



2026:AHC:35023-DB

Reserved on 02.02.2026

Delivered on 17.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2955 of 1985

Battu Singh And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Prakhar Srivastava, Braham Singh, Pt.
Mohan Chandra, Sushil Kumar Tewari

Counsel for Respondent(s) : A.G.A.

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Prarabadh Jain and Sri Anurag Srivastava, holding brief of Sri Prakhar Srivastava, learned counsel for the appellants; Sri G.N. Kanaujiya, learned A.G.A.-Ist for the State and perused the judgment and trial court record.

2. The above noted criminal appeal has been preferred against the judgment and order dated 31.10.85/2.11.85 passed by Additional District & Sessions Judge, Moradabad, in Sessions Trial No.25 of 1985, convicting and sentencing the appellants to life imprisonment under section 302/149 I.P.C., to 1 year R.I. under section 147 I.P.C. to 6 months. R.I. under Section 323/149 I.P.C. and further 6 months R.I. under Section 323/149 I.P.C., all the sentences to run concurrently.

3. The prosecution case is that the incident is alleged to have taken place at about 1:00 p.m. on 23.6.1984 on a public rasta in between the houses of

the accused, Battu and the complainant, Savley (P. W.1) in village Devra Khas, P.S. Kurfatehgarh. A written report (Ext. Ka-1) was lodged by said Savley at 2.30 p.m. on 23.6.84 itself at P.S. Kurfatehgarh. It was alleged that Savley along with his brothers, Rakshpal and Soran, was returning from *jungle* after ploughing fields. Rakshpal followed by Soran were going ahead and Savley was behind them. Their own house was situated across the intervening rasta from the house of accused, Battu. The accused, Battu, accompanied by the accused, Satyapal, Meharban and Babu, was digging earth from the rasta land and collecting the same on the side of his own house. The co-accused, Deena, Brij Lal, Sheopali, Munshi Ji, Babu Ji, Kunwar Sen, Nanhey, Kishan Pal, Kishan Lal and Kaley were sitting there. These persons were armed with spear and *lathi*. As Rakshpal and Soran protested, all the 14 accused pounced upon them and started beating them with their respective spears and *lathis*. On the alarm raised by Rakshpal and Soran, Laley, Natthu, Ram Charan, Shivam Pal, Ram Gulam and Jarki came to the spot. The accused beat Laley as well. Savley also reached the spot but as these accused came upon him, he ran away and stood aside. After having administered beating these accused ran away towards *jungle* in the east. On reaching near Rakshpal, Savley found that Rakshpal had died. He also found injuries on the person of Soran and Laley. Savley shifted the dead body of Rakshpal to the court-yard of his own house and then took the injured, Soran and Laley, to the police station and lodged the aforesaid F.I.R.

4. The police registered a case and commenced investigation. The same day, the dead body of Rakshpal, was taken into custody and a Panchayatnama (Ext. Ka-4) was prepared. The dead body was duly sealed and was then sent for postmortem examination through constables, Satya

Vir Tyagi and Jamuna Prasad. This postmortem examination was performed by Dr. N.K. Gupta at 3.10 p.m. on 24.6.84 (Ext. Ka-16). Photo Nash (Ext.Ka-5), 7 chalan Nash (Ext. Ka-6) and necessary letters (Ext.Ka-7 and Ka-8) were also prepared and were sent along with the dead body. The spot was inspected and a sketch map (Ext.Ka-9) was prepared. Recovery memos in respect of *lathi*, spade, blood stained Bandh of cots (Ext.Ka-10 to Ka-13) were also prepared. Another recovery memo (Ext. Ka-15) regarding blood stained clothes of the injured Soran Singh and Laley was prepared on 24.6.84. The injured Laley and Soran were medically examined at 9.15 p.m. and 9.30 p.m. respectively on 23.6.84 itself, at P.H.C. Kundarki and injury reports (Ext. Ka-18 and Ka-17) were prepared. Ultimately after completing the investigation the police submitted a charge-sheet (Ext. Ka-14) against these accused on 24.7.84.

