

A SANJEEV KUMAR GUPTA

v.

STATE OF U.P. (NOW STATE OF UTTARAKHAND)

B (Criminal Appeal No.507 of 2013 etc.)

MAY 08, 2015

**[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]**

C *Penal Code, 1860 – s. 302/149 and s. 148 – Murder*  
D *– Prosecution case that accused persons armed with weapons*  
E *asked the victim and PW 1 to withdraw their names from the*  
F *college election – On refusal, accused persons assaulted*  
G *them and the victim succumbed to his injuries the next day*  
H *– PW 1 suffered injuries and lodged a complaint – Accused*  
*persons convicted u/s. 302/149 and s. 148 and sentenced*  
*accordingly by the courts below – On appeal, held: Medical*  
*evidence corroborated by testimonies of the prosecution*  
*witnesses proved that the deceased died a homicidal death*  
*– No inconsistency in the statements of the prosecution*  
*witnesses as regards the presence of the accused persons*  
*and the individual role played by them – Testimonies fully*  
*reliable and no improvement made – Discrepancy with*  
*regard to the place of occurrence; the testimony of the*  
*prosecution witnesses as also certain flaws in the*  
*investigation not fatal to the prosecution case – Even if it is*  
*assumed that there was no common object of killing, but only*  
*of stopping the deceased and others from contesting the*  
*elections, the common intention to kill might have arisen on*  
*the spur of the moment – Actions of the accused and the*  
*injuries inflicted on the body of the deceased substantiate*  
*the same – Thus, order passed by the courts below upheld.*

H **Dismissing the appeals, the Court**

**HELD: 1.1** The appellants raised the defense that A  
there was an improvement by the prosecution witnesses  
with respect to the place of occurrence of the incident.  
However, from a perusal of the site map it became clear  
that the incident originally took place near the cycle stand  
and on receiving the injuries AC (deceased) ran away B  
from the place and fell down after 10-20 steps. Out of the  
seven accused, he was chased by four accused and  
injuries were caused to him by them near building, which  
was hardly 10-20 steps from the place where he fell down C  
after getting trapped with the wire. The veracity of the  
said distance came forth in the cross-examination of the  
witnesses. It is believed that a person may presume them  
to be at one place or two separate places. Therefore, the  
discrepancy with respect to the place of occurrence has D  
no bearing on the prosecution case. [Para 26] [136-F-H;  
137-A-B]

**1.2** It is believed that the testimonies of the  
prosecution witnesses are consistent, on the whole, and E  
minor discrepancies are such that those will not weaken  
the prosecution case. The prosecution witnesses  
established the presence and participation of all the  
accused in the offence. The testimonies of the  
prosecution witnesses have been fully corroborated by F  
the medical reports of the doctors who examined the  
deceased and the injured witness. The statement of  
P.W.1 gets corroborated by the injury report prepared  
by the doctor-P.W.8 of the Hospital who recorded the  
injuries on the person of P.W.1 and P.W.3 supported the G  
version given by P.W.1. He named all the seven accused  
with respect to their presence at the cycle stand. He also  
supported P.W.1 with respect to their individual roles  
played in assaulting the deceased and P.W.1. With H

A respect to the question of presence of the seven accused  
persons and the individual role played by them, there is  
no inconsistency in the statements of the prosecution  
witnesses. Therefore, the testimonies of the prosecution  
witnesses are fully reliable and there has been no  
B improvement made. [Para 27,28] [137-C-F; 138-H;139-A]

1.3 The inconsistency in the statement given by  
P.W.1 in the F.I.R and the statement given in the court, is  
not fatal to the prosecution case. The possibility of post  
C incident trauma and shock which might have been  
caused to the injured eye witness cannot be ruled out.  
In such a situation one cannot expect the witness to  
depose about every detail with accuracy. The testimony  
of an injured eye witness has to be given much  
D credence. [Para 28] [137-G-H; 138-A]

1.4 The investigation suffers from certain flaws  
such as non-recovery of the weapon used by the  
accused appellants and recovery of the blood stained  
E shirt after six days of the date of the incident. However,  
merely on the basis of these circumstances the entire  
case of the prosecution cannot be brushed aside when  
it has been proved by medical evidence corroborated  
F by testimonies of the prosecution witnesses that the  
deceased died a homicidal death. [Para 29] [139-B-C]

