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STATE OF RAJASTHAN

v.

BABLU @ OM PRAKASH

(Criminal Appeal No.1475 of 2021)

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NOVEMBER 24, 2021

**[UDAY UMESH LALIT AND AJAY RASTOGI, JJ.]**

C *Appeal against acquittal: Interference with – Prosecution case that 13 accused along with 10-12 persons armed with weapons, forcibly entered the house of the informant and hurled abuses, inflicted informant's brother with injuries who later succumbed to his injuries – Informant also suffered injuries when he tried to intervene – Conviction of 13 accused in respect of offences punishable u/ss. 147, 148, 149, 450 or 450/149, 452 or 452/149, 302 or 302 rw ss. 149, 307 or 307 rw 149 IPC on basis of the eye*

D *witness account – High Court upheld the conviction and sentence against A2 and A3, however, acquitted the remaining 11 accused – On appeal, held: Even if the testimony of single witness is found reliable by the Court, it can be the foundation of the order of conviction – On facts, evidence of the informant-brother of the deceased itself would normally be sufficient who received injuries*

E *in the transaction and his presence could not be doubted – Furthermore, on entirety, consistent and cogent eyewitness account – Presence of the prosecution witnesses who were examined as eyewitnesses to the occurrence, cannot be discredited – Five eyewitnesses testified to the presence and participation of the*

F *accused – Thus, in the face of such clear, consistent and cogent evidence on record, the High Court not justified in not relying on the evidence of the eyewitnesses without giving any valid reasons – Order of acquittal manifestly erroneous and perverse – Accused A1, A6, A7, A8, A10 and A13 were attributed certain overt acts not*

G *only by PWs 1 and 27 but at least by one more witness, thus, their acquittal is set aside and order of conviction and sentence is restored whereas rest of the accused are given benefit of doubt and their acquittal is confirmed – Penal Code, 1860 – ss 147, 148, 149, 450 or 450/149, 452 or 452/149, 302 or 302 read with ss. 149, 307 or 307 rw 149 – Evidence – Eye-witnesses – Code of Criminal*

H *Procedure, 1973 – s. 378.*

Partly allowing the appeals, the Court

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**HELD: 1.1** With regard to the presence of the prosecution witnesses who were examined as eyewitnesses to the occurrence, nothing was brought on record to discredit them except the submission that the presence of PW6-was not spoken to or adverted by PW24. The fact that one of these witnesses had suffered injuries in the transaction and the rest of them had taken the deceased as well as the injured to medical center immediately after the occurrence lends credibility to the case of the prosecution unfolded through these eyewitnesses. Nothing has been brought on record in their cross-examinations to dislodge the credibility of these witnesses. Even then, this Court may avoid the testimony of PW6 as his presence was not adverted to by PW24. That leaves with 5 eyewitnesses who had testified to the presence and participation of the accused-respondents. [Para 17][437-D-F]

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**1.2** Even the version of a single witness, if his testimony is found reliable by the Court, can be the foundation of the order of conviction. In the instant case, the evidence of PW1-, the brother of the deceased itself would normally be sufficient. Said witness had received injuries in the transaction and his presence could not even be doubted. Additionally, there were four witnesses viz. PW2, PW24, PW25 and PW27. The chart tabulated shows the role ascribed to each of the accused. [Para 20][476-F-G]

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**1.3** In the face of such clear, consistent and cogent evidence on record, the High Court was not justified in proceeding on the basis that the eyewitnesses had not named other accused in specific terms or entertaining any doubt and then recording order of acquittal. The approach of the High Court was completely against the settled principles of law and no valid reasons were given by the High Court as to why the evidence of all the eyewitnesses could not be relied upon in so far as the role played by the acquitted accused was concerned. The order of acquittal recorded by the High Court is found to be completely unjust and its conclusion is totally against the record. In these appeals against acquittal, therefore, this Court is not persuaded to go by the order

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A of acquittal passed by the High Court as the same, was manifestly erroneous and perverse. [Para 21][476-H; 477-A-C]

1.4 Considering the entirety of the material on record, emerges the consistent and cogent eyewitness account on record through PWs 1 and 27, which was well supported by PWs 2, 24 and 25. The evidence of PW6 has not been taken into account. [Para 22][477-C-D]

1.5 As there was an earlier incident just four days prior to the occurrence in question, in order to lend complete assurance and as a matter of prudence, a criteria may be adopted where, if any of the eyewitnesses (other than PW6), apart from and in addition to PWs 1 and 27 had adverted to and attributed overt acts to any of the accused, the role of such accused can be taken to have been established beyond any doubt. The principle in *Masalti's* case would get attracted where apart from attribution of presence, nothing more was attributed by way of any overt act. However, in the facts of the instant case; and to rule out any possibility of over-implication, this criteria is adopted, more particularly because the matter in appeals against acquittal. Thus, accused A1, A6, A7, A8, A10 and A13 are those who were attributed certain overt acts not only by PWs 1 and 27 but at least by one more witness, whereas, the role attributed to the rest of them was only by PWs 1 and 27 without any other eyewitnesses apart from PW6, deposing about the role played by them. In the circumstances, these appeals are allowed against original accused A1, A6, A7, A8, A10 and A13 while rest of the accused-respondents are given benefit of doubt and their acquittal, as recorded by the High Court is confirmed. The order of conviction and sentence recorded against original accused A1, A6, A7, A8, A10 and A13 by the Trial Court is thus restored. [Paras 23, 24][477-F-H; 478-A-B]

G *Masalti v. State of U.P.* [1964] 8 SCR 133; *State of Maharashtra v. Ramlal Devappa Rathod and Others* (2015) 15 SCC 77 : [2015] 11 SCR 357 – referred to.

Case Law Reference

	[1964] 8 SCR 133	referred to	Para 18, 23
H	[2015] 11 SCR 357	referred to	Para 19

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1475 of 2021. A

From the Judgment and Order dated 04.12.2018 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Criminal Appeal No.1191 of 2017.