5. On the basis of the aforesaid charge-sheet, the Magistrate took cognizance of the case. In due course, learned Chief Judicial Magistrate, Moradabad, committed this case to the court of Sessions by order dated 7.1.85.

6. The accused and their counsel were heard and the aforesaid charges against them were framed on 12.3.85. The accused pleaded not guilty to the charges.

7. In order to prove its version, the prosecution examined Savley (P.W.1); Soran (P.W.2) and Natthu Singh (P. W-3) as the witnesses of the occurrence. Constable, Brij Phan Singh (P.W.4) has been examined to prove the registration of the case at the police station. S.I. S.K. Sagar (P.W.5) is the Investigating Officer of this case.

8. The defence examined Dr. A.K. Mahendra (D.W.1) and Babu Singh (D.W.2).

9. During the pendency of this appeal, all the appellants died except appellant no.1, Battu Singh, s/o Beni; appellant no.7, Munshi Ji, s/o Brijpal and appellant no.11, Kishan pal, s/o Nanhey. By the earlier orders, the appeal has been dismissed as abated against the other appellants. Therefore, appeal has been heard only on behalf of the surviving appellant nos. 1, 7 and 11 noted above.

10. This occurrence has been deposed to by Savley (P.W.1), Soran (P.W.2) and Natthu (P. W. 3). Savley deposed that deceased Rakshpal was his real brother. Soran (P.W.2) is also his real brother. All the three of them had gone to their fields on the early morning to plough. He was ploughing his own field separately, while Rakshpal and Soran were combinedly ploughing another field. At the field itself Savley's wife come to deliver them the meals and then she informed them that the accused, Battu and others were digging earth from *rasta* in between their houses and were preparing a *chabootra* on their side of the *rasta*. Savley asked her not to create a fuss and that he will look into it on reaching home. While returning from the fields, Rakshpal followed by Soran were going ahead and he was about 25 paces behind them. He and Soran were carrying ploughs on their shoulders while Rakshpal was carrying bullocks. On reaching near the house they spotted the aforesaid act of the accused, Battu and others. Rakshpal left the bullocks and went near the spot and protested to Battu and others against their act of narrowing *rasta* by digging earth therefrom. He was abused and assaulted by the accused and then Soran (P.W.2) also rushed to that spot. He too was beaten. The alarm raised by them attracted many other persons of the village including Ram Charan, Natthu, Shishupal, Laley and Janki. Laley was ahead of them and on his protest against the beating of Rakshpal and Soran, the

accused assaulted and injured him as well. Savley deposed that at the relevant time the accused, Battu, Meharban, Satpal and Babu were digging earth and preparing a *chabootra* on their side of the *rasta*. The other co-accused, namely, Brij Lal, Sheopali, Deen, Munsu Ji, Kunwar Sen, Narhey, Kishan, Kishan Lal, Babu Ji and Kaley were sitting in the *gher* of Battu. When Battu and three others assaulted Rakshpal, the other co-accused came out and joined in the beating. At the relevant time Battu, Meharban, Satpal and Brij Lal used spears while the rest used *lathies*. Battu struck a spear blow to Rakshpal and Meharban too struck a similar spear blow to Rakshpal. The accused, Satpal, however, used his spear from the handle side by using it as a *lathi*. Kishan Lal, the accused gave a *lathi* blow to Rakshpal. He added that Soran (P.W-2) was beaten with *lathi* by Kishan Lal, Babu, Kaley, Babu Ji and Nanhey, while Laley was beaten with *lathi* by the accused, Brij Lal, Seopal, Deena, Munshi Ji and Kunwar Sen. He said that this occurrence took place on the *rasta* near the *Pakhar* tree, which stood on the land of the accused, Battu. After having administered beating the accused fled away towards east. Rakshpal had fallen on the ground. He witnessed the entire occurrence from a distance of 25-30 paces and when, after the accused had ran away, he went near Rakshpal, he found him dead. He also saw injuries on the person of Soran (PW-2) and Laley. He then got Rakshpal shifted on a cot to his own *gher* and then took the injured Soran and Laley in a dunlop cart to P.S. Kurfatehgarh on way to the police station he got the written report (Ext.Ka-1) scribed through one, Rajendra of village Dhoom Nagar, which he carried and lodged at the police station.