1.5 It is not disputed that the accused persons  
were present at the site of the incident and were armed  
with deadly weapons. They had shared the common  
G intention of stopping the deceased from contesting for  
the elections. These circumstances are indicative of the  
fact that all the accused persons, at that time, were the  
members of unlawful assembly because their common  
H object was to threaten and prevent the deceased and

other persons from contesting the College elections. As far as the argument regarding the absence of a common intention to kill the deceased or the prior concert is concerned, it can arise at the spur of the moment. [Para 30] [139-E-G] A

1.6 Even if it is assumed that there was no common object of killing, but only of stopping the deceased and others from contesting the elections, it cannot be ruled out that the common intention to kill might have arisen on the spur of the moment. The actions of the appellants and the injuries inflicted on the body of the deceased also go to substantiate the same. Therefore, the judgment and order passed by the High Court is upheld, confirming the judgment and order of the Additional Sessions Judge/Special Judge. [Para 31] [140-D-F] B C D

*Dharmendrasinh alias Mansing Ratansinh Vs. State of Gujarat* 2002 (3) SCR 193: (2002) 4 SCC 679; *Manjit Singh and Anr. Vs. State of Punjab and Anr.* 2013 (11) SCR 107: (2013) 12 SCC 746; *Ramachandran and Ors. Vs. State of Kerala* 2011 (13) SCR 923: (2011) 9 SCC 257 – referred to. E

**Case Law Reference**

2002 (3) SCR 193	Referred to.	Para 28	F
2013 (11) SCR 107	Referred to.	Para 29	
2011 (13) SCR 923	Referred to.	Para 30	G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 507 of 2013.

From the Judgment and Order dated 08.04.2011 of the H

A High Court of Uttarakhand at Nainital in Criminal Appeal No. 675 of 2001 (old No. 1887 of 2000)

WITH

B Crl. A. Nos. 508, 509, 510, 511, 512 & 513 of 2013

K. T. S. Tulsi, R. S. Suri, A. Sharan, Nagendra Rai, Y. Prabhakar Rao, Rahul Malhotra, Avinash Kumar, Chanchal Kumar Ganguli, Ms. Aprajita Mukherjee, Umang Shankar, M. C. Dhingra, Rajesh Sachdeva, for the Appellant.

C

Aditya Singh, Jatinder Kumar Bhatia, Jatinder Kumar Sethi, Umesh Arora, Prem Prakash, Gaurav Agrawal (AC), Dr. Abhishek Atrey, Ashutosh Kr. Sharma, Sumit Rajora, for the Respondent.

D

The judgment of the Court was delivered by

**PINAKI CHANDRA GHOSE, J.** 1. In these appeals, by special leave, the appellants have challenged the judgment and order dated 8<sup>th</sup> April, 2011 passed by the High Court of Uttarakhand at Nainital, in Criminal Appeal No.675 of 2001, whereby the High Court has dismissed the appeals preferred by the appellants herein and confirmed the judgment and order of the Additional Sessions Judge/Special Judge, Anti Corruption, U.P. (East), Dehradun, convicting the appellants under Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short "I.P.C.") and sentencing them to life imprisonment and to pay a fine of Rs.10,000/- each.

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2. The facts pertinent to the case, as unfolded by the prosecution, are that on 24.9.96 at about 10:30 A.M., Vipin Singh Negi, Alok Chandana, Suyesh Kukreti and Rajneesh Chhatwal were standing near the cycle stand, situated within the campus of D.A.V. (P.G.) College, Dehradun and at the same

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time, accused Dheeraj Kalra along with Rish Kumar, Som A  
Prakash, Saurabh, Nitin @ Vippu, Bhagat and Sanjeev Kumar  
@ Happy armed with Lathis, Knives and Khukries reached  
there and asked Vipin Singh Singh Negi and Alok Chandana  
to withdraw their names from the election of Commerce Faculty B  
of the College. When they refused to withdraw their names  
from the election, they were assaulted by the accused persons  
with the help of their respective arms. As a result this assault,  
Alok Chndana and Vipin Singh Negi received serious injuries.  
Alok Chandana was immediately taken to Coronation Hospital C  
by some College students but he succumbed to his injuries on  
the succeeding day. Vipin Singh Negi lodged a written  
complaint of the incident at the Police Station, Dalanwala. On  
the strength of his written complaint, a case was registered on  
the same day at 11:00 A.M. as Case Crime No.275/96 under D  
Sections 147, 148,149, 307, 323 I.P.C., which was later  
converted under Section 302 I.P.C.

