

Madhya Pradesh High Court

The State Of Madhya Pradesh vs Homsingh on 12 April, 2022

Author: Deepak Kumar Agarwal

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Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016

THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(DIVISION BENCH)

(Hon'ble Shri Justice G.S.Ahluwalia &
Hon'ble Shri Justice Deepak Kumar Agarwal)

Criminal Appeal No.212/2010
Ramprakash & Anr.
Vs.
State of M.P.

Shri M.K.Chaudhary, learned counsel for the appellants.
Shri C.P.Singh, learned counsel for the State.
Shri Anand Purohit, learned counsel for the complainant

&
Criminal Appeal No.219/2010
Munna @ Ramnaresh & Ors.
Vs.
State of M.P.

Shri Pradeep Katare, learned counsel for appellants No.1 & 4.
Shri F.A.Shah, learned counsel for appellants No.3.
Appellant No.2-Ramvaran has died.
Shri C.P.Singh, learned counsel for the State.
Shri Anand Purohit, learned counsel for the complainant.

&

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Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016

Criminal Appeal No.268/2010
Santosh & Anr.
Vs.
State of M.P.

Shri V.D.Sharma, learned counsel for the appellants.
Shri C.P.Singh, learned counsel for the State.
Shri Anand Purohit, learned counsel for the complainant

&
Criminal Appeal No.285/2010
Hanumandas Baba & Hemraj
Vs.
State of M.P.

Shri Ashok Jain, learned counsel for the appellant.
Shri C.P.Singh, learned counsel for the State.
Shri Anand Purohit, learned counsel for the complainant

&
Criminal Appeal No.346/2016
State
Vs.
Homesingh & Ors.

Shri C.P.Singh, learned counsel for the appellant/State.
Shri Pradeep Katare, learned counsel for respondent No.4.
Shri R.K.Shrivastava, learned counsel for respondents No.9 and 10.

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Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016

Date of hearing : 21.02.2022

Date of Judgment :12.04.2022

JUDGMENT

(12.04.2022) PER JUSTICE DEEPAK KUMAR AGARWAL This judgment shall govern the disposal of all the five criminal appeals (Criminal Appeal Nos.212/10, 219/10, 268/10, 285/10 & 346/16.

2. Criminal appeal Nos. 212/10, 219/10, 268/10 & 285/10 have been filed under Section 374 of Cr.P.C by the appellants against the judgment of conviction & sentence passed by Third Additional Sessions Judge, Bhind, in S.T.No.165/2007 on 11.03.2010 by which appellants have been convicted under Sections 302/149, 148, and 324/149 of IPC and sentenced to undergo life imprisonment with fine of Rs.500/-, one year and one year RI respectively and Criminal appeal No.346/2016 has been filed by the State against the same judgment being aggrieved by acquittal of respondents Homesingh, Ramdutt and Satyaprakash under Sections 148, 302/149, 324/149 and 307/149 of IPC after taking leave to file appeal from this Court vide order dated 28.3.2016.

3. Prosecution case in brief is that on 3.7.2007 complainant Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 Narendra Sharma along with his father Ramlakhan Sharma in injured condition lodged a Dehati Nalishi at Surgical Ward of Distt. Hospital to the effect that today they were working on their field at Bajariya; his brother Ramgopali was ploughing the field with tractor and complainant and his father Ramlakhan were collecting stubble. At about 7 pm

Hanumandas carrying 315 bore gun, Totaram mouser gun, Munna 12 bore double barrel gun, Ramvaran 315 bore gun, son of Ramvaran 12 bore gun, Ramdutt 315 bore gun, Satyaprakash 12 bore gun, Ramsuresh 315 bore gun, Ramprakash 12 bore gun, Santosh Lathi and Damodar armed with axe came there in Marshal Tata Sumo and after surrounding Ramgopal started firing on him with intention to kill him. Gunshot fired by Hanumandas hit at his waist, due to which blood started oozing out. Complainant and his father when tried to save Ramgopal, then accused persons with intention to kill started firing on them. The complainant sustained four injuries on his head and as a result of which fell down. Father of the complainant also sustained injuries at different part of his body. Damodar and Santosh committed Marpeet with Lathi and axe. Guddan, Manish, Koke and Shashikant, who were present at the spot, intervened in the matter. Thereafter, injured were brought to Distt. Hospital, Bhind, where Ramgopal died. On such report, Dehati Nalishi was recorded under Sections 302, 307, 147, 148, 149 of IPC. Thereafter, FIR Crime Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 No.34/2007 was registered at police Station, Pavai, Distt. Bhind, for the aforesaid offences.

4. After completion of investigation, charge-sheet was filed before the competent Court and the case was committed to the Court of Session from where it was received by the trial Court for trial.

5. In order to bring home the charge prosecution examined fifteen witnesses. Appellants in their defence examined three witnesses.

6. After trial, learned trial Court convicted & sentenced the appellants as aforesaid and acquitted respondents of Criminal Appeal No.346/2016.

7. Learned counsel for the appellants submits that appellants have been falsely implicated in the case on account of election rivalry. In this regard, attention has been drawn to para 6 & 17 of the statements of Ramlakshan @ Ramlakhan (PW-6) where he has admitted that his son Surendra had lost the election of Surpanch against accused Hanumandas and appellants Ramprakash & Ramsuresh had supported Hanumandas. It is further submitted that several cases have been registered against the complainant party in regard to murder and for giving shelter to dacoits, and therefore, this possibility cannot be ruled out that out of the aforesaid enmity someone has killed the deceased and due to election rivalry, appellants have been falsely implicated in the case. The eye-witnesses of the case are related witness, and Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 therefore, looking to the fact that there is previous enmity between parties, evidence of these witnesses cannot be relied on. As per the FIR and 161 Cr.P.C. statements of Narendra Sharma (PW-3) and Ramlakshan (PW-6) have sustained firearm injuries in the incident, but as per the MLC report, they did not sustain any firearm injury and therefore, in order to fit in the slot of medical evidence, they have stated before the Court that their Marpeet has been committed by butt of gun, Lathi and axe.

8. It is further submitted that as per the prosecution story 12 accused have fired on the deceased and complainant party, but deceased Gopali has received only one gunshot on his thigh inflicted by accused Hanuman. Against remaining accused omnibus allegation of firing has been made. The trial Court on the same evidence acquitted accused Homesingh, Satyaprakash and Ramdatt only on the

ground that they are having enmity with complainant party and therefore possibility of their false implication cannot be ruled out.

9. It is further submitted that appellants Santosh and Damodar have been alleged to be armed with Lathi and axe, but the death of the deceased has been caused due to gunshot injury at thigh.

10. State counsel has supported the impugned judgment and prayed for dismissal of the appeals. As regards criminal Appeal No.346/2016 filed against acquitted accused Homesingh, Ramdatt and Ramprakash, Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 it is submitted by the learned counsel for the State that trial Court has erred in acquitting accused Satyaprakash, Ramdatt and Homesingh when they were carrying 12 bore gun, 315 bore gun and Lathi and actively participated in the incident.