11. The Investigating Officer, S.I. S.K. Sagar (P. W.5) deposed that this investigation was entrusted to him and he reached the spot at 3.10 p.m. on

the same day. Forthwith he began inquest proceedings which were completed by him by 5 p.m. This is shown by the inquest report (Ext.Ka-4) as well. Babu Singh (D. W.1) stated at one place that Sub-Inspector had arrived at the spot at 1.30 p.m. itself and that he then went back and returned for preparing *Panchayatnama* in respect of the dead body of Rakshpal. He has not been corroborated by any other piece of evidence in his statement that S. I. had reached the spot at 1.30 p.m. and had then gone back. If it were a fact the prosecution witnesses were bound to have been questioned in this behalf. The occurrence itself took place at 1:00 p.m. and unless there was information to the police it could not have reached the spot quite soon. Thus, the prosecution claimed that the police reached the spot at 3.10 p.m. appears to be true. On the spot the Investigating Officer prepared photo Nash, chalan Nash and other necessary documents. The dead body was put under seal and was then sent for postmortem examination through constables. As shown by chalan Nash (Ext. a-6) the dead body reached the police lines at the head quarters at 7.15 a.m. on the next day, i.e., 24.6.84, and as shown by postmortem examination report (Ext. Ka-16), the doctor held said postmortem examination at 3.10 p.m. on 24.6.84 itself. It also bears out from the testimony of the Investigating Officer (P.W.5) that he interrogated the informant, namely, Savley (P.W.1) at 5.30 p.m. on the date of the occurrence itself, and that he interrogated Soran (P.W.2) and Laley on the next day. It has come in the testimony of Soran (P.W-2) that he had gone for medical examination and then remained with the dead body on the intervening night and hence he was not available in the village on the date of the occurrence.

12. From the evidence discussed above, it is proved that the occurrence in

question took place at 1 p.m. on 23.6.84 on the *rasta* in between the houses of deceased and accused Battu.

13. The aforesaid evidence further shows that in the occurrence Rakshpal, the deceased, Soran (P.W.2) and Laley received injuries, and that Rakshpal died on the spot itself. It is further shown by the testimony of the Investigating officer (P.W.6) that he prepared *panchayatnama* (Ext. Ka-4) from 3.10 p.m. to 5 p.m. on 23.6.84 itself, and after putting the dead body in sealed clothing he sent for postmortem examination. This postmortem examination was held by Dr. N.K. Gupta at 3.10 p.m. on 24.6.84. Doctor Gupta found rigor mortis to have passed of upper extremities, but it was still present in the lower extremities . He found ante mortem injuries as following :-

- i. Punctured wound rounded 2 cm x 1/2 cm on the left side of chest 8 cm away from left nipple.
- ii. Punctured wound rounded 1 cm x 1 cm on the left shoulder Joint 22/1/2 cms above the left elbow joint.
- iii. Lacerated wound 2 cm x 1 cm on the back side of left arm 4 cm below the left shoulder joint.
- iv. Abrasion 2cm x 4 cm. on left hand little finger.

14. In the doctor's opinion death of Rakshpal was caused due to shock and haemorrhage on account of the injuries noted above. In his opinion death had occurred one day before examination.

15. The genuineness of the postmortem examination report (Ext.Ka-16) has been admitted by the defence. The defence has also admitted the genuineness of the injury reports (Ex.Ka.17 and Ka-18) in respect of the examination of Soran and Laley.

