

**A.F.R.**

**Reserved On 27.01.2022**

**Delivered On 31.05.2022**

**Case :- CRIMINAL APPEAL No. - 2111 of 1988**

**Appellant :- Ram Singh And Others**

**Respondent :- State of U.P.**

**Counsel for Appellant :- N.K. Sharma, Anshul Kumar  
Singhal, Mukesh Kumar, S.P.S. Chauhan, Vinod Kumar Singh**

**Counsel for Respondent :- A.G.A., Ravi Prakash Singh**

**Hon'ble Mrs. Sunita Agarwal, J.**

**Hon'ble Subhash Chandra Sharma, J.**

*(Delivered by Hon'ble Subhash Chandra Sharma, J.)*

1. Heard Sri N.K. Sharma learned Advocate assisted by Sri Anshul Kumar Singhal learned Advocate on behalf of the appellant nos.3 & 4; Gajraj and Raghuveer; respectively and Sri Mukesh Kumar, learned counsel on behalf of the appellant no.5- Ram Bahadur.

2. This appeal emanates from the judgment and order dated 14.09.1988 passed by the learned VIIth Additional Session Judge, Aligarh in S.T. No.373/1987 (State vs. Rajveer & others) arising out of Case Crime No.26 of 1987 u/s 148, 302, 323 readwith Section 149 I.P.C., Police Station Sikandrara, District Aligarh whereby appellant Rajveer has been convicted and sentenced for imprisonment for a period of six months u/s 148; with life imprisonment u/s 302 readwith Section 149 I.P.C; for a period of three months simple imprisonment u/s 323 readwith Section 149 I.P.C; and appellant Ram Singh, Roshan, Gajraj, Raghuveer, Ram Bahadur & Roop Kishore have been convicted and sentenced u/s 147 I.P.C. for a period of three months rigorous imprisonment; u/s 302 readwith Section 149 I.P.C. for life imprisonment; and u/s 323 readwith Section 149 I.P.C. for a period of three months simple

imprisonment.

3. Co-appellant Rajveer had died during pendency of this appeal, therefore, appeal on behalf of co-appellant Rajveer stands abated.

4. The prosecution case in brief is that informant Ram Khiladi S/o Surat Singh is R/o Nagla Mahari hamlet of Kachaura, Police Station Sikandrarao. There was enmity owing to litigation between the informant Roshan Singh, Ram Singh and the informant and residents of his village relating to the pathway. As per narration in the F.I.R on 22.01.1987 at about 5:30 P.M., Pandit Bakelal resident of the neighbouring village cried near the Pipal tree in the forest under the fear of ghost on which several people reached there. In the meantime, the informant and his brother Rukumpal were coming back to their house from the field with fodder of babul and passed by the Pipal tree while looking at Bakelal Pandit. When they were near the Shiv Temple, Rajbir, Ram Singh, Roshan Singh, Gajraj, Kishorilal, Raghuveer, Ram Bahadur and Roop Kishore called and asked as to who was there and that who was shouting/crying, on which the informant replied that it was Bakelal Pandit who got scared near the pipal tree. On this, they said to him while abusing that he was not telling the truth. On this, the informant told them to keep their tongue under control and asked why were they abusing. An altercation was started between them and at which the accused said "*maro salon ko inka dimag bahut kharab hai*" and they began to beat all of them with lathi and spear.

5. On hearing their screams, his father, brother Ramji Lal, Ramdeen, Dhyan Singh and Krishnaveer ran to save them. They were assaulted as well. Rajveer was equipped with spear and others were carrying lathi. Rajveer pierced with spear in the abdomen of Rukum Pal who fainted and fell down. In the

meantime, Netrapal, Sughar Singh and Foran Singh came there and the accused/appellants ran away. It was stated in the report that in defence, the complainant side also wielded lathi which might have caused injuries to some of the persons of the accused party, but all on the side of the complainant were injured. Rukumpal succumbed to the injuries on the way to the hospital Sikandrarao, and then they reached the police station. Written tehrir stating the above noted facts was prepared by the informant and on the basis of it, F.I.R. was lodged at the police station on the same day at about 21:30 P.M.

6. The inquest of deceased Rukum Pal was conducted by S.I. Baljeet Singh on 22.01.1987 on the same day at about 10:40 P.M. at the gate of the police station and the inquest report was prepared in the presence of the witnesses present there. The dead body was sealed, essential papers were prepared and the body was handed over to constables Prempal Singh and Ram Tirath Singh for the post-mortem. Dr. T.N. Goel conducted autopsy of the dead body of Rukampal which was received by him in a sealed bundle, on 23.01.1987 at 4:30 P.M. and the post-mortem report was proved as Exhibit Ka-2. Details of the post-mortem report are as under:-

#### **External Examination**

Age of the deceased was about 30 years and the time of death about one day. Average built body. Rigor mortis was present in both upper and lower extremities. Eyes and mouth were closed.

#### **Antemortem Injuries**

1. Penetrating wound 1.5 cm x 1 cm x cavity deep on the left side of upper abdomen region. Margins are cleaned.

2. Abrasion 1.5 cm x 1.5 cm on back of the right elbow.
3. Abrasion 1 cm x 0.5 cm on back of the left wrist.
4. Linear abrasion 3 cm on outside middle of the left leg.