3. Charges were framed against all the accused  
persons under Section 148 and Section 302 read with Section E  
149 of I.P.C. An additional charge was framed against accused  
Rishi Kumar, Saurabh and Dheeraj under Sections 147 and  
323 read with Section 149 of I.P.C. Likewise additional charge  
was framed against accused Sanjeev @ Happy, Som Prakash,  
Nitin @ Vippu and Bhagat under Section 302 read with F  
Section 149 of I.P.C. Charges were denied by all the accused  
persons and claimed to be tried. Prosecution, in support of  
charges, have examined Vipin Singh Negi (PW-1), Dheeraj  
Negi (PW-2), Suyesh Kukreti (PW-3), Rajneesh Chatwal (PW-  
4), Dr. Ajay Sharma (PW-5), Dr. C.M. Tyagi (PW-6), A.S.I. G  
Rajendra Pal (PW- 7), Dr. Bharat Kishore (PW-8), Mahendra  
Pal Sharma (PW-9), Const. 493 Anil Kumar (PW-10), Virendra  
Kumar Sharma (PW-11) and Sub Inspector Prem Pal Singh  
(PW-12). H

A           4. Shri Vipin Singh Negi (P.W.-1) is an eye witness and he also received injuries in the incident. In addition to substantiating the prosecution version, he disclosed the specific role played by the accused persons at the spot. He disclosed that accused Bhagat had caused injury with his knife

B           on the back of Alok Chandana, accused Som Prakash caused injury on his neck with Khukhri, accused Nitin @ Vippu caused injury below his left eye with his Khukhri. P.W.-1 also stated that when he strived to rescue Alok Chanda, he was caught

C           hold by accused Saurabh and Rishi, whereas accused Dheeraj Kalra instantly caused head injury with a Danda. After receiving injuries, Alok Chanda ran towards canteen but fell down near the I.G.N.O.U. building as he got tangled with the wire-fencing. Accused Dheeraj Kalra, Saurabh and Rishi chased him and

D           attacked again with Dandas. About 300 students had assembled at the place of occurrence and Alok Chandana was instantaneously taken to the Coronation Hospital on a Motorcycle. Two students of the College also brought Vipin Singh Negi (PW-1) to the Coronation Hospital. Vipin Singh

E           Negi along with Suyesh Kukreti went to the Police Station, Dalanwala and appraised of the incident to the Police Officer on duty and lodged a written complaint, which was written and signed by this witness. After registration of the case, this witness was brought to the Coronation Hospital for medical

F           examination. The shirt of witness, which he was wearing at the time of incident, was taken by the Police in their possession and a memo was prepared in this regard and the shirt was sealed in presence of this witness. A charge-sheet was filed

G           by the Inspector (Police) Vikas Sharma, against the accused persons, namely, Dheeraj Kalra, Rishi Kumar, Saurabh, Som Prakash, Sanjeev Kumar @Happy, Nitin @ Vippu and Bhagat Singh under Sections 147, 148, 149, 323, 307, 302 I.P.C.

H           5. In the Court of the Additional Sessions Judge, Special

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Judge, Anti Corruption, U.P. (East), after hearing the counsel A  
for the parties at length, the Court opined that there was no  
delay in filing of the FIR, and the nature of FIR is that of a  
substantive piece of evidence which could be used for  
corroboration or contradiction. It does not require containing  
neither the exhaustive details of occurrence nor a catalogue B  
of the particulars: The FIR was lodged within half an hour of  
the occurrence and such an early reporting of the occurrence,  
with all its vivid details, gives assurance regarding truth of its  
version. C

6. During cross-examination, the complainant has also  
stated the fact that he was nervous and due to that he omitted  
some details. The complainant has lodged the FIR within half  
an hour on the same day. The eye witness Vipin Singh Negi D  
(PW-1) was also cross-examined at length, on the issue of the  
identity of the accused persons. He clearly disclosed that he  
knew accused Som Prakash and Rishi about one year prior  
to this occurrence and also knew of the location of their  
residence. The statement of P.W.1 Vipin Singh Negi has been E  
corroborated by Suyesh Kukreti (P.W.3). There was no  
contradiction in the testimonies of the abovementioned  
prosecution witnesses and the Sessions Judge relied on them.  
The prosecution case was further supported by the testimony F  
of Rajeev Negi (P.W.2). The medical examination also fully  
supported the case of the prosecution. Thus, the Trial Court  
convicted Dheeraj Kalra, Surabh, Rishi Kumar, Nitin @ Vippu,  
Som Prakash, Bhagat and Sanjeev @ Happy under Section  
302 read with Section 149 of I.P.C. and sentenced them to G  
imprisonment for life and a fine of Rs.10,000/- was imposed  
on each of them. All the accused persons were also convicted  
under Section 148 of I.P.C. and sentenced to rigorous  
imprisonment for two years. However, the sentences were  
directed to run concurrently. H

A           7. The finding of the High Court was concurrent with that of the Court of Sessions and it cancelled the bail of the appellants affirming the conviction and sentence of the accused persons under Section 302 read with Section 149 and under Section 148 of I.P.C.