With B

Criminal Appeal Nos.1476-1481, 1482, 1484, 1485, 1486 and 1483 of 2021.

Dr. Manish Singhvi, Sr. Adv., Vishal Meghwal, Milind Kumar, Ms. Archana Pathak Dave, Kumar Prashant, Parmod Kumar Vishnoi, Advs. for the Appellant. C

Aditya Kr. Choudhary, Deepak Chauhan, Gurmehar Vaan Singh, Vivek, Vaibhav Prasad Deo, Babu Malayil, Rajesh Singh Chauhan, Randhir Kumar Ojha, Advs. for the Respondent.

The Judgment of the Court was delivered by D

**UDAY UMESH LALIT, J.**

1. Leave granted.

2. These appeals are preferred by:

i) State of Rajasthan (appeals arising out of Special Leave Petition (Crl.) Nos.8676 of 2019, 9003 of 2019, 9004 of 2019, 9124 of 2019, D.No.32279 of 2019 and D.No.31873 of 2019); and E

ii) Sunil S/o. Govindram, the original informant (appeals arising out of Special Leave Petition (Crl.)Nos.8677-8682 of 2019):-

challenging the acquittal of 11 accused persons namely Radhey Shyam *alias* Golu (A1), Ramu *alias* Ram Singh (A4), Bablu *alias* Om Prakash (A5), Jeetu *alias* Jeetmal (A6), Ghan Shyam *alias* Pintu (A7), Rajendra (A8), Ram Gopal (A9), Sattu *alias* Satya Narain (A10), Kaptan (A11), Bhuria *alias* Dhara Singh (A12) and Ranjeet (A13) by the High Court<sup>1</sup> vide its judgment and final order dated 04.12.2018 in D.B. Criminal Appeal Nos.179 of 2018, 832 of 2017, 946 of 2017, 993 of 2017, 1123 of 2017, 1191 of 2017, 1475 of 2017 and 26 of 2018. F G

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<sup>1</sup> High Court of Judicature for Rajasthan Bench at Jaipur

A 3. 13 persons, *i.e.* aforementioned 11 acquitted accused and 2 convicted accused [Rajendra *alias* Tanti (A2) and Janak Singh (A3)] were tried in Sessions Case No.80 of 2013 on the file of the Trial Court<sup>2</sup> in respect of offences punishable under Sections 147, 148, 149, 450 or 450/149, 452 or 452/149, 302 or 302 read with Sections 149, 307 or 307 read with 149 of the IPC<sup>3</sup>.

B 4. The gist<sup>4</sup> of the First Information Report(FIR No.75 of 2012) in respect of offences punishable under Sections 147, 148, 149, 452, 323 and 307 IPC, lodged at the instance of Sunil S/o. Govindram (later examined as PW1) registered with Police Station Kaithun on 08.03.2012 was to the following effect:-

C “An FIR was registered on a written report made by complainant Sunil on 8.3.2012. It was stated that apart from him, Dhanpal, Madanpal, Narayan, Tulsi, Kalu Meena and Roop Singh Pahalwan were sitting at his residence on the festival of Holi. At that time, the accused Rajendra, Janak, Ramu @ Ramsingh, Vijendra, Pintu, D Golu, Mukat, Tanti @ Rajendra, Ramgopal, Atar, Dinesh, Bhuria @ Dharasingh residents of Ganeshpura and Sukhpal resident of Ummedganj and Kashiram along with 10-12 persons came equipped with the weapons. They entered into complainant’s house and attacked Dhanpal. Accused Rajendra and Pritam caused a blow by a sword, whereas, Janak has been assigned Gandasi and caused injury to Dhanpal. Other accused Ramgopal, Tanti, E Satyanarayan, Bablu, Golu, Pintu, Dinesh and Sukhpal also caused injuries to Dhanpal. Accused Mukut, Bhuria @ Dharasingh, Atar, Hansraj, Vijendra, bablu and Satyanarayan caused head injury to complainant.”

F 5. The initial medical attention to said Dhanpal was given by PW19 Dr. Krishna Hari Sharma. However, Dhanpal died during the course of treatment whereafter the offence under Section 302 IPC was added.

G Informant PW1 Sunil was medically examined and treated by PW17 Dr. P.P. Bansal.

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<sup>2</sup> Special Judge, SC & ST (Prevention of Atrocities Cases) Act, Kota, Rajasthan

<sup>3</sup> The Indian Penal Code, 1860

H <sup>4</sup> As recorded by the High Court in the judgment under appeal.

6. The post-mortem on the body of Dhanpal was conducted by PW30 Dr. Rakesh Sharma on 09.03.2012 who found following ante mortem injuries over the body of the deceased: A

“Injury No.1:- Stitched wound sized 9 Cms long present on the left side of head.

Injury No.2:- 03 stitched wounds sized respectively 7 Cms, 6 Cms and 4 Cms long present on the rear part of the head. B

Injury No.3:- Stitched wound sized 1 Cms long present on the right side of the head.

Injury No.4:- Thin abrasion mark sized 1 Cms long present on the right side of neck. C

Injury No.5:- Abrasion 1 X 1 Cms present on the right shoulder.

Injury No.6:- Abrasion sized 2 X 1 Cms present on the right elbow.

Injury No.7:- Abrasion sized 1 X 3 Cms present on the spine. D

Injury No.8:- Abrasion sized 1 X 1/2 Cms present on the left elbow.

Injury No.9:- Abrasion sized 1 X 1 Cms present on the left forearm.

Injury No.10:- Abrasion sized 1 X 1 Cms present on both knees.

Injury No.11 :- Abrasion sized 1 X 1/2 Cms present on the right leg. E

Injury No.12:- Abrasion sized 1 X 1 Cms present on the left leg.

Injury No.13:- Scalp Hematoma was found present on both sides of head and found hematoma present on the rear part of the head.

Injury No.14:- Left parietal bone was found fractured. F

Injury No.15:- Subdural Hematoma was found present on the left parietal part of the brain.