### **Internal Examination**

Scalp, skull – NAD. Membrane – NAD. Brain – NAD. Base – NAD. Vertebrae – NAD. Spinal Cord – Not opened.

### **Thorax**

Walls, ribs and cartilage – NAD. Pleura – NAD. Larynx and Trachea – NAD. Right and left lungs – NAD. Pericardium – NAD. Heart – NAD. Weight – 6.5 ounces. Vessels – NAD.

### **Abdomen**

Walls – as described. Peritoneum – punctured left side upper part. Cavity – partly clotted blood present. Buccal cavity, pharynx & oesophagus – NAD. Teeth – 16/16. Stomach – punctured with clotted blood present 40 ounces food material present mixed with blood. Small intestine – gases and faecal matter. Large intestine – gases faecal matter. Liver and gall bladder – NAD. GB – half full. Pancreas – NAD. Spleen – NAD weight 4.5 ounce. Kidneys – NAD with 7.5 ounce both bladder empty. Generation organs – NAD. Cause of death – due to shock and hemorrhage resulting from injury no.1.

7. On the date of the incident injured Ramji Lal, Ram Khiladi, Suraj Singh, Dhyan Singh, Krishna Singh were also examined by Dr. L.S. Chauhan at PHC Sikandra Rao, Aligarh. The details of injuries found on the person of Ramji Lal are as under:-

*(a) abraded contusion 3 cm x 2 cm x muscle deep on*

*forehead 5 cm above the right eyebrow.*

*(b) abraded contusion 4 cm x 2 cm on the back of left elbow joint. All injuries were simple in nature and caused by some hard and blunt object. Duration fresh.*

- 8.** On the body of Ram Khiladi, the following injuries were found :-

*(a) abraded contusion 4 cm x 7 cm on the outer part of right upper arm from above the right elbow joint.*

*(b) Contusion 5 cm x 2 cm on the back of the right forearm 6 cm above the right elbow joint. All injuries were simple in nature, caused by some hard and blunt object. Duration fresh.*

- 9.** Injuries found on the body of Suraj Singh are as under :-

*(a) Contusion 3 cm x 2 cm on the back of right shoulder oblique in direction.*

*(b) Contusion 8 cm x 2 cm on the back of right forearm below the elbow joint.*

*(c) Lacerated wound 1.5 x 5 cm x tissue deep on the back of the right hand just below the wrist joint.*

*(d) Abraded contusion 4 cm x 2 cm on the left scapula region 3 cm below the shoulder joint. All injuries were simple in nature, caused by some hard and blunt object. Duration fresh.*

- 10.** Injuries found on the body of Dhyan Singh are as under :-

*(a) Lacerated wound 1 cm x .2 cm x tissue deep on the*

*right side of face just away from the nose.*

*(b) Contusion 6 cm x 3 cm on the back of left forearm 8 cm below the left elbow joint oblique in direction.*

*(c) Contusion 3 cm x 2 cm below the back of right forearm 2 cm above the wrist joint. All injuries were simple in nature, caused by some hard and blunt object. Duration fresh.*

**11.** Injuries found on the body of Krishna are as under :-

*(a) Contusion 4 cm x 2 cm on the back of right leg 5 cm above the ankle joint. Injury was simple in nature caused by some hard and blunt object. Fresh in duration.*

**12.** The investigating officer visited the place of the occurrence, collected blood stained and plain soil in separate boxes, sealed them and prepared fard Ex Ka- 12. Two bundles of fodder of babul were taken into possession and given in supurdagi and fard supurdaginama Ex Ka-13 was prepared.

**13.** Search of the house of accused Rajveer was made on 29.01.1987 from where blood stained spear was recovered at the instance of the appellant Ram Singh and taken into custody and fard Ex Ka- 15 was prepared.

**14.** After inspection of the place of occurrence at the instance of the informant, site plan Ex Ka- 11 was prepared on 23.01.1987 by the Investigating Officer and the site plan Ex Ka-23 relating to recovery of spear from the house of co-appellant Rajveer was also prepared on 29.01.1987. The Investigating Officer had also recorded the statements of witnesses conversant to the facts of the

case. He concluded the investigation and found a case prima facie made out u/s 147, 148, 149, 323, 302 I.P.C. against the appellants and after preparing the charge-sheet, he submitted it to the court concerned.

**15.** Cognizance of the offences was taken by the learned C.J.M., who provided copies of prosecution papers to the appellants in compliance of Section 207 Cr.P.C. and committed the case to the court of sessions for trial.

**16.** Learned trial court framed the charges u/s 147, 148, 302, 323 readwith Section 149 I.P.C. on the basis of the material on record after giving opportunity of hearing to the appellants. Charges were readover and explained to them. They pleaded not guilty but denied the charges and claimed for trial, consequently case was fixed for prosecution evidence.