11. Heard learned counsel for the parties and perused the record.

12. As per Narendra Sharma (PW-3), deceased Ramgopal alias Gopali was his brother. On 03.07.2007 at about 6-7 pm, he was tilling his field. At that time he, his father Ramlaxin, brother Surendra, Guddan, Shashikant, Manish and Koke were present on the field. He and his brother were collecting stubble of mustard at the field. One Tata Sumo vehicle came and stopped near the tube-well of Ramprakash. Hanumandas, Totaram, Ramdutt, Satyaprakash, Rambaran, Pramod son of Rambaran, Homsingh, Santosh, Damodar, Ramsuresh, and Ramprakash came out of the vehicle. Accused Hanumandas was having 315 bore gun, Totaram was having mouser gun, Ramdutt was having Mouser, Satyaprakash was having 12 bore gun, Ramsuresh was having mouser gun, Ramprakash was having 12 bore gun, Munna was having 12 bore double barrel gun, Damodar was having axe, Santosh was having Lathi, Homsingh was having Lathi, Rambaran was having mouser 315 bore gun, Pramod son of Rambaran was having 12 bore double barrel gun. After getting down from the vehicle, they came towards them and started firing Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 indiscriminately. Munna and Homsingh stopped his brother Ramgopal who was tilling the field and switched off the engine of tractor. All of them by surrounding them started firing. Hanumandas assaulted his brother Ramgopal with firearm. Bullet hit on his right leg below the abdomen.

12.1 When he and his father ran towards his brother to save him, all the accused started firing on them. Bullets were passed through over his head. He fell down on the floor. Santosh, Damodar and Homsingh assaulted them with Lathi and axe due to which injuries were inflicted on his head and the head and neck of his father. 5-6 injuries were sustained to his father. Suresh Guddan, Shashikant and Manish on being called, ran towards them. Koke was also present alongwith them. At that time, they were assaulted with the handle of guns. When they came, all the accused ran towards the vehicle and having sit in the vehicle fled away. Gopali sustained firearm injury. He was brought to the Bhind Hospital, but he died on the way. Doctor of Bhind Hospital called SHO of City Kotwali. Thereafter report was lodged by him to the SHO. Report/Dehati Nalishi is Ex.P-12 which bears his signature. Thereafter he got treatment. Having reached the village, performed cremation of his brother and thereafter got prepared spot map. Spot map is Ex.P-13 which bears his signature. Police seized simple soil and blood stained soil from the spot and 10- Cr.A. Nos.212/2010, 219/2010,

268/2010, 285/2010 & 346/2016 12 empty cartridge of mouser and 12 bore gun from the spot. Seizure Panchnama of which is Ex.P-14. Part A to A of which bears his signature.

12.2 During cross-examination, he has stated that his house is situated at a distance of two fields from the field on which incident took place. Near his house, houses of Ramkishan, Chintamani and other peoples are situated. He has stated that he has mentioned while recording of Dehati Nalishi (Ex.P/12) that he was ploughing his field at Bajariya, but if this is not mentioned in Ex.P/12, he cannot give any reason. He did not mention in Ex.P/12 that his brother was collecting stubble of mustard because in fact he was sitting at that time. He stated that he was admitted in hospital on 3rd and discharged on 10th. Police took his statement on 4th. He has mentioned the name of son of Rambaran, namely Pramod to the police, but if it is not mentioned in Ex.D/1, he cannot give any reason. He specifically stated that he did not mention the name of brother of Ramsingh, namely Homesingh in Ex.D/1, but if it is written in Ex.D/1 he cannot say anything. Son of Rambaran, namely Pramod was carrying 12 bore gun. He further stated that while recording of Ex.D/1 and Ex.P/12 he has mentioned that after surrounding accused persons started firing, but if it is not written like that, he cannot give any reason. His brother sustained only one injury. He has mentioned to Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 the police that all the accused slowly started firing on them and the bullets passed through over their heads and he fell down on the ground, but if it is not written in Ex.D/1 and Ex.P/12 he cannot give any reason. He further stated that in regard to causing Marpeet with the butt of gun he has mentioned the police, but if this is not written in Ex.D/1 and Ex.P/12 he cannot give any reason. He did not sustain gunshot at his head and the portion "A" to "A" in Ex.D/1 that "he sustain gunshot at his head" has not been mentioned by him, how police has written it in Ex.D/1, he cannot give any reason. He admitted that in front of him Patwari has prepared spot map of the field which they were ploughing. He stated that spot map was signed by him at about 5 pm. 12.3 This witness further stated that after sustaining injury firstly he went to the hospital. At the time of lodging report he was in conscious state. He admitted that he did not mention the names of Pramod and Homesingh while recording of Dehati Nalishi as at that time he did not know their names. He mentioned their names in his statement to the police on the basis of information of his brother. He also admitted that police did not conduct identification parade in regard to these two persons. He further stated that he sustained 4-5 injuries on head two of Lathi and two of axe. Suresh, Guddan, Shashikant, Manish were at the mound of field at Bazaria. When they Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 came, the accused persons ran away. He further stated that his brother Surendra contested the election of Sarpanch against Hanumandas and Ramkishore. He admitted that accused Totaram has purchased the land from the widow of Chauhan. He denied that his father wanted to plough that land forcibly.

12.4 This witness denied that this land is situated at the middle of Bazariya, that land belongs to them. He further stated that land of Totaram and their land at Bazariya are adjacent. He denied that on 3.7.2007 when Munna and his cousin brother Homesingh were returning from Navalpura, they found that their land was being ploughed. He explained that they were ploughing their field. He admitted that Munna stopped them to plough the field and a dispute arose on this point. He denied that they committed Marpeet of Munna and Homesingh. He denied that they were aggressors and due to land dispute they are falsely implicating the accused. In reply to the question that at the time

of preparation of spot map whether he has informed the police in regard to the field which was not disputed and where incident took place, he stated that he does not remember about that. He admitted that family members of Totaram were saying not to plough their field and they were saying that they will plough the field and dispute arose on this point. He explained that they were ploughing their field. He admitted that disputed land is not recorded Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 in the name of his father and him. He explained that their predecessors donated the land to temple. He further admitted that his brother Surendra lost the election of Sarpanch and in that election Ramprakash, Ramsuresh and their family members opposed them and supported Hanumandas. His Marpeet was committed later on. After sustaining gunshot, his brother fell down on the ground and remained lying on the ground for 10-15 minutes. Police Station Pavai is 7 kms away from the place of incident. He denied that due to election rivalry he falsely implicated Ramsuresh and Ramprakash. 12.5 In reply to a question that when there was no dispute in regard to ploughing the field, then why he along with others remained at the field, he stated that ploughing had started, they went to see and sat there. He further stated that Ramdatt and others have encroached over their land and case is going on in Court at Mehgaon. He admitted that a case for the offence punishable under Section 3(1)(x) of the SCST Act was registered against his father, brother, this witness, Surendra, Gopali, Guddan, Ramlakhan, Rajkumar, Rajnarayan and Koksingh at crime No.70/2004. A case under Section 212, 216, 400 of IPC was also registered against his father at Crime No.13/1999. He further admitted that against this witness, his brother Surendra Kumar, Gopali, father Ramlakhan and uncle Ramkaran a case of Marpeet was registered at Crime No.55/94 on the report of Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 Rakesh resident of Didona. He also admitted that a case for committing Marpeet of Rajesh Bramhan resident of Dirona was registered against him at crime No.136/2004. He explained that accused persons got registered that case. He denied that police has proceeded against this witness, his brothers and father under Section 110 of Cr.P.C.

12.6 This witness has further stated that on the next day at 2.30-3 police took him from the hospital and he informed the police about the place of incident from where accused persons fired gunshots. At the time of incident, he was at a distance of 15-20 steps from his brother Gopali and his father was at a distance of 2-3 steps. At the time of preparation of spot map, he has informed the police in regard to place where Marpeet of his father and this witness was committed, but if it is not mentioned, he cannot give any reason. He also informed about the place at the time of preparation of spot map where Suresh, Guddan, Shashikant, Manish and Koke were sitting and on their call came to the place of incident. They were not carrying any weapons. He further stated that he and his father got injured and their clothes were stained with blood. Their clothes were seen by the police and doctor and their clothes were seized at the hospital. At the time of preparation of spot map, he has informed about the field at Bazariya, but if it is not written in Ex.P/13 he Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 cannot give any reason. He did not inform the police that he sustained four injuries at head and blood was oozing out and how it has been written in Ex.P/12 at "B" to "B" part, he cannot give any reason. He did not inform the police that his father received gunshots at various parts, but he had stated the police that he received injuries (Khoon Aluda) at various parts.