Injury No.16:- The brain matter had turned reddish and was swollen.” G

According to the medical opinion, the death of Dhanpal was due to coma caused by the injuries caused upon him immediately prior to his death.

A 7. During the course of investigation, following recoveries were made pursuant to disclosure statements of some of the accused:-

PWs	Name of Witness	Recovery	At whose instance	
B	DevkrishanGurjar	Iron Pipe	A1	
		Stick	A7	
		Iron Rod	A6	
C	Jagdish Gurjar	Iron Pipe	A1	
		Stick	A7	
D	Pawan	Iron Pipe and Motor Cycle	A2	
		Gandasi and Motor Cycle	A3	
E	Radheshyam	Iron Pipe and Motor Cycle	A2	
		Gandasi and Motor Cycle	A3	
F	PW11	Rafiq	Iron Pipe	A10
	PW12	Naresh	Iron Pipe	A10
	PW14	Suresh	Iron Rod	A6
G	Devilal	Iron Rod	A4	
		Iron Rod	A12	
H	Deewansingh	Iron Rod	A4	
		Iron Rod	A12	
I	PW20	Hiralal	Iron Rod	A5
	PW21	Harisingh	Iron Rod	A5
	PW22	Bharat	Iron Rod	A5
	PW23	Dharamsingh	Iron Pipe	A5

8. After completion of investigation and committal of the case to the Court of Sessions, charges were framed against 13 accused persons named earlier, in respect of offences punishable under Sections 147, 148, 149, 450 (alternatively under Section 450 read with Section 149), 452 (alternatively under Section 452 read with Section 149), Section 302 (alternatively under Section 302 read with Section 149) and 307 (alternatively under Section 307 read with Section 149) IPC.

9. The prosecution examined 40 witnesses in support of its case and produced 77 documents while the defense examined one witness and produced nine documents in support of its case.

10. PW-1 Sunil son of Govind Ram, the brother of the deceased stated about the incident as under:

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“Incident pertains to dated 08.03.2012 time at 1:30-2:00 PM in the afternoon when it was the festival of Dhulandi and me and my brother Dhanpal, Madan Pal, Jai Narain, Tulsi Ram, Kalu Meena, Roop Singh Pehalwan were sitting in the house and were talking to each other when just at that time people form Ganeshpura&Prehladpura wherein Rajendra, Janak, Ramualias Ram singh, Vijendra, Pritam son of Rajendra, cousin brother Jeetu, Golu, Mukut, Rajendra *alias* Tanti, Ram Gopal, Satya Narain, Bhuria*alias*Dhara Singh, Atar, Dinesh, Sukhpal, Ranjeet, Kaptan along with 10-12 other persons conspiringly loaded with weapons forcefully entered inside the house and with the intention to kill attacked with sword and gandasa upon the head of my brother Dhanpal. Rajendra attacked with the sword and Janak attacked with the gandasa, Pritam with the gandasa and persons named Ram Gopal, Tanti alisa Rajendra, Satya Narain, Bablu, Jeetu, Golu, Ranjeet, Dinesh, Sukhpal also assaulted Dhanpal by wielding with the blows of rod and pipe. Thereafter they dragged my brother to the Gurudwara from there and where also the said persons assaulted my brother. When I, went there for intervening upon which Mukut, Bhuria, Atar, Hansraj, Jitendra, Kaptan assaulted me also with the rod and pipe and Bablu and Satya Narain with the sword upon me. Thereafter which on hearing the noise of quarrel we were saved by my brother and other persons present on the spot. The said persons ran away towards Ganeshpura after committing assault.”

The witness was crossexamined by six different counsel who appeared for the accused. When questioned about the injuries suffered by him and the medical attention given to him, PW-1 stated:

“This incident was of one and half – two o’clock in the day. It is incorrect to say that we may have directly gone to Sudha Hospital from there. Himself said firstly we had gone to M.B.S. Thereafter we had gone to Sudha Hospital. He stated himself that from there he was referred to Sudha Hospital. There were three injuries on my head, for this reason I was referred. There were other injuries on my hands and legs, injuries were there on my back also. My treatment continued for two hours in M.B.S. Hospital, thereafter I was referred to Sudha Hospital. All the three injuries on my head were of sword. The injuries on my head were caused when I had come to save my brother. I was inside the house itself. It is



A correct that I had come out to save my brother from inside. It is correct that no injury was caused to me inside the house. The place where the beating had taken place, that place is about 40 feet open space. Himself said that the beating had taken place in the chowk. It is correct that on the day of Dhaulandi festival I was sitting inside my room, my brother was walking in the chowk.

B In the near about of my house there is the house of Panna Lal Ghansi on the other side. There are 3 rooms, kitchen, latrine, bathroom, 80 feet garden and 12 feet wide gallery in my house. It is correct that there is rasta in front of our house, wherein there is a tiraha (three way joint), and there is the house of Prabhu Dayal nearby.

C All the three injuries were sustained at one place in my house. The injuries by sword were hit on my head by Satya Narayan and Bablu.”

D 11. Apart from PW1-Sunil Kumar, who was injured in the transaction, Madanpal (PW2), Narain *alias* Jainarayan (PW6) Prakash *alias* Kalu (PW24), Roop Singh (PW25) and Tulsi Ram (PW27) were examined by the prosecution as eye-witnesses to the occurrence.

Evidence of these eye witnesses was completely consistent with that of PW1 Sunil except for certain minor variations.

