A GUNNANA PENTAYYA @ PENTADU & ORS.

v.

STATE OF A.P.

(Criminal Appeal No.292 of 2006)

AUGUST 20, 2008

B

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860:

C *s.302 r.w. s.149 – Conviction under – High Court confirmed conviction under s.302 however held that s.149 not attracted – On appeal, Held: No infirmity in High Court's order – Conviction was based on evidence of wife and son of deceased – They were natural witnesses and their presence* D *in the house in the morning when incident took place cannot be doubted.*

s.149 – Common object – Connotation of.

Common object and common intention – Distinction E *between.*

Witness Eye-witnesses – Presence of Incident of murder took place in morning – Presence of wife/son of deceased in the house – Held: Is natural and cannot be doubted.

F *FIR : Non-mention of details in – Effect of – Held: Not fatal on prosecution case.*

Non-mention of name of eye-witness in – Effect on prosecution case – Held: Not fatal.

G *Criminal trial:*

Delay in examination of eye-witnesses – No question put to Investigating Officer regarding reason for delay – Held: Defence cannot take advantage therefrom – Delay/laches.

H

Non-explanation of injuries on accused – Effect on prosecution case – Held: Not fatal when injuries sustained by accused were minor or superficial. A

Doctrines/Principle: "falsus in uno falsus in omnibus" – Applicability of.

B

Prosecution case was that on the day of incident at 6.30 A.M., all the accused persons A1 to A57 belonging to a political party came in a mob to the house of D-2 and attacked him with dangerous weapons. Thereafter they went to the house of D-1 and attacked him. C **Thereupon they went round the village and attacked the Congress supporters P.W.4 to P.W.33.**

P.W.1, wife and P.W.2 son of D-2, were eyewitnesses for the attack on D-2. P.W.3 wife of D-1, was the eyewitness to the death of D-1. All the injured persons D **were taken to hospital where Police recorded statement of P.W.1. Charge-sheet was filed against A-1 to A-57 for various offences including s.302 IPC. Trial Court acquitted some of the accused persons and convicted A-1 to A-7 under s.302 IPC and some other under s.302** E **r.w. s.149 IPC. On appeal, High Court acquitted the accused persons in respect of s.302 read with s.149 IPC holding that there was no common object, and confirmed conviction under s.302 IPC as against Al to A7 for causing death of D-2 and as against Al, A8, A12,** F **A21 and A24 in respect of death of D-1. Hence the present appeal by these 11 appellants.**

Appellants contended that evidence of PW-1 was unreliable because the complaint Ex.P1 was contrary to what she deposed in Court and that details were not G **mentioned in the Ex.P-1; that the presence of PW 1 at the place of incident was doubtful; that the statement of PW1 that the accused persons told her that they will not harm her is not believable; that the presence of PW 2 was not stated in Ex.P1 by PW1 and also not stated in** H

A statement recorded under Section 161 Cr.P.C.; that the evidence of PW2 was unreliable as his presence was impossible and PW3 is also unreliable; that section 149 IPC was not attracted and that it was obligatory on the part of High Court to convict the appellants according B to their role and the injuries inflicted by them individually; that evidence tendered by PW1 to a large extent was not accepted and that would throw out entire prosecution case and thus principle of *"falsus in uno falsus in omnibus"* was applicable; and that there was C a counter case and the injuries on the accused had not been explained.

Dismissing the appeal, the Court

HELD: 1.1. So far as the non-mention of details in D Ex.P-1 is concerned, the first information report is not encyclopedia of all details. In the instant case, all relevant details have been indicated in the first information report. High Court categorically held that the presence of PW4 to 33 because of receipt of injuries by them was established beyond all reasonable doubt. Therefore, E there was no serious doubt about the evidence of PWs. 4 to 33. [Para 6] [353-CD]

Gauri Shanker Sharma v. State of U.P. AIR (1990) SC 709 – relied on.

