SUPREME COURT OF INDIA

Manga @ Man Singh

Vs.

State of Uttarakhand

Crl.A.No.1156 of 2008

(Dr.B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

03.05.2013

JUDGMENT

FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. In these appeals the challenge is to the common judgment of the Division Bench of the High Court of Uttarakhand at Nainital dated 14.6.2007 in Criminal Appeal Nos.17, 18, 19, 21, 22, 23, 24, 25 and 95 of 2005. The High Court by the impugned judgment confirmed the conviction and sentences awarded by the trial Court in its judgment and order dated 01.2.2005, in Sessions Case No.156/2002 State v. Soma and Others. The appellants were all convicted for offences under Section 302, 307 read with Section 149 and Sections 147 & 148 of Indian Penal Code (IPC). Each of the accused was awarded the punishment of life imprisonment and fine of Rs.5000/- under Sections 302/149 IPC and seven years rigorous imprisonment and fine of Rs.3000/- under Section 307/149 IPC and one year's rigorous imprisonment and Rs.1000/- fine under Section 148 IPC and six months' rigorous imprisonment and Rs.500/- fine under Section 147 IPC. All the sentences were directed to run concurrently.

2. Criminal Misc. Petition No.22687 of 2011 in Criminal Appeal No.1160 of 2008 filed by the de facto complainant is allowed. Applicant is impleaded as party-respondent.

3. The genesis of the case was that the complainant Sajjad @ Kala PW-2 was the resident of village Dadoobas, within the jurisdiction of Bhagwanpur police station, district Haridwar. On 21.11.2001 his brother Ayyub (PW- 3) went to his field situated near the river. He was accosted by A1 to A- 4 Soma, Chander, Pyara and

Radha and fearing assault at their hands Ayyub (PW-3) escaped and rushed back to the residence and reported the matter to PW-2. PW-3 stated to have gone to his field by around 8.30 to 8.45 a.m. and retuned back by 9 to 9.15 a.m. By 10 a.m. the accused, 15 in number, armed with guns and country made pistols approached the house of the complainant, where all other family members were also present. The accused party stated to have abused the complainant and the family members and that while the complainant and his family members were attempting to pacify the accused party, without heeding to any of their advice, accused party opened fire in which Mehroof s/o Nazir, on sustaining gun shot injuries in his chest, succumbed to the injuries and died on the spot. That Iqurar Ali, another person was seriously injured and 10 others were also injured in the firing assault at the instance of the appellants. They were all shifted to Roorkee hospital for treatment. The body of the deceased Mehroof, was lying at the place of occurrence. PW-2 stated to have lodged written complaint Ka-1 in the police station at about 11.45 a.m. on the same date, whereafter a case was registered against all the accused persons. Iqurar Ali, the other seriously injured person, died on 24.11.2001 at about 4.30 a.m. Thereafter, PW-2 gave a further report Ka-2 to the police station Bhagwanpur. The post-mortem was conducted on the bodies of Mehroof and Iqurar Ali. The investigating officer, in furtherance of the investigation, recovered the guns, prepared the site plan, recorded the statement of witnesses and on conclusion of the investigation, submitted the charge-sheet before the Court. According to PW-2, two years prior to the incident in connection with Soma's (A-1) daughter, there was a gunshot firing by the appellants Bijendra (A-5) and Tirath (A-15) respectively, which was however, compromised outside the Court. He further informed that a 'marpeet' took place between Pyara (A-3) s/o Soma and one Liyakat s/o Nuruddin four days prior to the date of incident with regard to payment of Metador (vehicle) charges and that two days thereafter, exchange of hot words took place between them.

4. It was in the above stated background that the offence was alleged to have been committed by the appellants. The prosecution examined PWs-1 to 13 of whom, PWs-1 to 4 were injured eye-witnesses, namely, Gayyur, Sajjad @ Kala, Ayyub and Ashraf. PW-5 is Dr. S.S. Lal, who conducted the post- mortem on the body of Mehroof. PW-6 is Dr. D.D. Lumba, who attended on the injured persons numbering ten. PW-7 is Dr. Ajay Aggarwal, who attended on the injured eye-witnesses PWs-1 and 2. PW-8 is Dr. R.K. Pandey, who conducted the post-mortem on the body of Iqurar Ali. PW-9 is Dr. Yogesh Kumar, radiologist, who proved X-ray reports of seven of the injured witnesses. PW-10, Sub Inspector, R.K. Awasthi is the investigating officer.