12.7 This witness further stated that he mentioned in Ex.P/12 and Ex.D/1 that Santosh and Damodar by Lathi and axe committed Marpeet with this witness and his father, due to which this witness received injuries at his head and his father received 5-6 injuries at his head and nose, but if this is not written in Ex.P/12 and Ex.D/1 he cannot give any reason. He denied that he did not lodge any report on 3.7.2007 and on the next day after consultation with his family and relatives report was lodged. He denied that his brother Surendra by inflicting injury to himself lodged a false report at police Station Pavai on 3.6.2007 against Hanumandas and Ramdatt. In reply to a question that after firing and getting down from the vehicle, how accused persons went towards them, he has stated that they went towards them from all directions. After getting down from the vehicle, first fire was made by Hamumandas, but as tractor was running, he could not hear sound of fire. He cannot say that which accused caused how many gunshots. He denied that as after election Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 accused persons were opposing their family, therefore they were keeping enmity with them. He also denied that at the time of incident accused persons were not at the village. He further denied that he has falsely implicated the accused.

13. As per Ramlaxin @ Ramlakhan (PW-6), it was 3 rd day of Asaad. Approximately one year has elapsed. He was collecting stubble of mustard at his field. Guddan, Gopali, Narendra and Surendra were also present there. Gopali was driving tractor. At 5:30- 6 pm one Marshal vehicle came in which Hanumandas Baba, Ramdutt, Totaram, Rambaran, Ramsuresh, Ramprakash, Damodar, Santosh, Ramkhiladi, Homsingh, Munna, Pramod and Totaram total 11-12 persons were sitting. Vehicle was parked near the well of Ramprakash. Accused got down from the said vehicle and by firing gunshots and hurling abuses came near him and surrounded him. Hanumandas fired gunshot with 315 bore gun which hit his son Ramgopal between his leg and abdomen. Totaram was having mouser gun, Rambaran was having mouser, Munna was having 12 bore two barrel gun, Hom Singh was having Lathi, Pramod was having Lathi, Ramsuresh was having mouser, Ramprakash was having 12 bore, Ramkhiladi was having 12 bore, Damodar was having axe and Santosh was having lathi. His son fell down. When he went near him, Damodar assaulted him with Lathi, Hom Singh Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 assaulted him with Lathi, Pramod assaulted him with Lathi. All the accused fired gunshots which were passed through over his head. After sustaining gunshot injury to Gopali, he was brought to Pavai Police Station but on the way he succumbed to the said injury. 13.1 During cross-examination, he has stated that Surendra is his son. He admitted that Surendra was defeated in election against Baba Hanumandas. He admitted that election was held before this incident. He admitted that the land was sold by Hanumandas to Baby and Baby sold the said land to the wife of Totaram, dispute took place on the said land for which he filed objection. After defeat in election, land was sold by Baby to the wife of Totaram. He denied that Totaram used to cultivate the said land. He admitted that he disclosed in his police statement that on the date of incident they were tilling their field. If police did not mention this fact in his statement, he can not tell the reason. He admitted that accused never stopped him to cultivate the field of Bajaria Wala. He denied that Totaram forcibly took him to cultivate his land and due to which Surendra, Koke, Manish, Rajkumar had also gone alongwith him. He does not know that how he dictated in his statement that they had come there to cultivate the land. He disclosed in his police statement that all the accused fired gunshots which were passed through over his head. If Police did not mention this fact in his statement, he can not tell the Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 reason.

13.2 This witness did not disclose the Police that when he and Narendra ran to save Gopali, bullet hit on the right side of head. He did not disclose the police in his statement Ex.D-4 that due to firearm, injury was inflicted on the head of Narendra. On being asked from the witness that that all the accused assaulted you by means of Axe and Lathi, he told that all the accused assaulted with Axe and Lathi. Gopali on the said date of incident was tilling the field by Tractor. Since police did not ask him, he did not disclose the police that Tractor is of one Manoj and at the time of incident, the said tractor was parked in the field and after the incident also. When police arrived at Village for preparing spot map and conducting inquiry he was not present in the village. He admitted that father of Hanumandas was murdered. Hanumandas himself murdered his father. He admitted that in regard to the said incident case was registered against his son and relatives. He denied that on account of tilling of field in the darkness, he did not see the person who fired. He denied that to sack Hanumandas from the post of Sarpanch and to remove him from the village, a false complaint has been registered against him in regard to inflicting gunshot to his son. Despite sustaining injuries, he did not fall down. He was bandaging the foot of Ramgopal since he sustained gunshot injury. First of all, his son Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 Gopali sustained injuries. In spite of sustaining injuries to Gopali, he did not run away. He could not say that how much time he stayed at the spot.

13.3 This witness admitted that since election of Gram Panchayat, there are parties in the village. Satyaprakash is son of Ramdutt and Damodar is real brother of Santosh. Damodar and Santosh are cousin brother of Ramdutt. He admitted that when he tried to save Narendra, bullet did not hit on his head and the head of Narendra. He has mentioned in his police statement that he and Narendra were assaulted with Lathi and axe by all of them. On being analyzed his statement, this fact was found mentioned in his statement Ex.D-4. He does not know as to whether he had given documents related to the said field to the police or not. He disclosed the police in regard to injuries sustained by him and Gopali in the Hospital and not at the place of incident. He does not know what is the number of Marshall. There were 10-12 persons sitting in the vehicle, but he can not tell the accurate number. On hearing the sound of firing of bullet, he got frightened. He denied that the land which was being tilled by Gopali does not belong to him. He did not provide any document in regard to ownership of the said land. He denied that since he was having grudge with the accused due to dispute of land, accused has been falsely implicated by him.

Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016

14. As per Guddan @ Gokul Prasad (PW-4) he knows all the accused. On 03.07.2007 he was over the mound (medh) of his field, Koke, Manish, Shashikant were also present there. Ramgopal was driving tractor. At that time, at about 6 pm, when his father Ramlakhan and brother Narendra were collecting stubble of mustard in the field, one vehicle i.e. Tata Sumo Marshal came there. The said vehicle was stopped near the tube-well of Ramprakash. Accused Hanumandas, Totaram, Munna, Rambaran, Pramod, Homsingh, Ramdutt, Satyaprakash, Ramsuresh, Ramprakash, Damodar, Santosh came out from the said vehicle. Accused Hanumandas was having 315 bore gun, Totaram was having mouser gun, Munna was having a 12 bore double barrel gun, Rambaran was having mouser gun, Pramod was having 12 bore double barrel gun, Hom Singh was having Lathi, Ramdutt was having mouser gun, Satyaprakash was having 12 bore gun, Ramsuresh was having mouser gun,

Ramprakash was having 12 bore, Damodar was having axe and Santosh was having Lathi.

14.1 Having come out from the said vehicle, all the accused came towards tractor. Accused Munna and Pramod stopped the tractor by firing, Gopali switched off the engine of tractor and when he got down from the said tractor, Baba Hanumandas fired on him which hit on his right leg below the abdomen. Narendra and his father were Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 surrounded by the accused and they assaulted them by Lathi, axe and handle of axe, due to which they sustained several injuries. Injuries were inflicted on the nose, head and several parts of the body of his father and on the head of Narendra. When Narendra and his father Ramlakhan shouted, they reached there. Narendra and his father Ramlakhan fell down. Bullets were passing through over their heads. When all of them started shouting, accused by sitting in vehicle fled away.