F 1.2. The incident in question took place on 29.1.2000 in the morning in the house of D2. Therefore, the presence of PW1 who was his wife is natural. So far as the evidence of PW3 is concerned, she stated that A1, A8, A12, A21 and A24 came to her house. A1 hit her G husband with a stout stick on his head. A24 beat with him the stick and A8, A12 and A21 beat with sticks indiscriminately on his body as a result of which D1 sustained grievous injuries. Except suggesting that A1, A8, A12, A21 and A24 did not beat her husband, nothing H has been elicited to discard her testimony. Her presence

also cannot be doubted because it was morning time and the incident took place when D1 came out from his house. Therefore, the evidence of PWs1 and 3 cannot be doubted and discarded merely because 38 persons have been named in the first information report. [Para 8] [353-F-H, 354-A]

2. Mere non-mention of name of witness in Ex.P-1 does not render the prosecution version fragile. There can be no hard and fast rule that names of witnesses, more particularly, eye witnesses should be indicated in the FIR. Even otherwise, though name of PW2 has not been specifically mentioned in the first information report, it cannot be lost sight that he is the son of the deceased and the incident took place in his house. His presence is natural considering the time when the incident took place. Though it was contended that there was delay in examination of PW2, the same is without substance. Unless the investigating officer is categorically asked as to why there was delay in examination of the witness, the defence cannot take advantage therefrom. In the instant case, no question has been asked to the investigating officer PW53 regarding the reason for delay. There was even no suggestion that PW2 was not present in the house when the incident took place. [Para 9] [354-C-F]

State of Madhya Pradesh v. Mansingh (2003) 10 SCC 414; *State of U.P. v. Satish* (2005) AIR SCW 905 – relied on.

3.1. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in s.141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of s.149. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it

A cannot be said that he is a member of an assembly. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be B formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing C in s.149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not D thereafter. [Para 10] [354-G H, 355-A-F]

3.2. 'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is E 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 F 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, G 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 H

incident. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. [Para 11] [355-H, 356-A-E]

Chikkarange Gowda and Ors. v. State of Mysore AIR 1956 SC 731; *State of U.P. v. Dan Singh and Ors.* 1997 (3) SCC 747; *Lalji v. State of U.P.* (1989) 1 SCC 437; *Gangadhar Behera and Ors. v. State of Orissa* (2002) 8 SCC 381; *Shivjee Singh and Ors. v. State of Bihar* 2008 (11) SCR 548 – relied on.

4.1. The plea of applicability of the principle of *"falsus in uno falsus in omnibus"* (false in one thing, false in everything) is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness cannot be branded as liar. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence. [Para 15] [358-F-H, 359-A B]

Nisar Alli v. The State of Uttar Pradesh AIR (1957) SC 366; *Gurucharan Singh and Anr. v. State of Punjab* AIR (1956) SC 460 – relied on.

4.2. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be

A rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, B and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. [Para 15] [359-C-E]

C *Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh* (1972) 3 SCC 751; *Ugar Ahir and Ors. v. The State of Bihar* AIR 1965 SC 277; *Zwinglee Ariel v. State of Madhya Pradesh* AIR (1954) SC 15; *Balaka Singh and Ors. v. The State of Punjab* (1975) 4 SCC 511; *State of Rajasthan v.* D *Smt Kalki and Anr.* (1981) 2 SCC 752 – relied on.

4.3. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of E occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal F discrepancies do not corrode the credibility of a party's case, material discrepancies do so. [Para 15] [360-B-D]

5. Non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained G 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 outweighs the effect of the omission on the part of prosecution to explain the injuries. Prosecution is not called upon in all cases to explain the injuries received H

by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. The obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. [Para 16] [360-F,H, 361-A-E]