5. In the questioning under Section 313 C.r.P.C., all the accused took the plea of 'false implication' and that they have been implicated due to enmity, as well as for political reasons. The injuries on the body of Mehroof as stated in the post-mortem report were as under:

> "(1) Fire arm would of entry 1 cm x 1 cm rounded in front of left side of chest. 4 cm away from left nipple at 10 O' Clock position, margins inverted, blackening & tattooing present."

6. According to PW-5, Dr. S.S. Lal, Medical officer, the death was caused due to shock and hemorrhage resulting from the ante-mortem firearm injuries sustained by the deceased.

7. Thus, the death was one of homicidal and was proved beyond doubt. The injuries on the body of Iqurar Ali, as per PW-6 the doctor, who attended on him immediately after he was shifted to Roorkee Civil Hospital were as under:

> "(1) Lacerated would 1cm x 0.5 cm x through and through left pinna back middle part. No blackening scorching and tattooing seen around the wound.
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> (2) Lacerated would 1.0 cm x 0.5 cm x muscle deep tragus of left ear. No blackening, scorching and tattooing seen around the wound.
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> (3) Lacerated would 1.6 cm x 1.0 cm x depth not probed middle of chin lower part. No blackening, scorching and tattooing seen around the wound. Adv. X-ray and fresh in duration."

8. Considering the precarious condition of the injured Iqurar Ali, he was referred to a higher medical centre for treatment on 21.11.2001 at 12:10 p.m. He was taken to PGI Hospital, Chandigarh from where he was referred to AIIMS, New Delhi. However, considering the health of Iqurar Ali, he was allowed to be taken back to his house. He succumbed to his injuries on 24.11.2001. PW-8 who conducted the post-mortem on the body of Iqurar Ali, noted the following ante-mortem injuries:

> "(1) Fire arm wound of entry 0.5 cm x 0.08 cm below in middle part of chin. Margins are incised. No blackening and tattooing seen around the wound, on explanation. Bullet traversed through brain substance, strike at occipital bone. There is fracture of occipital bone rebound through brain substance back of neck and recovered from space between C5 & C6 from muscle, fracture of C5 cervical vertebra.

(ii) Abrasion 1.5 cm x 1 cm on the left pinna of tragus."

9. According to PW-8, the death of Iqurar Ali was due to hemorrhage and coma resulting from the ante-mortem fire-arm injuries sustained by the deceased. Therefore, it was established that the death of Iqurar Ali was also a homicidal death on account of fire-arm injuries sustained by him. PW-6 also examined other injured persons including PW-1 Gayyur, PW-3 Ayyub and PW-4 Ashraf and seven others. According to the report, injuries were all due to fire-arms.

10. In all these appeals, the main submissions were made by Shri S.R. Singh, learned senior counsel for the appellants, in Criminal Appeal Nos.1157/2008, 1158/2008, 1161/2008 and 1164/2008 and by Mr. Ashok Kumar Sharma counsel for the appellant in 1156/2008. The other learned counsel appearing for the appellants in Criminal Appeal Nos.1166, 1159 and 1155 of 2008 adopted the submissions of the above counsel. On behalf of the State, Dr. Abhishek Attrey addressed arguments. Mr. Yunus Malik appeared and made submissions on behalf of the de facto complainant, who was impleaded pursuant to the orders passed in Crl.M.P. 22687/2011 in Crl.A.1160 of 2008.

11. Having heard learned counsel for the appellants, the sum and substance of the submission of learned counsel was that there was delay in lodging of the FIR, that there were serious lacunae in the case of the prosecution framed against the appellants in that the evidence did not establish the offence alleged against the appellants, that there was long delay in sending express report to the Magistrate and thereby, violation of Section 157 Cr.P.C. was committed and consequently, the conviction could not have been ordered. According to learned counsel, when PW-3 Ayyub was alleged to have been accosted around 8.30 to 8.45 a.m. by four persons in the field, it was hard to believe that within a matter of about an hour, there could have been formation of an unlawful assembly by as many as 15 persons with fire-arm weapons, both licenced and country- made, to cause such gruesome and murderous attacks on the deceased and other injured persons, in order to invoke Sections 302 and 307 read with Section 149 IPC, along with Sections 147 & 148 IPC. It was contended that if at all the offence of common object can be attributed to the appellants, it could have been only under Section 141 'third', which cannot be applied to the nature of offences alleged against the persons, namely, Sections 302, 307 read with 149, as well as 147 & 148 IPC. As far as the first appellant in Cri. Appeal No.1165/2008 was concerned, it was contended that he was totally alien to the village where the occurrence took place as he belonged to a different village and that he had been falsely roped in. It was also contended that there was a

communal tension in the village as admitted by PW-13 and that under political pressure the police implicated all the persons in the village who were holding licenced arms. Reliance was placed on Jang Singh and others v. State of Rajasthan - 2001 (9) SCC 704 in support of the submission of Section 157 Cr.P.C.

