

SUPREME COURT OF INDIA

Munishamappa

Vs.

State of Karnataka

Crl.A.No.96-97 of 2011

(Dr.Dhananjaya Y.Chandrachud and Navin Sinha, JJ.,)

24.01.2019

JUDGMENT

Dr.Dhananjaya Y.Chandrachud, J.,

1. By a judgment dated 31 October 2003, the Principal Sessions Judge, Kolar acquitted eleven persons who were tried for offences under Sections 143, 148, 323, 324 and 302 read with Section 149 of the Indian Penal Code 1860 (“penal code”) and Sections 3, 4 and 5 of the Explosive Substances Act 1908. The State challenged the order of acquittal in a criminal appeal while the injured complainant assailed the acquittal in a criminal revision. By its judgment dated 14 September 2010, the Karnataka High Court allowed the appeal in part and convicted ten of the accused (accused Nos 1 to 4, 6 to 8 and 10 to 12 before the Trial Court) of offences punishable under Section 304 Part I read with Section 149 of the Penal Code and sentenced them to rigorous imprisonment for a period of seven years each. Further, each of them was convicted under Section 324 read with Section 149 of the Code and sentenced to suffer rigorous imprisonment for a period of one year with a fine of Rs.5000/- and in default, to suffer simple imprisonment for three months.

2. In these proceedings, three sets of criminal appeals have been filed by the ten *accused*¹. The original complainant, PW 1 has filed a *criminal appeal*² primarily against the judgment of the High Court finding the accused guilty under Section 304 Part I read with Section 149 instead Section 302. A plea for enhancement of sentence was also made.

3. The genesis of the incident, as it emerges from the evidence, is that Gopalappa and Bachappa (accused No. 5 since deceased) were brothers. They were living separately. Accused No. 1 (Venkatesappa), accused No. 2 (Nagappa), accused No. 3 (Dhanegowda), accused No. 4 (Munishamappa), accused No. 6 (Lakshmana), accused No. 7 (Shekar), and accused No. 8 (Srinivasa) are sons of accused No. 5. Accused No. 10 is the wife of accused No. 2, while accused No. 12 is the wife of accused No. 1. The daughter of accused No. 1, Bhagayamma (accused No. 9) was tried as a juvenile. The family tree of the accused appellants is depicted below:

survey the house of CW 29. At that stage there was a verbal exchange between accused No. 5, Krishnappa and CW 29, during the course of which, accused No. 5 sought to prevent survey of the house of CW 29 on the ground that there was a dispute in regard to the property in the civil court. There was an altercation between the two sides as a result of which the survey officials left the location. Subsequently, at around 12 noon, the accused came to the house of CW 29, allegedly armed with deadly weapons including a baku, knife, cycle chain and explosives. The case of the prosecution is that accused No. 1 assaulted Krishnappa with a dagger. Accused No. 6 assaulted him with a cycle chain. As a result, Krishnappa sustained severe injuries and collapsed on the ground. Kenchappa, who was standing near Krishnappa was assaulted with a knife in the stomach by accused No. 3. Accused No. 2 was handling an explosive, which he threw on the road which injured Sriramappa. After exploding the bomb, accused No. 2 tried to run away but in that attempt, he fell and the bomb which he was carrying in his pocket, exploded. As a result of this, he sustained injuries. The case of the prosecution is that accused No. 4 assaulted CW 29. Accused No. 6 assaulted Krishnappa with a cycle chain. Accused Nos. 7 and 11 assaulted PW 7 while accused No. 8 assaulted CW 4 with a cycle chain. A role is sought to be ascribed to three women i.e. accused Nos. 10, 11 and 12 from the family who are alleged to have assaulted the side of the complainants with clubs. Both Kenchappa and Krishnappa died as a result of the injuries suffered by them in the incident.

6. The First Information Report (FIR) was lodged by PW 1 Rani (the complainant) at 14:15 hours on the date of the incident at the Malur circle police station. The prosecution examined twenty five witnesses in order to establish its case. The defence of the accused was of total denial. The complainant was examined as PW 1. PWs 3, 5, 6 and 7 are injured witnesses. They, together with PW 1, are crucial eye-witnesses on which the case of the prosecution has turned. PW 20 - Dr K Srinivasan examined the injured prosecution witnesses as well as the injured accused. PW 20 also conducted the post-mortem.