16. The injury report (Ex.Ka-18) shows that Laley alias Lal singh was examined at 9.15 a.m. on 23.6.84 at P.H.C. Kundirki itself and it discloses injuries as following:-

I. Lacerated wound 5 cm x 2 cm x scalp deep on the right side of head 13 cm from right ear and both eye brows; clotted blood seen and wound bleeds on washing.

ii. Lacerated wounds 2 cm x .2 cm x 2 cm on right. side back of head 11 cm above right ear and 4 cm behind injury No.1; bleeds on washing; clotted blood present.

iii. Lacerated wound .3 cm x .3 cm x 2 cm, 7 cm from right nipple and 18 cm from right axilla on right side of chest; clotted blood present on wound.

iv. Contusion 2 cm x 1 cm on lateral aspect of right arm , just above the elbow joint; red in colour,

v. Abrasion 3 cm x .3 cm on left fore-arm 9 cm above the left wrist joint, clotted blood present.

17. In the doctor's opinion all the injuries were caused by some blunt object and were simple in nature and these were half a day old at the time of examination.

18. The injury report (Ex.Ka-17) shows that Soran (P. W.2) was examined at 9.30 p.m. on 23.6.84 itself and the injuries found on his person are as following :-

i. Lacerated wounds 6.5 cm x .7 cm x scalp deep on the left side of head 11 cm above left ear and 8 cm above left eyebrow; clotted blood seen and the wound bleed on washing.

ii. Abrasion 2 cm x 2 cm on left side of fore-head 3 cm above left

eyebrow; serum coming out of wound.

iii. Lacerated wound 4 cm x .3 cm x .5 cm in the middle of right pinna of ear bifurcating the pinna, extending begin wards 2 cm x 3 cm x.5 cm clotted blood seen which, on washing bleeds.

iv. Abrasion 2 cm x 1 cm on the back and lateral aspect of right arm just above the right elbow joint; clotted blood seen.

v. Abrasion 1 cm x 1 cm on dorssen of bio food in middle on right right foot; clotted blood seen.

vi. Abrasion 2 cm x 1 cm on left knee joint on lower part on front; clotted blood seen.

vii. Contusion 13 cm x 3 cm on lateral aspect of right lower part of neck just above illiac crust. Red in colour.

viii. Contusion 13 cm x 3 cm vertically on right side back 4 cm above the injury No.7; red in colour.

18. In the doctor's opinion all the injuries were simple and were caused with some hard blunt object and they were half a 1 day old at the time of examination.

19. Statement of appellants were recorded under Section 313 Cr.P.C. In the statement of the appellants recorded under Section 313 Cr.P.C., accused-appellant no.1, Battu Singh, stated in reply to question no.18 that Laley, Soran and Rakshpal attacked him and he protected himself by *lathi* and he suffered injuries. Appellant no.7, Munshi Ji, also stated that Soran, Laley and Rakshpal attacked him and he protected himself by using *lathi* and also suffered injuries.

20. DW.1, Dr. A.K. Mahendra, proved that on 27.6.2018, he examined Deena, s/o Brijpal, deceased, appellant no.5 and found two lacerated

wounds on his right chest and internal side of the left thumb. The medical examination was conducted by him in jail. He also examined accused, Battu Singh, who suffered abrasions and contusions on left leg and there were abrasions on his knee. He also suffered injuries on left side of back and lower part of his head. He further examined appellant no.7, Munsu Ji and found five injuries on his hand, knees and legs. Finally he examined the injuries of the deceased appellant, Satpal and found one contusion on his left leg. All the injuries were found to be simple and possibly caused by *lathi*.

21. Learned counsel for the appellant has submitted that the case falls within the domain of right to private defence; genesis of the incident has been concealed by the prosecution since the injuries of accused are not explained by the prosecution; the provisions of Section 157 Cr.P.C. were blatantly violated in this case; the provisions of Section 99 Sub Clause (3) IPC were not taken into consideration by the trial court; unlawful assembly of all the accused was not proved before the trial court beyond reasonable doubt; the defence taken by the accused and their statements under Section 313 Cr.P.C. were not considered by the trial court and no recovery of any weapon allegedly used in committing the offence was made.