12. As against the above submissions, learned counsel for the State argued that non-recovery of bullets or pellets or not sending the guns for ballistic expert report by itself may not vitiate the case of the prosecution, when there was direct evidence relating to the occurrence and injuries inflicted by the appellants on the deceased and other injured persons.

13. Learned counsel contended that when after PW-3 was accosted between 8.30 and 8.45 a.m. and who escaped from the onslaught of the appellants in the field, the appellants had more than an hour, inasmuch as they reached the place of occurrence only by 10 a.m. and, therefore, they had enough time to gather other assailants and indulge in the gruesome act. As far as the scope of Section 149 was concerned, learned counsel contended that the said submission was satisfactorily met in the judgments of the Court below and the same does not merit any consideration. Learned counsel for PW-2 also adopted the submissions of the learned counsel for the State.

14. Having heard learned counsel for the respective parties and having perused the material papers placed before us including the judgment of the High Court as well as that of the trial Court, we find that the following relevant questions require to be addressed, namely:

1) What is the interpretation to be placed on Section 141 ‘third’ vis-à-vis Section 149 IPC,

2) Whether the so-called delay in forwarding express report to the Magistrate after three days from the date of occurrence, namely, on 24.11.2001 would vitiate the case of the prosecution.

3) Whether the prevalence of communal riots at the time of occurrence merits acceptance in order to extricate the appellants from the conviction imposed.

4) Whether there was any lacunae in the case of the prosecution based on various points raised on behalf of the appellants.

15. We wish to deal with the first question in the last.

16. As far as the second question is concerned, it is based on the factum of the time taken in forwarding the express report to the Magistrate. Since in Exhibit Ka-47 namely, the First Information Report, the concerned Court put the date 24.11.2001 after the expression 'seen' and there being no other endorsement prior or subsequent to 21.11.2001 mentioning any other date, there is no doubt that the express report was forwarded to the Magistrate only on 24.11.2001. The question, therefore, for consideration is whether that by itself would vitiate the whole case of the prosecution. The submission is that since there was such a wide time gap as between the alleged date of occurrence, namely, 21.11.2001 and the forwarding of the report to the Magistrate on 24.11.2001, there was every chance of antedating the FIR. In support of the said submission based on Section 157 of Cr.P.C., reliance was placed upon the decision reported in Jang Singh (supra). In the first blush, though the said submission appears to be very sound, on a detailed analysis, we find that it is without any substance for more than one reason.

17. In the first place, it is not shown as to how such a delay caused any prejudice to the accused. Except merely stating that the three days delay in forwarding the express report belies the case of the prosecution as alleged, nothing else was shown in support of the said submission. In fact the trial Court dealt with this very submission. The trial Court has noted that the investigating officer was not questioned at all about the reasons for not sending the report prior to 24.11.2001. It has further noted that in the 'Panchnama' of the deceased Mehroof, the crime was clearly mentioned along with the relevant sequence of crime. The trial Court has therefore, found that without recording the First Information Report on that very day, namely, 21.11.2001, the crime number could not have been mentioned in the 'Panchnama'.

18. In this context, when we refer to the decision relied upon by the learned counsel for the appellants, namely, Jang Singh (supra), we find that this Court has noted the vitiating factors in the entire case of the prosecution, including the delay in sending the First Information Report to the Magistrate for which there was no explanation. By merely referring to the said factor along with the other serious defects noted by this Court, it was concluded that the case of the prosecution was not made out. We, therefore, do not find any scope to apply the said decision as a proposition of law in order to apply the same to the case on hand.

19. Per Contra, it will be appropriate to refer to a reasoned decision of this Court reported in Sandeep v. State of Uttar Pradesh - 2012 (6) SCC 107, wherein this

very Bench dealt with the implication of Section 157 Cr.P.C. and held as under in paragraphs 62 and 63:

> "62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 Cr.P.C. instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20- 11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh v. State of Punjab wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.
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> 63. Applying the above ratio in Pala Singh to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in Ishwar Singh v. State of U.P. and Subash Chander v. Krishan Lal."
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> We can also refer to a recent decision of this Court in Bhajan Singh @ Harbhajansingh and Ors. v. State of Haryana – (2011) 7 SCC 421. Relevant paras 29 and 31 are as under:
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> "29. It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante- dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression "forthwith" mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of

course, the same is to be sent within reasonable time in the prevalent circumstances.

