2025 INSC 1192

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1187 OF 2014
(Arising out of SLP (Crl.) No. 740 of 2014)

ZAINUL **...APPELLANT**

VERSUS

THE STATE OF BIHAR **...RESPONDENT**

WITH

CRIMINAL APPEAL NO. 1188 OF 2014
(Arising out of SLP (Crl.) No. 726 of 2014)

SATTAR & ORS. **...APPELLANTS**

VERSUS

THE STATE OF BIHAR **...RESPONDENT**

J U D G M E N T

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:-

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1. Since the issues raised in both the captioned appeals are the same, the appellants are co-convicts and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. These appeals arise from the common judgment and order passed by the High Court of Judicature at Patna dated 17.07.2013 in Criminal Appeal (DB) No. 202 of 1990 (hereinafter, "**the impugned judgment**"), by which the High Court dismissed the appeal preferred by the appellants herein and thereby affirmed the judgment and order of conviction passed by the Trial Court in Sessions Case No. 124 of 1989 holding the appellants herein guilty of the offence of murder punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short, "**the IPC**").

I. CASE OF THE PROSECUTION

3. It appears from the materials on record that the investigating officer recorded the statement of one Jagdish Mahato (PW-20), an injured eyewitness, dated 20.11.1988, while he was admitted in the hospital, which later came to be reduced in the form of a first information report (Ext. 7). The statement of the PW-20 recorded by the investigating officer dated 20.11.1988 reads thus:

> "*ST No. 124/89*
> *5055*
> *16.2.90*
> *Statement of Jagadish Mahato, S/o- Jamun Mahato, R/o-Raharkhal, PS- Ajam Nagar, District- Katihar, recorded by the S.I. AK Jha, OIC of Ajam Nagar PS, Date: 20.11.88, Time: 13.30 in the State Dispensary, Ajam Nagar.*

My name is Jagadish Mahato, S/o- Jamun Mahato, R/o-Baharkhal, PS- Ajam Nagar, District- Katihar. Today, on 20.11.88 at about 13.30 hrs, I give my statement to the Inspector of the Ajam Nagar PS in an injured condition in the Government hospital, Ajam Nagar, that today at about 8.00 AM, I was watching my field which used to be grazed by buffaloes along with my brother Meghu Mahato. Seeing the buffalo not there, we both the brothers went to the field of Aslam which I have taken on 'Batai and doing the sweet potato cultivation and came to our paddy field and sat down there. Yesterday, on 19.11.88, I had got the paddy cut by the labourers from the land given to me by the Government of Bihar. I had cultivated the said land. Due to this Sh. Jainul Sarkar, Muslim Sarpanch, Barik, Aftab, all R/o-Mahila along with 400-500 people were hiding there. All of them armed with gun, country made pistol, bhalla, farsa, gadasa, sword, suli and kachia etc. Some of them were having stones. Some of them were cutting the paddy from the land given by the Government of Bihar. Seeing me and my brother, all of them ran towards us from all directions and surrounded us. At first they threw stones. Among them, I found 1. Masiad, S/o- Mahi, 2. Ajam, S/o-Shekh Nausad, 3. Khwaja, S/o- Shekh Nausad, 4. Shekh Aladi, S/o- Shekh Shekh Sadiq, 5. Shekh Karim, S/o- Sekh Sadiq, 6. Kaimuddin, S/o- Shekh Habib, 7. Sahebuddin, S/o- Habib, 8. Hoda, S/o-Habib, all R/o- Mahila, 9. Manoria, S/o- Unknown, 10. Asarul, S/o- Jhagru, 11. Rajjak, S/o- Salim, 12. Sikandar, S/o- Salim, 13. Aku, 14. Sallu, all are S/o-Gaffur, 15. Israel Munsi, S/o- Shekn Kalu, 16. Shekh Muslim, 17. Shekh Barik, 18. Shekh Jainul, 19. Shekh Mustaffa, 20. Sheikh Aftab, all are S/o-

Kalimuddin, 21. Abbu Naser, S/o- Basir, 22. Haklu, S/o- Bazaru, 23. Gulam, S/o- Haklu, 24. Jaina, S/o- Shekh Mallu, 25. Shekh Mahsuddin, S/o- Massu, 26. Niajuddin, S/o- Shekh Masu, 27. Ismail, S/o- Shekh Chutharu, 28. Masiyad, S/o- Shekh Mohidi, 29. Shekh Udhva, S/o- Shekh Mohidi all are R/o-Mahila, PS-Ajam Nagar, out of whom Manoriya was holding three-not pistol, Abu Nasar was holding gun, Gulam holding 'suli' and others were holding lathi, bhala, farsa, gadasa, sword, suli and stones. At first those people having surrounded threw stones on us. Then I and my brother raised alarm and tried to flee. During this time I was hit by a stone. When we fell down upon this Gulam hit me in the ribs with 'suli'. Then they assaulted us with lathi, and farsa. Then my brother Meghu fled when 30. Ibrahim, S/o- Unknown, R/o- Kantakosh, PS- Manihari who was with those persons opened fire from a pistol on my brother Meghu. Then he fell down. By that time, hearing our alarm, people of the village, Dudhnath Mahato S/o- Bhuneswar Mahato, Faiju Mahato S/o- Jagdev Mahato, Sripati Mahato S/o- Bhujangi Mahato, Dasu Mahato S/o- Ram Govind Mahato, Sarjug Mahato S/o- Munni Lal Mahato, all R/o- Baharkhal arrived there running. Behind them a large number of men and women also came there running. Those people assaulted them also. Among them Sarjug Mahato also suffered gun-shot injuries and he had succumbed to death. My brother Meghu had sustained gun-shot injury and he died there. The other injured persons Doodhnath, Faizu, Sripati and Dasu had told me that 31. Allauddin, S/o- Alam, 32. Abbas, 33. Safat, both S/o- Nseer, 34. Basir, 35. Phooli, S/o Balal, 36. Hakkimul, S/o- Suleman, 37. Mahtab, S/o- Hakimuddin, 38. Khalil, S/o- Jamal, 39. Sattar, S/o- Taslim, 40. Mister, S/o- Garibul, 41.

Matru, 42. Motiya, 43. OC Mohammed, S/o-Alimuddin, 44. Nizam, 45. Ishaq, both S/o-Badaruddin, 46. Sakur Ahmmed, 47. Habib, both S/o- Mehdi, 48. Dhelu, 49. Dablu, both S/o- Siraj, 50. Nizam, S/o- Modi Khalil, 51. Kalimuddin, S/o-Sarfailly, 52. Mouzia, S/o- Kalimuddin, 53. Mahamuddij, S/o-Safar Ali, 54. Allouddin, S/o- Sadi Mahajan, 55. Saha, 56. Jamal, both are S/o-Basarat, 57. Mustaffa, 58. Fajak, 59. Imamdi, 60. Faijuddin, all S/o- Banka Naseer, 61. Pachharu, S/o-Hanif, 62. Najim, 63. Jabir, S/o- Naushad, 64. Arif, 65. Majibbul, 66. Jamir, S/o- Maqbool, 67. Ayub, S/o-Makbool, 68. Farooq, S/o- Jhagru, 69. Asarul, S/o-Jhagru, 70. Aslam, S/o- Alum, 71. Mokhtiyar, S/o-not known, all are R/o-Mahila, PS-Ajam nagar, District- Katihar and Mulla Master's aide who is having pox marks on his face, were also armed with bhalla, farsa, gadasa, sword, suli, kachia, stones, gun, pistol. They had surrounded them and injured them. Kaimuddin had fired from pistol on Sarjug Mahato and he died instantly. After Sarjug Mahato and Meghu Mahato had succumbed to their injuries, those people had dragged their dead bodies to take those away. But seeing other men and women near the embankment, they left them there and took Sripati Mahato with them. They had left him near the Mahila embankment. This incident had been seen by all the men and women of the village. They will narrate the incident. They will identify the accused persons. The injured persons will tell who had injured them. After those people left the spot, the co-villagers took us and the deceased Sarjug Mahato and Meghu Mahato to the Government hospital on a cot, where we are under treatment.

This is my statement. I claim that the aforementioned accused persons with the intention to kill us were hiding in the field being armed with bhalla, farsa, gadasa, sword, suli, kachia, stones, gun and country made pistol and killed Sarjug Mahato and Meghu Mahato and injured us.

This statement of mine was read over to me which I found correct and put my thumb impression on this.

Witness:
1. Ram Suraj Mahato
2. Uttam Mahato
3. Suresh Mahato

RTI
Jagadish Mahato

This statement of the informant was read over to him which he found correct and put his thumb impression on this.
ST/124

Sd.//Arvind
Ajam Nagar PS
20.11.88"

4. The aforesaid statement later came to be reduced in the form of a first information report as prescribed under Section 154 of the Code of Criminal Procedure, 1973 (for short, "**the CrPC**") and was numbered as FIR No. 148 of 1988 registered with the Ajam Nagar Police Station, Kathiar. In the FIR, in all 72 persons came to be arrayed as accused. The FIR reads thus:

"*Brief facts of the case and offence with sections and details of the property stolen:*
Assault by lathi, bhalla, farsa, gadasa, sword, suli, kachia, stones, gun, pistol with the intention to murder by forming unlawful assembly and injuring

others, Offence committed U/s. 147/148/149/342/302/324/323 IPC and section 27 of the Arms Act."

5. As per the FIR, on the fateful day of the incident, the first informant, Jagdish Mahato (PW-20) decided to visit his agricultural field on 20.11.1988 alongwith his brother (deceased). A day prior, i.e., on 19.11.1988, he had harvested paddy crop from the field that was assigned to him by the Government. It is the case of the prosecution that the accused nos. 2, 16, 17, and 21 respectively alongwith 400-500 persons were hiding nearby the agricultural field of the PW-20 with weapons. These persons did not want the PW-20 to harvest the paddy. According to the case of the prosecution, some of those persons even started causing damage to the paddy crop. All these persons upon seeing the PW-20 and his brother cornered them and started pelting stones.

6. The PW-20 named 30 persons as accused in his statement recorded by the investigating officer at the hospital. According to him, the accused no. 9 named in the FIR had a pistol in his hand, the accused no. 21 named in the FIR was holding a gun, the accused no. 23 named in the FIR had a *suli* in his hand and others were having weapons like *lathi*, *bhala*, *farsa*, *gandasa*, sword, *suli*, stones etc. It is alleged that the accused persons laid an assault on the PW-20 and his brother was shot dead in the incident. Upon hearing the alarm, the PWs 3, 4, 5, 6, and 10 respectively alongwith one Sarjug Mahato (deceased) accompanied by other villagers reached at the place of occurrence. The accused persons are said to have assaulted the

aforesaid witnesses as well. Sarjug Mahato is alleged to have been shot dead by the accused no. 1.

7. On the strength of the FIR referred to above, the investigation started. On conclusion of the investigation, the chargesheet came to be filed against 24 accused persons for the offences punishable under Sections 148, 149, 307 and 302 of the IPC respectively.

8. The criminal case came to be committed by the Magistrate to the court of Sessions under the provisions of Section 209 of the CrPC. Upon committal, the same came to be registered as the Sessions Case No. 124 of 1989 in the court of Sessions Judge, District Katihar.

9. The Trial Court proceeded to frame charge against the accused persons for the offences enumerated above. The accused persons denied the charge and claimed to be tried.