A. PW2-Madanpal stated:-

E “On coming they shouted abuses at the house of Sunil then Dharmapal said that I will come on advising them you sit inside. No sooner Dharmapal went outside then these persons started beating Dharmapal and from there dragging Dharmapal took him to Gurudwara which is in front. Janak, Tanti, Ranjit, Rajendra, Pritam, Govind, Pintu, Bablu, Jeetu, Ram Singh,

F Dhara Singh who were part of those persons started giving beating to Dharmapal. Janak hit injury on the head of Dharmapal with Gandasi. Tanti hit on the head of Dharmapal with iron rod, then Rajendra and Pritam hit on the head of Dharmapal with swords and Golu also hit injury on the head of

G Dhanpal, the rest of the accused persons had iron rods and woods with them with which they did beating with Dhanpal and these very persons also did beating with Sunil also. Lot of blood was bleeding out from the head of both of them. Thinking Dharmapal to have died the accused persons ran away on their motor cycles. Then we putting Sunil and Dhanpal in the

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vehicle of Sunil brought them to Kaithun Hospital, where after seeing Dharmapal doctors referred him to other Hospital and did not admit him in Kaithun Hospital. After that we took Dharmapal directly to M.B.S.H., Kota, after this on treatment not being given we took Dharmapal to Sudha Hospital, where got Dharmapal admitted and got the treatment done. After that in the morning at 5.00 on 9/3/12 the doctors declared him dead....”

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B. PW6-Narayan @ Jai Narayan deposed:-

“On 8/03/2012 Rajendra Singh, Janak, Tanti @ Rajendra Singh, RadheyShyam, Ghanshyam, Gopal, Sattu, Dharasingh, Jeetu 20-25 persons of the same family, all these persons had come to Charan Chowki, Motipura, where there is house of my brother Sunil, and started hurling abuses on the date, entered the house and started doing beating and dragged my brother Dharampal to outside. All started beating Dharmapal and Sunil. They attacked with speed and treating Sunil and Dharmapal to have died left them. ...”

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C. The version given by PW24-Prakash alias Kalu was:

“...all these persons, out of whom Rajendra Singh, who was identified by the witness in Court, Janak, Rajendra, Tanti, Kaptan, Kallu @ Satya Narayan, Jetu and many other persons were there, whom I know by face, do not know their names, entered the house of Sunil and did beating with Sunil Bhai Sahab and carried him dragging towards the Gurudwara. In the meantime I, Sunil, Madanpal, Tulsi, Roop Singh Pahalwan we all came out. When Sunil had gone to intervene then they did beating with Sunil, Rajendra with sword, Janak with gandasi, Rajendra @ Tanti with iron pipe and all other persons did rapid beating with them. Those persons assuming Dhanpal bhai sahab to be dead ran away taking motor cycle, then taking Dhanpal Bhai sahab and Sunil we had gone to Kaithun Hospital. There because of the doctor not being available we took them to M.B.S. Hospital, Kota, where also because of delay in the treatment we took him to private Hospital Sudha Hospital. Where death of Dhanpal Bhai Sahab took place in the night. The treatment of Sunil was going on. There were several injuries on the head of Sunil and on the head and body of Dhanpal...”

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A D. PW25-Roop Singh deposed:-

“...As soon as Dhanpal reached near the gate, all these persons took him taking out of the house and giving beating upto the road. They had pipe, sword, Gandasis with them, with which they had attacked Dhanpal. Sword was in the hand of Rajendra, Gandasi was in the hand of Janak and pipe was with Tanti @ Rajendra, we all together had protected Dhanpal. These persons treating Dhanpal and Sunil to have died ran away. We also had gone to Kaithun Hospital taking Dhanpal and Sunil in injured condition, Narayan, Tulsi, Kalu had taken them to Hospital. ...”

C E. PW27-Tulsiram in his examination stated:-

“I, Narayan, Sunil, Madanpal, Roopsingh, Prakas @ Kalu were sitting at the house of Sunil and were eating pakodis, and were applying gulal to one another. At about one and half – two o’clock residents of Prahladpura and Ganepura Rajendra, Rajendra @ Tanti, Janak, Ram Gopal, Sattu, Ram Singh @ Ramu, Dhara Singh @ Bhuria, Satya Narayan @ Sattu, Ranjit, Golu @ RadheyShyam, Pintu @ Ghanshyam, Bablu, Jeetmal @ Jeetu, all these persons came to the house of Sunil. All of them were armed with arms. Janak had Gandasi, Rajendra @ Tanti has iron pipe, Rajendra had sword, Ramgopal had iron rod with him, Golu had iron pipe, Pinto had wood and otherx also had woods with them and had iron pipes also. They started hurling abuses from outside the house of Sunil and said come out today we will play holi of blood. Dhanpal told us you stop I will satisfy them. Just at that time these persons came inside the house and all of them started beating Dhanpal. Janak hit with Gandasi on the head of Dhanpal. Rajendra hit with sword on the head of Dhanpal, Tanti had hit with iron pipe, Ram Gopal also attacked on the head of Dhanpal with iron pipe and dragging they took Dhanpal near the Gurudwara. When Sunil came to intervene then these persons also started attacking on them. Taking Dhanpal to have died these persons went from there then we took Dhanpal and Sunil to the hospital. From M.B.S. we took these persons to Sudha Hospital. There during the course of treatment the death of Dhanpal occurred.”

H 12. The involvement of every accused as deposed by the eyewitnesses and the role ascribed to each of the accused can be tabulated as under:-

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Accused	Name	Role Ascribed	Witness
A1	RADHEY SHAM alias GOLU	Entered the house	PW1
		Hurled abuses. Hit on Dhanpal's head, dragged Dhanpal till Gurudwara which was 100 steps away from the house, took PW1 to the Gurudwara.	PW2
		Came to the house, Hurled Abuses, Hit on Dhanpal's head, dragged Dhanpal from the house to Gurudwara which was 100 steps away, hit PW1.	PW6
		Entered the house armed with Iron Pipe, hiton the heads of PW1 and Dhanpal.	PW27
A2	RAJENDRA alias TANTI	Entered the house, carrying iron pipe, assaulted Dhanpal, inflicted blows of rod on the hands, legs, knees and body of Dhanpal, dragged Dhanpal from the house to Gurudwara which was 100 steps away, assaulted PW1 inside the house as well as outside the house.	PW1
		Hurled abuses. Hit on Dhanpal's head, dragged Dhanpal till Gurudwara which was 100 steps away from the house, took PW1 to the Gurudwara.	PW2