31. In view of the above, we are in agreement with the High Court that there was no delay either in lodging the FIR or in sending the copy of the FIR to the Magistrate. It may be pertinent to point out that the defence did not put any question on these issues while cross-examining the investigating officer, providing him an opportunity to explain the delay, if any. Thus, we do not find any force in the submissions made by the learned counsel for the appellants in this regard."

Again in Shivlal & Another v. State of Chhattisgarh- AIR 2012 SC 280, the significance and relevance relating to sending a copy of FIR to the Illaqa Magistrate has been explained as under in paragraph 9:

"9………the Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159, Cr.P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante- timed or ante-dated or investigation is not fair and forthright. In a given case there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to Illaka Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case."

In the case on hand nothing was put to PW-13(Investigating Officer) as regards the alleged delay in sending the FIR to the Magistrate and or to any prejudice was caused to the appellants on that account. It would have enabled the Investigating Officer to explain the reason for the delay. In any event nothing has been shown as to any prejudice caused to the appellants on the ground of alleged delay in sending a copy of FIR to the Magistrate.

20. When we apply the above principle laid down in the said decision for the reasons to be adduced for the other questions to be dealt with in this judgment, we hold that there was no dearth in the process of investigation based on the factum of the alleged occurrence on 21.11.2001, as reported by the complainant PW-2 and the mere delay in forwarding of the express report to the Magistrate has not caused

any dent in the case of the prosecution. In other words, we have no difficulty in stating that the FIR was factually recorded without delay and the investigation started on the basis of the FIR and in the absence of any other infirmity in that respect, the delay in forwarding the report to the Magistrate does not in any way vitiate the case of the prosecution.

21. With this we come to the next question. The submission on behalf of the appellants was that there was communal tension prevailing and, therefore, if in that milieu, someone was injured, those who were possessing licenced arms in the village cannot be held responsible, even if it resulted in the death of two individuals and injuries to several other persons. In support of the said contention, reference was made to the deposition of PW-13, the Investigating Officer. To a stray question put to him, PW-13 answered that;

> “there had been gross tension present in the said village which had been communal in nature and scope thereof. I had neither recorded the time of commencement of any proceeding, in the said village nor, had I recorded culmination thereof, in the contents of leaflet No.1 of my Case Diary nor further, had I copied down the contents of the Inquest-Report [Panchaytnama], in the contents thereof.”

22. Reference was also made to a suggestion made to the said witness, which was denied and the statement was to the following effect:

> “It is also wrong and incorrect, to accordingly allege and consequently suggest, to the effect that, on account of the then prevailing communal tension, in the said village, subsequently in consultation of all licensed weapon-holders of the community of accused of the said village, the present accused, as a matter of fact, had since been implicated, in a belied manner, on account of undue pressure, in the present matter. However, this fact remains true and correct, to the effect that, except the licensed arm- holders belonging, to the community of accused, there was no other licensed arm-holder or, any other member, from their community present, at the said spot of occurrence.”

23. Except making the said bald suggestion, which was rightly denied, there was nothing brought out or placed either in the evidence of the prosecution witness or by way of defence evidence before the court, as to what was the nature of communal tension, who were all communally and inimically disposed of and when such communal friction occurred. In fact, what all was stated in the Section 313

statement, was ‘false implication’ due to enmity and political reasons. Political difference and communal difference are two different factors and, therefore, it is not known why such a specific stand of communal tension was not taken in the Section 313 questioning. If really there was any communal tension in the village, there would have been any number of witnesses who would have come forward and stated the same before the Court, as none would have been prejudiced nor affected by making such a true statement before the Court. When we consider the oral evidence of PW-13, namely, that there had been gross tension present in the village, as there was nothing recorded in the police station, it will be a dangerous proposition if simply based on the said isolated statement, one were to conclude that the present occurrence and its aftermath were solely due to communal tension. It was not even suggested to any of the witnesses that there was communal hatred as between those witnesses examined in support of the prosecution or that it was due to such communal tension they suffered such injuries, as well as casualties in their family. In fact, we are of the view that there are too many incongruities in the said submission, inasmuch as the said submission is made in desperation and does not deserve any consideration. Therefore, the said submission is also liable to be rejected as meritless.

24. With this, we come to the last of the questions as to whether there were any lacunae in the case of the prosecution based on the submissions of the learned counsel. Before dealing with the submissions, we wish to note that though PWs-1 to 4 were closely related to the deceased, they also suffered fire-arm injuries at the hands of the appellants and the injuries sustained by them were duly supported by medical evidence, both documentary as well as oral, namely, through PWs-6, 7, 8 and 9. There was nothing pointed out in the evidence of the above witnesses, namely, PWs-1 to 4, except stating that since because they were closely related, their version about the occurrence was not true in order to discredit their version. Even before the Courts below the only argument made was that the said witnesses were related to the deceased and that they falsely implicated the appellants. In our considered opinion, merely based on such a flimsy submission as regards the credibility of those witnesses, the evidence of those injured eye witnesses cannot be discarded.