10. The prosecution examined the following 24 witnesses.

Sr. No.	Prosecution Witness	Particulars
1.	Suraj Mahto	Resident of Baharkhal.
2.	Ram Surat Mahto	Witness to inquest report prepared by the PW-24.
3.	Dasu Mahto	Injured eyewitness; cousin of PW-20.
4.	Chhedi Mahto	Injured eyewitness.
5.	Faizu Mahto	Injured eyewitness.
6.	Sripati Mahto	Injured eyewitness.

7.	Munilal Mahto	Father of the deceased Sarjug, resident of Baharkhal.
8.	Chinta Devi	Wife of the deceased Sarjug, resident of Baharkhal.
9.	Ram Nath Mahto	Witness to seizure lists, resident of Baharkhal.
10.	Dudh Nath Mahto	Injured eyewitness.
11.	Maharania Devi	Wife of the deceased Meghu, resident of Baharkhal.
12.	Tilaki Devi	Wife of the PW-5, resident of Baharkhal.
13.	Samudri Devi	Wife of the PW-6, resident of Baharkhal.
14.	Tusia Devi	Wife of the PW-20, resident of Baharkhal.
15.	Bhubneshwar Mahto	Father of the PW-10, Resident of Baharkhal.
16.	Suresh Mahto	Brother of the PW-6, resident of Baharkhal.
17.	Uttam Mahto	Witness to inquest report prepared by the PW-24.
18.	Radhe Mahto	Witness to seizure lists; cousin of deceased Sarjug.
19.	Arjun Mahto	Witness to seizure lists.
20.	Jagdish Mahto	Injured eyewitness; brother of deceased Meghu; resident of Baharkhal.
21.	Dr. B.P. Gupta	At Kishanganj Hospital, conducted post-mortem on

		dead body of deceased Sarjug and Meghu.
22.	Dr. Narayan Mishra	Medical Officer at the Azam Nagar Hospital; examined injuries on 5 injured persons.
23.	Arvind Kumar	Investigating Officer
24.	Surendra Prasad Singh	Assistant Sub-Inspector at the Azam Nagar Police Station; prepared the inquest reports.

11. It also relied upon few pieces of documentary evidence.

Exhibit	Particulars
Ext. 2 to 2/4	*Parcha* granted by the State of Bihar
Ext. 3 and 3/1	Rent receipts of the P.O. Land
Ext. 4	*Fardbeyan*
Ext. 5 and 5/1	Post-mortem reports of the deceased
Ext. 6 to 6/4	Injury reports
Ext. 7	Formal FIR
Ext. 8 to 8/4	Injury Reports prepared by the police
Ext. 9 and 9/1	Inquest reports
Ext. 10 and 10/1	Seizure lists

12. Upon closure of the recording of the oral evidence, the Trial Court recorded the further statements of the accused persons under

Section 313 of the CrPC. The accused persons stated that they all were innocent and had been falsely implicated in the crime.

13. The Trial Court, upon appreciation of the oral as well as documentary evidence on record, held 21 accused persons guilty of the alleged offence whereas the remaining 3 accused persons were acquitted of all the charges. All the convicted accused persons were sentenced to undergo life imprisonment for the offence of murder.

14. The appellant herein being dissatisfied with the judgment and order passed by the Trial Court went in appeal before the High Court. The High Court after reappreciation of the oral as well as the documentary evidence on record dismissed the appeal preferred by the appellants herein and thereby affirmed the judgment and order of conviction passed by the Trial Court.

15. In such circumstances referred to above, the appellants are here before this Court with the present appeals.

a. Oral Evidence on Record

16. Jagadish Mahto (PW-20), the brother of the deceased Meghu Mahto, on whose statement the FIR was registered, and one of the eyewitnesses to the incident deposed that, at about 8 AM, the PW-20 and the deceased had gone to have a look at their paddy field. Thereafter, they went to the sweet potato field where they saw the accused nos. 17, 2, 21, and 16 respectively loitering around the settlement land. The witness has further deposed that at some distance, he saw 400-500 people, all armed with weapons like gun, pistol, *suli*, pick-axe, spear, sickle, etc.

17. The witness further stated that out of the 400-500 people, 10-11 persons started cutting the paddy from his field, and when the deceased and the witness tried to stop them, they started pelting stones on them. The PW-20 went on to identify the accused nos. 9, 4, Aladi (not arrayed as an accused in the FIR), accused nos. 20, 5, 22, 8, 6, 1, 18, 11, 10, 12, Abbas (accused no. 32 in the FIR), Safak (accused no. 33 in the FIR), Nayazuddin (not arrayed as an accused in the FIR), Jaharuddin (not arrayed as an accused in the FIR), Ismail (accused no. 27 in the FIR), accused nos. 2, 17, 21, and Gulam (accused no. 23 in the FIR) respectively. He deposed that after being hit by a stone, he fell down. Thereafter, Gulam hit him on his ribs with a *suli*, the accused no. 10 assaulted him by a pick-axe on his head, the accused no. 12 assaulted him with a *lathi*, the accused no. 2 assaulted him with a *gandasa* and the accused no. 11 with a *bana*. According to the PW-20, his brother was also assaulted. During this time, the PWs 3, 5, 6, 10, and the deceased Sarjug Mahto respectively, reached at the place of occurrence but they, too, were assaulted by them.

18. The PW-20 further deposed that his brother was done to death by a gun-shot and was also assaulted with a *suli*. After the assault, all accused fled away. Thereafter, the villagers took them to the Azam Nagar Hospital. The Police Inspector recorded his statement, and obtained his signature. He stated that prior to the incident, he had no quarrel of any nature with the residents of the village Mahila with respect to the settlement land. He further deposed that the accused persons were not concerned in any manner with the settlement land.

One Hakimul of the village Mahila had set the house of Fekan Mahto on fire which had led to a murder on account of the said dispute.

19. The PW-20 admitted that the accused persons were never in possession of the settlement land. He denied stating before the police that the accused persons were hiding being agitated because of the harvesting of the paddy which had taken place a day prior to the incident. He deposed that he was unable to identify the persons harvesting the paddy crop and identified them as labourers. According to him, he fell unconscious after the assault and was unable to witness as to who had assaulted the deceased Sarjug and the PWs 3, 6, and 10 respectively. He stated that he was unable to remember whose names he had disclosed. He categorically stated that the injured persons had disclosed before the police as to who all had assaulted them. In his cross-examination, the witness partly resiled from his previous statement and stated that he was unable to remember whether the statement that he had given to the police in the hospital was read over to him or not.

20. The medical examination of the PW-20 revealed the following injuries on him:
    i. Incised wound on the right-side scalp 1" X 1/4" X bone deep;
    ii. Lacerated wound on the scalp 2½" X 1/2" X bone deep;
    iii. Punctured wound on the right side of the back ¼" diameter X ½" deep;
    iv. One bruise in the right thigh 2½ X ½";
    v. Bruise on the left wrist joint 1½" X 1½";
    vi. Bruise over right wrist joint 1" X 1½";

vii. Bruise on the left side chest 3" X ½".

21. Dasu Mahto (PW-3), the cousin-brother of the PW-20 and one of the eyewitnesses to the incident deposed that the PW-20 and his brother (deceased Meghu Mahto) had gone to the paddy field. When he heard shouts, he ran towards the field. He was followed by deceased Sarjug and the PWs 5, 6, and 10 respectively. He deposed that the accused no. 12 assaulted him on his head with a *lathi*, the accused no. 10 assaulted him on his leg with a *gandasa*, the accused nos. 2 and 17 respectively were holding a gun, the accused no. 2 was holding a spear, the accused no. 11 was holding a *suli*. The PWs 5, 6, 10, and 20 respectively, were injured. The accused persons killed Sarjug and Meghu respectively.

22. The witness further deposed that the fight ensued because of the cutting of the paddy crop. He stated that he was at his house when he heard the sound of the firing of two gun-shots. He fell unconscious after being assaulted and regained consciousness only after some time. He further deposed that the police had arrived between 11:00 AM and 12:00 noon and he had given his brief statement. He deposed that he had not stated the names of 40 accused persons out of the 72 accused persons to PW-20, and he does not remember whether the accused no. 2 was armed with a spear and the accused no. 11 was armed with a *suli*.

23. The medical examination of the PW-3 revealed the following injuries on him:

i. One lacerated wound on the forehead 1½" X ½" X bone deep;

ii. One bruise over left scapular region 2½" X ½";
iii. Bruise over left thigh outer aspect 3" X ½";
iv. One bruise over left knee joint outer aspect 2" X ½".

24. Faiju Mahto (PW-5), one of the eyewitnesses to the incident deposed that after he heard some noise from the southern side of the settlement land, he ran in that direction. The PW-3 was running ahead of him. The PWs 6, 20, and deceased Sarjug and Meghu respectively were also there. Upon reaching the place of occurrence the residents of the village Mahila surrounded them and accused no. 5 (acquitted accused) assaulted him on his right hand with a *farsa* and Sayab (absconder) assaulted him on his head with a pick-axe. Further, the accused nos. 6, 8, and 22 respectively, assaulted him with *lathi*s. Thereafter, he was taken to the hospital, where he came to know that the assailants had killed Sarjug and Meghu, and the PWs 3, 6, and 20 had suffered serious injuries. The PW-5 had heard two rounds of firing.

25. In his cross-examination, the PW-5 deposed that he regained consciousness in the boat while on his way to the hospital. All five injured persons were taken to the police station. They reached the police station at about 9:00 AM where the police recorded their statements. Thereafter, he was admitted to the hospital. In the night, the Sub-Inspector had recorded his statement.

26. The medical examination of the PW-5 revealed the following injuries on him:

i. One incised wound on the right forearm measuring 2½" X ½" X muscle deep;
ii. Incised wound on the middle of scalp 1½" X ¼" bone deep.

27. Sripati Mahto (PW-6), one of the eyewitnesses to the incident deposed that the incident had occurred at about 8:30 AM. He heard a commotion coming from the direction where the settlement land was situated. He ran behind the PW-3, and the PWs 5 and 10 respectively ran alongwith him. The witness deposed that even before he could reach the settlement land, the residents of the village Mahila assaulted them. The accused no. 19 hit him with a pick-axe, the accused no. 14 assaulted him with a sword, and the accused nos. 18, 7, 3, 13, Matru (absconder) and Jamshed (absconder) assaulted him with a *lathi*. The witness denied having stated before the police that he had heard the commotion coming from the direction where the settlement land was situated. He had reached the hospital at 5 PM but his statement was not recorded on that day.

28. The medical examination of the PW-6 revealed the following injuries on him:
i. One incised wound 1½" X ¼" X bone deep over root of right ring finger;
ii. Incised wound 1" X ¼" over right side of injury No. 1;
iii. Incised wound ¾" X 1/6" X muscle deep over right middle finger;
iv. One lacerated wound ¾" X ¼" over right side of scalp;
v. One abrasion 1" diameter over right cheek;
vi. One incised wound with out of radius bone 1½" X ½" over left forearm.

29. Doodhnath Mahto (PW-10), one of the eyewitnesses to the incident, deposed that the incident occurred between 8:00 AM and 9:00 AM. On hearing some noise, he ran towards the settlement land. Jalla (not arrayed as an accused in the FIR) hit him on his head with a *lathi*. Thereafter, someone assaulted him on his neck with a pick-axe. He was unable to see the assailant as he was assaulted from behind. At this juncture, the witness was declared hostile. He denied stating before the police that upon reaching the settlement land, the residents of the village Mahila surrounded him and he was assaulted. Thereafter, he named Masiyan (not arrayed as an accused in the FIR) as the assailant who assaulted him on his neck from behind.