7. The Trial court acquitted all the accused of the charge of having committed the murder of the two deceased. After evaluating the evidence of the prosecution witnesses, the Trial court observed thus:

“A careful perusal of the cross-examination of PW 4 Anjanappa, PW 5 Sriramappa, PW 6 Govindappa, PW 7 Bhagyamma, PW 8 Krishnappa and PW 13 Shivamma clearly demonstrates that the accused persons did not come to their house armed with deadly weapons. It was only after hot exchange of words started between A1 and the deceased Krishnappa, then the remaining accused persons stated to have entered the scene of offence. However, the evidence of these witnesses uniformly indicates that A1 stabbed with a baku on the right shoulder of Krishnappa and A6 hit with a cycle chain on the back of deceased Krishnappa. A3 stabbed with the knife on the abdomen of Kenchappa, it pierced towards his back. Further it is also uniformly states A2 hurled a hand bomb, it exploded, due to which PW5 Sriramappa sustained injuries. When A2 tried to run, he fell into the roadside ditch. Another hand bomb, which he was holding, exploded and therefore A2 himself sustained injuries on both the thighs.

In this way it is stated by all these witnesses that deceased Krishnappa and deceased Kenchappa were murdered by these accused persons.”

However, the Trial Court came to the conclusion that the accused were entitled to acquittal for the following reasons :

(i) The evidence of PW 20 indicated that accused Nos. 2,3, 4 and 5 had sustained injuries in the course of the incident. The injuries which were sustained by the accused were severe in nature. This indicates that the incident had taken place in the course of a free fight between the families of Gopalappa and Bachappa;

(ii) Except for explaining the injury which was sustained by accused No. 2, PWs 1 to 8 and 13 gave no explanation as to how the injuries were sustained by accused Nos. 2 to 4;

(iii) A cross complaint by accused No. 4 to the Malur Police Station against PW 3 was registered as Crime No. 112 of 1995 in which a B-final report was submitted in 1999 to the JMFC, Malur. The prosecution has not explained the circumstances in which the B summary report was submitted;

(iv) In the absence of an explanation by the prosecution witnesses of the injuries sustained by the accused, their evidence “loses credence” and an inference must be drawn that the prosecution witnesses have suppressed the truth;

(v) The evidence of PW 20 Dr K Srinivasan indicates that the injury sustained by Krishnappa extended from the left loin to the lower border of right scapula. Since the deceased was 6 feet in height, if he was hit with a weapon like MO 5 by accused No. 1 whose height was 5.1 feet, the nature of the injury would not have been slanting but vertical;

(vi) The Investigating officer had not collected the bloodstained earth for analysis;

(vii) While the case of the prosecution is that Krishnappa was stabbed with a knife, what has been seized was a baku or dagger which is stated to have been used to stab him, which was marked as MO 5; and

(viii) CW 29, who was one of the eye-witnesses, had not been examined. Besides, there were certain contradictions in the evidence of PW 3 and PW 4.

8. The High Court, in the course of its judgment, adverted to the principles which it was required to follow in an appeal against acquittal, formulating them in the following terms:

“1. In an appeal against acquittal, the Appellate Court would be slow in reversing the judgment of the Trial court unless miscarriage of justice has thereby ensued.

2. The Appellate Court would not interfere with the order of acquittal even if, based on the evidence on record two views are possible and the view taken by the Trial court is equally plausible.

3. If the Appellate Court finds that the appreciation of evidence by the Trial court is without evidence or capricious or against the interest of justice, then only the Appellate Court would venture to reverse the order of acquittal.

4. If after appreciation of the evidence, the Appellate Court independently finds that order of acquittal is not in accordance with law and the conclusion arrived at by the Trial court are not based on the correct appreciation of the evidence on record, and the incident cannot be explained except with the guilt of the accused and is totally inconsistent with the innocence of the accused, in such cases only the Appellate Court would reverse the order of acquittal.”