**17.** The prosecution examined PW-1 Ram Khiladi, PW-2 Sughar Singh, PW-3 Netrapal, PW-4 Sri Krishana Veer as witnesses of fact. PW-5 Dr. T. N. Goel is the doctor who conducted the post-mortem of the body of deceased Rukampal and prepared post-mortem report. PW-6 Dr. L.S. Chauhan had examined the injuries on the person of Ramji Lal, Ram Khiladi, Suraj Singh, Dhyan Singh and Krishan Singh and prepared injury report. PW-7 H.C. Sri Krishna prepared the check F.I.R. on the basis of tehrir and entered the detail in the G.D. PW-8 S.I. Mahaveer Singh Yadav conducted the investigation of the case after S.S.I. Kailash and Inspector Baljeet Singh and submitted the charge-sheet. PW-9 Constable Ram Tirath brought the dead body to the mortuary for the post-mortem. PW-10 Lakhan Singh is a witness of recovery of spear from the house of appellant Rajveer. PW-11 Inspector Baljeet Singh recorded the statement of witnesses and prepared the inquest report and after visiting the place of the incident prepared

the site plan.

**18.** After conclusion of prosecution evidence, the statements of appellants under Section 313 Cr.P.C were recorded wherein they negated the statements made by the witnesses before the court and stated that witnesses had falsely implicated them due to enmity. Co-appellant Rajveer had also negated the recovery of spear from his house. All the appellants had made similar statements.

**19.** Appellants were given an opportunity for defence evidence wherein they examined Layak Singh as DW-1 in their support.

**20.** Learned trial court heard the arguments for the prosecution as well as appellants, passed the judgment and order dated 14.09.1988 wherein he found the appellant Rajveer guilty under Sections 148, 302, 323 read with Section 149 I.P.C. Appellants Ram Singh, Roshan, Gajraj, Raghuveer, Ram Bahadur and Roop Kishore were found guilty u/s 147, 302, 323 readwith Section 149 I.P.C. and sentenced as aforesaid against which this appeal has been preferred.

**21.** Learned counsel for the appellants submits that the judgment of the learned trial court is against the evidence available on record. It is bad in the eyes of law and based on the testimony of interested witnesses those who were related to the deceased. No independent witness had been examined though the occurrence took place on a public place. The prosecution failed to establish the motive for committing the offence. As a result, no offence can be said to be made out against the appellants under Sections 302, 323 read with Section 149 I.P.C. Appellant Rajveer who had been assigned the role of stabbing spear had already died. There was no evidence of unlawful assembly and common object, therefore,

conviction under Section 302 with the help of Section 149 I.P.C. against all the appellants cannot be sustained. The learned trial court on misappropriation of the evidence has convicted and sentenced all the appellants with the aid of Section 149 I.P.C. which is bad in law. There was no common object in the minds of the appellants to murder the deceased. There was an altercation between the appellants and the deceased due to which the incident took place wherein people from both the sides received injuries. This fact is clear from the F.I.R. wherein the informant has mentioned that in defence people on their side also wielded lathi causing injuries to some people on the accused side. In this way, from the evidence on record, it transpires that the appellants had not committed the act in prosecution of their common object so they cannot be held guilty for the overt act committed singly by appellant Rajveer for stabbing with spear to the deceased. Even if it is accepted that there was a common object it may be to the extent of causing injuries only but not to commit the murder. Therefore, the case, at the worst, would fall within the limits of Section 323 I.P.C. and the appeal deserves to be allowed.

**22.** Learned A.G.A. opposed the submissions made by the learned counsel for the appellants and urged that, in this case, the appellants caused injuries to the deceased with lathi and spear and also to other injured persons with lathi. All the appellants formed an unlawful assembly and in prosecution of the common object of the assembly they committed the murder of Rukampal and caused injuries to others. It was argued that it is not necessary that an assembly may be unlawful since the beginning but it may become unlawful subsequently and in this regard the argument made by the learned counsel for the appellants is not tenable. The witnesses had sustained injuries on their person so their presence cannot be disputed and their testimony is wholly reliable. There are no

material contradictions in their statements. They are natural witnesses of the incident so their testimony cannot be said to be unreliable and untrustworthy. Learned trial court has convicted the appellants on the basis of the evidence on record. There is no illegality in the judgment in question and the appeal being devoid of merit is liable to be dismissed.

**23.** From the submissions and perusal of the record, the following questions emerged for consideration by this Court (i) as to whether there was any unlawful assembly and common object in prosecution of which the offence was committed or the incident took place only at the spur of the moment without any prior meeting of mind. (ii) Further whether it was only to the extent of committing marpit for which liability of all the appellants cannot be fixed with the help of Section 149 I.P.C., constructively, but it may be fastened individually on the appellant Rajbeer who did overt act in causing injury to Rukampal with spear resulting into his death, and that the offence committed by the appellants goes to the extent of Section 323 I.P.C. since appellant Rajbeer who stabbed the deceased with spear had already died and this appeal on his behalf stood abated.

**24.** Before we deal with the contentions raised by the learned counsel for the appellant, it would be convenient to take note of the witnesses account as adduced by the prosecution.