30. Further, he denied stating before the police that the accused no. 10 had assaulted him on his head with a *lathi*, the accused nos. 18 and 22 had assaulted him with a *lathi*, the accused no. 4 had assaulted him with a pick-axe on his wrist, the accused no. 1 was armed with a pistol, the accused nos. 11 and 20 were armed with a spear, and the accused no. 8 was armed with a *lathi*.

31. The medical examination of the PW-10 revealed the following injuries on him:
    i. One incised wound on the back of neck 4" X 1" X 1½" (deep) with bending of neck;
    ii. One incised wound on the back 1" X ¼" X ¼" deep;
    iii. One incised wound on the scalp back side 1" X ¼";

iv. One incised wound on the right wrist joint 1 ¼" X ¼" X muscle deep.

32. Chhedi Mahto (PW-4), resident of the village Mahila and one of the eyewitnesses to the incident, deposed that the incident had occurred at about 8:00 AM. At the time of the incident, he was in his sweet potato field. He identified the accused nos. 1 and 18 respectively. He first stated that the accused no. 1 was holding a gun. Then, he stated that he was armed with a spear. He deposed that all were fighting with eachother. He further deposed that the accused no. 1 shot dead deceased Sarjug, and the PWs 3, 5, 6, 10, 20 respectively, were injured. The accused no. 19 had a *gandasa* in his hand, Jamir (absconder) held a *suli*. In his cross-examination, the witness stated that he had no idea of the cause behind the fight. He further deposed that there were many people and it could not be said as to who were the assailants and who were the spectators. The police arrived at about 12:00 to 1:00 PM, and his statement was recorded on the spot.

33. Chinta Devi (PW-8), the wife of deceased Sarjug Mahto and one of the eyewitnesses to the incident, deposed that she and her husband were sowing crops in the morning of the day of the incident. At that time, the deceased-Meghu raised an alarm. The PW-8 alongwith her husband ran in that direction. She deposed that her husband was surrounded by the residents of the village Mahila. She identified the accused no. 18 passing on a gun to the accused no. 1, who in turn fired a shot towards her husband. Thereafter, the accused no. 14 assaulted him with a *suli*, the accused no. 11 with a pick-axe, the accused no. 17 with a *suli*. In her cross-examination, the witness

deposed that there was a crowd of around 400-500 people. While some were armed, some were unarmed. She further deposed that the Station-House-Officer of the police station arrived after 2 hours of the incident and interrogated her.

34. Arvind Kumar Jha (PW-23), the Officer-In-Charge of the Azam Nagar Police Station, deposed that on the day of the incident at about 1:25 PM, he received an O.D. Slip from the Govt. Hospital. On the basis of the same, he recorded the statement of PW-20, and the same was reduced in the form of an FIR. He deposed that he had collected the injury reports of the PWs 3, 5, 6, and 10 respectively, from the hospital and then immediately left for the place of occurrence. He reached the place of occurrence, i.e., the settlement land at 3:20 PM. He found blood at various places on the ground and a blood stained *lathi*. He inspected the documents pertaining to the settlement land, which he found to be in the joint names of the deceased Meghu Mahto, Lalu Mahto, Dharmu Mahto, and the PW-20 respectively. On 21.11.1988, he recorded the statements of the PWs 3, 5, 6, 10, and 15 respectively.

35. The police officer further deposed that the PW-4 had stated that the accused no. 17 inflicted injuries with a *suli* on the body of the deceased-Meghu, Ibrahim was armed with a pick-axe, Kirouri (not arrayed as an accused in the FIR) was armed with a sword, Tara (not arrayed as an accused in the FIR) was armed with a *gupti*, Manoriya (accused no. 9 in the FIR) had come with a pistol, and Kaimuddin snatched the gun from accused no. 18 and fired a shot at the deceased-Sarjug. Further, the PW-8 neither stated that the accused

nos. 14 and 17 respectively had assaulted her husband with a *suli* nor that accused no. 11 assaulted him with a pick-axe. She had named Sarful, Hamzu, Mozamil, Tulku, Shakil, Faltu, Nasir, Azimuddin, Ishahak, and Chhotiya as the asssailants.

b. Judgment of the Trial Court

36. Upon appreciation of the oral as well as documentary evidence on record, the Trial Court *vide* its judgment and order dated 24.05.1990 passed in Sessions Case No. 124/1989 held 21 accused persons guilty of the alleged crime and acquitted the remaining 3 accused persons. The findings recorded by the Trial Court in its judgment can be better understood in seven parts:-

a. *First*, on the factum of assault, it was observed that the PW- 21, i.e., the doctor who performed postmortem on the dead bodies had found several injuries, including a firearm injury, on both the dead bodies. The description of injuries given by the PW-22, who examined the injured witnesses, lend credence to the version of assault narrated by the five-injured persons, i.e., the PWs 3, 5, 6, 10, and 20 respectively. The injuries were found to be on vital parts of the body like neck, chest, and head, caused by sharp and hard blunt weapons. They were reflective of the intention of the assailants at the time of causing such injuries. They had knowledge that the injuries were sufficient in the ordinary course of nature to cause death. Further, the oral testimony of the other eyewitnesses and IO read with the inquest report and seizure list, entirely supported the case of the prosecution. The Trial Court further observed that the blood marks at different places, the trails of dragging marks and the

presence of a blood-stained lathi also substantiated the case made out by the prosecution. It noted that the two deaths and the injuries to five persons were not in dispute. It held that from the oral evidence of the PWs 21, 22, 23, and 24 respectively, the factum of assault as narrated by the PW-20 stood fully corroborated.

b. In continuation of the above, the Trial Court declined to accept the version of the defence that the deceased and the witnesses wanted to forcibly harvest the paddy from the settlement land and as they started harvesting the paddy, the accused nos. 3 and 24 respectively objected, due to which the deceased and the witnesses had assaulted both the accused persons. The court declined to believe such defence on the ground that paddy was not found at the spot at which the accused persons claimed to have harvested it. The relevant observations read as under:-

> "*39. From the evidence of P.Ws. referred to in different para above, it is apparent that the medical officer who held postmortem on the dead bodies found numerous injuries on both the dead bodies. There was injury of fire arm on both the dead bodies. In this way the doctor fully supports the picture of assault given by the eye witnesses of the alleged occurrence. The Medical Officer of Azamnagar Hospital who has examined the five injured persons had also found various injuries on the persons of Jagdish Mahto, Dudhnath Mahto, Faiju Mahto, Sripati Mahto and Dasu Mahto. Their injuries disclose that on the vital parts of the body like neck, chest, head etc. the sharp cutting weapons and hard blunt substance caused injuries and the injuries were of the quality which would have caused fatal results. These injuries are sufficient to show the intention of the assailants that at the time of causing these injuries they had very clear knowledge that these*

injuries could have led to the worst result of death of these injured persons. These injuries found by the doctor fully corroborates the story of assault given by the five injured persons Jagdish Mahto (P.W. 20), Dasu Mahto (P.W. 3), Faizu Mahto (P.W. 5), Sripati Mahto (P.W. 6), and Dudh Nath Mahto (P.W. 10). The evidence of other eye witnesses on the point of assault is also corroborated by the medical evidence of the two doctors P.Ws. 21 and 22. The I.O. P.W. 23 and the A.S.I. P.W. 24 have also supported the prosecution story the fair injury reports (Ext. 8 series) inquest reports and seizure lists fully support the story. The P.O. of this case described by the I.O. (P.W. 23) speaks clearly that the parcha land is the P.O. field and the occurrence covered a big area of about 50 yards. The blood marks at different places and the dragging mark and the trampling mark and presence of "dhelas" and blood stained lathi fully corroborates the picture of assault given by the prosecution that a large number of persons took part in this assault and the assault was indiscriminate. One thing is very clear from the evidence of the I.O. that there was no paddy bundle nor there was any harvested paddy in any field near the P.O. According to the prosecution story few members of the mob started forcibly harvesting the paddy from the parcha land which was objected to by the complainant Jagdish Mahto and his brother Meghu Mahto on which they were surrounded by the mob and they were assaulted. Against this according to the defence story the complainant party had gone in a group to forcibly harvest the paddy from the P.O. land and they were harvesting the paddy against which Habib and Allauddin protested on which the complainant party assaulted Habib and Allauddin causing injuries then villagers came in the help of Habib and Allauddin and there was "marpeet". It is worth consideration that the defency story contained in the complaint petition filed by Habib speaks about the theft of paddy from 6-7 bighas on the date of occurrence. The two murders and injuries to five persons is not seriously disputed by the defence side. If actually there was

harvesting of paddy by the complainant party and there was protest by the accused side to protect their paddy and exercised their right of defence of property as the defence side has argued then there was no time for the complainant and others to remove even a single bundle of paddy. Therefore, in the natural circumstances one will expect that the harvested paddy of the entire 6-7 bighas of land should have been found there. But there was no such harvested paddy either in bundle shape or in spread shape. This falsifies the story presented by the defence side. The I.O. and the two doctors examined in this case are independent responsible public servants. They have no reason to depose falsely against the accused persons. In their cross-examination also there is nothing it discredit there. Therefore I find nothing to doubt the correctness of their evidence. Accordingly I rely on the evidence of the public servants examined as P.Ws. 21, 22, 23 and 24. From their evidence the picture of assault given by the complainant in the fard bayan and in the evidence as well as in the evidence of other injured persons and eye witnesses finds full corroboration."

c. *Secondly*, the Trial Court rejected the defence of right to private defence, observing that the accused persons could not have cultivated paddy on the settlement land as it had previously been in the possession of the State of Bihar, and later with the PW-20 alongwith his brothers. It further ruled out the possibility of paddy been grown by the accused persons as none of the witnesses or the deceased had harvested the paddy from the settlement land. The relevant observations read as under:-

"*40.[…]Therefore the claim presented by the accused persons in this case clearly speaks that they want to force the settles of the State of Bihar to flee away from the settled land only due to the strength of the accused side. This tendency cannot create any right of private defence rather it clearly suggests. that the*

whole occurrence is the result of the principle of might is right. The accused persons had no justification for going to the parcha and but they went upon the strength of their violence to take possession of the land which the complainant and his brothers and cousins had got settlement. In this way I find that there is no scope to argue for right of private defence.[…]"

d. *Thirdly*, the Trial Court noted that the contradictions in the testimonies of the witnesses would not be of any help to the accused persons as the witnesses were not found to have suppressed the relevant facts. The relevant observations read as under:-

"*42. The learned defence lawyer has tried to show some contradictions in the evidence on the point of occurrence with the help of witnesses who have gone hostile. I do not think that such contradictions can be used in favour of the defence when the case diary and the evidence on the record speaks that they are not suppressing the relevant facts. I do not find any merit in the contradictions pointed out by the defence side. The P.Ws. are all illiterate simple and rustic villagers. If something is extracted by the lawyer from them due to complicated questions it can't be used to contract other P.Ws.[…]*"

e. *Fourthly*, the oral evidence of the PWs 3, 4, 7, 8, and 20 respectively, was found to be inspiring confidence, more particularly, the fact that the accused no. 1 had fired shots killing deceased Sarjug Mahto, the accused Ibrahim had fired shots killing deceased Meghu Mahto, and that the other members of the mob had assaulted them. It noted that the common object of the members of the unlawful assembly was

apparent from the fact that they had arrived there with weapons without any provocation.