14.2 During cross-examination, he has stated that he knows Rajesh. He does not know that before 1994 his brother Surendra was tried in regard to death of Rajesh. He has admitted that in the FIR, he and Narendra were arrayed as accused. He voluntarily said that he was exonerated in the said case. He admitted that a case was registered against his father at Police Station Sajeev in regard to giving shelter to dacoits. He voluntarily said that his father was exonerated in the said case. He denied that before the said incident, a case in regard to committing Marpeet with Constable Vinod Singh was registered against him at Police Station Pawai. He admitted that against his brother Gopali a case was registered in connection with death of son of Ramdulare. He voluntarily said his brother was exonerated in the said case. He denied that before the incident, they had previous animosity with many peoples. He denied that dispute took place on Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 the land which was sold by Hanumandas to Baby and thereafter Baby sold it to Shanti Bai. He denied that at the time of incident they were tilling that field. He admitted that Hanumandas contested election, but denied that they had any grudge with him. 14.3 He admitted that in his Police statement (Ex.D-2) he did not say that "since the election they are keeping enmity with Hanumandas and Baba Hanumandas sold the land which belongs to temple and executed sale-deed of the said land and they were tilling the field which was sold by Hanumandas". He admitted that in his statement (Ex.D-2) he revealed that at the time of incident he was tilling his field, if this fact is not mentioned in his statement, he can not tell the reason. He denied that at the place where mound (medh) of the field of Ramdulare and Ramsiya is situated, dispute took place. He was sitting on the field of Chintamani. Since he is illiterate, he has no knowledge in regard to direction. Surendra had brought water. He did not tell the name of Surendra from portion "A" to "A" of his cross-examination. He voluntarily said that he had told the name of other three persons. Accused Munna and Pramod stopped the tractor by firing. He had revealed this in his Police Statement Ex.D-2. Gopali switched off the engine of tractor. He had revealed this in his Police Statement (Ex.D-2). He told the police that his father Ramlakhan and Narendra were assaulted by the butt of pistol. Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 In his police Statement (Ex.D-2) he told that bullets were passing through over their heads but "when his father ran to save his brother, bullet hit on his head", how this fact is mentioned in his statement ExD-2, he does not know. All the persons did not tell about Lathi and Axe, how this fact is mentioned in his statement Ex.D-2 he does not know. He does not know that at what time police reached the village, however, he himself stated that he brought Gopali to hospital. Police met him in the hospital. He told the police that the incident was caused by accused persons and he saw the

incident. He narrated the said incident to the police at 5-6 pm in the hospital. He was having license of 315 mouser gun. He himself stated that the said gun has been deposited in Police Station. He does not know that in which offence the said gun has been deposited. Gopali was alone while driving the tractor. He did not see whether bullet hit the tractor or not? After hitting one bullet to his brother, accused fired in the air. He himself admitted that bullets passed through over the head of his brother and father. He denied that since the accused did not give money to his father, he has falsely implicated them. Munna alias Ramnaresh is son of Totaram. He does not know who was driving Tata Sumo.

14.4 He himself admitted that when the accused came out from the said vehicle, he realized that the said accused are coming towards Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 him. He does not know as to which accused was firing, but someone ordered to stop the tractor. He was not driving the tractor, however he himself admitted that he was sitting in the tractor. Gopali was driving the tractor of Raju Purohit. He could not tell as to whether he mentioned the said fact in his statement Ex.D-2 that all the accused while using firearm came out from the vehicle. Having come near Gopali, accused fired on him at a distance of 10-12 foot. He could not tell that how much bullets were fired by the accused. Thereafter he said that it may be 30-40. When bullet hit Gopali he was standing at a distance of 30 steps, but accused did not fire on him. When his father and brother shouted, he had gone to the place of incident. When bullets were passing through over his head, he kneeled down. He has stated in his statement (Ex.D-2) that bullets were passing through over his head and head of his father. He has not sustained any injury but he shouted. He does not oppose in regard to selling of land by Hanumandas, however, he admitted that he filed an application in Tahsil Court because the said land was his ancestral land. His elder brother opposed because the said land belonged to temple. He denied that since there is a dispute in regard to land, they have falsely implicated the accused. He denied that Totaram, Rambaran, Hotsingh, Ramnaresh and Pramod were present at the place of incident. He does not know that Ramdutt filed a civil case in Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 regard to land dispute against his father in Mahgaon Court. 14.5 He denied that due to election rivalry they are having grudge with accused. He in his statement Ex.D-2 did not disclose the fact that accused surrounded his father and brother. He disclosed the said fact for the first time before the Court. Injuries were inflicted on nose, head and other parts of the body of his father and on the head of Narendra, he mentioned this fact in his statement. If police did not mention this in his statement, he could not tell. He denied that he is relative of Koke, but he belongs to his caste. Rajkumar is his cousin brother. He does not know that he is a dacoit who has an award of Rs.25,000/- on his head. He denied that on the date of incident he was absconded. He admitted that on the report of Phoolsahay Jatav before this incident, a case against his father and 11 others was registered. He himself admitted that they were exonerated in the said case. He denied that Surendra made statement against them in the said case. He denied that Damodar and Santosh made statement against his father in the said case. He denied that he has been introduced as a false eye-witness and he has made false statement in the present case since he is having grudge with the accused. 14.6 This witness (PW-4) has reached the spot along with Suresh, Shashikant & Manish and did not sustain any injury in the aforesaid incident. He is brother of the deceased and has been falsely Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 introduced as eye-witness of the case.

15. As per Manish (PW-8), he knows the accused and deceased Gopali. On 03.07.2007 when he was on the mound (medh) of field, Gopali was tilling the said field. His father Ramlakhan, Guddan, Sashikant, Surendra were also present there. One vehicle i.e. Tata Sumo Marshal came there. The said vehicle was stopped near the tube-well of Ramprakash, 10-12 persons came out from the said vehicle and went towards Gopali. He knows all 10-12 persons whose names were Hanumandas, Totaram, Munna, Rambaran, Pramod, Homsingh, Ramdutt, Satyaprakash, Ramswaroop, Ramprakash, Damodar, Santosh. All accused were firing. When Gopali came down from the tractor, Hanumandas fired on him. Bullet hit below the abdomen of Gopali. Accused having surrounded Ramlakhan and Narendra committed marpeet with them. When they ran to save them, accused hurled abuses to them. He himself admitted that he fell down and afterwards accused having sit in the said vehicle fled away. Gopali died on the spot. Injured were sent to hospital. They got treatment at Bhind Hospital.

15.1. During cross-examination, he has stated that he does not know that after lapse of how much time police recorded his statement. Incident is of 03.07.2007. On 04.09.2007 his statement was recorded. He denied that after listening sound of bullet, he reached the spot Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 along with Shashikant, Koke and Kamlesh. He denied that Tata Sumo vehicle was standing there before his reaching. He admitted himself that after his reaching vehicle came on the spot. He denied that when he reached, firing was going on. He admitted himself that he was already present at the field. Pallets hit Ramnaresh and his father. He did not mention this fact in his statement (Ex.D-5). He did not depose that Gopali died. How this fact has been mentioned in his statement, he can not say. He did not disclose this fact in his statement recorded before the Police, however, for the first time he disclosed before the Court that at 7 pm when he was sitting on the mound of field, Gopali was driving the tractor. In his statement Ex.D-5 he has stated that the vehicle Tata Sumo stopped near the tube-well of Ramprakash, 10-12 persons came out from the said vehicle and started firing indiscriminately and went towards Gopali. When Gopali came down from the tractor, Hanumandas fired on him. Bullet him below the abdomen.