**25.** PW-1 Ram Khiladi, the informant and brother of the deceased Rukampal deposed that he is resident of Nagla Surat Singh. Appellant Rajbeer and Gajraj are residents of Nagla Beni Ram. Other appellants Roshan, Ram Singh, Ram Bahadur, Kishori, Roop Kishor and Raghuveer are residents of Nagla Kaka which is 200 meters away in the South direction. Nagla Beni Ram is located in the Western direction at the distance of 350 meters. Appellants Rajbeer and Gajraj are uncle and nephew, Roop Kishor and Kishori

are cousins. Ram Singh and Ram Bahadur are also uncle and nephew, likewise Kishori and Rajbeer are also cousins. The informant moved an application u/s 133 Cr.P.C. before the S.D.M. against Roshan and Ram Singh for removing the obstruction in the pathway in front of his house which was withdrawn by him under the pressure of both the appellants. That pathway was still closed regarding. Earlier also an application was moved before the S.D.M. whereupon order was passed to remove the obstruction and open the way due to which they became inimical with him. He further reiterated the averments in the FIR about the occurrence. It is stated by PW 1 that he wrote a tehrir by taking a piece of paper from the compounder of the hospital and lodged the report at the police station Sikandrarao. He proved the written tehrir being in his writing and signature as Ex Ka – 1. It was further stated that all the injured persons were sent to Sikandrarao hospital for medical examination where they were medically examined and the dead body of Rukampal was kept in front of the police station.

This witness was subjected to a lengthy cross-examination by the learned counsel for the appellants wherein the witness had not disclosed any such fact which weakens his testimony. He had assigned the role of stabbing with spear to the appellant Rajbeer and marpit by lathi by other appellants.

**26.** PW-2 Sughar Singh deposed that on the date of the incident, at about 5:30 P.M., he was coming from the side of the village and when reached near the temple outside the village, he heard the noise of abuses. Hearing the noise, he reached to the boundary line of the field of Kedari, where Sobran Singh and Netrapal Singh were also present. He saw that Rukampal, Ram Khiladi, Suraj Singh, Dhyanveer Singh, Krishnaveer Singh and Ramji Lal were being beaten by Rajveer, Gajraj, Roshan, Raghuveer, Kishori, Roop

Kishor, Ram Singh and Ram Bahadur. Rajveer stabbed Rukampal with spear in his stomach, as a result, he fell down. Other accused persons beaten Rukampal, Dhyan Singh, Suraj Singh, Ramji Lal, Ram Khiladi and Krishnaveer with lathi. All these persons sustained injuries of lathi. After beating, accused persons went away towards the East direction. Rukampal became unconscious and was taken to his house on a cot.

This witness was also subjected to grueling cross-examination by the learned counsel for the appellants but even during the cross-examination he again asserted the account of the incident as committed by the appellants. No such statement was made by him as to indicate that this witness was not present at the place of occurrence or he could not identify the assailants.

**27.** PW-3 Netrapal Singh had deposed that the time of murder of Rukampal was 5:30 P.M. He was at the temple and heard noise coming from the field of Kedari. The boundary line of the field of Kedari and the temple was same. Hearing the noise he went to the field of Kedari where Ram Khiladi, Ramji Lal, Rukum Pal, Kishanveer, Ramdin, Surajpal, Sugar Singh & Sobran Singh were present. Rajbir was equipped with spear (Bhala), Gajraj Singh, Kishori Lal, Rookishor, Ram Singh, Ram Bahadur, Roshan Singh and Raghuveer were equipped with lathi. These people started beating Ram Khiladi and others. Rajbir stabbed Rukampal with spear who fell on the ground. PW 3 stated that he interrupted and said why did you beat them, whether you would kill them. In addition to Rukam Pal, Ramji Lal, Ram Khilari, Ramdin, Kishan Veer and Suraj Pal also sustained injuries. After beating, the accused persons ran away towards East.

This witness faced lengthy cross-examination but he reiterated the detail of the incident categorically without any

deviation.

**28.** PW-4 Krishnaveer also stated that his brother Rukam Pal was murdered at about 5:30 P.M. He was at home at that time. His father, brother Ramji Lal, Ramdin and Dhyan Singh were also at home. Hearing the noise from near the temple, they went to the field of Kedari (near the temple) where Rajbir, Gajraj, Ram Bahadur, Ram Singh, Roshan Lal, Kishan Lal and Roop Singh were present. They were beating his brothers Ram Khiladi and Rukam Pal. Rajbir had spear and others were equipped with lathi and all the accused were beating the complainant side. When they tried to save the injured, the accused Rajbir and others also beaten them and caused injuries, Rajbir stabbed with spear in the stomach of his brother Rukam Pal before him, with the stab wound Rukam Pal fell down. He, (P.W. 4) Ram Khiladi, Ramji Lal, Dhyan Singh and his father Sooraj Singh also sustained injuries. After committing marpit, accused persons went away towards the East. Rukum Pal was brought to his house by them, then to the police station by tractor. While they were taking him to the hospital at Sikandra Rao he succumbed to his injuries.

This witness was also cross-examined by the learned counsel for the appellant at length but during cross-examination the witness had asserted the details of the incident clearly without deviating from the actual facts relating to the occurrence.

**29.** PW-5 Dr. T.N. Goel had deposed that on 23.01.1987 he was posted at Malkhan Singh Hospital and conducted the post-mortem of the dead body of Rukam Pal at about 4:35 O'clock. Dead body was brought by the constables Prem Pal and Ram Tirath. He had proved the injuries found on the person of deceased and also the post-mortem report, having being prepared in his hand writing and signature as Ex Ka- 2. He opined that the death of deceased

Rukam Pal was possible in the evening at about 8:30 P.M. on 22.01.1987 and injury no.1 could be inflicted with spear and others with lathi and danda.