9. After analyzing the evidence on the record, the High Court held that the version of PW 1 specifically mentions the presence of lethal weapons and the presence of explosive substances in the hands of accused No. 2. Moreover, it was specifically stated that accused No. 2 was injured, as the explosive substances in his custody exploded as he was fleeing. In the view of the High Court, the evidence of the injured eye-witnesses namely PWs 3, 5, 6, and 7 adverted to the overt acts of each of the accused. PWs 2, 4, 8 and 13 were eye-witnesses to the incident. The evidence of the injured eye-witnesses could not be lightly brushed aside. The High Court noted that none of the injured witnesses were armed with any weapons at the time of the offence. On the other hand, the accused were in possession of weapons including bazu, knife, cycle chain and clubs. Hence, it was proved that the accused had taken part in the incident on the date of the offence and had caused the death of two persons and injuries on four others. As regards the alleged failure of the prosecution to explain the injury on the accused, the High Court noted that the FIR adverts to the injury sustained by accused No. 2. As far as the other injured accused were concerned, the police filed a B-report, which was accepted by the Magistrate and had not been pursued further by the accused. While reversing the acquittal of the accused, the High Court nonetheless noted that there was an age old enmity between the side of the accused and the family of the deceased, as a result of which a quarrel took place and the offence cannot be regarded as having been committed with an intention to cause the death of the deceased. The High Court held that having regard to the nature of the weapons in their custody, the accused would have the knowledge that their acts would cause the death of Kenchappa and Krishnappa. Hence, the conviction was ordered under Section 304 Part I, besides the conviction under Section 324, both read with Section 149.

10. Assailing the judgment of the High Court, Shri V Krishnamurthy, learned Senior Counsel appearing on behalf of the accused appellants urged the following submissions:

(i) In an appeal against acquittal, the High Court has not found the judgment of the Trial court to be either perverse or resulting in a miscarriage of justice. The

presumption of innocence gets fortified by the acquittal of the accused by the Trial court;

(ii) The High Court has transgressed the settled principles which govern an appeal against acquittal; and

(iii) The evidence indicates that accused Nos. 2, 3, 4 and 5 were seriously injured during the course of the incident. Except for the explanation of the injury sustained by accused No. 2, the prosecution has failed to explain the injuries caused to the rest of the accused persons. This constitutes a serious omission which casts a doubt on the theory propounded by the prosecution. The decision of this Court in *Lakshmi Singh v State of Bihar (Lakshmi Singh)* governs the field on the basis of which the accused are entitled to acquittal.

11. On the other hand, learned counsel appearing on behalf of the State urged the following submissions:

(i) The judgment of the Trial court is primarily founded on the hypothesis that the injuries sustained by the accused were not explained. Of the four injured accused, the evidence elaborately explains that accused No. 2 was injured while handling the explosive substances which he was carrying;

(ii) As regards the injuries sustained by the other accused, they are relatively of a minor nature. Besides, the judgments of this Court subsequent to the decision in *Lakshmi Singh (supra)* which is relied upon by the accused appellants, indicates that the prosecution is not bound to explain every injury, if any, sustained by the accused and the decision must turn on the facts and circumstances including the nature of the weapons which the accused were carrying;

(iii) The judgment of the Trial court suffers from a clear perversity of approach. Besides the manifest error in appreciating the legal position as adverted to above, the Trial court has failed completely to assess correctly the clear and cogent accounts of the injured eye-witnesses; and

(iv) The injured eye-witnesses and PW 1 have furnished a consistent account of the nature and genesis of the incident and the role of each accused. The High Court was, in these circumstances, entirely justified in reversing the judgment of acquittal.

12. Supporting the submissions which have been urged on behalf of the State, Mr Shekhar G Devasa, learned counsel appearing for the complainant PW 1 submitted that:

(i) Except for the evidence of PW 1, the Trial court did not correctly evaluate the nine eye-witnesses including the four (PWs 3, 5, 6 and 7) who were injured;

(ii) The subsequent decisions of this Court have clarified the position in law and it is now well settled that the question as to whether there was a failure on the part of the

prosecution to explain the injuries sustained by the accused must be evaluated in the context of the nature of the injuries, the weapons wielded by the accused and all relevant facts and circumstances;

(iii) The present case in fact does not warrant the application of Section 304 Part I and a clear case of an offence under Section 302 of the Code has been made out; and

(iv) The High Court had correctly applied the provisions of Section 149 of the Code and a common object emerges on the basis of the evidence on the record.

