3937 : (2007) 4 Supreme 642 ; See: Prithu @ Prithi Chand and Another Vs. State of H.P., AIR 2009 SC 2070 : (2009) 3 JT 440 : (2009) 3 SCALE 192 : (2009) 11 SCC 588 : (2009) 2 SCR 765 ; State of U.P. Vs. Santosh Kumar,

(2009) 11 JT 592 : (2009) 12 SCALE 269 : (2009) 9 SCC 626 : (2009) 15 SCR 106 : (2009) 8 UJ 3992 ; See: Appabhai and Another Vs. State of Gujarat, AIR 1988 SC 696 : (1988) CriLJ 848 : (1988) 1 Crimes 606 : (1988) 1 JT 249 : (1988) 1 SCALE 228 : (1988) 2 UJ 27 ; See: Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, AIR 1999 SC 3544 : (1999) CriLJ 4561 : (1999) 7 JT 247 : (1999) 6 SCALE 69 : (1999) 8 SCC 649 : (1999) 3 SCR 1 Supp : (1999) AIRSCW 3546 : (1999) 8 Supreme 364 ; See: State of Himachal Pradesh Vs. Lekh Raj and Another, AIR 1999 SC 3916 : (2000) CriLJ 44 : (1999) 4 Crimes 337 : (1999) 9 JT 43 : (1999) 7 SCALE 86 : (2000) 1 SCC 247 : (1999) 4 SCR 286 Supp : (1999) AIRSCW 4008 : (1999) 9 Supreme 155 ; See: Laxman Singh Vs. Poonam Singh and Others, AIR 2003 SC 3204 : (2003) 96 CLT 782 : (2003) CriLJ 4478 : (2003) 1 JT 61 Supp : (2003) 7 SCALE 334 : (2004) 10 SCC 94 : (2003) 3 SCR 528 Supp : (2004) 1 UJ 116 : (2003) AIRSCW 4566 : (2003) 6 Supreme 644 ; See: Kuria and Another Vs. State of Rajasthan, AIR 2013 SC 1085 : (2012) CriLJ 4707 : (2012) 4 JCC 2644 : (2012) 9 JT 296 : (2013) 2 RCR(Criminal) 108 : (2012) 9 SCALE 42 : (2012) 10 SCC 433 : (2012) AIRSCW 5259)

22. Another Advocate appearing on behalf of co-accused Rakeshwar @ Rakesh that testimony of PW2 injured does not inspire confidence of Court and on this ground co-accused Rakeshwar @ Rakesh be acquitted under Section 325 IPC and under Section 27 of Arms Act 1959 is also rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that concept of falsus in uno falsus in omnibus is not applicable in criminal cases. (See Bhe Ram Vs. State of Haryana, AIR 1980 SC 957 : (1980) CriLJ 735 : (1980) 1 SCC 201 : (1980) SCC(Cri) 206 . Also See Rai Singh Vs. The State of Haryana, AIR 1971 SC 2505 : (1971) CriLJ 1738 : (1972) 4 SCC 289 : (1972) 4 UJ 4 It was held in case reported in Dalbir Singh and Others Vs. State of Punjab, AIR 1987 SC 1328 : (1987) CriLJ 1065 : (1987) 2 JT 580 : (1987) 1 SCALE 830 : (1987) 3 SCC 360 : (1987) 2 UJ 116 that there is no hard and fast rule which could be laid down for appreciation of evidence and it is a question of fact and each case has to be decided on the fact as they proved in a particular case.

23. In view of above stated facts appeal is partly allowed. We modified judgment of learned trial Court relating to co-accused Rakeshwar @ Rakesh son of Surjan Singh. We convict co-accused Rakeshwar @ Rakesh under Sections 325 IPC and under Section 27 of Arms Act 1959. Acquittal of other co-accused by learned trial Court is affirmed by way of giving them benefit of doubt and acquittal of Rakeshwar @ Rakesh son of Surjan Singh qua other criminal offences is also affirmed by way of giving him benefit of doubt. Now convict co-accused Rakeshwar @ Rakesh be heard on quantum of sentence under Sections 325 IPC and under Section 27 of Arms Act 1959 on 21.9.2015. Convict Rakeshwar @ Rakesh be produced before us.