**30.** PW-6 Dr. L.S. Chauhan had deposed that on 22.1.1987 he was posted at P.H.C. Sikandrara as Medical Officer. On that day, he examined injuries on the person of Ramji Lal at 11 O'clock in the night, Ram Khiladi at 11:15 P.M., Sooraj Singh at 11:30 P.M., Dhyan Singh at 11:45 P.M. and Kishan Singh at 12:00 P.M. He proved the injuries found on the person of injured and also injury report prepared by him in his hand writing and signature. He proved them as Ex Ka- 3 to 7.

**31.** PW-7 Shri Krishan, H.C. Police Station, Sikandrara deposed that he prepared check report of this case in his hand writing and signature and proved it as Ex Ka- 8. Further stated that the entry of F.I.R. was made as report no.41 in G.D. in his hand writing and signature and proved the carbon copy of G.D. by comparing it with the original, as Ex Ka- 9.

**32.** PW-8 S.I. Mahaveer Singh Yadav stated that he was handed over the investigation of this case after S.S.I. Kailash Bhusan and Inspector Bajeet Singh. He recorded the statements of witnesses Ramdin, Netrapal, Sughar Singh and all the accused persons. He prepared the charge-sheet in his hand writing and signature which he proved as Ex Ka-10.

**33.** PW-9 Constable Ram Tirath, stated that on 22.01.1987 at about 12:00 O'clock in the night he was handed over the dead body of deceased Rukam Pal and brought it to post-mortem house, Aligarh with relevant papers. Constable Prem Pal was also with him at that time.

**34.** PW-10 Lakhan Singh is a witness of recovery of spear at the

instance of Rajbir and proved the recovery as Ex-1.

**35.** PW-11 Inspector, Baljeet Singh had investigated the case prior to S.S.I. Mahaveer Singh. He proved the investigation done by him and also the inquest report which was got prepared by S.I., K.P. Sharma and the site plan of the place where two bundles of babul fodder were lying as Ex Ka-11. He also proved fard relating to collection of blood stained and plain soil from the place of occurrence as Ex Ka-12, supurdaginama relating to two bundles of babul fodder as Ex Ka-13 and search memo of the house of accused Rajbir as Ex Ka-14. Thereafter, he was transferred. Further he proved the fard recovery of the spear in the hand writing of S.I., K.B. Singh as Ex Ka-15, the inquest report of deceased Rukam Pal in the hand writing and signature of Sri K.P. Sharma as Ex Ka-16, other relevant papers relating thereto as Ex Ka-17 to Ex Ka-22 and the site plan relating to the place of recovery as Ex Ka-23.

**36.** PW-1 to PW-4 are witnesses of fact. All these witnesses remained intact during their gruelling examination. No such contradictions are visible in their statements which can make their testimony unreliable and unnatural. Minor contradictions are there but they are of cosmetic nature and not likely to affect the credibility of their testimony. In the instant case, both informant, injured persons and the appellants belong to the adjacent locality. There cannot be any dispute about the identification of the appellants. Though the appellants have stated in their statements recorded u/s 313 Cr.P.C. that they had been implicated falsely on account of enmity but there was no suggestion of enmity during cross-examination of any of the witnesses which might have adversely affected their reliability and become an excuse for implicating the accused falsely while absolving real culprits. It is to note that PW-1 Ram Khilari, informant has stated that he moved an application u/s

133 Cr.P.C. before the S.D.M. against Roshan and Ram Singh for removing obstructions in the pathway in front of his house which was withdrawn by him. Thereafter, pathway was still closed and he filed another application before the S.D.M. to remove the obstructions owing to which they became inimical with him. It infers that there was dispute relating to obstruction in the way of the informant between appellants Roshan and Ram Singh but not with other appellants. It can also not be said that on account of such a dispute informant would implicate appellants falsely leaving the real assailants. On the ground of enmity the testimony of ocular witnesses those have sustained injuries in the incident cannot be said to be unreliable because they are natural witnesses of the incident. On the other hand, enmity is said to be with appellant Roshan and Ram Singh whereas other appellants Gajraj, Ram Singh, Ram Bahadur and Roop Kishor were not inimical to the informant. Therefore, the testimony relating to their involvement also can not be disbelieved.

**37.** There is not even an iota of evidence on record which could suggest that PW-1 to PW-4 had any other grudge against the appellants in any case to implicate them falsely.

**38.** From PW-1 to 4, all are related to each other and also to the deceased Rukumpal regarding which argument had been made that all these witnesses being relative and highly interested, are not reliable and lack of account of independent witnesses in support of the case is fatal to the prosecution story. No doubt the prosecution witnesses from PW-1 to 4 relating to the fact, as examined in the case, are members of the same family as uncle and nephew and also related to the deceased. But the relationship itself is not a ground to reject the testimony of witnesses, rather a family member would be last to leave the real culprit and falsely implicate any

other person.