15.2 This witness narrated in his statement Ex.D-5 that accused having surrounded Ramlakhan and Narendra, committed Marpeet with them. He admitted that he did not go to Bhind hospital. His father and other members of family came on the next day of incident. He denied that he did not see the incident. He denied that in front of him Hanumandas did not fire gunshot on Gopali. He admitted that Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 before recording of his police statement, he did not disclose about the incident to anyone. He admitted that before half an hour of the incident he was sitting at the field. Gopali was also present alongwith him. He did not disclose in his statement Ex.D-5 that since ten days he is at the house of his brother-in-law Gopali. He admitted that all the accused were firing bullets, if this fact is not mentioned in his police statement, then he can not tell the reason. He does not know that there was previous animosity between his brother-in-law and all the accused. He denied that since his relative is having grudge with the accused, he is giving false evidence against the accused. 15.3. The presence of Manish (PW-8) at the time & place of occurrence appears to be highly doubtful because he is not found to be trustworthy as in para 4 of his statement it has come on record that witness belongs to village Ahno police Station Andori Tahsil Gohad. The distance of said village from the place of occurrence is near

about 20-21 kms. Moreover this witness is a close relative of the deceased because this witness has admitted in para 10 of his statement that deceased was husband of his sister. Apart from this, conduct of the witness is highly suspicious and in para 9 of his statement this witness has deposed that he had not gone to Bhind hospital. If this witness had been present on the spot, he would have definitely gone to the hospital with brother of the deceased. Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 Moreover there are various material omissions and contradictions in his statement, hence, statement of this witness is not acceptable.

16. As per Shashikant Sharma (PW-15), he had put his signature on Safina form and Lash Panchayatnama. Before two years at about 6-7 pm, he was at a distance of two fields, he listened the noise of bullet. He alongwith Manish and Tota ran towards the place of incident. At that time, firearm injury was caused to Gopali. He did not see the accused who caused firearm injury. He did not see the accused at the place of incident but saw some persons running away. 16.1 During cross-examination, he admitted that when he reached the place of incident, he saw that Hanumandas Baba, Munna Gurjar, Rambaran Gurjar, son of Rambaran, Ramdutt Sharma, Ramprakash Sharma, Ramsuresh Shram, Satyaprakash Sharma, Totaram Gurjar were having guns and Hom Singh and Santosh were having Lathi and Damodar was having axe. He did not reveal the police in his statement Ex.P-39 that Hanumandas fired gunshot, how police mentioned this fact in his statement, he can not tell. However, he admitted that accused fired gunshot which hit Gopali and Narendra. He did not disclose in his statement Ex.P-39 that Santosh and Damodar assaulted with Lathi and Axe, how this fact is mentioned in his statement, he can not say. Due to gunshot injury, Gopali fell down, then accused fled away. He went to Bhind Hospital. He knows Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 all the accused. He did not give his statement in the hospital. His statement was recorded after two months. He did not disclose anyone that who got down from the vehicle Tata Sumo. He admitted that he saw the accused firing gunshot and due to which stampede occurred and villagers reached the spot. However he himself admitted that four persons of village reached the spot. He disclosed in his statement that he was at a distance of two fields from where he listened the noise of bullet. If this fact is not mentioned in his police statement, he can not tell the reason. He does not know owner of the fields, which were situated near the field which was being tilled by Gopali. When he reached the place of incident, there was little brightness, 4-5 persons of village were present at the place of incident. However, he himself admitted that after taking Gopali, he had gone. He admitted that no incident took place before him. He denied that since he belongs to the family of Ramlakhan, he is giving false evidence.

17. Surendra Sharma (PW-5) has stated that on 3rd July, 2007 he was ploughing his field. His father Ramlakshin, brothers Ramgopal and Narendra were there. Gopali was driving tractor. His father Ramlakshin and Narendra were collecting stubble of mustard. His brother was ploughing the field. In the evening at about 6 one Tata Sumo Marshal vehicle came and stopped near well of Ramprakash. Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 Ramdatt, Hamunmandas, Totaram, Satyaprakash, Ramsuresh, Ramprakash, Damodar, Santosh, Rambaran, Munna, Homesingh, Pramod got down and by firing came towards them and surrounded the tractor, then his brother stopped the tractor. They started firing from all directions, they became frightened. His brother Ramgopal sustained gunshot below the stomach fired by Hamuman. At that time, Ramdatt was having 315 bore mouser, Satyaprakash 12 bore gun, Ramsuresh Mouser,

Ramprakash 12 bore gun, Damodar axe, Santosh Lathi, Homesingh Lathi, Munna 12 bore double barrel gun, Rambaran mouser gun and Totaram was having mouser gun. His father and Narendra also received injuries in the incident. When they cried, he went there. Accused persons committed Marpeet of Ramlakhan and Naresh by butt of gun and Lathi and axe. Because of their firing, he laid down on the ground. On making hue and cry by them, some persons reached there, then accused persons ran away. He stated that his predecessors donated the land to temple of Hanumanji. Earlier Vijayramdas was Pujari of temple, thereafter Nathuramdas and then Hanumandas became Pujari of the temple. By manipulating documents, Hanumandas became Bhumiswami of the said land. Hanumandas sold the land to one widow and she sold it to wife of Totaram, namely Shantibai. When they came to know, they filed appeal before the SDM, and therefore, dispute arose. He himself Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 stated that before one month, gunshot was fired at him. 17.1 During cross-examination, he admitted that Munna @ Ramnaresh, Totaram, Ramvaran, Homesingh and Pramod belong to one family. Gopali was also called as Ramgopal and he was killed in the incident. He admitted that where Ramgopal was ploughing, he was not present there. He was coming by taking water. His father and brother Narendra were at the field and collecting stubble of mustard. After taking water from the home, he went to the field at 6. He did not find any Tata Sumo vehicle in the way. He saw Tata Sumo vehicle from the distance of 200-300 meter and it stopped at the tube well of Ramprakash. He saw the accused persons when they were coming after getting down from the vehicle by firing. At that time, Gopali was on tractor at a distance of 20-25 steps away. He admitted that Santosh did not fire gunshot. He was carrying Lathi. There was also some contradiction in regard to firing by Homesingh and Pramod. He admitted that when his brother Gopali sustained gunshot Narendra was at a distance of 10-15 steps and he was at a distance of 40-50 steps from Gopali. When he reached he saw that accused persons were committing Marpeet of Ramlakshan and his brother Narendra by butt of gun, Lathi and axe. If this fact is not mentioned in Ex.D/3, he cannot say anything.

17.2 Distance between Harlal Ka Pura and place of incident is 200- Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 300 meter. After Gopali received gunshot when they cried, persons from Harlal Ka Pura reached the place of incident, then accused persons ran away. He also mentioned this fact in his statement Ex.D/3, but if it is not written in it he cannot assign any reason. He denied that the land, which was being ploughed by deceased Gopali, is not of their ownership. He denied that Ramvaran was not present at the time of incident and was admitted in hospital from 30.6.2007 to 5.7.2007. He denied that land, which was being ploughed by his brother Gopali, was purchased by Totaram in the name of his wife. He does not want that Totaram purchase said land. He wants that said land remains with temple. He denied that he is falsely implicating the accused persons.

17.3 This witness further stated in his cross-examination that the tractor from which they were ploughing the field is of Raju Pirohit. Gopali did not went alone along with tractor, along with him, his father and younger brother Narendra also went to the field. They went to field at about 6 and after half an hour he reached the spot. He heard shouting of his brother Narendra that Gopali has sustained gunshot, at that time, he was lying in the field of Shrikrishna Vyas at a distance of 20-25 steps. He admitted that Santosh and Damodar did not have guns and they did not make any fire. When this witness was asked that no report was lodged on the date of incident, he replied Cr.A.

Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 that doctor called the police, but on that day he did not give his statement to the police. One month before gunshot was caused to him and he lodged the report in regard to this incident against Hanumandas and Ramdatt at police Station Kotwali. He admitted that no challan was filed in this case, but he denied that by inflicting injury to himself, he lodged a false report. He admitted that he did not went with Gopali for ploughing the field. He went there after taking water. He denied that he did not present at the spot at the time of incident and came there later on.

17.4. This witness has specifically admitted in para 4 of his statement that he has not seen the actual person firing with gun on the deceased. Moreover this witness does not reside in the village. In para 5 of the statement, it has come on record that when he arrived at the spot 4 or 5 persons of the village were present there, but they were not examined by the prosecution. On close scrutiny of the statement, there is no hesitation in arriving at that this witness is not a eye-witness of the incident. His evidence is vague and cryptic.

18. Kamendra Singh Kushwah (PW-14) has stated that on 3.7.2007 he was posted as Head Constable at police Station, City Kotwali, Bhind. On the said date Head Constable Rajkumar gave one Dehati Nalishi to him, on the basis of which, he registered FIR Crime No.0/2007 for the offence punishable under Sections 302, 307, 147, Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 148, 149 of IPC which is exhibited as Ex.P/36. The same bears his signatures. During cross-examination, he denied that Head Constable Rajkumar did not give any Dehati Nalishi to him and in collusion with SHO, police Station, Pavai, he prepared Dehati Nalishi and FIR (Ex.P/36) later on.

19. B.S.Jadaun (PW-11) has stated that on 4.7.2007 he was posted at Station House Officer at police Station Pavai. On the basis of Dehati Nalishi, he registered FIR bearing Crime No.34/2007 at police Station, Pavai, against accused Hanumandas, Totaram, Munna Gurjar, Ramvaran Gurjar, Son of Ramvaran, Ramdatt Sharma, Satyaprakash Sharma, Ramsuresh Sharma, Ramprakash Sharma, Santosh Sharma and Damodar Sharma. He also recorded Merg intimation No.4/2007 vide Ex.P/29 which bears his signatures. On the same day after reaching village Dhidhona at the instance of Narendra Sharma he prepared stop map (Ex.P/13). On the same day, he took the statements of Narendra Sharma, Surendra Sharma and Guddan Sharma as narrated by them. On 8.7.2007 he took statement of Ramlakhan Sharma @ Raklakshan. On 9.7.2007 he arrested accused Munna @ Ramnaresh Gurjar vide Ex.P/1. On the same day, he arrested Ramprakash Sharma, Santosh Sharma and Homesingh Gurjar vide Ex.P/2, Ex.P/3 and Ex.P/5 which bears his signatures. He prepared memorandum of aforesaid accused vide Ex.P/5, Ex.P/6, Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 Ex.P/7 and Ex.P/8. On the basis of memorandum of Homesingh and Santosh Sharma one Lathi each has been seized from them vide Ex.P/9 and Ex.P/10. On 23.7.2007 he arrested accused Damodar Sharma vide arrest memo Ex.P/18 and one axe has been seized from his possession vide Ex.P/17. On 27.7.2007 he arrested accused Ramvaran Singh vide arrest memo Ex.P/30 and from his possession one 315 bore gun, two live cartridges along with photocopy of licence have been seized vide seizure memo Ex.P/31. Earlier on 4.7.2007 in presence of witnesses he seized plain and blood stained soil along with empty cartridges of 12 bore and 315 bore vide seizure memo Ex.P/14. He sent the seized weapons, plain and blood stained soil and clothes of deceased to

Forensic Science Laboratory, Sagar for examination and the report of FSL, Sagar, is Ex.P/32. He admitted that in Sanha No.78 dated 4.7.2007 there is mention of sending Munna Singh and Homsingh to the hospital for examination and their MLC is exhibited as Ex.D/7. He himself stated that Homsingh and Munna reached police Station in injured condition. It is true that in Sanha No.65 (Ex.D/9) there is mention of sending both the injured to hospital for examination and also departure of SHO, Surpara towards place of incident. How they sustained injuries, in this regard he does not have any information. During investigation, he came to know that during incident they sustained injury, but who Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 caused injury to them it did not come out. He did not take their statement, he interrogated them.

19.1 This witness further stated that during investigation he investigated the fact that accused persons came from Tata Sumo, but no information about its driver, colour could be known. He denied that accused Ramsuresh, Ramprakash and Hanumandas have not committed the incident and he in collusion with complainant party has falsely implicated them.

20. Dr.J.P.S.Kushwah (PW-2) has stated that on 4.7.2007 he was deputed on emergency duty at District Hospital, Bhind. On the said date, he conducted postmortem of deceased Ramgopal and found following external injuries:-

"(i) Gunshot/wound of entry -Lacerated wound of about 1/2" diameter present over right thigh inner part medially just above the right patella upper border with inverted margins.

(ii) Gunshot wound/ wound of exit- Lacerated wound over right thigh lower part of size 8"x 4" x lacerated with fracture of right femur bone. Margins everted. "

As per the opinion of the doctor the cause of death is gunshot injury leading to fracture of right femur with injury to blood vessels of right thigh leading to excessive bleeding and death within 6-12 hours of postmortem. Death was homicidal in nature and mode of death is syncope. During his cross-examination, no discrepancy has been Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 carved out.

21. Dr.S.C.Gupta (PW-13) has stated that on 3.7.2007 he deputed on emergency duty at District Hospital, Bhind. On the said date, Ramlakshan son of Harnayan was brought before him for examination. He found following injuries on his person:-

"1. Lacerated wound 1 1/2 cm x 1 1/2 cm x 1 cm placed at left leg upper 1/3rd. Margin irregular. Fresh blood present.

2. Incised wound 3 cm x 1/2 cm x bone deep placed at right parietal region. Obliquely placed. Margin regular.

3. Lacerated wound 1 1/2 x 1 cm placed at right cheek.

4. Lacerated wound 1 cm x 1/2 cm x 1/2 cm placed at right side of nose. Margin irregular.

As per the opinion of the doctor, injury No.2 was caused by hard and sharp object and injuries No.1, 3 and 4 were caused by hard and blunt object. He advised for x-ray of head and left leg. The injuries were caused within 24 hours of examination.

21.1 On the same day, he also examined Narendra and found following injuries on his person:-

"1. Incised wound 4 cm x 1/2 cm x bone deep placed at left side of occipital region. Margin regular.

2. Lacerated wound 3 cm x 1/2 cm x bone deep placed at occipital region. Margin irregular.

3. Lacerated wound 2 cm x 1/3 cm x bone deep placed at left parietal region. Margin irregular.

4. Abrasion 3 cm x 2 cm placed at right forearm middle 1/3rd."

As per the opinion of the doctor, injury No.1 was caused by hard and Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 sharp object and injuries No.2, 3 and 4 were caused by hard and blunt object. For ascertaining the nature of injuries, he advised for x-ray. The injuries were caused within 24 hours of examination. During cross-examination, he stated that as no fracture was found in x-ray, it can be presumed that injuries are simple in nature. He admitted that injuries mentioned in Ex.P/35 may come due to falling on stubble of mustard or sharp object. He admitted that in regard to the injuries mentioned in Ex.P/34 and Ex.P/35 no query was made by the police.