Krishna Mochi and Ors. v. State of Bihar etc. **(2002) 6 SCC 81**; *Sucha Singh v. State of Punjab* **(2003) 7 SCC 643**; *Zahira H. Sheikh v. State of Gujarat* **(2004) 4 SCC 158**; *Ram Udgar Singh v. State of Bihar* **(2004) 10 SCC 443**; *Gorle S. Naidu v. State of Andhra Pradesh* **(2003) 12 SCC 449**; *Gubbala Venugopalswamy v. State of Andhra Pradesh* **(2004) 10 SCC 120**; *Anil Kumar v. State of U.P.* **(2004) 13 SCC 257 – relied on.**

Case Law Reference

AIR (1990) SC 709	relied on	Para 6
(2005) AIR SCW 905	relied on	Para 9
AIR 1956 SC 731	relied on	Para 12
(1989) 1 SCC 437	relied on	Para 12
1997 (3) SCC 747	relied on	Para 12
(2002) 8 SCC 381	relied on	Para 12

A	2008 (11) SCR 548	relied on	Para 12
	AIR (1957) SC 366	relied on	Para 15
	AIR (1954) SC 15	relied on	Para 15
	AIR (1956) SC 460	relied on	Para 15
B	AIR 1965 SC 277	relied on	Para 15
	(1972) 3 SCC 751	relied on	Para 15
	(1975) 4 SCC 511	relied on	Para 15
	(1981) 2 SCC 752	relied on	Para 15
C	(2002) 6 SCC 81	relied on	Para 16
	(2003) 7 SCC 643	relied on	Para 16
	(2003) 12 SCC 449	relied on	Para 16
	(2004) 4 SCC 158	relied on	Para 16
D	(2004) 10 SCC 120	relied on	Para 16
	(2004) 10 SCC 443	relied on	Para 16
	(2004) 13 SCC 257	relied on	Para 16

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 292 of 2006

From the final Judgment and Order dated 11.8.2005 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No. 382 of 2003

F

M. Karpaga Vinayagam, Rajnish, A. Vinayagam Balan and Dr. Kailash Chand for the Appellants.

U.U. Lalit, A. Fatima and D. Bharathi Reddy for the Respondents.

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The Judgment of the Court was delivered by

DR.. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of the Division Bench of the Andhra Pradesh High Court confirming the conviction of the appellant punishable H under Section 302 of the Indian Penal Code, 1860 (for short

'IPC'), so far as the appellants 1 to 7 are concerned. The others have been convicted for offence punishable under Section 302 IPC.

2. Originally, there were 57 accused persons. Some of them were acquitted by learned Sessions Judge, Vizianagaram. The present appeal is filed by accused nos. 1 to 7, 8, 12, 21 and 24, A1, A8, A12, A21 and A24 were convicted for homicidal death of Appalasamy (hereinafter referred to as 'D1'). A1 and A7 were convicted for causing death of Appallanaidu (D2).

3. Prosecution version as unfolded during trial is as follows:

Accused party belongs to a particular political party. Prosecution party belonged to another political party. On 29.1.2000 around 6.30 A.M., all the accused persons Al to A57 came in a mob to the house of D-2 Appalanaidu and attacked him with dangerous weapons. Then they went to D-1's house and attacked him. Thereupon they went round the village and attacked the Congress supporters P.W.4 to P.W.33. P.W.1 Potnuru Laxminarayana the wife and P.W.2 son of D-2, are eyewitness for the attack on D-2. P.W.3 wife of D-1, is the eyewitness to the death of D-1.

The motive for the attack is that a love letter was sent by son of A-47 to a girl, who was a relative of D-2. Due to this there was a clash between the two groups. A case and counter cases were registered as Crime No.11 and 12 of 2000. Both the parties were arrested. Thereafter there was rumour that one person of the accused group was killed. So the entire mob of the accused group came and attacked D-1, D-2 and others. All the injured persons were taken to Hospital at Gajapathipuram.