f. *Fifthly*, the charge under Section 302 r/w Section 149 of the IPC stood duly proved as the accused persons wanted that the PW-20 and his brothers give up their claim over the settlement land to enable the accused persons to forcibly occupy it. It held that the common object of all the members of the unlawful assembly was to cause the death of any person coming in the way of their illegal design to forcibly dispossess the PW-20 and his brothers from the settlement land. Further, the charge under Section 307 of the IPC against all the accused persons also stood duly proved *qua* the assault on the PWs 3, 5, 6, 10, and 20 respectively. The relevant observations read as under:-

> "*44. Question No. II: From the evidence of the P.Ws. it is well proved that Kaimuddin fired killing Sarjug Mahto and Ibrahim fired killing Meghu Mahto. There are numerous other injuries on dead bodies besides the injuries of fire arms which speak that several other members of the mob also assaulted both the deceased. From the evidence of P.W. 4 Chhedi Mahto, P.W. 8 Chinta Devi, P.W. 7 Munilal Mahto, P.W. 3 Dasu Mahto and the complainant P.W. 20 it is proved that Kaimuddin fired on Sarjug Mahto killing him on the spot. It is further proved that Ibrahim fired on Meghu Mahto and other members of the mob also assaulted him. This Ibrahim has absconded in this case. The preplanning of all the members of the mob is apparent from the fact that they had collected there variously armed and without any provocation they started assaulting the complainant and his brother Meghu Mahto and the persons who came to their rescue were also indiscriminately assaulted mercilessly. This clearly speaks that all had one and the same object that the complainant and his*

brothers who had got parchas in respect of the land should abandon their claims and allow the accused persons to forcibly occup7y those settled lands and if there was any protest the persons should be killed. Therefore the common object of all the members of the mob was one and the same to cause the death of the persons coming in the way of their illegal design to forcibly dispossess the complainant party from the settled land. Therefore all the members of the mob are equally responsible for causing the death of Meghu Mahto and Sarjug Mahto. Therefore the charge u/s 302/149 IPC is well proved against the accused persons who have taken part in this assault. There is no evidence to connect accused Aslam, Kalimuddin and Allauddin. Therefore they are not found responsible for this incident. The charge framed u/s 302 IPC against Kaimuddin is well proved. The charge u/s 307 IPC framed against the accused persons for murderous attack on Dudhnath Mahto, Jagdish Mahto, Dasu Mahto, Sripati Mahto and Faiju Mahto is also well proved from the evidence discussed above.[…]"

g. *Sixthly*, the Trial Court found that the accused no. 10 was identified as an assailant by the PWs 3, 7, and 20 respectively. Further, the accused no. 12 was identified by the PWs 3, 7, 8, 20 respectively; the accused no. 11 by the PWs 3, 8, 20 respectively; the accused no. 18 by the PWs 4, 6, 8, 20 respectively; the accused no. 19 by the PWs 4, 6, 16 respectively; the accused no. 5 by the PWs 8 and 20 respectively; the accused no. 8 by the PWs 5 and 20 respectively; the accused no. 22 by the PWs 5 and 20 respectively; the accused no. 2 by 3 and 20 respectively; the accused no. 14 by the PWs 7 and 8 respectively; the accused nos. 3, 7, 13, 16 by the PW-6; the accused nos. 4, 9, 16, 20, and 21 respectively by the PW-20. The relevant observations read as under:-

> "*45. In the evidence of P.Ws. I have found that accused Allu @Allauddin has been identified as an assailants in the members of mob by P.W. 3 Dasu Mahto, and the complainant P.W. 20 Jagdish Mahto. Further his name has come in the evidence of P.W. 7 Munilal Mahto as dying declaration of Sarjug Mahto. Accused Sallu has been identified by P.W. 3 Dasu Mahto, P.W. 8 Chinta Devi, P.W. 20 Jagdish Mahto and his name also comes in the evidence of P.W. 7. Accused Hoda has been identified by P.W. 3, P.W. 8 and P.W. 20. Accused Samuddin stands identified P.W. 4 Chhedi Mahto, P.W. 6 Sripati Mahto, P.W. 8 Chinta Devi and P.W. 20 Jagdish Mahto. Accused Garibul has been identified by P.W. 4, P.W. 6 and P.W. 16 Suresh Mahto. Accused Asarul has been identified by P.W. 8 Chinta Devi and P.W. 20 Jagdish. Accused Razak has been identified by P.W. 5 Faiju Mahto and P.W. 20 Jagdish Mahto. Accused Sikander has been identified by P.W. 5 Faiju Mahto and P.W. 20 Jagdish Mahto. Accused Muslim Sarpanch has been identified by P.W. 3 Dasu Mahto and P.W. 20 Jagdish Mahto. Accused Udwa has been identified by P.W. 6 Sripati Mahto. Accused Majia @ Mojib has also been identified by P.W. 6. Accused Mister has been identified by P.W. 8 Chinta Devi and he has also been named by P.W. 7 in the dying declaration. Accused Barik has been identified by the complainant Jagdish Mahto. Accused Aftab, Masiat, Azam and Khaza have also been identified by the complainant Jagdish Mahto P.W. 20. Accused Habib has been identified by P.W. 6 Sripati Mahto. In this way all these 21 accused persons have been specifically alleged by the P.W. b with definite identification that they took part in this assault.*"

h. *Lastly*, as the prosecution had failed to prove the charges beyond reasonable doubt against the accused nos. 15, 23, and 24 respectively, the Trial Court acquitted them. The relevant observations read as under:-

> "*44. […]Accordingly I find that the prosecution has proved the charges beyond reasonable* shadow *of doubts against all the accused persons except accused Aslam, Kalimuddin and Allauddin.*"

II. IMPUGNED JUDGMENT

37. The 18 convicts being dissatisfied with the judgment and order passed by the Trial Court, went in appeal before the High Court by way of Criminal Appeal (DB) No. 202 of 1990. The High Court *vide* its impugned final judgment and order dated 17.07.2013 partly allowed the appeal by acquitting 7 accused persons. As a sequitur, the High Court affirmed the conviction of 11 accused persons. The impugned judgment and order of the High Court is in three-parts.

i. *First*, the High Court by relying on the Exhibit I series (petitions filed by the respective PWs for settlement of land), held that the defence had admitted the validity of Exhibit 2 series (*purcha* granted by the State Government in favour of the PW-20 and others), more particularly, it acknowledged the *khata* and *khasra* number. Thus, the Exhibit 2 series could be said to be conclusive on account of it not being challenged. The relevant observations read as under:-

> *"52. This case suffers from some sort of peculiarity and that is with regard to its origin. The origin happens to be connected with the right to possess actual physical possession of the land under dispute. The position would have been very much clear, had the defence allowed the prosecution to sail on its boat without pouncing upon the same but as is evident, the defence was not satisfied with the suggestion whatever they have during course of cross-examining the P.Ws. They jumped into fray and advanced their plea that the land was possessed by them and to support the same, they have exhibited trace-map, C.S. Khatian, R.S. Khatian. Not only this by having*

Ext-I to 1/4 the defence had also brought on record the petitions filed by the respective prosecution witnesses for settlement of the land and by such action the defence had admitted its propriety, genuineness and on account thereof the defence had accepted validity of Ext-2 series, the Purcha granted by State Government in favour of the prosecution party. It is no where the case of the defence that they have had ever challenged Ext-2 series, Parcha before the competent authority. That means to say, there happens to be acceptance of the aforesaid Ext-2 in its conclusiveness.

53. When particular act is performed in pursuance of mandate of specific law then its genuineness, its propriety, its effectiveness, its execution will be accepted unless and until contrary is proved. The defence had nowhere challenged or tried to rebut the genuineness of purcha as well as even having purcha issued in favour of prosecution party, they never came over the land side by side when there happens to be specific claim on behalf of defence, then in that event it should have been proved at least to such extent to cast doubt with regard to the prosecution version relating to possession over the land brought under Ext-2 series, Ext-2 relates to Meghu Mahto which discloses settlement of 1.25 Acres of land of Khesra no. 29/3 of Khata No. 94 of village, Giddhaur, 2/1 relates to Jagdish Mahto to the extent of area 1.50 Acre of Khesra no. 29/1 of Khata No. 94 of village, Giddhaur, 2/2 relates to Dharmu Mahto covering an area of 1 Acre of Khesra no. 108 (MI) of Khata No. 94 of village Giddhaur, 2/3 relates to Dasu Mahto of area of 1 Acre of Khesra no. 29/5 of Khata No. 94 of village, Giddhaur, 2/4 relates to Lalu Mahto to the extent of area 1 acre under Khesra no. 29/4 of Khata No. 94 (MI) of village, Giddhaur.

xxx

55. None of the exhibits, that means to say, Ext-F series, Ext-g relates to Khata No. 94, the Khata having under Purcha and not Khata No. 14 so claimed under Ext-C. The defence by exhibiting respective petitions filed by the prosecution party

under Ext-I series, in real sense had shown their status acknowledging Khata No, Khesra No. incorporated therein and by such measure they have virtually sacked their own status to advance their claim or having their claim with regard to land covered under Khata No.94, the Khata having been allotted in favour of prosecution party."

ii. *Secondly*, the High Court noted that the presence of injured witnesses, i.e., the PWs 3, 5, 6, 10, and 20 respectively, cannot be doubted. It observed that the oral testimonies of the said witnesses were found to be reliable and trustworthy. Further, by relying on the decision of this Court in ***Shyam Babu* v. *State of Uttar Pradesh***, reported in **(2012) 8 SCC 651**, it was held that the oral evidence of the witnesses cannot be discarded solely because they are related to each other. The relevant observations read as under:-

"*60. Coming to the remaining witnesses, as stated above, 1.C PWs, 3,-4-, 5, 6 and 20 are injured witnesses whose presence cannot be doubted. After going through their testimony, it is found reliable and trustworthy because of the fact that from their testimony it is apparent that they have hot tried to inter-mingle their evidence with any sort of development or going beyond their status what they have perceived as eyewitnesses as well have been victimized. at the hands of appellants during course of occurrence. It has also been found from their evidence that they are inter-related.[...]*"

iii. *Thirdly*, on the applicability of Section 149 of the IPC, the High Court by relying on the decision of this Court in ***Kanhaiya Lal & Ors.* v. *State of Rajasthan***, reported in **(2013) 5 SCC 655**, and ***Subal Ghorai & Ors.* v. *State of West Bengal***, reported in **(2013) 4 SCC 607**, held that all the accused persons were

members of the unlawful assembly and the common object of the unlawful assembly was to commit the crime as alleged. After a meticulous examination of the oral evidence on record, the High Court found that the prosecution was able to prove its case against some of the accused persons beyond reasonable doubt. Having said so, it acquitted the accused nos. 4, 5, 16, 18, 20, 21, and 22 respectively, as their possibility of being passive onlookers could not have been ruled out. The relevant observations read as under:-