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A			Came to the house, Hurlled Abuses, hit Dhanpal on head with Iron Rod, hit PW1, dragged Dhanpal from house to Gurudwara, ran towards PW6 to hit him.	PW6
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C			Entered PW1's house and did beating with Dhanpal with fists and legs and carried him to Gurudwara, hit PW1 with iron pipe, hit Dharampal with iron pipe.	PW24
D			Hurlled abuses at Dhanpal, Came to gate and hit Dhanpal inside the house, hit Dhanpal	PW25
E			Entered the house armed with Iron Pipe and hit on Dhanpal's head, hit on the heads of PW1 and Dhanpal.	PW27
F	A3	JANAK SINGH	Entered the house, attacked Dhanpal with gandassa, dragged Dhanpal from the house to Gurudwara which was 100 steps away.	PW1
G			Hurlled abuses. Hit on Dhanpal's head, dragged Dhanpal till Gurudwara which was 100 steps away from the house, took PW1 to the Gurudwara.	PW2

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		Came to the house, Hurled Abuses, hit Dhanpal on head with Gandasi, hit PW1, dragged Dhanpal from house to Gurudwara, ran towards PW6 to hit him.	PW6
		Entered PW1's house and did beating with Dhanpal with fists and legs and carried him to Gurudwara, hit PW1 with gandasi, hit Dharampal with iron pipe.	PW24
		Hurled abuses at Dhanpal, Came to gate and hit Dhanpal inside the house, hit Dhanpal with gandasi, hit on Dhanpal's head.	PW25
		Entered the house armed with gandasi and hit on the head of Dhanpal, hit on the heads of PW1 and Dhanpal.	PW27
A4	RAMU alias RAM SINGH	Entered the house, dragged Dhanpal from the house to Gurudwara which was 100 steps away.	PW1
		Entered the house armed with iron pipe/wood stick, hit on the heads of PW1 and Dhanpal	PW27

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A	A5	BABLU aliasOM PRAKASH	Assaulted Dhanpal, attacked PW1 when he intervened, dragged Dhanpal from the house to Gurudwara which are 100 steps away, caused injuries on front side PW1's head	PW1
B			Entered the house armed with iron pipe/wood stick, hit on the heads of PW1 and Dhanpal.	PW27
C	A6	JEETU alias JEETMAL	Entered the house, assaulted Dhanpal, dragged Dhanpal from the house to Gurudwara which was 100 steps away.	PW1
D			Came to the house, Hurled Abuses, hit PW1	PW6
E			Entered PW1's house and did beating with Dhanpal with fists and legs and carried him to Gurudwara, attacked Dhanpal and PW1	PW24
F			Entered the house armed with iron pipe/wood stick, hit on the heads of PW1 and Dhanpal	PW27
G	A7	GHAN SHYAM alias PINTU	Entered the house, dragged Dhanpal from the house to Gurudwara which was 100 steps away	PW1

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		Hurled abuses. Hit on Dhanpal's head, dragged Dhanpal till Gurudwara which was 100 steps away from the house, took PW1 to the Gurudwara.	PW2
		Came to the house, Hurled Abuses, gave beating to Dhanpal, hit PW1	PW6
		Entered the house armed with wood stick, hit on the heads of PW1 and Dhanpal	PW27
A8	RAJENDRA	Entered the house, Attacked Dhanpal on head with sword, caused injury with sword on the backside of Dhanpal's head, dragged Dhanpal from the house to Gurudwara which was 100 steps away	PW1
		Gave Dhanpal one blow on the head	PW2
		Hurled Abuses, hit Dhanpal on head with swords, hit PW1	PW6
		Entered PW1's house and did beating with Dhanpal with fists and legs and carried him to Gurudwara, hit PW1 with sword, hit Dharampal with sword	PW24
		Hurled abuses at Dhanpal, Came to gate and hit Dhanpal inside the house, hit Dhanpal with sword, hit on Dhanpal's head	PW25

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A			Entered the house armed with sword and hit on Dhanpal's head, inflicted injuries on PW1 with sword, hit on the heads of PW1 and Dhanpal	PW27
B	A9	RAM GOPAL	Entered the house, assaulted Dhanpal, dragged Dhanpal from the house to Gurudwara which was 100 steps away	PW1
C			Came to the house, Hurlled Abuses, hit PW1	PW6
D			Entered the house armed with iron rod and hit on Dhanpal's head, hit on the heads of PW1 and Dhanpal	PW27
E	A10	SATTU alias SATYA NARAIN	Entered the house, assaulted Dhanpal, attacked PW1 when he intervened, dragged Dhanpal from the house to Gurudwara which was 100 steps away, caused injuries on PW1's head	PW1
F			Came to the house, Hurlled Abuses, hit PW1	PW6
G			Entered PW1's house and attacked Dhanpal and carried him to Gurudwara, attacked PW1 and Dhanpal	PW24
H			Entered the house armed with iron pipe/wood stick, hit on the heads of PW1 and Dhanpal	PW27

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A11	KAPTAN	Entered the house, attacked PW1 when he intervened, ragged Dhanpal from the house to Gurudwara which was 100 steps away	PW1
		Entered PW1's house and did beating with Dhanpal with fists and legs and carried him to Gurudwara, attacked PW1 and Dhanpal	PW24
A12	BHURIA alias DHARASINGH	Entered the house, attacked PW1 when he intervened	PW1
		Came to the house, Hurlled Abuses, hit PW1	PW6
		Entered the house armed with iron pipe/wood stick, hit on the heads of PW1 and Dhanpal	PW27
A13	RANJEET	Entered the house, assaulted Dhanpal	PW1
		Hurlled abuses. Hit on Dhanpal's head, dragged Dhanpal till Gurudwara which was 100 steps away from the house, took PW1 to the Gurudwara.	PW2
		Hurlled Abuses, gave beating to Dhanpal, hit PW1, dragged Dhanpal from house to Gurudwara, ran towards PW6 to hit him	PW6
		Entered the house armed with iron pipe/wood stick, caught Dhanpal, hit on the heads of PW1 and Dhanpal	PW27

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A 13. The medical evidence on record was unfolded by i) PW17-Dr. P.P. Bansal who had treated PW1 Sunil, ii) PW19-Dr. Krishna Hari Sharma who had initially treated Dhanpal and iii) PW30-Dr. Rakesh Sharma who had conducted post mortem on the body of the deceased Dhanpal.