13. The rival submissions now fall for analysis:

14. The High Court in the present case was dealing with an appeal against acquittal. In such a case, it is well settled that the High Court will not interfere with an order of acquittal merely because it opines that a different view is possible or even preferable. The High Court, in other words, should not interfere with an order of acquittal merely because two views are possible. The interference of the High Court in such cases is governed by well established principles. According to these principles, it is only where the appreciation of evidence by the Trial Court is capricious or its conclusions are without evidence that the High Court may reverse an order of acquittal. The High Court may be justified in interfering where it finds that the order of acquittal is not in accordance with law and that the approach of the Trial court has led to a miscarriage of justice. The High Court, however, must be satisfied that the incident cannot be explained except on the basis of the guilt of the accused and is inconsistent with their innocence.

15. In the present case, PW 1, who is the daughter of Krishnappa, deposes that there was a long-standing dispute between the families of the two brothers: Bachappa (accused No.5) and Gopalappa (CW 29). Litigation ensued. On the date of the incident, at about 8:30 am, the officials from the Survey Department came to conduct a survey. After the house of CW 29 was surveyed, they proceeded to the house of accused No. 5, his brother. Accused No. 5 intervened to oppose the survey at which stage a heated exchange of words took place between Krishnappa and accused No. 5. In view of the verbal altercation, the survey officials left the scene. Later on, before noon, the accused returned to the scene, armed with lethal weapons. PW 1 deposed that accused No. 1 stabbed her father Krishnappa and accused No. 6 assaulted him with a cycle chain. As a result, Krishnappa collapsed in a pool of blood. His brother Kenchappa, who was standing near him, was stabbed by accused No. 3 as a result of which, his intestines came out. PW 1 narrated the course of the incident and the manner in which the other accused had assaulted the members of the family of the prosecution witnesses. Accused No. 2 was holding a bomb and threw it on the road in front of the house of CW 29, as a result of which the eyes, face and hands of Sriramappa were burnt. After exploding the bomb, accused No. 2 attempted to flee from the scene. At this stage, another bomb which was in his pocket exploded, as a result of which he suffered injuries. Following the incident, at 12 noon the two deceased were transported in a bullock-cart for admission at Malur hospital. The remaining injured persons were also taken to the hospital. PW 1, together with her maternal aunt, walked to the Malur police station to lodge the complaint.

The weapon of offence namely, bazu was recovered and marked as MO 5. The account of the incident furnished by PW 1 has been corroborated in the testimonies of the other eye-witnesses. Among them, PWs 3, 5, 6 and 7 are injured eye-witnesses.

16. Along with PW 1, PWs 2 to 8 and 13 have deposed that Krishnappa stabbed Kenchappa on his right shoulder with a bazu. PWs 1 to 7 and 13 deposed that accused No. 2 hit CW 25 on her right arm/shoulder with a knife. PWs 1 to PW 8 and PW 13 testified that accused No. 2 threw a bomb on the road which exploded, causing injuries to PW 5. They have also testified that accused No. 3 stabbed Kenchappa, on his stomach with a knife, in such a manner that it protruded out of his back. It was further stated that accused No. 3 stabbed CW 29 in the abdomen with a knife and assaulted PWs 3, 6 and 7 with a knife. PWs 1, 4, 5 and 6 deposed that accused No. 4 assaulted CW 29 on the back with a club. PW 7 deposed that accused No. 4 hit her on the back with a club. PWs 1, 2, 3, 5, 6 and 13 deposed that accused No. 6 assaulted Krishnappa with a cycle chain. PWs 1, 4, and 5 have deposed that accused No. 7 assaulted PW 7 with a club. PWs 1, 3, 4 and 13 deposed that accused No. 8 hit PW 3 on his back with a cycle chain. PWs 3 and 4 deposed that accused No. 11 had a club and PWs 1, 2, 5 and 7 deposed that accused No. 11 assaulted CW 26 with a club. There is no consistency in the deposition against accused Nos. 10 and 12. PW 1 deposed that accused No. 10 hit CW 29. PW 4 deposed that accused No. 10 had a club and PW 2 deposed that accused No. 10 hit CW 4 and CW 26 with a club. PW 1 deposed that accused No. 10 kicked CW 29 with the foot. PW 1 deposed that accused No. 12 hit CW 29 and PW 4 deposed that accused No. 12 hit CW 25 with a club.