> "*75. Thus after meticulously examining the evidence of PWs, including that of injured witnesses, it is found and held that prosecution has succeeded in proving its case beyond reasonable doubt. However, appellants Azam, Asarul, Aftab Alam, Shahabuddin, Md. Khaza, Barik, Md. Sikandar find their involvement as a member of an unlawful assembly but without having any sort of allegation at the end of prosecution and and as as revealed by the prosecution on its own showing presence of large numbers of persons, then in that circumstances presence of person as spectators at the place of occurrence cannot be ruled out.*
> *76. Consequent there upon, they should at least are found entitled for benefit of doubt and accordingly are acquitted. They are on bail. Hence, they are directed to be discharged from the liability of bail bond.*"

38. In such circumstances referred to above, the appellants are here before us with the present appeals.

III. SUBMISSIONS ON BEHALF OF APPELLANT

39. Mr. Rauf Rahim, the learned Senior Counsel appearing for the sole appellant in Criminal Appeal No. 1187/2014, submitted that the FIR was lodged at 2:35 PM on the basis of the statement of

the PW-20. However, the statements of other witnesses indicate that the statement of the PW-20 was not the first information to the police. He submitted that it is inconceivable that the complainant was able to see and identify 72 assailants in a sudden assault. He further submitted that the Trial Court failed to properly appreciate the evidence so far as the accused no. 17 is concerned.

i. Mr. Rahim further submitted that the PW-20 has named accused nos. 2, 10, 11, and 12 respectively as his assailants. The PW-20 had deposed that the accused no. 17 was loitering with accused nos. 16 and 21 respectively near the settlement land. The High Court has acquitted both the accused nos. 16 and 21 on the possibility of them being passive onlookers. Moreover, it has also come clearly on record that the land of many residents of the village Mahila is situated towards north of the settlement land. Hence, their presence cannot be said to be unusual. Notably, the accused no. 17 is not related to either the accused nos. 1 or 2 respectively, who have been claiming their right over the settlement land.

ii. Mr. Rahim pointed out that the PWs 5 and 6 respectively, failed to identify the accused no. 17 as being present or having been as assailant. Further, the PW-3 has improved upon his version which has come on record in the statement of the PW-23, i.e., the Investigating Officer. The I.O. deposed that the PW-3 had not stated in his police statement that the accused no. 17 was armed with a spear.

iii. He argued that the PW-3 cannot be said to be a credible witness as the other witnesses, i.e., the PWs 5, 6, and 10 respectively have neither identified the accused no. 17 to be present nor have stated that he was one of the assailants even when all of them have stated to have arrived at the place of occurrence together. The statement of the I.O. also revealed that the PW-8 had not stated before him that the accused no. 17 had assaulted her husband.

iv. As regards the applicability of Section 149 of the IPC, Mr. Rahim relied on the decision of this Court in ***Musa Khan* v. *State of Maharashtra***, reported in **(1977) 1 SCC 733**, to submit that courts should not presume that any and every person who is present near a mob at any time or to have joined or left it at any stage, is guilty of every act committed by it from the beginning till the end. He further relied on the decision of this Court in ***Ranvir Singh & Ors. v. State of Madhya Pradesh***, reported in **(2023) 14 SCC 41**, to fortify his submission that, in such cases, courts should evaluate the evidence more closely as there is always a tendency to implicate the innocent with the guilty. He argued that the oral testimony of the witness could be termed as consistent only when the evidence is found to be credible, and satisfies the conscience of the court.

v. In the last, Mr. Rahim submitted that the High Court committed a serious error by not properly marshalling the evidence. It has merely referred to the evidence, and not appreciated the same. He submitted that Section 149 of the IPC demands a greater degree

of appreciation of the evidence. He urged that the impugned judgment be set aside and the appellant be acquitted.

40. Mr. Ashwani Kumar Singh, the learned Senior Counsel appearing for nine appellants in Criminal Appeal No. 1188/2014, would argue that the FIR is ante-timed and an afterthought. The incident allegedly took place on 20.11.1988 at about 8 AM. The I.O. recorded the statement of the informant at about 1:30 PM, and the FIR was registered on the same day at 2:35 PM. However, the same was transmitted to the concerned Magistrate after 2 days, as is apparent from the Column 8 of the said FIR. Therefore, on account of substantial delay in forwarding the FIR and non-explanation thereof, the FIR becomes doubtful and would come under the suspicion of being an exaggerated version.

i. He submitted that the PW-5 stated in his deposition that he reached the police station at about 9 AM alongwith all the five injured persons, i.e., the PWs 3, 6, 7, 10, and 20 respectively. The Sub-Inspector of Police prepared the papers of the injured persons after which they were taken to the hospital. Further, PW-3, in his cross-examination admitted that the Sub-Inspector reached the hospital at about 11 AM, wherein his statement was recorded. Whereas, the PW-4 deposed that the Sub-Inspector arrived at the place of occurrence at about 12 PM, where his statement was recorded by him.

ii. In light of the conflicting versions given by the aforesaid witnesses, the possibility that the statement of PW-20, on the strength of which the FIR was registered, might have been

recorded after due deliberations and consultations cannot be ignored. In such circumstances, the statement given by PW-20 could not have been treated as the FIR. Consequently, the investigation could be termed as tainted, and it would be unjust to rely upon such a tainted investigation.

iii. With a view to fortify the aforesaid submission, Mr. Singh highlighted one another contradiction in the deposition of the PW-22, i.e., the Medical Officer of the Azam Nagar Hospital and the PW-23, i.e., the I.O. The I.O. had deposed that he had gone to the hospital on the basis a O.D. Slip received from the hospital. Whereas, the PW-22 stated that he examined the injuries on the injured persons upon police requisition. He further submitted that there are contradictions in the form of material omissions in the testimony of the witnesses before the Trial Court.

iv. In the last, he submitted that the High Court failed to appreciate the evidence in its true prespective. The PW-5 had deposed that the accused no. 5 had hit him with a *farsa* on his right-hand, and the accused nos. 6, 8, and 22 respectively had assaulted him with a *lathi*. Strikingly, the High Court acquitted the accused nos. 5 and 22 respectively but affirmed the conviction of the accused nos. 6 and 8 respectively. He highlighted that the case against the accused nos. 6 and 8 respectively stood at par with that of the accused persons acquitted by the High Court.

IV. SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE

41. Mr. Divyansh Mishra, the learned counsel would argue that the evidence on record clearly indicates the specific role played by the appellants in the assault. They all were heavily armed and laid an indiscriminate attack on the prosecution party in pursuance of their common object. He submitted that the appellant-accused no. 17 was identified by the PWs 3 and 8 respectively as one of the assailants. The accused no. 6 was identified as one of the assailants by the PW-5, and was identified by the PW-20 as one of the members of the unlawful assembly.

    i. Further, the PW-5 had deposed that the accused no. 8 assaulted him with a lathi. He was also identified as one of the members of the unlawful assembly by the PW-20. The PWs 3 and 20 respectively deposed that the accused no. 10 assaulted the PW-3 on his left leg with a *gandasa* and the PW-20 on his head with a pick-axe. The PWs 3 and 20 respectively deposed that the accused no. 12 was one of the assailants who assaulted them with a *lathi*. The PW-8 also witnessed the accused no. 12 assaulting her deceased husband Sarjug Mahto. The PW-6 deposed that the accused nos. 7 and 13 respectively had assaulted him. Mr. Mishra also submitted that the injuries sustained by the witnesses are consistent with the description of assault given by them in their testimonies.

    ii. Mr. Mishra relied on this Court's decision in ***Joy Devaraj* v. *State of Kerala***, reported in **(2024) 8 SCC 102**, to submit that the discrepancies in the testimonies of the witnesses must be viewed in the context of the chaotic incident, where multiple accused

persons are alleged to have assaulted the witnesses with various weapons. In such circumstances, minor inconsistencies *qua* the weapons are natural and do not undermine the credibility of the witnesses. The discrepancies are not fatal to the case of the prosecution when the ocular version stands fully corroborated with medical evidence.

iii. He further submitted that the motive behind the incident was the previous enmity between the witnesses belonging to the Mahto community and the residents of Mahila village. He placed reliance on the decision of this Court in the case of ***Bikau Pandey & Ors.* v. *State of Bihar***, reported in **(2003) 12 SCC 616**, to submit that the existence of the common object under Section 149 of the IPC is to be inferred from the conduct, language, and acts of the members of the unlawful assembly. The nature of the weapons carried by the members holds considerable significance. The common object of the assembly could be ascertained from the formation of the assembly, the arms carried, and the conduct of the members before, during, and after the occurrence.

iv. Applying the ratio of the aforesaid judgment, Mr. Mishra submitted that the injured witnesses, i.e., the PWs 3, 5, 6, and 20 respectively, have attributed specific overt acts to each of the appellants. The unlawful assembly was armed with deadly weapons like firearms, pick-axes, *suli*, *gandasa*, *lathi*, etc., which reflects on the common object.

v. Elaborating on the liability of the accused persons under Section 149 of the IPC, Mr. Singh submitted that the liability under Section 149 of the IPC is not dependent on the individual intention of each member of the assembly. He relied on the decision of this Court in the case of ***Vasant @ Girish Akbarasab Sanavale* v. *State of Karnataka***, reported in **2025 SCC OnLine SC 337**, to submit that a person may be held guilty for an offence committed by another member of the assembly, even if it was contrary to their personal intention, so long as the act was in prosecution of the common object and the individual continued to be a part of the assembly at the material time. The provision focuses on collective action directed at a shared objective.

vi. He further relied upon the decision of this Court in ***Mizaji & Ors.* v. *State of U.P.***, reported in **1958 SCC OnLine SC 95**, to submit that where a body of persons go armed to take forcible possession of land, it is reasonably inferred that they knew murder was likely to be committed in the course of achieving the object.

vii. In the present case the appellants were armed with lethal weapons. Further, their presence at the place of occurrence as part of the mob is proved by the oral testimony of the witnesses. Therefore, it can be inferred that the appellants knew that death was likely to be caused by the assembly in an attempt to take forcible possession of the land.

V. ANALYSIS

42. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

43. We take notice of the fact that 24 accused persons were put to trial, excluding 5 persons who were declared as absconding accused. At the conclusion of the trial, 21 persons stood convicted. Whereas, 3 persons came to be acquitted. Out of the 21 convicts, 19 preferred appeals before the High Court. The High Court upheld the conviction of 12 and acquitted 7. Therefore, 12 convicts whose conviction was affirmed came before this Court in appeal. However, the appeals stood abated in so far as two appellants were concerned *vide* orders of this Court (Md. Muslim *in* Criminal Appeal No. 1187/2014 and Kaimuddin *in* Criminal Appeal 1329/2014). Accordingly, the present two appeals concern 10 convicts. The chart as below would make the picture further clear:-

Before the TC		Status
A-1	Kaimuddin	Since Deceased
A-2	Md. Muslim	Since Deceased
A-3	Habib	
A-4	Azam	Acquitted by HC
A-5	Asarul	Acquitted by HC
A-6	Sattar	Appellant no. 1 in Crl. Appeal No. 1188/2014
A-7	Udua	Appellant no. 2 in Crl. Appeal No. 1188/2014
A-8	Razaque	Appellant no. 3 in Crl. Appeal No. 1188/2014
A-9	Md. Mashiyat	Appellant no. 4 in Crl. Appeal No. 1188/2014

A-10	Allauddin @Allu	Appellant no. 5 in Crl. Appeal No. 1188/2014
A-11	Hoda	Appellant no. 6 in Crl. Appeal No. 1188/2014
A-12	Salahuddin @Sallu	Appellant no. 7 in Crl. Appeal No. 1188/2014
A-13	Md. Mojib @Mujiya	Appellant no. 8 in Crl. Appeal No. 1188/2014
A-14	Md. Mister	Appellant no. 9 in Crl. Appeal No. 1188/2014
A-15	Aslam	Acquitted by TC
A-16	Aftab Alam	Acquitted by HC
A-17	Zainul	Appellant no. 1 in Crl. Appeal No. 1187/2014
A-18	Sahabuddin @Samuddin	Acquitted by HC
A-19	Garibul	
A-20	Md. Khaza	Acquitted by HC
A-21	Barik	Acquitted by HC
A-22	Md. Sikander	Acquitted by HC
A-23	Kalimuddin	Acquitted by TC
A-24	Allauddin	Acquitted by TC

44. There is no gainsaying that appreciation of evidence primarily falls within the domain of the trial court, and the first appellate court. However, if the courts below could be said to have faltered by overlooking material aspects resulting in the miscarriage of justice, this Court in exercise of its jurisdiction under Article 136 is duty-bound to intervene and look into the matter closely.