25. In fact with regard to the reliance to be placed upon the injured witnesses, this Court has held in very many decisions as to the due credence to be given. The following decisions can be referred to for that purpose:-

1) State of Maharashtra v. Chandraprakash Kewalchand Jain -1990 (1) SCC 550

2) State of U.P. v. Pappu – 2005 (3) SCC 594

3) State of Punjab v. Gurmit Singh – 1996 (2) SCC 384

4) State of Orissa v. Thakara Besra – 2002 (9) SCC 86

5) State of H.P. v. Raghubir Singh – 1993 (2) SCC 622

6) Wahid Khan v. State of M.P. – 2010 (2) SCC 9

7) Rameshwar v. State of Rajasthan – AIR 1952 SC 54

Applying the principles laid down in those decisions, we hold that on this ground there is no scope to interfere with the orders impugned in these appeals.

26. It was thus contended that there was delay in filing the FIR. In fact going by the version of PWs-2 and 3 supported by PWs-1 and 4, the occurrence took place at 10 a.m. in the morning. The matter was reported by PW-2 to the police by 11.45 a.m. and it has come in the evidence that the distance between the place of occurrence and the police station was 12 Kms. There was nothing brought out on the defence to contradict the said statement made by the prosecution witnesses. It was also stated that PW-2 had to reach the police station only through a bullock cart. In such circumstances, the lodging of the FIR by 11.45 a.m., cannot be held to be highly delayed. When it is stated that the occurrence took place at 10 a.m., where more than ten persons suffered injuries and one person died on the spot and while another person died after three days, it is quite possible that every member of the injured party would have taken the immediate required time to attend to the injured, by moving them to the hospital and arranging the required transport for them, while also taking stock of the situation in order to proceed further for lodging the complaint with the police. That by itself would have taken not less than an hour for them and only thereafter, a decision might have been taken by PW-2 to go to the police station for lodging the FIR. Therefore, it can never be held that there was any delay at all in reporting the matter to the police, nor in registering the FIR.

27. It was contended that according to the prosecution when the accused party attacked the injured party apart from the family members of the injured party, local villagers were also present but yet, none was examined by way of independent

witness. The said submission has been rightly rejected by the High Court by giving reasons. The High Court has rightly held that though the injured witnesses were related to each other, having regard to the nature of evidence tendered by them, there were no good grounds to discard their version. It has found that their evidence was natural and there was nothing to find fault with their version. It has further held rightly that it is the quality of the witness and not the quantity that matters. It has also taken judicial notice of the fact that the public are reluctant to appear and depose before the Court, especially in criminal cases because of many obvious reasons. We fully endorse the said conclusion of the High Court, while dealing with the said submission made on behalf of the appellants.

28. It was then contended that the investigating officer though visited the spot did not detect any empty cartridges or bullets. PW-13 in his evidence has stated that he had neither detected any empty cartridges nor any pellets on the spot of occurrence. If he had not detected it, then the reason is as simple as that. It is not the case of the appellants that pellets were strewn all around the place of occurrence visibly, but yet the investigating officer failed to collect and place even some of them before the Court. When there was enough evidence to support the version of the prosecution that the appellants, some of whom were in possession of licenced arms and others were holding unlicenced pistols and the shooting with those arms was sufficiently established by the version of the injured eye-witnesses, we fail to understand as to how non- detection of pellets or bullets will be of any consequence as a vitiating factor to defeat the case of the prosecution. It is an undisputed fact that both the deceased died of fire-arm injuries and all the injuries suffered by others were also firm-arm injuries. The said contention also therefore, deserves to be rejected.

29. The contention about not noting the route of arrival and route of escape, in our considered opinion, are very flimsy submissions and do not deserve any consideration at all. It was then contended that PW-3 was initially accosted by A1 to A-4 at around 8.30 to 8.45 a.m. and that he reported back at 9.00 to 9.15 a.m. at his house, by escaping from their clutches and that the alleged occurrence took place at 10 a.m. and, therefore, within such a short time, there could have been no scope for the appellants to gather fifteen persons to cause the attack on the injured party. We have concluded in the earlier part of our judgment that a one hour gap in a village was more than sufficient to gather any number of persons, especially when the purpose of such gathering was to cause a physical attack on a weak and unarmed party. It is relevant to note that while thirteen persons were seriously injured, of whom two succumbed to injuries, not even a scratch was reported against any of the appellants. There was not even a suggestion that any of the

injured party was in possession of any weapon, like even a stick or a ‘lathi’. Therefore, all the above factors only go to show that the plea of lack of sufficient time to gather more number of persons can hardly be a ground of defence, as against the overwhelming direct evidence present before the Courts below.