**39.** In the case of **Brahm Swaroop and another vs. State of U.P. (2011) 6 SCC 288** the Apex Court in Para No.21 has observed as under

*“merely because the witnesses were related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that affects the credibility of a witness, more so, a relation would not conceal the real culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence.”*

**40.** The Court also referred cases of ***Dalip and others vs. State of Punjab A.I.R. (1953) SC 364; Masalti vs. State of U.P. (A.I.R.) 1965 SC 202.***

**41.** In ***Masalti vs. State of U.P. A.I.R. 1965 SC 202***, the Apex Court observed in Para No.14

*“but it would, we think, be unreasonably to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on sole ground that it's partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it's partisan cannot be accepted as correct.*

**42.** It is common knowledge that village (*mohalla*) life is faction ridden and involvement of one or the other in the incidents is not unusual. One has also to be cautious about the fact that wholly independent witnesses are seldom available or are otherwise not

inclined to come forth. Lest they may invite trouble for themselves for future. Therefore, relationship of eye-witnesses inter se, cannot be a ground to discard their testimony. There is no reason to suppose the false implication of the appellants at the instance of the eye-witnesses. It would also be illogical to think that witnesses would screen the real culprits and substitute the appellants for them.

**43.** This Court has also made such observations in Para No.14 of ***Rameshwar and others vs. State 2003 (46) ACC 581.***

**44.** It is pertinent to note that PW-1 Ram Khilari is an injured witness and his presence on the place of occurrence cannot be denied and it can also not be said that he would conceal the name of real assailants and implicate the false one.

**45.** It is settled law that the testimony of an injured witness is considered to be very reliable and is accorded a special status in law. In the case of Bhajan Singh Vs. State of Haryana (2011) 7 SCC 421, where it was held as follows: " The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailants in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built in guarantee of his presence at the scene of crime and is unlikely to spare his actual assailants in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness. (vide Jarnail Singh v. State of Punjab

(2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra (2010) 6 SCC 673; Abdul Sayed v. State of Madhya Pradesh (2010) 10 SCC 259".

**46.** In the case of *State of U.P. v. Naresh & Ors.* (2011) 4 SCC 324, it was held that evidence of an injured witness cannot be doubted merely because there is a background of previous dispute or enmity between the parties because this could well be the motive of giving assault by the accused on injured witnesses. The evidence of an injured witness has to be appreciated keeping in view that ordinarily a person, who has been assaulted by someone would not allow him to go Scot free and falsely implicate persons other than those who actually assaulted him. The evidence of an injured witness stand on different pedestal as compared to any other witness cited by the prosecution as eye witness, who claims to have seen the incident. Where an injured witness clearly named the person and the assault made on him by those persons which is broadly corroborated with what has been found in the medical report, even though there may not be any mathematical precision with regard to the manner of assault, the evidence of an injured eye witness cannot be lightly thrown aside only on certain minor contradictions and omissions. It cannot be a case of some exaggeration or it could even be some discrepancy in recollecting the whole incident with exactitude and certainty but on certain minor discrepancy disbelieving altogether the testimony of injured eye witness, would be against the settled principle of appreciation of evidence.

**47.** In the case of *Bhajan Singh Vs. State of Haryana* (2011) 7 SCC 421 it was observed that in Para No.21 :-

*21. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered*

*to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: Abdul Sayeed v. State of Madhya Pradesh (2010) 10 SCC 259; Kailas & Ors. v. State of Maharashtra (2011) 1 SCC 793; Durbal v. State of Uttar Pradesh, (2011) 2 SCC 676; and State of U.P. v. Naresh & Ors., (2011) 4 SCC.*

**48.** Therefore, in the light of law reproduced as above and applying the same to the facts of the present case, it can be held that the testimony of the injured witnesses, in the present case, is absolutely clear and cogent and free from any kind of discrepancies, embellishments and concoctions. Thus, no ground is made out for brushing aside the testimony of the injured witnesses. There are no grounds for rejection of the evidence of PW-1 and, as discussed above, unless and until there are major contradictions and discrepancies in the testimony of injured witnesses, there arises no reason for either doubting their presence at the spot of the incident or for that matter questioning the injuries suffered by them. Moreover, in the case in hand, the testimony of PW-1 is not only firm, cogent and convincing but is also in consonance with the medical evidence on record.

**49.** Injuries on the person of deceased Rukumpal were caused by spear, lathi and danda as stated by PW-1 to 5. Ex Ka-2 is the post mortem report in which penetrated wound and abrasion were found on the body of deceased Rukumpal and PW-5 Dr. T. N. Goel has proved the injuries and stated that injury no.1 was possible to be inflicted with spear and others with lathi and danda though in

cross-examination he stated that injury no.2 & 3 could occur by falling and injury no.4 by friction and also opined that the death of the deceased Rukumpal was possible in the evening at about 8:30 P.M. on 22.01.1987. In this way, injuries found on the body of deceased Rukumpal are proved to have been caused with spear, in the evening on 22.01.1987 and it also corroborates the manner of causing injuries resulting into death as stated by PW-1 to PW-4. In this regard, the eye-witness account finds support with the medical evidence available on record.

**50.** Likewise, injuries found on the person of Ram Khilari and Krishan Veer are in the nature of contusions and lacerated wounds which were said to have been caused by the appellants with lathi and danda. Ex Ka-3 to 7 are the injury reports relating to the injured persons. PW-6 Dr. L. S. Chauhan had proved the injuries and stated that they were caused by hard and blunt object like lathi and danda and could occur in the evening on 22.01.1987. Injuries were fresh in nature. In this regard, the testimony of prosecution witnesses relating to the injury caused by the appellants with lathi and danda gets corroboration from the medical evidence on record and the opinion given by the doctor who conducted the medical examination. In this way, the manner of causing injuries and the time when they were caused are well established.