17. PW 20 Dr Srinivasan examined these injured eye-witnesses on the date of the incident. His evidence indicates the nature of the injuries to be as follows:

“PW 3 : Dhanegowda

1. An irregular 1 c.m. cut injury superficial over the left deltoid (shoulder).
 2. A contusion of 3”x %” over medial aspect of left scapula.
 3. An irregular contusion of 7” x %” running across from the top of right scapula to left loin.
 4. An %” length clean cut injury by scalp depth over vertex.
5. Another contusion 2 % x %” over left chest.” “PW 5 : Sriramappa
1. A clean cut injury over vertex 1 % “ x scalp depth.
 2. An irregular wound 1’ x superficial depth over left bizen.
 3. A contused abrasion of 1.5 c.m. above both medial end of eyebrows.
 4. 4-5 pellet injuries over the chest.

5. A clean cut injury across left thigh 1” superficial depth.”

“PW-6 : Govindappa

1. A clean cut injury 1” in length to the left of 3-9 vertebra cutting the erecto spine longitudinally to the left the midline.”

“PW-7 : Bagayamma

1. %” superficial cut injury over dorsum of right hand wrist.

2. 1 c.m. superficial cut injury diskful to it.

3. Tenderness over left buttock.”

PW 20 opined that the injuries on the body of the injured persons may be caused by means of a knife or a baku, the contusion caused by clubs and the irregular injuries by means of a cycle chain. Venkatamma (CW 25) and CW29 were included among other members of the family whose injuries were examined by PW 20.

18. PW 20 conducted the post-mortem of the body of Krishnappa which revealed external and internal injuries. He deposed thus:

“..On examination I found the following external injuries:

1. An interrupted long contused abrasion of 10” x W extending from left loin to the lower border of right scapula lateral end.

2. A penetrating clean cut injury of 1 1/2” x W width is seen over the mid right supra scapula force with inverted edges vertically with tilling edge below.

The above injuries are antemortem in nature.

On dissection of the chest a vertical clean cut 1 V2” x ¥2” injury present over the mid right supra scapular area with a tailing left edge with everted edges seen inside with 200 ml. of blood in the right hemithorax. Right lung is shrunken.

Lung:- A clean cut vertically over the abical segment of right lung. Right upper lob has a penetrating injury which has extended upto the medial segment of middle lobe cutting the branchiol, veils and arteries.

The other parts of the body were intact and pale.

I am of the opinion that the death was a result of peripheral circulatory failure due to haemorrhage as a result of injury to the lung. I have issued PM report vide Ex.P.16.

Ex.P.16(a) is my signature. The injuries found on the body of deceased Krishnappa can be caused by means of weapon like MO 5.”

Similarly, the post-mortem examination of the body of Kenchappa by PW 20 revealed the following injuries:

“1. A vertical clean cut perforating injury with inverted edges 2” lateral and above the umbilicus of 1 ½” x ½” gape is present with 1” contusion of lateral inferior angles of the wound through which 10” of small intestine has come out.

The injury has perforated the tomentum. The ascending colon and descending part of duodenum and W in length. The exit wound is present on the back 1 ½” lateral to midline and has cut in transverse process of L1 vertebra and is 1” in length with ½” gape and has everted edges.

The all the injuries are anti mortem in nature.

On internal examination of the abdomen perforating wound present as described above. Peritoneum and tomentum has been perforated.

Duodenum in its descending part has been pierced and is W in length anterior to right kidney. The ascending part has been pierced and it is one quarter inch in length anterior to right kidney.

A liter of blood is seen in the abdominal cavity in left flank.

Right kidney has been cut through and through at the junction with hylum, measures W” in length.