22. V.P.Dwivedi (PW-10) has stated that on 14.9.2007 he was posted at police Station Pavai as Station House Officer. On the said date, during investigation of crime No.34/2007 under Sections 302, 307, 147, 148, 149, 324, he recorded the statements of witnesses Manish, Shashikant and Kamlesh as narrated by them. Thereafter on 18.9.2007 he arrested Totaram Gurjar vide arrest memo Ex.P/18 which bears his signatures at "A" to "A" part. On the said date, he seized 315 bore gun from accused Totaram vide seizure memo Ex.P/19. Thereafter, on 1.10.2007 he arrested accused Satyaprakash Sharma, Hanumandas Baba, Ramdatt Sharma vide Ex.P/20, Ex.P/21 and Ex.P/22 which bears his signatures. On the said date, one 315 bore rifle from accused Ramdatt Sharma, one 315 bore rifle from accused Hanumandas Baba and one single barrel gun from accused Satyaprakash Sharma have been seized vide seizure memo Ex.P/23 Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 to Ex.P/25. On 3.10.2007 he arrested accused Pramod Gurjar vide arrest memo Ex.P/26 and searched his house, Panchnama to this effect was made vide Ex.P/27.

22.1 During cross-examination, this witness admitted that on the date of incident he was not posted at police Station Pavai. He admitted that the gun which was seized from Baba Hanumandas was his licensee gun. He further admitted that against the complainant and deceased several cases were

registered at the police Station. He investigated about the criminal antecedents of deceased and his family members. He admitted that during investigation he did not go to the spot. Witness Manish in Ex.D/5 has not stated that Tata sumo vehicle stopped near tube well and 10-12 persons alighted from the said vehicle and started firing. This witness also did not inform that after alighting from the vehicle accused persons went towards the place where deceased Gopali was ploughing the field by tractor. This witness also did not inform in Ex.D/5 that when Gopali alighted from the tractor, Hanumandas Baba fired at him which hit him below his stomach. He also did not inform that accused persons after surrounding Narendra and Ramlakhan committed Marpeet with them. He explained that he only told that accused persons committed Marpeet with Narendra and Ramlakhan. He admitted that Rajnarayan and Rajkumar are nephews (Bhanje) of Ramlakhan and a reward of Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 Rs.25,000/- each was declared on them. It is true that in regard to giving shelter to them, case has been registered against complainant Narendra, witness Surendra and Ramlakhan. He had taken statements of Manish, Shashikant and Kamlesh on 14.9.2007 and not before that. They did not take him to the place from where they saw the incident. Witness Manish did not tell in his statement that all the accused were firing. Witness Manish stated during his police statement that he also received injuries which was written by him. He admitted that 12 bore licencee gun of Satyaprakash has been seized by him. He denied that he detained accused Ramdatt and Satyaprakash two days before at the police Station along with weapons and later on he arrested them and prepared seizure memo. He admitted that wife of accused Damodar, namely Annapurna lodged a report in regard to loot against complainant party which was registered. He denied that in collusion with complainant party he has prepared a false case against the accused.

23. Ramhet (PW-1) has stated that he does know Munna Gurjar, Ramprakash Sharma, Santosh Sharma and Homesingh Gurjar. No seizure was made by the police from the aforesaid accused in front of him. He was declared hostile and leading questions were put to him. During which, he admitted his signatures on arrest memos Ex.P/1, Ex.P/2, Ex.P/3 and Ex.P/4. He also admitted his signatures on Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 memorandums given by Munna, Ramprakash, Santosh and Homesingh (Ex.P/5, Ex.P/6, Ex.P/7 and Ex.P/8) and seizure memo Ex.P/9 and Ex.P/10. During cross-examination, he stated that he signed the documents at the police Station on the instructions of SHO. He does not know about the contents of the documents.

24. Mahesh Kumar Sharma (PW-7) is the witness of arrest memo (Ex.P/15) and seizure memo (Ex.P/16). He has not supported the prosecution case and declared hostile.

25. Haribabu Sharma (PW-9) is a witness of seizure memo (Ex.P/17) and arrest memo (Ex.P/18). He also has not supported the prosecution case and declared hostile.

26. Ramprakash (PW-12) has stated that on 4.7.2007 he was posted as Constable at police Station, Pavai. On the said date Constable Jitendra Singh brought one sealed Potli from District Hospital, Bhind, containing clothes of the deceased along with sample seal and handed over the same to Head Constable Ramautar Rathore at the police Station. It was seized before him vide seizure memo Ex.P/33.

27. Dr. Dharmveer Dinkar (DW-1) has stated that on 24.11.2005 he was posted as Medical Officer in PHC, Guishar. He has brought record of the hospital from 30.6.2007 to 5.7.2007. He specifically stated that certificate Ex.D/11 was not issued by him. He further Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 stated that they only admit the patient for one day and if someone requires longer treatment, then they refer him to Gohad or Bhind. Ex.D/11 is a certificate allegedly issued by Dr. D.V.Dinkar PHC, Guishar certifying that appellant Rambaran son of Gambhir Singh was admitted their from 30.6.2007 to 5.7.2007. In original register page No.92 (Ex.D/12) there are entries from 1791 to 1799. There are some overwriting on the same and in entry No.1798 there is mention of Rambaran Singh son of Gambhir Singh resident of Girgaon. This witness has stated that said entry was made by Compounder and not by him. He admitted that on the said date Rambaran would have come in the hospital for treatment, and therefore, there is entry of his name in Ex.D/12. He denied that certificate of Ex.D/11 was issued by him.

28. Dataram (DW-2) has stated that he is resident of Girgaon. He knows appellant Rambaran son of Gambhir Singh. He is his neighbour. On 30.6.2007 Rambaran was ill and he took him to Government Hospital, Guishar. During cross-examination, he stated that he is not literate and he cannot say that from which date to which date appellant Rambaran remained admitted in the hospital. He denied that as Rambaran is son of his Bua, he is giving false evidence.

29. Dr.J.P.S.Kushwah (DW-3) has stated that on 4.7.2007 he was Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 deputed in emergency duty at District Hospital, Bhind. On the said date Homesingh son of Gambhir Singh was brought before him for examination. He found following injuries on his person:-

1. One lacerated wound over right side of head of size 3x 1 cm
2. One abrasion at the second finger of right hand of size 1 x ¼ cm He was complaining of pain in chest. As per the opinion of the doctor, injuries are simple in nature and caused within 24 hours of examination. On the said date, he also examined Munnasingh son of Totaram and found following injuries on his person:=-

1. Lacerated wound over right side of head of size 3 x ½ x ½".
2. Contusion at right elbow.

Both the injuries were caused by hard and blunt object. For ascertaining the nature of injuries x-ray of head and right elbow was performed.

30. From the aforesaid analysis of the witnesses, it is clear that except Narendra Sharma (PW-3) and Ramlaxin @ Ramlakhan (PW-

6), who are brother and father of the deceased, all other witnesses who have been examined in the case as eye-witnesses have reached the spot on hearing shouting that Gopali has sustained gunshot. Narendra Sharma (PW-3) in para 18 of his cross-examination has specifically stated that Suresh,

Guddan, Shashikant and Manish were at the mound Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 of field at Bazariya and when they came, the accused persons ran away. Ramlaxin @ Ramlakhan (PW-6) in para 15 page No.210 of the paper-book has stated that when Gopali sustained gunshot injury, at that time, except Narendra and this witness, there was no other one at that time. Thereafter, he has stated that after sustaining gunshot, immediately others came there running. Surendra Sharma (PW-5) also reached the spot later on. Surendra Sharma in para 16 of his statement has stated that when he heard crying of Narendra that Gopali has sustained gunshot injury, he was lying on the field of Shrikrishna Vyas at a distance of 20-25 steps. Thus, it is clear that except witness Narendra Sharma (PW-3) and Ramlaxmin @ Ramlakhan (PW-6), who also received injuries in the incident, there is no other witness in the case who witnessed the incident of firing on the deceased.