A. Interpretation of Section 149 of the Indian Penal Code

45. Albeit the essentials of Section 149 of the IPC are oft-repeated and firmly established, they are reiterated herein for the sake of convenience:

i. There must be an assembly of five or more persons;

ii. An offence must be committed by any member of that unlawful assembly;

iii. The offence committed must be in order to attain the common object of that assembly, or

iv. The members of the assembly must have the knowledge that the particular offence is likely to be committed in order to attain the common object.

46. Section 149 of the IPC stipulates that if an offence is committed by any member of an unlawful assembly (of 5 or more persons) in prosecution of the common object (as defined in Section 141 of the IPC) of that assembly, or if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who, at the time of committing that offence, was a member of that assembly, will be guilty of that offence.

47. The first limb of the provision envisages the **commission** of an offence by a member of an unlawful assembly in order to attain the common object of that assembly. Whereas, the second limb of the provision encapsulates **knowledge** on the part of a member of the unlawful assembly *qua* the likelihood of such offence being committed in order to attain the common object.

48. The distinction between the two limbs of Section 149 of the IPC was elucidated in the decision of ***Mizaji* v. *State of U.P.***, reported in **1958 SCC OnLine SC 95**. The relevant observations are reproduced hereinbelow:-

> "*6. This section has been the subject-matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must*

be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C.J., in Sabid Ali case [(1873) 20 WR 5 Cr] that 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. The distinction between the two parts of Section 149, Indian Penal Code 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 of Section 149 as explained above

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."

(Emphasis supplied)

49. The expression "in prosecution of the common object" means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. In ***Charan Singh* v. State of U.P.**, reported in **(2004) 4 SCC 205**, this Court held that the test for determining the "common object" of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons carried by its members, and their conduct before, during, or after the incident. The relevant observations read as thus:-

"*13. […]Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should*

have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

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 eo instanti."

(Emphasis supplied)

50. To put it briefly, Section 149 of the IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fastened only upon proof that the act was done in pursuance of a common object. The essentials of Section 149 were succinctly explained by the Constitution Bench in the decision of ***Mohan Singh* v. *State of Punjab***, reported in **AIR 1963 SC 174**. It reads thus:-

> "*8. The true legal position in regard to the essential ingredients of an offence specified by Section 149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by*

> *any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. It would thus be noticed that one of the essential ingredients of Section 149 is that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more.[…]*"
>
> (Emphasis supplied)

51. Undoubtedly, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a probable consequence in furtherance of the common object, thereby rendering him a "member" of the unlawful assembly.

52. While ascertaining this fact, it is of utmost importance to consider whether the assembly consisted of some persons who were merely passive onlookers who had joined the assembly as a matter of idle curiosity, without the knowledge of the common object of the assembly, since such persons cannot be said to be members of the unlawful assembly. We say so because, the nucleus of Section 149 is "common object".

a. Innocent Bystander v/s Member of an Unlawful Assembly

53. Once the two broad essentials of Section 149 are fulfilled, i.e., (1) an offence is committed by any member of an unlawful assembly in prosecution of the common object, or (2) if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who at the at the time of commission of the offence was a member of the assembly is to be held guilty of that offence.

54. At the same time, mere presence at the scene does not *ipso facto* render a person a member of the unlawful assembly, unless it is established that such an accused also shared its common object. A mere bystander, to whom no specific role is attributed, would not fall within the ambit of Section 149 of the IPC. The prosecution has to establish, through reasonably direct or indirect circumstances, that the accused persons shared a common object of the unlawful assembly. The test to determine whether a person is a passive onlooker or an innocent bystander is the same as that applied to ascertain the existence of a common object. The existence of a common object is to be inferred from the circumstances of each case, such as:

    a. the time and place at which the assembly was formed;
    b. the conduct and behaviour of its members at or near the scene of the offence;
    c. the collective conduct of the assembly, as distinct from that of individual members;
    d. the motive underlying the crime;
    e. the manner in which the occurrence unfolded;

f. the nature of the weapons carried and used;
g. the nature, extent, and number of the injuries inflicted, and other relevant considerations.

i. Rule of Prudence in Convicting Members of an Unlawful Assembly

55. This Court, as a matter of caution, has enunciated parameters to safeguard innocent spectators or passive onlookers from being convicted merely on account of their presence. This cautionary rule, however, does not dilute the doctrine of constructive liability, under which proof of an overt act by each individual is not indispensable. Where the presence of a large number of persons is established and many are implicated, prudence mandates strict adherence to this rule of caution.

56. In ***Masalti* v. *State of Uttar Pradesh***, reported in **1964 SCC OnLine SC 30**, 40 persons were charged with having committed several offences, the principal ones of which were under Section 302 r/w Section 149 of the IPC. The accused persons were alleged to be armed with guns, spears, swords, *gandasas*, and a *lathi*. While dealing with the oral evidences, the High Court observed that most of the witnesses belonged to the prosecution faction. Further, the evidence of all the witnesses gave an account of the incident in similar terms. The High Court held that unless at least four witnesses give a consistent account against the accused persons, the allegations against them cannot be said to have been proved beyond reasonable doubt. A Four-judge Bench of this Court approved the test applied by the High Court and held that a conviction in cases involving a large number of offenders and victims can be sustained

only when supported by the consistent account of two or three, or more, reliable witnesses. The relevant observations are reproduced hereinbelow:-

> "*16. Mr Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.*"
>
> (Emphasis supplied)

57. In ***Muthu Naicker* v. *State of T.N.***, reported in **(1978) 4 SCC 385**, two factions in a village were involved in a dispute over the laying of pipelines. In the facts of the case, 28 persons were put to trial and 34 witnesses were examined, 6 of whom were injured eyewitnesses.

The Court noted that whenever a fight amongst factions happens in rural society, numerous people appear on the scene as curious spectators. In such a case, mere presence in the assembly shall not be treated as evidence of the fact that the person was a member of the unlawful assembly. It further observed that the presence of those accused would be accepted as satisfactorily proved if there was reliable evidence of at least three witnesses against them. The relevant extracts have been reproduced hereinbelow:-

> "*6. Where there is a melee and a large number of assailants and number of witnesses claim to have witnessed the occurrence from different places and at different stages of the occurrence and where the evidence as in this case is undoubtedly partisan evidence, the distinct possibility of innocent being falsely included with guilty cannot be easily ruled out. In a faction-ridden society where an occurrence takes place involving rival factions it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire evidence on the sole ground that it is partisan is to shut one's eyes to the realities of the rural life in our country. Large number of accused would go unpunished if such an easy course is charted. Simultaneously, it is to be borne in mind that in a situation as it unfolds in the case before us, the easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen in the melee is a tendency which is more often discernible and is to be eschewed and, therefore, the evidence has to be examined with utmost care and caution. It is in such a situation that this Court in Masalti v. State of U.P. [AIR 1965 SC 202 : (1964) 8 SCR 133 : (1965) 1 Cri LJ 226] adopted the course of adopting a workable test for being assured about the role attributed to every accused. To some extent it is inevitable that we should adopt that course.*
> *7. Before we proceed to look into the evidence it is also necessary to make it clear that whenever in*

uneventful rural society something unusual occurs, more so where the local community is faction ridden and a fight occurs amongst factions, a good number of people appear on the scene not with a view to participating in the occurrence but as curious spectators. In such an event mere presence in the unlawful assembly should not be treated as leading to the conclusion that the person concerned was present in the unlawful assembly as a member of the unlawful assembly. Vicarious liability would attach to every member of the unlawful assembly if that member of the unlawful assembly either participates in the commission of the offence by overt act or knows that the offence which is committed was likely to be committed by any member of the unlawful assembly in prosecution of the common object of the unlawful assembly and becomes or continues to remain a member of the unlawful assembly. If one becomes a member of the unlawful assembly and his association in the unlawful assembly is clearly established, his participation in commission of the offence by overt act is not required to be proved if it could be shown that he knew that such offence was likely to be committed in prosecution of the common object of the unlawful assembly. But while finding out whether a person was a curious spectator or a member of an unlawful assembly it is necessary to keep in mind the life in a village ordinarily uneventful except for small squabbles where the village community is faction ridden and when a serious crime is committed people rush just to quench their thirst to know what is happening. In this case we will have occasion to point out that there are accused who are convicted with the aid of Section 149 of the IPC but in respect of whom we have no doubt in our minds that they were mere spectators and could hardly be said to be members of the unlawful assembly.

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39. Now, turning to the case of the rest of the accused, we would ordinarily accept the presence of those accused as satisfactorily proved in respect of whom at least there is reliable evidence of three

witnesses and while analysing the evidence we would be rather slow to accept the evidence of PW 19 standing by itself who, as we would presently point out, has been materially contradicted by her statement under Section 161, CrPC Approaching the matter from this angle, we would briefly set out the evidence. The presence of Accused 6 is consistently spoken to by PWs 1, 19, 20 and 24 and that evidence establishes the fact that Accused 6 was a member of unlawful assembly and charge under Section 148 IPC is brought home to him.

xxx

54. Turning now to the Charges under Heads 4, 8, 10, 12, 14, 18, 20, 22, 24, 26 and 30, it must be pointed out that under these charges all the accused were convicted with the aid of Section 149 IPC in respect of specific offences committed by each individual accused in the case of one or the other prosecution witness. Without elaborating we must at once say that in a case of this nature where a large crowd collected all of whom are not shown to be sharing the common object of the unlawful assembly, a stray assault by any one accused on any particular witness could not be said to be an assault in prosecution of the common object of the unlawful assembly so that the remaining accused could be imputed the knowledge that such an offence was likely to be committed in prosecution of the common object of the unlawful assembly. To illustrate, when it is alleged that a certain accused pelted a stone and caused an injury to some one who came within the trajectory of the stone, could it be said that all other members of the unlawful assembly knew that such an offence would be committed? We are, therefore, not inclined to sustain the conviction of the accused for charges under Heads 4, 8, 10, 12, 14, 18, 20, 22, 24, 26 and 30 and accordingly the conviction of the accused under the aforementioned charges and the sentence imposed for the same are set aside and they are acquitted of these charges."