22. Learned AGA has submitted that the plea of private defence cannot be taken in a case of murder; accused were ready to cause the incident and there was no time available for the informant side for informing the public authorities; accused side were the aggressors and were encroaching upon the *rasta*; the appellant no.1, Battu Singh, has been assigned the role of causing injury by *Bhala* to Rakshpal while appellant no.7 and appellant no.11 have been assigned the role of causing injury to Brijpal, Rakshpal,

Somali and Deena by *lathies* by PW-1. PW-2 has assigned the role of causing injury to Meharban by Battu Singh from *Bhala* and causing injury by *lathies* by appellant no.7 and appellant no.11. PW-3 has assigned the same role to the appellants; that due to specific role assigned to the appellants, trial court has rightly convicted and sentenced them; the statement of DW-2 was not found reliable by the trial court and no *alibi* was set up by the accused. Learned AGA has relied upon the judgment of Apex Court in the cases of ***Ram Ratan and others Vs. State of Uttar Pradesh, AIR1977SC619, Jagmal Singh and others Vs. State of U.P., 2008 (61) ACC 820 and Hukum Singh and others Vs. State of U.P., AIR 1959All 690***, in support of his contentions.

23. After hearing the rival submissions advanced by learned counsel for the parties and going through the material on record and judgment and order passed by the trial court, we find that as per the prosecution case at about 11:00 a.m. in the morning, the wife of Savley (PW-1) brought food for him and his brothers, who were working in the field and informed that accused were taking earth from the side of PW-1 to their side. PW-1 continued with his work and said that he will see them later. Therefore, from the own case of the prosecution, it is clear that the accused side were committing offence against the property of the prosecution side and therefore, the prosecution side tried to defend their rights of property which resulted in the incident in dispute.

24. Learned counsel for the appellant has laid much stress on his argument that there cannot be a right to private defence of the prosecution against the accused, who exercised their rights to private defence, as clear from the injuries suffered by them and examined and proved by the jail doctor. He has submitted that there can be no right of private defence

against an act when there is time to have recourse to protection of the public authorities as per Section 99 Sub Clause (3) I.P.C. He has submitted that the wife of PW-1 gave information to PW-1 at 11:00 a.m. that the accused were taking earth from their side and storing it on their own side, but PW-1 did nothing and the incident in dispute took place at 01:00 p.m. Therefore it is clear that PW-1 had two hours to make complaint of the accused to public authorities from 11:00 a.m. to 01:00 p.m. which he did not do and therefore the plea of private defence cannot be taken by the prosecution for defence of their property since a person has right to private defence only subject to the condition contained in Section 99 Sub Clause (3) I.P.C. For ready reference Section 99 Sub Clause (3) is being quoted herein below:-

" There is no right of private defence in cases where there is time to have recourse to the protection of public authorities."

25. The second point of consideration is that occurrence took place on *rasta* (passage) on the land of accused-appellant no.1, Battu. Therefore, it appears that the prosecution side was aggressor and went on the land of accused and caused incident there. In this connection, learned counsel for the appellant has relied upon the judgement of **Lakhan and others Vs. State of U.P. (2025:AHC:69540-DB)** wherein it has been held as under:

*"After considering the material placed on record and the submissions advanced, it gives an impression that, even if, the allegations against the appellants are accepted as true, they are yet entitled for acquittal, on a plea of right of private defence. **It is the admitted case of the prosecution that Pran was returning from Vikrama Talab after washing his body and when he reached in front of the house of the appellants, the incident took place. Therefore, it was the prosecution who was aggressor.** As the appellants saw Deshraj being assaulted, they in exercise of their right of private defence assaulted Pran and all others who intervened. Though, Trial Court had noticed the defence but failed to discuss the same. Neither the defence witnesses nor*

the defence Exhibits and the injuries sustained have been commented by the Trial Court. The prosecution witnesses, in their testimony, have not revealed anything about the injuries sustained by the defence nor have disclosed the genesis of the occurrence. Though they had deposed about the incident but remained silent throughout on these aspects. The defence has proved its injuries which were caused in the same incident. Thus, the prosecution has suppressed the genesis and origin of the occurrence and failed to explain the injuries on the person of the accused, therefore, an adverse inference can be drawn against the prosecution for not offering any explanation much less a plausible one. The prosecution has not brought on record the true version of the incident, therefore, it is to be itself squarely, blamed for the failure of the case.”