30. It will be relevant to take note of the alleged motive, which was not seriously disputed on behalf of the appellants. It was unfortunate that in spite of the fact that members of the injured party earnestly attempted to dissuade the situation by pacifying the appellants, no good sense appeared to have prevailed upon the appellants, who seem to have taken an upper hand and caused the onslaught on the unarmed members of the injured party, of whom one was a female. The submissions of the appellants, therefore, do not merit consideration on this ground as well.

31. A feeble submission was made that the FIR does not even reveal that PW- 2 was injured. On the other hand, a reading of the FIR discloses that PW- 2 specifically mentioned that he along with others was injured due to the onslaught of the appellants. Yet another feeble submission was that PW-3 stated that they were all standing outside the house at the time when the accused party approached the place of occurrence, while the case of the prosecution was that only after the arrival of the accused the members of the injured party came out of their house. We see absolutely no substance in the said submission as we do not find that such a silly discrepancy can cause any dent in the case of the prosecution, which is otherwise supported by overwhelming evidence, both oral as well as documentary.

32. On behalf of the first appellant in Criminal Appeal No. 1165 of 2008, it was contended that he belonged to a different village and that he was falsely implicated. In fact, the said contention was dealt with by the trial Court extensively, which has noted that the said accused claimed that he was the resident of the village Manduwala of District Saharanpur and that he was actually present at Saharanpur on that date. In the Section 313 statement, the said accused had admitted that he was 50 years old and at the time of the incident he would have been 46-47 years old, while the family register which was produced at his instance disclosed that his age was 38 years. The trial Court, therefore, held that by relying upon such an age old register, the abode of the said accused at the time of occurrence could not have been arrived at. On the other hand, the evidence of PW-1 disclosed that the father-in-law of the said accused is the resident of the village concerned, that since he had no male child, the said accused was living along with his father-in-law and that in the family register of the year 1999 produced by the prosecution, as well as the copy of the electoral list, the name of the said accused

was clearly mentioned. The contention on behalf of the said accused that due to enmity with his father-in-law he was implicated, was rejected by saying that if that was the case, there was no reason for the prosecution to leave out the father-in-law and implicate the son-in-law alone. The said point raised on behalf of the said accused also, therefore, does not merit any consideration. We, therefore, hold that none of the points raised alleging lacunae in the case of the prosecution merit any consideration and the same are, therefore, rejected. The said question is also answered against the appellants.

33. With that we come to the main question as to the interpretation to be given to Section 141 'third', read along with Section 149, IPC. In the forefront, we wish to highlight the extent of power of this Court in the matter of interpretation of words in the provision of a statute. In this context, at the outset, we wish to quote the words of Justice G.P. Singh in the celebrated book on 'Principles of Statutory Interpretation', where the learned author in Chapter II under the caption 'Guiding Rules' in sub- para 1(d) stated as under, under the caption 'Departure from rule':-

> "(d) Departure from the rule
>
> In discharging its interpretative function, the Court can correct obvious drafting errors and so in suitable cases "the court will add words, or omit words or substitute words". But "before interpreting a statute in this way the Court must be abundantly sure of three matters : (1) the intended purpose of the statute or provision in question, (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed." Sometimes even when these conditions are satisfied, the court may find itself inhibited from interpreting the statutory provision in accordance with underlying intention of Parliament, e.g. when the alteration in language is too far reaching or too big or when the subject matter calls for strict interpretation such as a penal provision." (See Inco Europe Ltd. v. First Choice Distribution (a firm) (2000) 2 ALL ER 109, p.115 (HL)"
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> (Emphasis added)

34. In the decision of this Court reported in Surjit Singh Kalra v. Union of India and another - 1991 (2) SCC 87, while laying down the principle of purposive construction to be adopted by Courts, it has been held as under in paragraph 19:-

> "19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies Statute Law, 7th edn., p. 109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: Sirajul Haq Khan v. Sunni Central Board of Waqf.)" (Emphasis added)

35. The principle statute in Maxwell's Interpretation of Statutes under the Chapter "Exceptional Construction" is also relevant, which was applied in one of the judgments of this Court reported inGujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. - 2008 (4) SCC 755. The said principle has been extracted in para 53 of the said judgment, which reads as under:-

> "53. In the chapter on "Exceptional Construction" in his book on Interpretation of Statutes, Maxwell writes:
>
> "WHERE the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning."