(Emphasis supplied)

58. Where allegations are levelled against a large number of persons, the courts must carefully scrutinize the evidence, more particularly, if the evidence available on record is hazy. In ***Sherey* v. *State of U.P.***, reported in **1991 Supp (2) SCC 437**, six eyewitnesses had deposed about the incident, and the complainant had attributed overt acts to nine accused persons. One of the eyewitnesses, therein in his deposition, named further five accused persons who attacked the deceased. Regarding the others, he had mentioned that the accused persons were armed with *lathis*; no overt act was attributed to anyone. In such circumstances, this Court cautioned saying that the evidence of witnesses should be subjected to a close scrutiny *vis-à-vis* their former statements. This Court thought it fit to convict only those who were consistently named from the stage of the earliest report. The relevant extract has been reproduced thus:-

> "*4. We have carefully gone through the evidence. We have no doubt that all the eye-witnesses were present. Nothing significant has been elicited in their cross-examination. However, the eye-witnesses simply named these appellants and identified them. So, the question is whether it is safe to convict all the appellants. In a case of this nature, the evidence of the witnesses has to be subjected to a close scrutiny in the light of their former statements. The earliest report namely the FIR has to be examined carefully. No doubt in their present deposition they have described the arms carried by the respective accused but we have to see the version given in the earliest report. In that report PW 1 after mentioning about the earlier proceedings has given a fairly detailed account of the present occurrence. He has mentioned the names of the witnesses and also the names of the three deceased persons. Then he proceeded to give a long list of names of the accused and it is generally stated that all of them were exhorting and surrounded the PWs and the other Hindus and*

attacked them. But to some extent specific overt acts are attributed to appellants 1, 4, 5, 7, 8, 10, 17, 22 and 25. It is mentioned therein that these nine accused were armed with deadly weapons and were seen assaulting the deceased Ram Narain and others. Now in the present deposition he improved his version and stated that in addition to these nine accused, five more persons also attacked the deceased and others. In view of this variation we think that it is safe to convict only such of the appellants who are consistently mentioned as having participated in the attack from the stage of earliest report. With regards the rest PW 1 mentioned in an omnibus way that they were armed with lathis. He did not attribute any overt act to any one of them. Further, the medical evidence rules out any lathis having been used. The doctor found only incised injuries on the dead bodies and on the injured PWs. Therefore, it is difficult to accept the prosecution case that the other appellants were members of the unlawful assembly with the object of committing the offences with which they are charged. We feel it is highly unsafe to apply Section 149 IPC and make everyone of them constructively liable. But so far as the above nine accused are concerned the prosecution version is consistent namely that they were armed with lethal weapons like swords and axes and attacked the deceased and others. This strong circumstance against them establishes their presence as well as their membership of the unlawful assembly.[…]"

(Emphasis supplied)

59. In ***Akbar Sheikh* v. *State of W.B.***, reported in **(2009) 7 SCC 415**, this Court observed that in cases of convoluted facts, the rule of prudence should be applied. The Court held that something more than their being cited as an accused in a witness box would be necessary. There must be some material before the Court to form an

opinion that the accused had shared a common object. The relevant observations read as under:-

> "*41. In a case of this nature, the rule of prudence should be applied. Something more than their being cited as an accused in a witness box would be necessary. The court must have before it some materials to form an opinion that they had shared a common object. It has not been denied or disputed that whereas five brothers were implicated as one brother had deposed against PW 9 and sons had also been implicated because a father had deposed against them. Whereas PW 1 in his deposition denied that the accused deposed in the case in which a son was found to be guilty of murder of Dol Gobinda Acharya (ex-Pradhan), PW 9 admitted that he committed the said murder in broad daylight. The defence that there were other reasons for their false implication cannot also be ruled out.*
>
> *xxx*
>
> *43. We are not unmindful that Akbar and Kanku have been named by both the witnesses but even against them no overt act has been attributed. We, therefore, are of the opinion that doubts legitimately arise as regards their presence and/or sharing of common object. While saying so, we are not oblivious of the fact that the incident had taken place at the dead of night. Enmity between two groups in the village is admitted. But, we cannot also lose sight of the fact that a person should not suffer rigorous imprisonment for life although he might have just been a bystander without anything more*."
>
> (Emphasis supplied)

60. In ***Subal Ghorai*** (*supra*), about 200/250 persons armed with weapons had launched an attack, in which three persons succumbed to their injuries. The trial court convicted 36 persons. The Court held that the constructive liability enshrined in Section 149 of the IPC can be extended to the acts done only in pursuance

of the common object. The commission of an overt act by such a person would prove that he shared the common object. It ought to be proved that the accused was not only a member of the unlawful assembly but shared the common object of the assembly at all stages that he was a part of the assembly. At the same time, the Court left a note of caution stating that the courts must guard against the possibility of convicting mere passive onlookers. The relevant observations read thus:-

> "*52. The above judgments outline the scope of Section 149 IPC. We need to sum up the principles so as to examine the present case in their light. Section 141 IPC defines unlawful assembly to be an assembly of five or more persons. They must have common object to commit an offence. Section 142 IPC postulates that whoever being aware of facts which render any assembly an unlawful one intentionally joins the same would be a member thereof. Section 143 IPC provides for punishment for being a member of unlawful assembly. Section 149 IPC provides for constructive liability of every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly who knew to be likely to be committed in prosecution of that object. The most important ingredient of unlawful assembly is common object. Common object of the persons composing that assembly is to do any act or acts stated in clauses "First", "Second", "Third", "Fourth" and "Fifth" of that section. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of common assembly is a relevant factor. At what point of time common object of unlawful assembly was formed would depend upon the facts and circumstances of each case. Once the case of the person falls within the ingredients of Section 149 IPC, the question that he did nothing with his own hands would be immaterial. If an offence is committed by a*

member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly.

53. But this concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. Quite often, people gather at the scene of offence out of curiosity. They do not share common object of the unlawful assembly. If a general allegation is made against large number of people, the court has to be cautious. It must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly. Unless reasonable direct or indirect circumstances lend assurance to the prosecution case that they shared common object of the unlawful assembly, they cannot be convicted with the aid of Section 149 IPC. It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime.

These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution."

(Emphasis supplied)

61. The law on the point can be summarized to the effect that where there are general allegations against a large number of persons, the court must remain very careful before convicting all of them on vague or general evidence. Therefore, the courts ought to look for some cogent and credible material that lends assurance. It is safe to convict only those whose presence is not only consistently established from the stage of FIR, but also to whom overt acts are attributed which are in furtherance of the common object of the unlawful assembly.

b. Principles of Law relating to Appreciation of Evidence of the Witnesses

62. This Court in ***State of Madhya Pradesh* v. *Balveer Singh***, reported in **2025 SCC OnLine SC 390**, wherein one of us, J.B. Pardiwala, J., was a part of the Bench, had underscored two principal considerations for assessing the value of the evidence of eyewitnesses. It read thus:-

"*57. To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the*

> *veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere bald assertion of tutoring, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raises a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.*"
>
> (Emphasis supplied)

63. At this stage, we would also like to discuss the established principles of law on the evaluation of the testimony of injured eyewitnesses. The testimony of an injured eyewitness is accorded a special status in law because the injuries on the person lends credence to the fact that the witness was present at the scene of the occurrence. The courts lend credence to the testimony of an injured eyewitness, assuming that the witness would not want to let his actual assailant go unpunished. Thus, unless there are cogent grounds for disbelieving the evidence of an eyewitness due to major contradictions and discrepancies, ordinarily, such evidence should be relied upon.

64. In ***Balu Sudam Khalde & Anr.* v. *State of Maharashtra***, reported in **(2023) 13 SCC 365**, one of us, J.B. Pardiwala, J., had the benefit of expounding the law on this subject as follows:-

> "*26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:*

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.
26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

65. Keeping in view the above principles of law and the rule of caution, we shall now look into and discuss the evidence on record. The case in hand revolves around the evidence of five injured eyewitnesses, and two eyewitnesses to the occurrence. Upon a careful scrutiny of the evidence, we find that the oral testimony of the prosecution witnesses is marred by material inconsistencies and embellishments striking at to the root of the matter.

66. The oral evidence of PW-20, an injured eyewitness, on whose police statement the FIR was registered, would indicate that he had no dispute with the accused persons regarding the settlement of land. Further, he denied stating before the police that the accused persons

were hiding because they were opposed to the harvesting of paddy. He was unable to identify the persons harvesting the paddy, and rather described them as labourers. In the *fardbeyan*, he stated that a day prior to the incident, he had harvested paddy from the field that was allotted to him by the Government and, for this reason, the accused nos. 2, 16, 17, and 21 respectively, alongwith 400 to 500 other persons, were hiding with weapons in order to stop him from further harvesting the paddy. More importantly, he admitted that he was unable to disclose the names of the assailants as stated by the PWs 3, 6, and 10 respectively, as he fell unconscious after the assault. However, in the *fardbeyan*, while naming forty-one assailants, the PW-20 stated that the PWs 3, 5, 6, and 10 respectively had told him about the assailants.

67. The deposition of the PW-20 stands at variance with his *fardbeyan*. In his oral testimony, the PW-20 admitted that he fell unconscious after the assault and, therefore, was unable to name the assailants who had attacked the PWs 3, 6, and 10 respectively. In stark contrast, his *fardbeyan* categorically records that the PWs 3, 5, 6, and 10 respectively had informed him that forty others, armed with various weapons, had participated in the assault. This contradiction strikes at the root of his credibility. To add to this, the PW-3 deposed that he had never disclosed the names of forty assailants to the PW-20, thereby further undermining the credibility of the witness.

68. The PW-3, an injured eyewitness, in his oral evidence has attributed overt acts to the accused nos. 12 and 10 respectively. He stated that the accused no. 10 assaulted him with a *gandasa* on his leg.

However, the medical evidence on record indicates not only the absence of any injury on the leg of the witness but also that an injury caused by a *gandasa* would ordinarily result in an incised wound. It further emerges from his deposition that he reached the scene of occurrence later, upon hearing the sound of two gunshots. He also admitted that he had not disclosed the names of forty accused persons to the PW-20.

i. Conflict between the Ocular Version and the Medical Evidence

69. The law on conflict between the medical evidence and ocular evidence has been succinctly explained in ***Abdul Syeed* v. *State of M.P.***, reported in **(2010) 10 SCC 259**, succinctly explained thus:-

> "*Medical evidence versus ocular evidence*
> *32. In Ram Narain Singh v. State of Punjab [(1975) 4 SCC 497 : 1975 SCC (Cri) 571 : AIR 1975 SC 1727] this Court held that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case.*
> *xxx*
> *38. In State of U.P. v. Hari Chand [(2009) 13 SCC 542 : (2010) 1 SCC (Cri) 1112] this Court reiterated the aforementioned position of law and stated that : (SCC p. 545, para 13)*
> *"13. … In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."*
> *39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony*

> *improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.*"
>
> (Emphasis supplied)

70. The PW-5, an injured eye-witness, has in his oral evidence attributed overt acts to the accused nos. 8 and 6 respectively. However, the medical evidence does not support the version of assault as narrated by the witness. While both, i.e., the accused nos. 8 and 6 respectively, are alleged to have assaulted the witness with *lathis*, the medical evidence discloses only incised wounds on his body. His oral testimony further indicates that he had reached the scene of the occurrence much after the deceased had already been shot.