All other parts of the body were intact and normal and pale. I have issued the PM report vide Ex.P.17. Ex.P.17(a) is my signature.

I am of the opinion that the death was as a result of Shock, Massive Haemorrhage due to injury to vital organ Kidney.”

Krishnappa had suffered serious injuries to his lungs and the medical evidence indicates that he died due to circulatory failure. Kenchappa had suffered injuries on his kidney and died as a result of shock and haemorrhage.

19. The Trial court, as we have noted earlier, was persuaded despite this state of the evidentiary record to acquit the accused primarily on the ground that the injuries on the accused (except accused No. 2) had not been satisfactorily explained. In Lakshmi Singh (supra), a two judge Bench of this Court held thus:

“12...Indeed if the eyewitnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence”

The decision in *Lakshmi Singh* has been considered in a later judgment of this Court in *Amar Malla v State of Tripura*⁴. A two judge Bench this Court held thus:

“9...From the nature of injuries said to have been received by these accused persons, it would appear that the same were simple and minor ones. It is well settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eyewitnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the investigating officer.”

The same principle has been followed by another Bench of two judges in *State of M P v Ramesh* where it was held that:

“11...Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. (See *Lakshmi Singh v. State of Bihar*⁵.”

In *Raghubir Singh v State of Rajasthan*⁶, a two judge Bench of this Court held thus:

“14...each and every injury on an accused is not required to be explained and more particularly where all the injuries caused to the accused are simple in nature (as in the present case) and the facts of the case have to be assessed on the nature of probabilities...”

The evidence of PW 20 notes the injuries which were sustained by accused No. 2 thus:

“1. A white blast injury tearing of the skin sub-cutaneous tissue and partly of quadriceps muscle covering almost entire half of left thigh with profused bleeding a doubtful fracture of left femur.

2. Multiple pellet wounds are present over left inguinal area in lower left iliac area and supra pubic area.”

These injuries have been duly explained in the evidence of the prosecution witnesses as having been sustained when the bomb which accused No. 2 was carrying exploded in the course of the incident. The injuries sustained by the other accused were evidently simple injuries. The pellet injuries suffered by accused No. 3 were traceable to the bomb blasts caused by accused No. 2. The injuries suffered by accused Nos. 4 and 5 were of a simple nature.

20. On the above state of the record, it is abundantly clear that the judgment of the Trial court suffers from a manifest perversity. The Trial court at one stage, adverted to the injuries sustained by the four accused persons as “fatal injuries” ignoring that there had been no death in the course of the incident on the side of the accused. At other places in the course of the judgment, the Trial court opined that the injuries were severe. Here again, there was an evident and manifest error on the part of the Trial court in failing to notice that the pellet injuries which were sustained by accused No. 3 were a result of the explosion of the bomb which had been handled by accused No. 2. The other injuries sustained by the accused were relatively of a minor nature. That apart, it has emerged on the record that in the cross complaint which was filed by the side of the accused, the police, after investigation, submitted a B summary report which was accepted by the Magistrate.

21. The principal basis on which the Trial court acquitted the accused is contrary to the evidence on the record and suffers from a manifest perversity. The evidence on the record is indicative of the following circumstances:

(i) As a result of the incident, two persons - Kenchappa and Krishnappa suffered homicidal death in the family of the complainant and as many as six persons were injured;

(ii) None of the persons in the family of the complainant were armed;

(iii) On the contrary, it was the side of the accused which came to the house of the complainant armed with weapons such as baku, knife, cycle chains and explosives;

(iv) The injury sustained by the two deceased persons were on vital parts of the body namely, lungs and kidney; and

(v) After the initial altercation took place at 10:30 am and the survey officers had left the location, the accused returned armed with lethal weapons and during the course of the incident caused serious injuries on Krishnappa and Kenchappa resulting in their

death. Besides the perversity in the judgment of the Trial Court noted earlier, it is evident that the judgment proceeded on the basis of surmises. The Trial court hypothesised that since the deceased was 6 ft. in height and accused No. 1 was 5 ft. in height, the injuries, if caused by a dagger, would have been slanting and not vertical in nature. This has completely ignored the vital aspects of the medical evidence on the record. The contradictions which the Trial court adverted to in the evidence of PWs 3 and 4 were not of a nature that should result in discrediting the entire case of the prosecution.