36. Keeping the above basic principles in mind, we considered the submission of Shri S.R. Singh, learned senior counsel who appeared for the appellants in Criminal Appeal Nos.1157/2008, 1158/2008, 1161/2008 and 1164/2008.

According to the learned counsel, under Section 141 'third', the expression 'other offence' used therein for the purpose of ascertaining the common object of a person in an unlawful assembly, would only be relatable to offences similar to those such as, mischief or criminal trespass, referred to in the said clause. The learned senior counsel submitted that such an interpretation should be laid by applying the principle of ejusdem generis. The learned counsel, therefore, contended that if that be the legal position, reading Section 141'third' and Sections 147, 148 and 149 together, none of the offences referred to in Sections 147 and 148 or any of the other grave offences falling under other provisions of the Indian Penal Code will get attracted. The learned counsel, therefore, contended that conviction for offences under Section 302 read with Sections 149 and 307 read with Section 149 IPC, as well as Sections 147 and 148 of IPC with the aid of Section 141, could not have been made. Though the said submission looks quite attractive in the first blush, on a deeper scrutiny of the other provisions contained in the Code, we are afraid that such a narrow interpretation, which is sought to be applied by the learned senior counsel cannot be made.

37. In this context, Section 40 IPC, which defines 'offence' is also required to be noted. In order to appreciate the submission and to arrive at a correct conclusion, we feel that Section 40 IPC, Sections 141, 147, 148 and 149 are required to be extracted which are as under:-

> "40. "Offence"- Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.
>
> In Chapter IV, [Chapter VA] and in the following section, namely, sections [64,65,67,71], 109,110,112,114,115,116,117, [118,119,120] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this code, or under any special or local law as hereinafter defined.
>
> And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.
>
> 141. Unlawful assembly – An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second- To resist the execution of any law, or of any legal process; or

Third – To commit any mischief or criminal trespass, or other offence; or

Fourth - By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth - by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation – An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

147. Punishment for rioting- Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

148. Rioting, armed with deadly weapon- Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object- If an offence is committed by any member of 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, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence”

38. Section 141 ‘third’, clearly mentions that an assembly of five or more persons is designated as an unlawful assembly if the common object of the persons composing that assembly as among other offences namely, mischief or criminal trespass or commission of other offence. A literal interpretation, therefore, only means that apart from the offence of mischief and criminal trespass, all other offences would fall within the said clause ‘third’ mentioned in Section 141. Other related sections falling under the said Chapter VIII are up to Section 160. Reading Section 141 ‘third’ along with Section 149, if the commission of any other offence apart from mischief or criminal trespass and such commission of offence was by a member of an unlawful assembly, the prescription of common object will automatically get satisfied. When we refer to Section 144 in this context, we find that joining an unlawful assembly armed with a deadly weapon, which is likely to cause death, can be inflicted with a punishment prescribed therein. If the interpretation placed by learned senior counsel is accepted, we wonder whether the prescription placed in Section 144 could be held to be in consonance with section 141 ‘third’. The definite answer can only be in the negative. If mere possession of a deadly weapon by a member of an unlawful assembly, which is likely to cause death would attract Section 141‘third’ as a corollary, it will have to be held that the expression ‘or other offence’ mentioned in Section 141 should without doing any violence to the said provision, include all other offences apart from the offence of mischief or criminal trespass. Similar will be the interpretation that can be made relating to the offence, namely, rioting prescribed under Section 146 punishable under Sections 147 as well as 148, namely, rioting, armed with deadly weapons.

39. The principle ‘ejusdem generis’ means ‘where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed’. The learned senior counsel for the appellants, therefore, contended that since the expression “other offence” under Section 141 ‘third’ has been used along with the offence, mischief or criminal trespass, it can only relate to similar such offences of the same species and not commission of all other offences as in the case on hand, namely, murder or attempt to commit murder.

40. When we test the said submission by making reference to the Chapter, in which the offence of mischief and trespass are specified in the Code, we are able to expose the glaring fallacy in the submission of the learned senior counsel. Mischief and criminal trespass fall under Chapter XVII. The caption of the said Chapter is “of offences against property”. The offences dealt with in the said Chapter are governed by Sections 378 to

462. The offences dealt with apart from mischief and trespass are theft, extortion, robbery, dacoity, dacoity with murder, misappropriation of property, criminal breach of trust, dealing with stolen property and cheating.