26. The next point for consideration is regarding compliance of provisions of Section 157 Cr.P.C. The Head Constable, Brijbhan Singh (PW-4) has admitted in his cross-examination that he never sent the copy of FIR to Chief Judicial Magistrate because it was not required to be sent. We find that the Apex Court in the case of **Arjun Marik and other Vs. State of Bihar, 1994 Supp (2) SCC 372**, has held that mere delay in dispatching the FIR to the Magistrate weakens the prosecution case, but in this case it is admitted that FIR was never sent by PW-4 to the Magistrate concerned and therefore prosecution story is too doubtful.

27. The injuries suffered by the accused was not explained by either of PW-1, PW-2 or PW-3 and they simply denied causing any injuries to the accused, but DW-1, Dr. A.K. Mahendra, who examined the accused in jail, proved that accused suffered injuries around the date and time of the alleged incident and therefore, the prosecution case becomes doubtful on this account too.

28. The Hon'ble Supreme Court in State of **Rajasthan vs. Madho and others. AIR 1991 SC 1065**, had observed that:

"If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the respondents herein, it casts a doubt on the genesis of the prosecution case since the evidence shows that these

injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident"

29. Referring to the observations of the Hon'ble Apex Court in ***Lakshmi Singh and others vs. State of Bihar. (1976) 4 SCC 394***, wherein it has been held that:

"12..... It seems to us that in a murder case, the non-explanation of the injuries, sustained by the accused at about the time of the occurrence or in the course of altercation, is a very important circumstance from which the Court can draw the following inferences:

"(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore. their evidence is unreliable:

(3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case."

30. Recently, the Honb'le Supreme Court by reiterating the observations as referred above in ***Nand Lal and others vs. State of Chhatisgarh. (2023)2 SCR 276***, had held as under:

"Omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes improbability with that of the prosecution more particularly when some of the witnesses have lied by stating that they did not see any injuries on the person of the accused"

Thus non-explanation of injuries, on the persons of the accused, creates a doubt, as to whether, the prosecution has brought on record, the real genesis of the incident. Such non-explanation, however, is a factor which is to be taken into account in judging the veracity of the prosecution witnesses, and the Court has to scrutinize the evidence with care. Each case presents its own features. In some case, the failure of the prosecution to account for the injuries of its story, while in others it may have little or no adverse effect on the prosecution case. It may also,

in a given case, strengthen, the plea of private proposition of law of universal application that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand prima facie established and the burden would shift to the prosecution to prove that those injuries were caused to the accused in self defence by the complainant party.”

31. Now considering the implication of the accused with the help of Section 149 IPC needs consideration. Section 149 of the Code deals with common object. To attract this provision there must be evidence of an assembly of five persons or more with the common object becoming an unlawful one. The concept of constructive or vicarious liability is brought into this provision by making the offense committed by one member of the unlawful assembly to the others having the common object. It is the sharing of the common object which attracts the offense committed by one to the other members. Therefore, the mere presence in an assembly per se would not constitute an offense, it does become one when the assembly is unlawful It is the common object to commit an offense which results in the said offense being committed. Therefore, though it is committed by one, a deeming fiction is created by making it applicable to the others as well due to the commonality in their objective to commit an offense. Thus, it is for the prosecution to prove the factors such as the existence of the assembly with a requisite number, the common object for everyone, the object being unlawful, and an offense committed by one such member. Courts will have to be more circumspect and cautious while dealing with a case of accused charged under Section 149 IPC, as it involves a deeming fiction. Therefore, a higher degree of onus is required to be put on the prosecution to prove that a person charged with an offense is liable to