P.W.53 Sub-Inspector of Police went to the hospital and recorded the statement from P.W.1. The case was registered as crime No.13 of 2000 for various offences including Section

307 of IPC. On 31.1,2000, D-1 died. On 10.2.2000, D-2 died. Case was altered to Section 302 IPC. P.W.53 Inspector of Police took up the investigation. After investigation, charge sheet was filed against Al to A57 for various offences including Section 302 IPC. The Trial Court acquitted some of the accused persons and convicted Al to A7 for offence punishable under Section 302 IPC and some other accused for the offence punishable under Section 302 read with Section 149 for causing death to D-2 Appalanaidu. Trial Court convicted A-1, A-8, A-12, A-21 and A-24 for offence punishable under Section 302 IPC and some other accused for offence under Section 302 read with Section 149 for causing death of D-1 Appalasamy. Other accused were convicted for the offences punishable under Section 148, 325, 323, 452 for the individual offences in respect of the injuries inflicted on the witnesses. However, in appeal the High Court acquitted the accused persons in respect of Section 302 read with Section 149 holding that there was no common object. The High Court confirmed the conviction for the offence under Section 302 IPC as against Al to A7 for causing death of D-2 and as against Al, A8, A12, A21 and A24 in respect of death of D-1. Hence the appeal by these 11 appellants.

4. In support of the appeal, learned counsel for the appellant submitted that PW's 1 evidence is unreliable because the complaint Ex.P1 is contrary to what she deposed in Court. It was submitted that the overt acts individually for the first time stated in court. Secondly, it is submitted that the weapons purportedly used are not correctly stated by PW1. Presence of PW 2 is not stated in Ex.P1 by PW1 and also not stated in statement recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short the 'Code'). It is further submitted that the statement of PW1 that the accused persons told her that they will not harm her is not believable. Since the prosecution case was that the people belonging to a particular political party were to be attacked, there is no reason as to why PWs 1, 2 and 3 were not attacked. Since

the Trial Court and the High Court have found that the allegations were not fully established because some of the accused persons were falsely implicated, the evidence of witnesses is suspect. The evidence of PW2 is unreliable as his presence is impossible and PW3 is also unreliable. There was a counter case and the injuries on the accused had not been explained.

5. Learned counsel for the respondent-State on the other hand supported the judgments of the courts below.

6. So far as the non-mention of the details in Ex.P1 is concerned, the first information report is not supposed to be encyclopedia of all details. In the instant case, all relevant details have been indicated in the first information report. It is to be noted that the High Court categorically held that the presence of PW4 to 33 because of receipt of injuries by them was established beyond all reasonable doubt. Therefore, there was no serious doubt about the evidence of PWs. 4 to 33.

7. Learned counsel for the appellants submitted that because of the admitted political rivalry and the relationship of the PWs 1, 2 and 3 their evidence should have been rejected. This Court in *Gauri Shanker Sharma v. State of U.P.* (AIR 1990 SC 709) observed that unless there are sound grounds to reject evidence of the so called interested witness it would not be proper to hold that they are interested witnesses.

8. As rightly noted by the High Court the incident in question took place on 29.1.2000 in the morning in the house of D2. Therefore, the presence of PW1 who was his wife is natural. So far as the evidence of PW3 is concerned, she stated that A1, A8, A12, A21 and A24 came to her house. A1 hit her husband with a stout stick on his head. A24 beat with him the stick and A8, A12 and A21 beat with sticks indiscriminately on his body as a result of which D1 sustained grievous injuries. Except suggesting that A1, A8, A12, A21 and A24 did not beat her husband, nothing has been elicited

A to discard her testimony. Her presence also cannot be doubted because it was morning time and the incident took place when D1 came out from his house. Therefore, the evidence of PWs1 and 3 cannot be doubted and discarded merely because 38 persons have been named in the first information report.