B           8. We have heard the learned counsel appearing for the appellants as also the counsel for the State of Uttarakhand. For a proper analysis of the evidence on record, we need to examine the statements given by the prosecution and defense witnesses in detail.

C           9. The injured eyewitness and complainant in the present case is P.W.1 Vipin Singh Negi, who disclosed the specific roles played by the accused persons in the occurrence.

D           He disclosed the weapons which the accused persons possessed and the injuries sustained by the deceased and by himself. Accused Bhagat Singh caused the injury with knife on the back of Alok Chandana, Som Prakash caused injury on the neck with knife, Vippu caused injury with Khukri below the

E           left eye of Alok. In an attempt to save Alok Chandana, P.W.1 was caught hold by accused Saurabh and accused Dheeraj Kalra instantly caused head injury with Danda. After receiving injuries the deceased Alok Chandana ran towards the canteen

F           but fell down near the I.G.N.O.U. building as he got trapped in wire fencing. He further stated that during the incident, about 300 students had assembled. Thereafter, Alok Chandana was instantaneously brought to the Coronation Hospital and P.W.1 was also taken to the same hospital. Thereafter, P.W.1 along

G           with Suyash Kukreti reached the police station and a written complaint was lodged. It was signed by P.W.1. and thereafter P.W.1 was also brought to Coronation Hospital by a constable. The shirt which P.W.1 was wearing during the incident was seized and a memo was prepared and the shirt was sealed

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The shirt and vest of Alok Chandana was also taken by the Police in possession for which a memo was prepared. A

10. P.W.2 Shri Rajeev Negi, is also an eye witness, who has supported the prosecution version. He has stated in his deposition that the incident took place on 24.9.96 at about 10:00 A.M. He was taking tea at the Canteen and saw Alok Chandana coming towards the I.G.N.O.U building from the Cycle Stand and after trapping into wire fencing fell down. He was being chased by accused Saurabh, Rishi, Dheeraj Kalra and they attacked him after he fell down. This prosecution witness has also supported the fact of Alok Chandana being taken to the Coronation hospital and the filing of the FIR. B C

11. Prosecution witness Shri Suyesh Kukreti (P.W.3) is also an eye witness, and he has corroborated and confirmed the statements of P.W.1. D

12. Eye witness and prosecution witness Shri Rajneesh Chatwal (P.W.4) confirmed his presence along with Alok Chandana, Vipin Singh Negi, Suyesh Kukreti near the cycle stand on 24.9.1996 at about 10:30 A.M. however this witness has turned hostile. E

13. Medical examination was conducted by Dr. Bharat Kishore (P.W.8) and it corroborates the prosecution story and confirmed that the injuries of Vipin Singh Negi and Alok Chandana could have been received on 24.9.1996 at about 10:30 A.M. He has further stated that the injuries to Vipin Singh Negi could have been caused by Danda and injuries to Alok Chandana could have been caused by knife and one of his injury could have been sustained by friction. The statement of P.W.8 gets strengthened further by the statement of Dr. C.M. Tyagi, who conducted the internal examination of the deceased and found the frontal bone fractured and right lung ruptured. F G H

A On external examination, Dr. Tyagi found all the injuries as were found by Dr. Bharat Kishore (P.W.8).

14. The accused persons have adduced evidences in their defense. Shri P.S. Bisht (D.W.1), Office Superintendent of D.A.V. College produced the record of the College pertaining to the year 1996-1997 and stated that accused Som Prakash and Rishi were not the students in the Commerce Faculty of D.A.V College during 1996-1997 session.

C 15. Shri Jaswant Singh (D.W.2) is the Contractor in-charge of the cycle stand from 1989 till date. He has brought to light the timings of the classes in the College, starting at 7.55 A.M. and continuing till 1:30 P.M. and thereafter evening classes to start at 6:00 P.M. and continue till 8:00 P.M. He stated that he remained present at the stand during that time and he was present at the cycle stand during the said timings on 24.9.1996.

E 16. Shri Tejendra Pal Singh (D.W.3) resides just opposite the residence of accused Saurabh. He deposed that on 24.9.1996, at about 10:30 A.M. he saw Saurabh with his father outside his residence and they were ready to go to their shop.