be punished for the offence committed by the others under section 149 IPC. The principle governing the aforesaid aspect is taken note of by Apex Court in **Ranjit Singh Vs. State of Punjab, (2013) 15 SCC 752:32. Baladin v. State of U.P. [AIR 1956 SC 181: 1956 Cri LJ 345]** which was one of the early cases in which Apex Court dealt with Section 149 IPC. It held that mere presence in an assembly does not makes a person a member of the unlawful assembly, unless it is shown that he had done or omitted to do something which would show that he was a member of the unlawful assembly or unless the case fell under Section 142 IPC.

Resultantly, if all the members of a family and other residents of the village assembled at the place of occurrence, all such persons could not be condemned ipso facto as members of the unlawful assembly. The prosecution in all such cases shall have to lead evidence to show that a particular accused had done some overt act to establish that he was a member of the unlawful assembly. This would require the case of each individual to be examined so that mere spectators who had just joined the assembly and who were unaware of its motive may not be branded as members of the unlawful assembly.

33. The observations made in **Baladin case [AIR 1956 SC 181: 1956 CriLI 345] were considered in Masalti v. State of U.P. [AIR 1965 SC 202: (1965) 1 Cri LJ 226]** where this Court explained that cases in which persons who are merely passive witnesses and had joined the assembly out of curiosity, without sharing the common object of the assembly stood on a different footing; otherwise it was not necessary to prove that the person had committed some illegal act or was guilty of some omission in pursuance of the common object of the assembly before he could be

fastened with the consequences of an act committed by any other member of the assembly with the help of Section 149 IPC. The following passage is apposite in this regard: (Masalti case [AIR 1965 SC 202: (1965) 1 Cri LJ 226], AIR p. 211, para 17)

"17.... The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined entertain the common object of the assembly. It is in that context the assembly as a matter of idle curiosity without intending to that the observations made by this Court in Baladin [AIR 1956 SC 181: 1956 Cri Lj 345] assume significance, otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that 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; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly" (emphasis supplied)

34. Again in **Bajwa v. State of U.P. ((1973) 1 SCC 714]** Apex Court held

that while in a faction-ridden society there is always a tendency to implicate even the innocent with the guilty, the only safeguard against the risk of condemning the innocent with the guilty lies in insisting upon acceptable evidence which in some measure implicates the accused and satisfies the conscience of the court.

35. In a faction-ridden village community, there is a tendency to implicate innocents also along with the guilty, especially when a large number of assailants are involved in the commission of an offence is a matter of common knowledge. Evidence in such cases is bound to be partisan, but while the courts cannot take an easy route to rejecting out of hand such evidence only on that ground, what ought to be done is to approach the depositions carefully and scrutinise the evidence more closely to avoid any miscarriage of justice.

36. Finally we find that none of the weapons, namely, *Bhala* (spear) and *lathis* were recovered and only a spade (*fawda*) was recovered, which has no relevance since PW-2 admitted that *Fawda* was not used in the alleged crime.

37. The reliance of AGA on the judgment of Apex Court in the case of ***Ram Ratan (supra)*** is not well founded. In the aforesaid case, the complainant, Ram Khelawan, has encroached upon a chak road and sowed crops over the same. When the accused side tried to forcibly pass their bullocks from the encroached chak road, the dispute took place between the parties. The Apex Court has held that the complainant, Ram Khelawan, was in actual physical possession over the land, which was although chak road, but he had right to defend his crops sowed thereon and accused side could not have taken its bullocks from the same because Ram Khelawan was in settled possession of land in dispute. Without

taking recourse to law, his crops could not have been removed. Therefore the plea of self defence set up by the accused on the ground that they were trying to free chak road, belonging to public, was not accepted by the trial court, High Court as well as the Apex Court.