B 9. So far as non-mention of name of PW2 is concerned, in *State of Madhya Pradesh v. Mansingh* (2003 (10) SCC 414) it was observed that mere non-mention of name of witness does not render the prosecution version fragile. There can be no hard and fast rule that names of witnesses, more C particularly, eye witnesses should be indicated in the FIR. Even otherwise, though name of PW2 has not been specifically mentioned in the first information report, it cannot be lost sight that he is the son of the deceased and the incident took place in his house. His presence is natural considering the time D when the incident took place. Though it was raised that there was delay in examination of PW2, the same is without substance in view of what has been stated by this Court in *State of U.P. v. Satish* (2005 AIR SCW 905). It was observed that this Court in several decisions has held that unless the E investigating officer is categorically asked as to why there was delay in examination of the witness, the defence cannot take advantage therefrom. In the instant case, no question has been asked to the investigating officer PW53 regarding the reason for delay. There was even no suggestion that PW2 F was not present in the house when the incident took place.

10. A plea which was emphasized by the appellants relates to the question whether Section 149, IPC has any application for fastening the constructive liability which is the sine qua non for its operation. The emphasis is on the common G object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, H the accused persons cannot be convicted with the help of

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

11. 'Common object' is different from a 'common

A intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the B 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 C 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 D of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it E was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even F for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot co instanti.

12. Section 149, IPC consists of two parts. The first part G of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. H

Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be called out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word 'knew' used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within first part, but offences committed in prosecution of the common object would be generally, if not

A always, be within the second part, namely, offences which the parties knew to be likely committed in the prosecution of the common object. (See *Chikkarange Gowda and others v. State of Mysore* : AIR 1956 SC 731.)

13. In *State of U.P. v. Dan Singh and Ors.* (1997 (3) B SCC 747) it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Reference was made to *Lalji v. State of U.P.* (1989 (1) SCC 437) where it was observed that:

C

> "while overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149".

D 14. This position has been elaborately stated by this Court in *Gangadhar Behera and Ors. v. State of Orissa* (2002 (8) SCC 381 and *Shivjee Singh and Ors. v. State of Bihar* (SLP (Crl.) No.1494/2004 disposed of on 30.7.2008).

15. The next plea as noted above related to the acquittal E of number of persons. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW1 to a large extent to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one F thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would G be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or H witnesses cannot be branded as liar(s). The maxim "falsus in

uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence. (See *Nisar Alli v. The State of Uttar Pradesh* [AIR 1957 SC 366]. In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See *Gurucharan Singh and Anr. v. State of Punjab [AIR 1956 SC 460*]. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh [1972 (3) SCC 751*] and *Ugar Ahir and Ors. v. The State of Bihar* [AIR 1965 SC 277]. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution

A completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of Madhya Pradesh* [AIR 1954 SC 15] and *Balaka Singh and Ors. v. The State of Punjab* [1975 (4) SCC 511]. As observed B by this Court in *State of Rajasthan v. Smt. Kalki and Anr.* [1981 (2) SCC 752], normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence C and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. D These aspects were highlighted in *Krishna Mochi and Ors. v. State of Bihar etc.* [2002 (6) SCC 81] and in *Sucha Singh v. State of Punjab* [2003 (7) SCC 643]. It was further illuminated in the *Zahira H. Sheikh v. State of Gujarat* [2004 (4) SCC 158], *Ram Udgar Singh v. State of Bihar* [2004(10) SCC E 443], *Gorle S. Naidu v. State of Andhra Pradesh* [2003 (12) SCC 449] and in *Gubbala Venugopalswamy v. State of Andhra Pradesh* [2004 (10) SCC 120].

16. So far as the non-explanation of injury on the F accused is concerned, in *Anil Kumar v. State of U.P.* (2004 (13) SCC 257), it was held as follows:

> "Non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained by the accused are minor and superficial or where the evidence G is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in *Ramlagan Singh v. State of Bihar* (AIR 1972 SC 2593) prosecution H is not called upon in all cases to explain the injuries

received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In *Hare krishna Singh and Ors. v. State of Bihar* (AIR 1988 SC 863), it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on veracity of prosecution case. (See *Surendra Paswan v. State of Jharkhand* (2003) 8 Supreme 476)."

17. The appeal is without merit, deserves dismissal, which we direct.

D.G. Appeal dismissed.