41. While referring to the offence of mischief, Sections 435 to 438 deals with mischief by fire or any explosive substance with the intent to destroy a house or other properties or to destroy or make unsafe a decked vessel etc., for which imprisonment for life or a term which may extend to ten years apart from fine can be imposed. While dealing with the offence of trespass under Sections 449 and 450, whoever commits house- trespass for committing an offence punishable with death can be punished for imprisonment for life or rigorous imprisonment for a term not exceeding ten years, apart from fine. Similar such provisions for other types of criminal trespass have also been provided for in the said Chapter.

42. We fail to appreciate as to how simply because the offences mischief or criminal trespass are used preceding the expression “other offence” in Section 141 ‘third’, it should be taken that such offence would only relate to a minor offence of mischief or trespass and that the expression “other offence” should be restricted only to that extent. As pointed out by us above, the offence of mischief and trespass could also be as grave as that of an offence of murder, for which the punishment of life imprisonment can be imposed as provided for under Sections 438, 449, 450 etc. Therefore, we straight away hold that the argument of learned senior counsel for the appellants to import the principle of ‘ejusdem generis’ to Section 141 ‘third’, cannot be accepted.

43. The submission of the learned senior counsel cannot also be countenanced by applying Section 40 of the Code, which specifically mentions as to how the term ‘offence’ will have to be construed. In the main clause of the said section it has been clearly set out that the word “offence” denotes a thing made punishable by this Code except the Chapters and Sections mentioned in clauses 2 and 3 of the said section. Therefore, going by the main clause of Section 40, the word “offence” since denotes the thing made punishable under the Code, ‘other offence’ mentioned in Section 141 ‘third’, can only denote to offences, which are punishable under any of the provisions of the Code. Therefore, by applying the main clause of Section 40, it can be straight away held that all offences referred to in any of the provisions of the Code for which the punishment is provided for would automatically fall within the expression “other offence”, which has been used in Section 141 ‘third’.

44. What has been excepted in the main clause of Section 40 are what has been specifically mentioned in sub-clauses 2 and 3 of the said section. As far as sub-clause 2 is concerned, while making reference to Chapter IV and Chapter VA, as well as other sections mentioned therein, it states that the word "offence" would denote a thing punishable under the Code, namely, Indian Penal Code or under any special or local law, which have been defined to mean a law applicable to a particular subject or a law applicable only to a particular part of India. When we read sub-clause 3 of Section 40, Section 141 has been specifically mentioned in the said sub-clause. To understand the purport of the said clause, it will be worthwhile to extract that part of the provision which reads; "And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine".

45. It is quite apparent that the said sub-clause in regard to the offences under any special or local law, wherein punishment of imprisonment for a term of six months or upwards with or without fine is prescribed, the meaning assigned in those special or local laws are to be imported while invoking Section 141 or other sections mentioned in the said sub-clause 3 of Section 40.

46. Therefore, a conspectus reading of Section 40 makes the position abundantly clear that for all offences punishable under the Indian Penal Code, the main clause of Section 40 would straight away apply in which event the expression "other offence" used in Section 141 'third', will have to be construed as any offence for which punishment is prescribed under the Code. To put it differently, whomsoever is proceeded against for any offence punishable under the provisions of the Indian Penal Code, Section 40 sub-clause 1 would straight away apply for the purpose of construing what the offence is and when it comes to the question of offence under any other special or local law, the aid of sub-clauses 2 and 3 will have to be applied for the purpose of construing the offence for which the accused is proceeded against. Therefore, having regard to sub-clause 1 of Section 40 of the Code read along with Section 141 'third', the argument of learned senior counsel for the appellants will have to be rejected. We are, therefore, of the firm view that only such a construction would be in tune with the purport and intent of the law makers while defining an unlawful assembly for commission of an offence with a common object, as specified under Section 141 of the Code. In the case on hand, since mo special law or local law was attracted and the accuses were charged only for the offence under the Indian Penal Code, Section 40(1) gets attracted along with Section 141 'third' IPC. Having regard to such a construction of ours on Section 141, read along with Section 40 IPC, the offence found proved against the

appellants, namely, falling under Sections 302 read with 149, 307 read with 149 along with 147 and 148 of the Code for which the conviction and sentence imposed by the Court below cannot be found fault with.

47. In the light of our above conclusions on the various submissions made by the counsel for the appellants, we do not find any merit in these appeals. The appeals, therefore, fail and the same are dismissed. Appellant Soma in Criminal Appeal No.1158/2008 who is on bail is directed to surrender before Magistrate forthwith for serving out the remaining period of sentence, if any, failing which the Chief Judicial Magistrate Haridwar is directed to take him into custody and send him to jail to serve out the sentence, if any. A copy of the judgment be sent to the said CJM by the Registry forthwith.