22. For these reasons, we have come to the conclusion that the High Court was fully justified in reversing the judgment of acquittal, having due regard to the parameters which govern the exercise of its jurisdiction in an appeal against acquittal. Having regard to the facts and circumstances of this case, we are of the view that the High Court was correct in coming to the conclusion that the provisions of Section 149 of the Code stand attracted. Section 149 reads thus:

“Section 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.”

The provisions of Section 149 have been explained by this Court in *Mijazi v State of U P*⁷ and in *Masalti v State of U.P.*⁸. Two elements are crucial to the above definition: (i) the offence must be committed by a member of an unlawful assembly; (ii) the offence must be committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object. Once a common object of an unlawful assembly is established, it is not necessary that all persons who form the unlawful assembly must be demonstrated to have committed the overt act. The common object is ascertained from considering the acts of its members and on the basis of all surrounding circumstances. In *Sikandar Singh v State of Bihar*⁹, this Court held thus:

“17. A “common object” does not require a prior concert and a common meeting of minds before the attack. It is enough if each member of the unlawful assembly 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.

For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. 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.”

In a more recent decision in *Sanjeev Kumar Gupta v State of Uttar Pradesh*¹⁰, this Court held that a common object does not always require a prior concert and it may form even on the spur of the moment. In taking this view, this Court relied on the earlier decision in *Ramachandran v State of Kerala*¹¹ and held thus:

“32. In this case all the accused were very well known to the witnesses. So their identification, etc. has not been in issue. As their participation being governed by the second part of Section 149 IPC, overt act of an individual lost significance.”

In the present case, applying the same rationale, we are of the view that the common object within the meaning of Section 149 is evident from the genesis of the incident, the manner in which the accused returned after the initial altercation armed with lethal weapons and the nature of the injuries which were inflicted in concert.

23. Having carefully considered the submission which has been urged on behalf of the complainant, we are not inclined to interfere with the finding of the High Court that the conviction must be based on the provisions of Section 304 Part I of the Code. In coming to this conclusion and affirming the view of the High Court, we have based ourselves on the background of the dispute, circumstances in which the incident took place and all the surrounding circumstances. However, we are of the view that the sentence which has been imposed by the High Court should be enhanced to ten years rigorous imprisonment. We accordingly affirm the judgment of the High Court convicting accused Nos. 1, 2, 3, 4, 6, 7, 8, and 11 of the offence under Section 304 Part I. However, they are sentenced to undergo rigorous imprisonment of ten years. The conviction under Section 324 read with Section 149 of the Code is affirmed. Criminal Appeal No. 622 of 2011 filed by the complainant is partly allowed in these terms. There is no consistent deposition with respect to accused Nos. 10 and 12. They are given the benefit of doubt and stand acquitted.

24. Criminal Appeal Nos. 995 and 996 of 2011 are partly allowed in these terms. Criminal Appeal Nos. 1362 of 2011 and 96-97 of 2011 shall accordingly stand dismissed. Accused Nos. 1, 2, 3, 4, 6, 7, 8 and 11 shall surrender forthwith to serve the sentences imposed. A copy of the judgment shall be forwarded in addition to the Chief Judicial Magistrate to secure compliance.

Judgment Referred.

¹*Criminal Appeal Nos. 995-996 of 2011 is by accused Nos. 6, 10, 11 and 12. Criminal Appeal No. 1362 of 2011 is by accused Nos. 1 to 3 and Criminal Appeal Nos. 96-97 of 2011 is by accused Nos. 4, 7 and 8.*

²*Criminal Appeal No. 622 of 2011*

³(1976) 4 SCC 0394

⁴(2002) 7 SCC 0091

⁵(2005) 9 SCC 0705

⁶(2011) 12 SCC 0235

⁷AIR 1959 SC 0572

⁸(1964) 8 SCR 0133

⁹(2010) 7 SCC 0477

¹⁰(2015) 11 SCC 0069

¹¹(2011) 9 SCC 0257