71. The oral testimony of the PW-6, another injured eyewitness, would reveal that he was assaulted even before he could reach the scene of the occurrence. It appears from the materials on record that his statement was recorded on 30.11.1988, i.e., 10 days after the incident. Whereas, according to the investigating officer, he had recorded the statement of the said witness on 21.11.1988. The PW-6 has attributed overt acts to the accused nos. 14, 7, and 13 respectively; however, no other witness has said anything about the complicity of the accused nos. 14, 7, and 13 respectively. From the oral testimony of PW-10, it emerges that he was assaulted by one Jalla and Masiyan, who were neither named as accused in the FIR nor charge-sheeted. He further denied having stated before the police that the accused no. 10 had assaulted him.

72. Further, what is significant from the oral testimony of the PW-4 is that he does not say anything about the presence of any of the appellants. On the contrary, he states that there were a large number of persons at the spot, and he was unable to distinguish between the assailants and the spectators. However, the PW-23, i.e., the investigating officer, has deposed that the PW-4 had disclosed before him many names. Further, the PW-8 had not stated that the accused nos. 14, 11, and 17 respectively had assaulted her husband. In fact, she had also disclosed different names.

73. In the present case, prudence demands that we should believe the presence or participation of only those accused as satisfactorily established with the aid of at least two reliable witnesses. The oral testimonies of the PWs 3 and 5 respectively, also suffer from material contradictions.

74. Likewise, the accused nos. 7, 13, and 14 respectively have been implicated only by the PW-6. Their presence or participation finds no support from the testimony of any other witness, nor stands corroborated by any intrinsic evidence on record. So far as accused no. 9 is concerned the only evidence against him is the identification by the PW-20, which, in the absence of any supporting evidence, cannot be regarded as sufficient to bring home his guilt. The presence of the accused no. 10 is also doubtful.

75. According to the PW-3 he was assaulted by accused no. 10 with a *gandasa.* However, the evidence reveals something else. The *fardbeyan* recorded at the instance of the PW-20 does not name the

accused no. 10 as one of the assailants. Further, there is nothing cogent or credible to indicate the presence or participation of the accused nos. 11 and 12 respectively. Lastly, there is no credible evidence even against the accused no. 17 except an omnibus identification by the PW-20.

76. In the aforesaid view of the matter, we hold that the accused nos. 6, 7, 8, 9, 10, 11, 12, 13, and 14 respectively are entitled to the benefit of doubt. Their conviction cannot be sustained in the eye of law.

77. A common man may legitimately argue that if all the eyewitnesses are to be disbelieved then who is to explain the various injuries suffered by them. In other words, a common man may say that it is not even the case of the accused persons that no injuries were suffered by the eyewitnesses or that they were self-inflicted. In such circumstances, why should the eyewitnesses be outrightly disbelieved?

78. It needs to be emphasized that injuries on the eyewitnesses, at the best, may ensure their presence at the scene of occurrence but that is not enough. Before a criminal court even accepts the testimony of an injured eyewitness, it has to be satisfied that he is a truthful witness and had no reason to falsely implicate the accused persons. We have extensively explained or rather discussed the various infirmities in the oral evidence of all the eyewitness. These eyewitnesses in their police statements recorded under Section 161 of the Cr.P.C. have gone to the extent of implicating even those

persons who were ultimately not arrayed as an accused in the chargesheet including those who ultimately came to be acquitted by the trial court.

79. In cases like the one in hand, the courts must make an attempt to separate grain from the chaff, the truth from falsehood, yet this could only be possible when the truth is separate from the falsehood.

80. In the aforesaid context, we may refer to the decision of this Court in ***Balaka Singh & Ors.* v. *State of Punjab***, reported in **(1975) 4 SCC 511**. In paragraph 8, this Court observed thus:-

> "*8. The suggestion of the appellants is that they were falsely implicated because the prosecution could not succeed in convicting Balaka Singh for the murder of Gurnam Singh in the previous murder case. It was to wreak fresh vengeance on the accused that they had been falsely implicated in the present case. It is true that there are as many as eight witnesses who are alleged to have seen the occurrence and they have given a parrot-like version of the entire case regarding the assault on the deceased by the various accused persons. All these witnesses have with one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court, equally with the appellants making absolutely no distinction between one and the other. A perusal of the evidence of the prosecution witnesses would show that the prosecution case against the appellants and the four accused is so inextricably mixed up that it is not possible to sever one from the other. It is true that, as laid down by this Court in Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible*

when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.[...]"

(Emphasis supplied)

c. Whether the Prosecution could be said to have proved its case Beyond Reasonable Doubt?

81. In ***Ramakant Rai* v. *Madan Rai***, reported in **(2003) 12 SCC 395**, this Court explained the meaning of "reasonable doubt". It means doubts that are free from abstract speculation, not a result of an emotional response, which are actual and substantial doubts on the guilt of the accused person, and not vague apprehensions. It cannot be an imaginary, trivial or a possible doubt, but a doubt based upon reason and common sense. The relevant observations have been reproduced hereinbelow:-

> "*23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to (sic) of probability amounts to "proof" is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, as learned author says : [see The Mathematics of Proof II : Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)]*
>
> *"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to*

occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

25. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154] ."

(Emphasis supplied)

82. It cannot be said that the prosecution has proved its case beyond reasonable doubt. A case attains that standard when all its links are firmly established and recognizable to the eyes of a reasonable person. In the present matter, the prosecution version does not appear to stem from a truthful narration of facts.

83. The oral testimonies of the witnesses neither corroborate each other nor align with the medical records. The various contradictions in the form of material omissions go to the root of the matter, and in such circumstances, it cannot be held that the prosecution has discharged its burden of proof.

B. Whether the Statement of the PW-20 could have been treated as an FIR?

84. The FIR, based on the statement of the PW-20 recorded by the investigating officer, arrayed as many as 72 persons as accused, several of whom find no mention in the statements of the prosecution witnesses. Out of these 72 accused persons, chargesheet was filed only against 24 persons who were eventually put to trial. What is indeed disconcerting is that the individuals against whom direct and specific allegations were levelled have either not been named in the FIR or have been inexplicably dropped from the chargesheet. The materials on record do not indicate what action, if any, was taken by the police against them.

85. We consider it necessary to address yet another pertinent issue. It appears from the oral evidence of the injured eyewitnesses and other

eyewitnesses that the *fardbeyan* of PW-20 could not have been treated as the first information report. A bare perusal of the oral evidence of the PWs 3, 4, 5, 8, and 22 respectively, would indicate that the information about the commission of the offence had reached the police much prior to the recording of the statement of the PW-20 and lodging of the FIR. We have arrived at this conclusion on the basis of the reading of the following evidence:

a. *First*, the oral evidence of the Investigating Officer (PW-23) reveals that he received an O.D. Slip from the Government Hospital, Azam Nagar, and thereafter, he proceeded towards the hospital to record the *fardbeyan* of the PW-20. Whereas, the PW-22 (Medical Officer of the Government Hospital, Azam Nagar) stated that he had examined the injured persons on police requisition.

b. *Secondly*, the oral evidence of the PW-23, i.e., the I.O. indicates that he recorded the statement of the PW-20 around 1:25 PM.

   i. However, the PW-3 testified that when he regained consciousness at the scene of occurrence, he saw that the police had arrived. It was around 11:00 AM to 12:00 noon, and his statement was recorded.

   ii. The PW-5, on the other hand, stated that he regained consciousness in the boat while being taken to the hospital, and that all the injured persons first went to the police station around 9 AM, where their statements were recorded, and thereafter, proceeded to the hospital.

   iii. The PW-4, another eyewitness to the incident, stated that after the injured persons were taken to the hospital, the police arrived at the scene of occurrence at around 12:00 noon to 1:00 PM and recorded his statement. The testimony of the PW-

4 in this regard finds corroboration from the testimony of the PW-8. She stated that the police arrived approximately two hours after the incident and interrogated her.

c. *Thirdly*, the PW-20 in his oral evidence admitted that after the assault he fell unconscious, and hence, he was not able to identify the assailants of the deceased and the PWs 3, 6, and 10 respectively. Whereas, in his *fardbeyan*/statement to the police, it is recorded that the PWs 3, 5, 6, and 10 respectively had informed him that forty other persons, armed with various weapons, had assaulted them.

86. From the foregoing, it appears that the statement of the PW-20 could not have been treated as the FIR, since the first information about the occurrence had already reached the police prior to its recording of statements at the hospital. Resultantly, the statement of PW-20 becomes a police statement recorded under Section 161 of the CrPC.

87. In ***State of A.P.* v. *Punati Ramulu & Ors.***, reported in **1994 Supp (1) SCC 590**, this Court observed that once it is found that the investigating officer deliberately failed to record the first information report on receipt of the information of a cognizable offence, and had prepared the FIR after deliberations, consultations and discussions, the FIR would fail to inspire confidence. The relevant observations have been reproduced below:-

> "*5.[…]Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had*

prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case."

(Emphasis supplied)

88. In ***Ranbir Yadav* v. *State of Bihar***, reported in **(1995) 4 SCC 392**, the police officer had already started to investigate about a riot in the night, however, he did not record the statements of any of the persons he talked to. The FIR of the incident only came to be reported in the next morning on the basis of the information given by one of the witnesses. This Court held that the courts below erred in treating the statement as an FIR as the same was a statement under Section 161 of the CrPC. The following are the relevant excerpts:-

"*38. Having gone through the evidence of PW 96 we are constrained to say that the courts below were not justified in treating Ext. 10/1 as an FIR. Undisputedly PW 96 had reached Village Laxmipur Bind Toli in the night of 11-11-1985 to investigate into the two cases registered over the incident that took place in the morning. He*

deposed that after reaching the village at 10.30 p.m. he got information about the second incident also and in connection therewith he had talked to several persons. He, however, stated that he did not record the statements of the persons to whom he talked to. In cross-examination it was elicited from him that on the very night he learnt that houses of some people had been looted and set on fire, some people had been murdered and that some villagers were untraceable. While being further cross-examined he volunteered that he had started the investigation of the case registered over the second incident in the same night. In the face of such admissions of PW 96 and the various steps of investigation he took in connection with the second incident there cannot be any escape from the conclusion that the report lodged by PC PW 1 on the following morning could only be treated as a statement recorded in accordance with Section 161(3) of the Code and not as an FIR. The next question, therefore is whether the evidence of PC PW 1 is inadmissible as contended by Mr Jethmalani."

(Emphasis supplied)

89. There is no gainsaying that an FIR must faithfully reflect the information furnished by the informant at the very time it is presented. The true test for an information to qualify as an FIR lies in whether it is capable of supplying grounds for the police officer to suspect the commission of a cognizable offence. Once this requirement is met, the officer is bound to reduce it into writing.

90. In the present case, in the natural course of events, the PWs 3, 4, 5, and 8 respectively, would have disclosed the commission of the alleged offence to the police. The very first statement relating to the two homicidal deaths ought to have been treated as an FIR. However,

the daily diary or the *roznamcha* entry of the police station about the visit of the witnesses to the police station or the visit of the investigating officer to the scene of occurrence or even visit of the investigating officer to the hospital was not brought on record which further creates a doubt as regards the genuineness of the FIR. In such circumstances, the statement of the PW-20 reduced as an FIR fails to inspire confidence.

VI. CONCLUSION

91. In the result, the appeals succeed and are hereby allowed. The impugned judgment and order to the extent of holding the appellants herein guilty of the offences they were charged with, is set aside. The appellants are accordingly acquitted. Their bail bonds stand discharged.

.....J.
(J.B. PARDIWALA)

.....J.
(R. MAHADEVAN)

New Delhi;
7th October, 2025.