**51.** The place of occurrence is said to be on the way to the home of the informant passing by the Pipal tree near the Shiv Temple. PW-1 to PW-4 stated that the incident took place at the aforesaid place. In the site plan Ex Ka-11, the place of occurrence had been shown on the North West corner of the field of Kedari where the crop of mustard was grown and found damaged and two bundles of babul twigs with leaves were found lying. Blood was also found there. The Shiv Temple was also situated near that place. Pw-11 Inspector Baljeet Singh had proved the site plan and no question

relating to the place of occurrence had been asked to him during his cross-examination except the distance of village Nagla Surat from the place of occurrence which he had disclosed as 250 mtrs. Whereas he mentioned it in the site plan as 200 mtrs. and explained that it was only a guess work. Blood stained and plain soil was collected from that place by I.O. Pw-1 Ramkhilari had also deposed that he reached to the Southern corner of the Shiv temple where appellants surrounded him. In the meantime, he reached to the North-East corner of the field of Kedari. There was mustard crop in the field. During cross-examination also, he stated that pipal tree was 400 mtrs. from the Shiv temple on the Northern side from where he along with his brother was coming and was surrounded by the appellants in the field of Kedari. PW-2 had also stated the place of occurrence being the field of Kedari in his chief-examination and even asserted it during his cross-examination. Likewise, PW-3 & 4 had also deposed the same. Thus the place of occurrence in the field of Kedari stands proved.

**52.** There is no delay in lodging of the F.I.R. Occurrence took place at 5:30 P.M. and F.I.R. was lodged at 21:30 P.M. after four hours. The distance between the place of occurrence and the police station was 11 kms. PW-1 stated that after the incident, he brought Rukumpal to his home, from there while they were bringing the deceased to Sikandrarao by tractor, on the way he died and then they went to the Hospital Sikandrarao where compounder told them that Rukumpal was dead. He then wrote the application and brought the deceased to the police station with other injured persons. In this way, the time gap of four hours in lodging the F.I.R. stood explained and there cannot be said to be any delay much less inordinate delay. It is proved that the F.I.R. was prompt.

**53.** Further the attention of this Court has also been drawn towards the absence of motive to commit the murder. The learned

counsel urged that the prosecution had failed to prove motive on the part of the appellants to commit the crime.

**54.** In this regard, it is fairly well settled that while motive does not have major role to play in cases based on eye witness account of the incident, it assumes significance in cases that rest on circumstantial evidence. There is no such principle or rule of law that where the prosecution fails to prove motive for commission of the crime, it must necessarily result in acquittal of the accused where ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of crime has not been proved.

**55.** In ***State of Himachal Pradesh Vs. Jeet Singh 1999 (38) ACC 550 SC***, it was held that no doubt it is a sound principle to remember that every criminal act was done with a motive but it's corollary is not that no offence was committed if the prosecution failed to prove the precise motive of the accused to commit it as it is almost an impossibility for the prosecution to unravel full dimension of the mental deposition of an offender towards the person whom he offended.

**56.** In the case of ***Baitulla and another Vs. State of U.P. AIR 1997 SC 3946*** where occurrence took place in the broad day light and spoken to by the eye-witness and the same was supported by Medical Report, it will not be necessary to investigate the motive behind such commission of offence.

**57.** This Court has also made such observations in the case of ***Rameshwar and others vs. State 2003 (46) ACC 581*** that when there is direct evidence, the motive was not important. Likewise in the case of ***State of Haryana vs. Sher Singh and others 1981 Cr. Ruling 317 SC*** it has been held that the prosecution is not bound

to prove the motive, more so, when crime is proved by direct evidence.

**58.** Lastly it was argued that there was no unlawful assembly and there is no evidence of common object of it to cause the murder of Rukumpal but the incident was a result of altercation between the appellants and the informant along with the deceased at the spur of the moment. Further the death of Rukumpal was caused with the stab wound of spear which was caused by Rajbir as his individual overt act and other appellants caused simple injuries only to other persons and as such they cannot be held liable for the overt act of Rajbir.

**59.** It is evident from Ex Ka-1 tehrir that the incident took place at the spur of moment when the deceased and informant were returning to their home with babul fodder and on the way near the Pipal tree Pt. Bankalal was shrieking from where they passed by. In the meantime, appellants also came there on the way and made query about shrieking and also asked as to who they were. On their reply, that Pt. Bankelal got scared under the Pipal tree, appellants did not believe but while abusing uttered that they (deceased and informant) were not telling the truth. On this, the appellants were confronted by the informant and were hold not to abuse. At this, altercation among them was commenced when the accused uttered that – *maro salo ko, inka dimag bahut kharab hai'* and they started assaulting them with lathi and spear. PW-1 informant who is the injured witness and with whom the incident took place also stated in his examination-in -chief that Roshan said, "*salo ko mar lo*".