38. The second judgement of ***Jagmal Singh (supra)*** is also of no help for the State, since it has held in paragraph 15 that true owner had right to dispossess or throw out a trespasser, while trespasser is in the act or process of trespassing and has not accomplished in his possession. In this case when the mud was being secured by the accused-appellants' side and the act was being accomplished and was seen by the wife of PW-1 at 11:00 a.m. and she informed PW-1 and his brother in this regard, they did nothing. After two hours, he went to the place of incident, which was in front of the house of the appellants and assaulted the appellants side with *lathis* and thereafter the accused side exercised their rights to private defence. The place of incident was before the house the appellant no.1, Battu and therefore we have found that accused side was the aggressor. Thus it is clear that the prosecution had opportunity to approach the public servants for help but instead of the same, they took law in their hands and then accused side exercised their rights of private defence against them.

39. After giving thoughtful consideration to the facts and circumstances of this case, we find that although the appellants exercised their rights to private defence, but the appellant no.1 exceeded his right and caused disproportionate injury to the deceased by spear (*Bhala*) in his chest once. The judgment of Apex Court in the case of ***Rafiq Vs. State of Maharastra, reported in 1979 AIR Supreme Court 1179*** held that the appellant is entitled to exercise the right of private defence, but the

evidence on record as to the nature and violence of the blows suffered and apprehended by him, shows that he exceeded that right, when he stabbed the deceased in his heart. He caused the injury, which proved grievous and therefore, the Hon'ble Supreme Court held in that case that the appellant exceeded his right to private defence.

40. In the present case, we also find that the appellant exceeded his right to private defence. We further find that in the statement of PW-1 it has come that the appellant no.1, Battu, and deceased, appellant no.2, Maharban, were having spears in their hands. Rest of the accused were having *lathies*. When the informant side was only armed with lathis and they had caused lathis' blow to the appellant side. Appellant no.1, Battu Singh, is alleged to have struck spear blow to Rakshpal and Meharban is also alleged to have struck similar spear blow to Rakshpal. In the autopsy report of the deceased, only two punctured wounds were found on the body of the deceased, Rakshpal. One is on left side of his chest and other left shoulder joint, apart from one laceration and an abrasion on left arm and left hand little finger, respectively. Appellant no.1 has been assigned the role of causing only one fatal injury by spear to the deceased by PW-1. It is not clear whether he caused punctured wound by spear on his chest or on his shoulder, since deceased-appellant, Meharban, has also been assigned the same role.

41. The Apex Court in the case of **Rafiq (supra)** has converted the conviction and sentence of the appellant for causing single knife injury to the deceased in his heart by modifying order of conviction from life imprisonment to first part of Section 304 IPC and sentenced the accused-appellant to rigorous imprisonment for five years with fine of Rs.2500/-.

42. We, therefore, modify the conviction of the appellants from Section

302/149 IPC to 304/149 IPC and reduce the sentence of the appellants from life imprisonment to sentence of five years with fine of Rs.25000/-. Appellant nos.7 and 11 have been assigned the role of causing injury by lathies to the other side and therefore excise of their right to private defence was proportionate to the assault made on them. Hence, the conviction of appellant nos. 7 and 11, namely, Munshi Ji and Krishna Pal, is set aside.

43. Appellant no.1, namely, Battu Singh, is on bail, his bail bonds is cancelled and sureties are discharged. He is directed to surrender forthwith and carry out remaining sentence. Period of sentence already undergone by him shall be adjusted.

44. The appellant nos. 7 & 11, namely, Munshi and Krishna Pal, are absolved of all the charges, their bail bonds are cancelled and sureties are discharged. They need not to surrender.

45. The above noted criminal appeal is **partly allowed**.

46. Office is directed to send back trial court record and notify this judgment to the trial court within two weeks.

(Jai Krishna Upadhyay,J.) (Siddharth,J.)

February 17, 2026

Ruchi Agrahari