B PW36-Dr.Vivek Goel was also examined in respect of injuries suffered by Accused Nos.1,2 and 7.

14. The Trial Court by its judgment and order dated 19.04.2017 passed order of conviction against all 13 accused as under:-

C “Therefore in overall view of aforesaid analysis and in view of the citations the prosecution has completely succeeded in proving far from reasonable doubts the offences u/s 147, 148, 149, 450 or 450/149, 302 or 302 r/w sections 149, 307 or 307 r/w section 149 IPC against the accused persons RadheyShyam alias Golu, Rajendra alias Tanti, Janak Singh, Ramu alias Ram Singh, Bablu, D Jeetu alias Jeetmal, GhanShyam alias Pintu, Rajendra, Ram Gopal, Sattu alias Satya Narain, Kaptan, Bhuria alias Dhara Singh and Ranjeet. Accordingly, it appears justified for holding the aforesaid accused persons guilty of the charges for the commission of aforesaid offences and also it appears justified for acquitting the aforesaid accused persons of the charges for the offences u/s E 452 or 452/149 IPC.”

By the order of sentence passed on the same day, the Trial Court sentenced all 13 accused persons as under:-

F “(1) Aforesaid accused persons are held convicted for the charge u/s 147 IPC and are sentenced with 2 years of rigorous imprisonment.

G (2) Aforesaid accused persons are held convicted for the charge u/s 148 IPC and are sentenced with 2 years of rigorous imprisonment and each accused is punished with a fine of Rs.5000/- and in default of failure to deposit the fine each accused to undergo an additional simple imprisonment of one month.

H (3) Aforesaid accused persons are held convicted for the charge u/s 450 or 450/149 IPC and are sentenced with 7 years of rigorous imprisonment and each accused is

punished with a fine of Rs.10000/- and in default of failure to deposit the fine each accused to undergo an additional simple imprisonment of two months. A

(4) Aforesaid accused persons are held convicted for the charge u/s 302 IPC and are sentenced with a life imprisonment and each accused is punished with a fine of Rs.30000/-and in default of failure to deposit the fine each accused to undergo an additional simple imprisonment of six months. B

(5) Aforesaid accused persons are held convicted for the charge u/s 307 IPC and are sentenced with 7 years of rigorous imprisonment and each accused is punished with a fine of Rs.10000/- and in default of failure to deposit the fine each accused to undergo an additional simple imprisonment of two months. C

All the sentences of the accused persons to run concurrently. The duration of custody already undergone by the accused persons in police custody/judicial custody to be adjusted in their duration of final sentence. Warrant of sentence of the accused persons to be accordingly prepared.” D

14.1 The evidence led by the prosecution through the eyewitnesses account of PW1-Sunil Kumar, PW2-Madanpal, PW6-Narain alias Jainarayan, PW24-Prakash alias Kalu, PW25-Roop Singh and PW27-Tulsiram was found by the Trial Court to be trustworthy. The submission advanced on behalf of the accused with regard to PW6-Narain alias Jainarayan was dealt with by the Trial Court as under:- E

“In the sequence of the said witness it was contended by the Counsel during the arguments that the said witness is not the witness of crime scene and has been planted and his presence is not corroborated by PW-24 Prakash alias Kalu and he arrived at the crime scene after the occurrence of incident and in the said relation PW-29 Chhagan Singh, Investigation Officer, has also disclosed that during his investigation he did not find the said witness as the eyewitness. In the said sequence, the facts and the contentions rendered by the Investigation Officer and the Counsels are not found appropriate. On perusing the testimonies rendered by other witnesses in relation to the said fact wherein the F  
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A examination-in-chief of PW-1 Sunil itself he has disclosed the presence of Jai Narain inside his house. In the report Exhibit P-1 also he has disclosed the presence of Jai Narain inside his house at the time of occurrence of incident and the said fact has also been corroborated during his deposition before the Court and which has not been contradicted in any manner. Similarly has corroborated the presence of Jai Narain during his cross-examination and had brought him to the hospital after lifting him. ....”

C 15. All 13 convicted accused, being aggrieved, filed aforesaid D.B. Criminal Appeal Nos. 179 of 2018, 832 of 2017, 946 of 2017, 993 of 2017, 1123 of 2017, 1191 of 2017, 1475 of 2017 and 26 of 2018 in the High Court. The High Court by its Judgment, presently under challenge, affirmed the conviction and sentence recorded against Rajendra *alias* Tanti (A2) and Janak Singh (A3) but acquitted all other 11 accused persons of the charges levelled against them. It was observed by the D High Court:-

E “The argument of learned counsel for the appellants is about over implication and false implication of other accused, who have not been assigned any specific injury to the injured and deceased even by eyewitnesses. It is true that when the FIR was registered, names of nineteen accused were given apart from involvement of 10-12 other persons. The police did not file charge-sheet against seven accused out of nineteen, though charge-sheet against Ranjeet, who was not named in the FIR, was filed. It is after making investigation of the case. On the strength of the aforesaid, we need to find out a case of over-implication, rather, for that, to look into the evidence led by the prosecution.

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G We find that the prosecution even produced independent witnesses PW/25 Roopsingh, who has supported the prosecution case and, accordingly, corroborated the statement of PW/1 Sunil Kumar. In view of the above, the prosecution could lead evidence to prove participation of Janak Singh, Pritam and Rajendra @ Tanti in the occurrence and to cause head injury to deceased.