**60.** From the words uttered by the appellants, as above noted, it can be inferred that they meant to beat the informant and deceased Rukumpal on account of the dispute that arose amongst

them relating to query about shrieking of Pt. Bankelal under the Pipal tree. The immediate cause of the dispute was shrieking of Pt. Bankelal. There are four injuries on the person of the deceased. Injury no.1 is penetrating wound and others are in the form of abrasion and linear abrasion on the back of right elbow, back of left ankle and outside middle of the left leg. PW-5 Dr. T. N. Goel has opined during his cross examination that injury no.2 & 3 could be sustained by falling and injury no.4 with friction. Thus, it cannot be concluded that these appellants were the person who authored these injuries on the person of the deceased. In the course of altercation Rajbir stabbed spear to Rukumpal which pierced his stomach and he died. This was his individual act. Other injured were assaulted with lathi by other appellants and after assault, the appellants ran away. No other injured had received grievous injury. All the injuries of the injured were in the nature of abrasions/contusions except two lacerated wounds on the back of hand and face which were simple.

**61.** It is also to be noted that as per the F.I.R. version of the informant, the complainant side also assaulted accused party with lathi. In his cross-examination also, the informant had deposed that he made statement before the I.O. that he had also wielded lathi in defence. PW-3 Netrapal had also made such a statement before I.O. but during his cross-examination he had denied making such a statement though admitted that Ramdin also attacked with danda. PW-4 Krishnaveer had also admitted that Ramdin had danda and he went to the place of the incident after hearing the noise of quarrel. It reveals that there was a quarrel and fight wherein both the parties assaulted each other. Further, it is also evident from the statement of PW-1 Ram Khilari that appellant Rajbir and Ram Singh asked him as to who were they. Likewise PW-2 Sughar Singh had also stated in the cross-examination that

when he came at the field of Kedari, two persons on the complainant side and four other persons on the accused side came running from the village. This fact further establishes that in the beginning there were only two accused persons Rajbir and Ram Singh and afterwards, four other persons joined in from the village who also participated in the incident of maarpeet. In such a situation of facts, it cannot be said that the appellants had planned to kill the deceased or to beat the injured but it was a result of sudden quarrel and fight between both sides. There was no such common object of the appellants as well.

**61.** In the case of *Lalji and others vs. State of U.P. 1973 AIR SC 2505* where during the course of quarrel relating to digging the earth and extending the frontage of hut one of the accused persons assaulted the deceased Pancham with spear on his abdomen as a result he died and other accused persons caused injuries to other injured persons with lathi causing simple injuries, it was observed therein that there was remonstrance and counter remonstrance which resulted in a fight which was a sudden affair and was the result of heated passion. It was held that the case does not show that the appellants formed a **common object** as there was no pre-meditation and the occurrence was a sudden affair, each of the appellants, in our opinion, should be held to be liable for his individual act and not vicariously liable for the acts of others. Further, it was held therein that Lalji gave the spear blow on the abdomen of the deceased Pancham and his conviction should therefore, be maintained u/s 304(1) I.P.C. As regards the other appellants their conviction for the offence u/s 323 I.P.C. was maintained and sentence of imprisonment u/s 323 I.P.C. was reduced to the period already undergone.

**61.** In the case of *Chinu Patel vs. State of Orrisa 1990 CRLJ 248*, where accused persons demanded for the return of the chair and

as the deceased refused to return the same, a quarrel ensued which ultimately resulted in a free fight between the parties during the course of which both sides were injured and one of them died. It was held that in such a situation as there is no scope for a pre-planned attack by the accused, the question of accused persons forming an unlawful assembly having a common object to do any act mentioned in the five clauses of Section 141 I.P.C. does not arise for consideration. The view taken by the Apex Court in aforesaid case of **Lalji vs. State of U.P.** was followed therein.

**63.** In so far as the question whether the appellants had formed an unlawful assembly and had common object of committing the murder, we have given our earnest consideration to this aspect. Taking a general picture of the case and after the close scrutiny of the evidence in its entirety, we find that in the course of altercation between the injured Rukumpal, Ram Khilari and appellants, in the heat of passion, Rukumpal was stabbed with spear by Rajbir (now dead) and the injured succumbed to the stab injury. No other appellants assaulted Rukumpal with lathi except to other persons (injured). Under these circumstances, it would be hazardous to hold that there was an unlawful assembly and common object of that assembly (of the appellants) was to commit the murder. It is established from the testimony of the prosecution witnesses that there was random individual acts done by the appellants without meeting of mind and, in our view, the appellants can be held liable only for their individual acts. Therefore, it is established beyond reasonable doubt that the appellants caused injuries which were simple in nature and punishable under Section 323 I.P.C. In the result, the conviction in respect of each of these appellants under Section 147 & 302 read with Section 149 I.P.C. can not be said to be just and lawful and sentence to imprisonment for life to each is, hereby, set aside.

**64.** The conviction of the appellants under Section 147, 302 readwith Section 149 I.P.C. is modified as conviction under Section 323 I.P.C. and they are sentenced to undergo imprisonment to the period already undergone.

**65.** The appeal is ***partly allowed*** to the extent indicated above. The appellants are on bail. Their bail bonds are cancelled. The sureties shall stand discharged. They need not to surrender.

**66.** Certify this judgment to the court below for necessary intimation and compliance. The compliance report be submitted to this Court through the Registrar General, High Court, Allahabad.

**Order Date :- 31<sup>th</sup> May, 2022**  
Ashok Gupta

***(Subhash Chandra Sharma,J.) (Sunita Agarwal,J.)***