31. Narendra Sharma (PW-3) has stated that all the accused came carrying respective weapons in Tata Sumo vehicle and started firing. Munna and Homesingh stopped Ramgopal who was ploughing the field by tractor and then all the accused started firing on him. Gunshot fired by Hanumandas hit Ramgopal below his stomach. Santosh, Damodar and Homesingh by Lathi and axe committed Marpeet of this witness and his father Ramlakhan. Similar is the statement of Ramlakhan (PW-6). He further stated that when his son fell down and he tried to reach near him, Damodar, Santosh, Homesingh and Pramod Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 caused injuries to him by Lathi and axe. Thereafter, he stated that all the accused fired gunshots which passed through over his head. Story put forth by the prosecution that witnesses Narendra (PW-3), Guddan @ Gokulprasad (PW-4) and Surendra Sharma (PW-5) all are brothers of the deceased and Ramlakhan (PW-6) is father of the deceased. Their evidence that accused persons namely Totaram, Ramdutt, Satyaprakash, Ramsuresh, Ramprakash, Munna have also fired several gunshots does not appear to be acceptable because as per the statement of Dr. J.P.S. Kushwah (PW-2) deceased Ramgopal sustained only one gunshot injury. Apart from this, other eye-witnesses did not receive any gunshot injury. Therefore, it appears that other accused persons, against whom the eye-witnesses have stated that they also fired several gunshots during the incident, are falsely roped in the case considering the fact that there was long previous enmity between the complainant party and accused persons, coupled with the medical report.

32. Now in the present case it is to be examined as to whether the accused persons in the present case came at the spot with the common object to kill deceased Gopali or not.

33. The Apex Court in the case of Bhargavan and others vs. State of Kerala, (2004) 12 SCC 414 has observed in regard to common object as under :-

Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 "14. 'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage

of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot *co instanti*.

15. Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the Cr.A. Nos. 212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be called out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word 'knew' used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within first offences committed in prosecution of the common object would be generally, if not always, with the second, namely, offences which the parties knew to be likely committed in the prosecution of the common object. (See *Chikkarange Gowda and others v. State of Mysore*, AIR 1956 SC 731.)"

The Apex Court in the case of *Baladin & others vs. State of Uttar Pradesh*, AIR 1956 SC 181 has held as under :-

"It is well settled that mere presence in an assembly Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142 Indian Penal Code."

34. Surendra Sharma (PW-5) in para 10 of his cross-examination has stated that his predecessors donated the land to temple of Hanumanji. Earlier Vijayramdas was Pujari of temple, thereafter Nathuramdas and then Hanumandas became Pujari of the temple. By manipulating documents, Hanumandas became Bhumiswami of the said land. Hanumandas sold the land to one widow and she sold it to wife of Totaram, namely Shantibai. When they came to know, they filed appeal before the SDM, and therefore, dispute arose. He himself stated that before one month, gunshot was fired at him. Narendra Sharma (PW-3) has stated in para 49 of his cross-examination that at the time of preparation of spot map he told the police about the place of incident as field at Bazariya, if the police has not written it in spot map (Ex.P/13) he cannot give any reason. He further stated that land of Totaram and their land at Bazariya are adjacent. Thus, there appears to be some dispute of boundary also. It is also gathered from the evidence of the witnesses that when deceased Gopali was ploughing the said land, accused persons firstly came to him and put off the engine by removing the key. As such from the above facts, it is clear that the common object of the accused was to stop deceased Gopali to plough the land. Thereafter on this point dispute arose between Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 accused on one side and deceased Gopali, complainant Narendra Sharma and Ramlakhan (available at the spot at that time) on the other, in which Hanumandas fired gunshot at deceased Gopali who died in the incident and Narendra Sharma & Ramlakhan from the complainant side and Homesingh and Munnasingh from the side of the accused received injuries. Thus, in such circumstances, in the considered opinion of this Court common object of other appellants cannot be stretched to the extent that they shared common object with accused Hanumandas to kill the deceased. There is no overt act of all other appellants except appellants Santosh, Damodar and Pramod and accused Homesingh, who were armed with Lathi & axe. They have allegedly fired on the deceased and injured Narendra and Ramlakhan by guns, but the bullets passed through over their heads. Here it is also to be taken care of the fact that there is enmity between both the parties, and therefore, there is possibility of false implication. It is also settled principle of law that testimony of inimical witnesses has to be considered with caution. The Apex Court in the case of Raju alias Balachandran and others vs. State of Tamil Nadu, (2012) 12 SCC 701 has held in this regard as under in para 25 & 26 :

"25. In the present case, PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinized with great care and caution.

26. In Dalip Singh v. State of Punjab, 1954 SCR 145 this Court observed, without any generalization, that a related Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused - each case has to be considered on its own facts. This is what this Court had to say:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

35. The evidence of injured eye-witnesses Narendra Sharma (PW-

3) and Ramlakhan (PW-6) is consistent and supported by medical evidence with regard to inflicting gunshot by Hanumandas to deceased Gopali and with regard to inflicting injuries to them by Lathi & axe, but their evidence with regard to other appellants, who were armed with guns, that they also fired on deceased as well as on them, but none of the bullets hit them does not corroborate from any other evidence, and therefore, appears to be exaggeration considering the Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 fact of enmity between the parties. Therefore, these appellants deserve benefit of doubt.

36. As per the evidence of injured Narendra Sharma and Ramlakhan, appellants Santosh, Damodar and Pramod and accused Homesingh were armed with axe and Lathi, but that cannot be termed as deadly weapons as axe is an agricultural tool unless used as weapon and carrying lathi (bamboo stick) is part of village life while involved in agricultural activities. Please see the judgment of the Supreme Court in the case of Jugat Ram vs. State of Chhattisgarh, (2020) 9 SCC 520 and Division Bench of Allahabad High Court in the case of Ram Charan & Ors. Vs. State of U.P. decided on 23.4.2020 in Criminal Appeal No.1164/2000. Therefore, on the basis of presence of these accused persons armed with Lathi & axe, it cannot be held that they had come at the place of incident (an agricultural field) prepared with deadly weapons. Both the injured received lacerated and incised wounds as per the report of the doctor which may come from Lathi and axe. Thus, evidence of injured eye-witnesses that they were beaten by appellants Santosh, Damodar and Pramod and accused Homesingh by means of Lathi and axe is well supported by medical evidence. Accused Homesingh has been acquitted by the trial Court on the ground of enmity, but evidence of injured with regard to causing injuries by this accused is well supported by medical Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 evidence.

37. In view of the aforesaid discussion, Criminal Appeal Nos.212/2010, 219/2010 and 268/2010 are allowed to the extent that conviction & sentence of appellants Ramprakash, Ramsuresh, Munna, Ramvaran, Pramod Kumar, Totaram, Santosh and Damodar under Sections 302/149, 148 & 324/149 of IPC is set aside. Appellants Pramod, Santosh and Damodar are convicted under Section 324 of IPC with one year RI.

Criminal Appeal No.285/2010 filed by Hanumandas Baba is dismissed. However, he is convicted under Section 302 of IPC with imprisonment for life & fine of Rs.500/-.

Criminal Appeal No.346/2016 filed by the State is partly allowed and appellant Homesingh is convicted under Section 324 of IPC with sentence of one year RI.

All the appellants are on bail. Appellant Hanumandas Baba @ Hemraj is directed to surrender before the trial Court on or before 25.4.2022 to serve remaining jail sentence, failing which trial Court will be at liberty to issue arrest warrant against him.

Appellants Santosh, Damodar and Pramod and accused Homesingh as discussed above have been convicted under Section 324 of IPC for one year. They are also directed to surrender before the trial Court for serving jail sentence of one year if not already served Cr.A. Nos.212/2010, 219/2010, 268/2010, 285/2010 & 346/2016 on or before 25.4.2022, failing which trial Court will be at liberty to issue arrest warrant against them.

(G.S.Ahluwalia)
Judge

(Deepak Kumar Agarwal)
Judge

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