H The prosecution, however, did not file charge-sheet against Pritam and even no application under Section 319 Cr.P.C. was moved

during the course of trial thus despite specific allegation against Pritam to cause one head injury to deceased, he has not been prosecuted. A

In view of the above, there remains two accused against whom specific allegation remains for causing head injury to deceased Dhanpal, namely Janak Singh and Rajendra @ Tanti. We find that eye-witnesses and injured witnesses have not named other accused in specific terms with assignment of weapon and injury, either to injured or to deceased. They have been convicted with the aid of Section 149 IPC. B

To appreciate the argument of learned counsel for the appellant, we have considered the case to find out as to whether a case for conviction with the aid of Section 149 IPC is made out. As per the prosecution, the appellants had a motive to cause the occurrence and, therefore, they came with common object. The accused were equipped with the weapons thus not only case of unlawful assembly was proved but their participation with common object also gets proved in reference to the incident took place four days ago when complainant party attacked on the accused party. It is only to settle the score that accused came and caused occurrence on 8.3.2012. C D

We find that four days prior to the date of incident in the present case, complainant said to have attacked on the accused party. In view of the above, there was a motive with the accused to cause occurrence. Once motive was there, common object to cause occurrence can also be inferred, however, conviction cannot be based on inferences but facts proved by evidence. E F

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The injured and deceased did not receive injury by sharp edged weapon but it all depends whether Gandasi was sharp enough to cause such an injury. In view of the above, we are not inclined to accept the argument of learned counsel for the appellant Janak Singh with reference to the nature of injury to the deceased when specific allegation has been made by the injured as well as eye-witnesses for causing head injury to him. G

So far as Rajendra @ Tanti is concerned, a blunt object has been recovered from him. Against him also specific allegation for H

A causing head injury to the deceased has been made. The recovery of weapon at his disclosure is corroborated by the statement of eye-witnesses thus, we find case against him also.

B So far as Rajendra S/o. Kashi/Dharam Singh is concerned, initially, the charge-sheet was not filed against him. He has otherwise taken a defence of “alibi” in his statement under Section 313 Cr.P.C. It is by stating that four days prior to the date of occurrence in this case, he sustained injuries on head, thus was at his residence. He has denied his participation in the occurrence, rather, his presence therein. The statement of said accused namely Rajendra C S/o Kashi/Dharam Singh has been corroborated by PW/37 Ramendra Singh. It is stated that on the festival of Holi, he visited Rajendra S/o Kashi/Dharam Singh at his residence. He was having head injury covered with a bandage. The said witness has supported the statement of Rajendra S/o Kashi/Dharam Singh. It is also a fact that no weapon has been recovered from him and, D initially, when the FIR was lodged, name of only one Rajendra was given for head injury. It was subsequently named by the witness as Rajendra Singh @ Tanti. In view of the above, we find a case in favour of Rajendra S/o Kashi/Dharam Singh. It is not only by accepting his plea of alibi but taking into consideration the evidence to corroborate it.

E So far as other accused are concerned, since we have not accepted the case of the prosecution for conviction with the aid of Section 149 IPC and as specific allegation for causing injury with the assignment of weapon has not been made, we find a case in their favour also. We have already recorded the finding F about previous enmity between the two groups and, at times, it results in over-implication, which is even established from the fact that after investigation, charge-sheet was not filed against all the accused. Thus, mere recovery of the weapons at their disclosure cannot connect the accused without assignment of injury to them.”

G 16. In this appeal we heard Dr. Manish Singhvi, learned Senior Advocate and Additional Advocate General on behalf of the State, Ms. Archana Pathak Dave, learned Advocate for the Complainant and Mr. Aditya Kumar Choudhary, Mr. Rajesh Singh Chauhan and Mr. Randhir Kumar Ojha, learned Advocates for the accused- H respondents.

It was submitted on behalf of the appellants that the eyewitness account was quite clear and specifically adverted to the overt acts committed by all the accused and that the High Court was not right in acquitting 11 accused-respondents. It was submitted that no cogent reasons were given by the High Court in setting aside the order of conviction and sentence against said 11 accused-respondents and that this Court would, therefore, be justified in setting aside the order of acquittal recorded by the High Court.

The learned Advocates appearing on behalf of the accused-respondents, on the other hand, submitted that, as found by the High Court, there was an incident four days prior to the occurrence in question, in which some of the accused persons had received injuries. Thus, the *inter se* rivalry between two groups could as well be and was rightly found by the High Court to be the motive to over-implicate; and as such, the High Court was justified in recording acquittal.

17. With regard to the presence of the prosecution witnesses who were examined as eyewitnesses to the occurrence, nothing was brought on record to discredit them except the submission that the presence of PW6-Narain *alias* Jainarayan was not spoken to or adverted by PW24-Prakash @ Kalu. The fact that one of these witnesses had suffered injuries in the transaction and the rest of them had taken the deceased as well as the injured to medical center immediately after the occurrence lends credibility to the case of the prosecution unfolded through these eyewitnesses. Nothing has been brought on record in their cross-examinations to dislodge the credibility of these witnesses.

Even then, we may eschew the testimony of PW6-Narain *alias* Jainarayan as his presence was not adverted to by PW24-Prakash @ Kalu. That leaves us with 5 eyewitnesses who had testified to the presence and participation of the accused-respondents.

18. In *Masalti vs. State of U.P.*<sup>5</sup> a four Judge Bench of this Court was called upon to consider whether the approach adopted by the High Court in convicting only those accused with respect to whom at least four witnesses had given a consistent account, came up for consideration. In that case five persons had lost their lives in the assault opened by the unlawful assembly and apart from witness Laxmi Prasad, none of the witnesses had attributed any overt acts to the accused but had merely

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<sup>5</sup> (1964) 8 SCR 133; AIR 1965 SC 202



A mentioned the names of the accused being present as part of the unlawful assembly. Adopting the yardstick as stated above, the High Court affirmed the conviction of 10 accused persons out of 35 accused persons under Section 32 read with 149 IPC by the Trial Court, which decision of the High Court was accepted by this Court.

B 19. The decision in *Masalti*<sup>5</sup> has since then been followed by this Court consistently and was explained in *State of Maharashtra vs. Ramlal Devappa Rathod and others*<sup>6</sup> as under:-

C 21. That brings us to the question whether in an attack such as the present one, how far the principle laid down by this Court in *Masalti*<sup>5</sup> is applicable? In *Masalti*<sup>5</sup> one Laxmi Prasad and his armed companions had proceeded to the house of one Gayadin. On the instigation of Laxmi Prasad, the assailants broke open the doors of the house of Gayadin, killed four persons including Gayadin and dragged their bodies out of the house whereafter one more person was killed. These five dead bodies were then taken to the field and set on fire. Out of thirty-five accused who were convicted, ten accused were given death sentence. The High Court confirmed their sentence of death and out of the remaining accused, seven were given benefit of doubt. Insofar as the accused who were convicted with the aid of Section 149, the High Court adopted a test and held that unless at least four witnesses had shown to have given a consistent account against any of the appellants, the case against them could not be said to have been proved. The decision discloses that except Laxmi Prasad, none of the assailants was assigned any particular part. The evidence as regards other accused was that they were part of unlawful assembly which is evident from the following observations of this Court: (*Masalti case*<sup>5</sup>, AIR p. 207, para 7)

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G “7. ... It also considered another feature which characterised the evidence of all the witnesses and that was that they gave their account of the incident substantially in similar terms and did not assign particular parts in respect of overt acts to any of the assailants except Laxmi Prasad, Accused 1.”

The observations of this Court further show that though testimony of a single witness would be enough to convict an accused person,

H <sup>6</sup> (2015) 15 SCC 77

in a case involving large number of accused, where the witnesses depose to the fact that certain persons were members of unlawful assembly which had committed the offences in question, a test so adopted by the High Court was found to be safe. It was observed that though every member of the unlawful assembly would be liable for the offence committed by anyone actuated by and entertaining common object of the unlawful assembly, in the absence of any overt act or specific allegation, it was possible to adopt such test.

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**24.** The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were

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A innocent bystanders or were actually members of the unlawful assembly. It is for this reason that in *Masalti*<sup>5</sup> this Court was cautious and cognizant that no particular part in respect of an overt act was assigned to any of the assailants except Laxmi Prasad. It is in this backdrop and in order to consider

B “whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly”, (AIR p. 211, para 17)

C this Court at SCR pp. 148-49 in *Masalti*<sup>5</sup> observed that his participation as a member of the unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in *Masalti*<sup>5</sup> was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well-known maxim that “evidence has to be weighed and not counted” as statutorily recognised in Section 134 of the Evidence Act.”

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F 20. In the backdrop of the principles set out in the decisions of this Court, even the version of a single witness, if his testimony is found reliable by the Court, can be the foundation of the order of conviction.

G In the instant case, the evidence of PW1-Sunil Kumar, the brother of the deceased itself would normally be sufficient. Said witness had received injuries in the transaction and his presence could not even be doubted. Additionally, there were four witnesses viz. PW2-Madanpal, PW24-Prakash alias Kalu, PW25-Roopsingh and PW27-Tulsiram. The chart tabulated hereinabove shows the role ascribed to each of the accused.

H 21. In the face of such clear, consistent and cogent evidence on record, the High Court was not justified in proceeding on the basis that the eyewitnesses had not named other accused in specific terms or

entertaining any doubt and then recording order of acquittal. The approach of the High Court was completely against the settled principles of law and no valid reasons were given by the High Court as to why the evidence of all the eyewitnesses could not be relied upon in so far as the role played by the acquitted accused was concerned. We find the order of acquittal recorded by the High Court to be completely unjust and its conclusion to be totally against the record.

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In these appeals against acquittal, therefore, we do not find ourselves persuaded to go by the order of acquittal passed by the High Court as the same, in our considered view, was manifestly erroneous and perverse.

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22. Considering the entirety of the material on record, what emerges is the consistent and cogent eyewitness account on record through PWs 1 and 27, which was well supported by PWs 2, 24 and 25. We may, at the cost of repetition, state here that we have not taken into account the evidence of PW6-Narain alias Jainarain for the reasons stated hereinabove.

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23. As there was an earlier incident just four days prior to the occurrence in question, in order to lend complete assurance and as a matter of prudence, a criteria may be adopted where, if any of the eyewitnesses (other than PW6), apart from and in addition to PWs 1 and 27 had adverted to and attributed overt acts to any of the accused, the role of such accused can be taken to have been established beyond any doubt.

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We must hasten to add that the principle in *Masalti*<sup>s</sup> would get attracted where apart from attribution of presence, nothing more was attributed by way of any overt act. However, in the facts of the instant case; and to rule out any possibility of over-implication we have adopted this criteria, more particularly because we are considering the matter in appeals against acquittal. Thus, accused A1, A6, A7, A8, A10 and A13 are those who were attributed certain overt acts not only by PWs 1 and 27 but at least by one more witness, whereas, the role attributed to the rest of them was only by PWs 1 and 27 without any other eyewitnesses apart from PW6, deposing about the role played by them.

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24. In the circumstances, we allow these appeals against original accused A1, A6, A7, A8, A10 and A13 while rest of the accused-

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- A respondents are given benefit of doubt and their acquittal, as recorded by the High Court is confirmed.

The order of conviction and sentence recorded against original accused A1, A6, A7, A8, A10 and A13 by the Trial Court is thus restored. These accused persons shall surrender themselves within four weeks

- B from today, failing which they shall be taken in custody to serve out the sentence recorded against them.

The copies of this Judgment and Order shall be sent to the concerned Police Station and the jurisdictional Chief Judicial Magistrate for compliance.

- C 25. These appeals are partly allowed to the extent indicated above.

Nidhi Jain

Appeals partly allowed.