F 17. Shri Pravesh Kumar Nagpal (D.W.4) is the neighbour of the accused Saurabh in the commercial premises. The shop of this witness is situated just opposite to the shop of Saurabh's father. He stated that on 24.9.1996 at about 10:30 A.M., he saw accused Saurabh with his father going to their shop. He further stated that at 10:30 A.M. to 10:45 A.M. when he was having a conversation with the father of the accused Saurabh, Saurabh told his father that some incident had occurred in the College and he was going to the hospital.

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18. Learned counsel for appellant Sanjeev Kumar Gupta submitted that the Trial Court as also the High Court overlooked the fact that the name of appellant Sanjeev Kumar Gupta was not mentioned in the F.I.R.. P.W.1 neither mentioned his name in the examination-in-chief nor in the F.I.R. It is only in the cross-examination that P.W.1 has made allegation of participation by the appellant Sanjeev Kumar Gupta. Learned counsel for the appellant submitted that the appellant has been falsely implicated, which is evident from the fact that details of all the accused were mentioned in the F.I.R. except accused Sanjeev. The Trial Court and the High Court ought to have appreciated that the prosecution story stands disproved by the evidence of P.W.4 Rajnish Chatwal, because while the prosecution alleges that P.W.4 had taken the deceased Alok Chandana to the Coronation Hospital immediately after the incident and that he had given a statement under Section 161 Cr.P.C., the said P.W.4 clearly denied the prosecution story stating that neither he had given statement under Section 161 Cr.P.C. nor did he know any of accused persons. Furthermore, the counsel submitted that even the main witnesses (P.W.1 and P.W.3) have stated that only four or five of the accused persons attacked the deceased, but the Trial Court and the High Court maintained the conviction of all seven of them. The High Court and Trial Court should have appreciated that the evidence of P.W.1 and P.W.3 was not trustworthy and reliable. P.W.3 himself is named as an accused in another murder case. Regarding the place of occurrence, the learned counsel submitted that the prosecution story is unbelievable as, according to the prosecution, the incident took place at two places, first near the cycle stand and next near the I.G.N.O.U building. However, the F.I.R. only states that the incident took place at the cycle stand. The counsel argued that P.W.1 also stated that he was at the cycle stand and had not gone to I.G.N.O.U building where the deceased was stated to have fallen down. The prosecution

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A story that the deceased had fallen down near the I.G.N.O.U building and was again attacked there, is untrue. In addition to that, no witness has stated that they had seen the accused attacking the deceased after having fallen down at the I.G.N.O.U building. Therefore, the Trial Court erred in not considering that the deceased could have died due to falling on the ground. The counsel submitted further that the Trial Court erred in holding that the fact that the dying declaration of the deceased was not recorded, was not significant. The Trial Court should have appreciated that conviction under Sections 148/149/302 I.P.C. was not sustainable in view of the fact that the objective of the assembly was to threaten the deceased and the motive of murdering Alok Chandana did not and could not arise.

19. The arguments put forward by learned counsel appearing for appellant Dheeraj Kalra were as follows: Dr. Bharat Kishore prepared the report of the injuries and as per the report only one injury was found on the body of the informant. Further, the learned counsel also questioned the absence of a dying declaration, and the inconsistent views of the eye witnesses. The mere refusal by the deceased and P.W.1 to withdraw their names from the election of Commerce Faculty of College cannot be a motive of the accused persons to commit the alleged crime under Section 302 read with Section 149 IPC. The evidences of the alleged crime do not connect the accused with the crime as no weapon was recovered by the Police and the blood on the shirt of the deceased could not be ascertained during chemical examination, and thus, it could not be ascertained that it belonged to the deceased. The high Court and Trial Court had wrongly disbelieved the plea of alibi, according to the counsel.

20. Learned counsel appearing for appellant Rishi Kumar, submitted that the appellant was not armed and was

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not a member of the unlawful assembly and, therefore, could A  
not have been convicted under Section 149 I.P.C. The F.I.R.  
was ante timed. Further, P.W.1 neither stated in the F.I.R. nor  
in Section 161 Cr.P.C. statement that Alok Chandana, after  
being beaten near the cycle stand, ran towards I.G.N.O.U. B  
building and got entangled in barbed wire fencing and fell down  
where he got Lathi blows. This shows that there was clear  
improvement. He further submitted that the Courts below failed  
to appreciate that the medical evidence does not support the  
ocular evidence and also failed to note the improvements C  
made.

21. Learned counsel appearing for appellant Saurabh  
took the following defenses: That the common object was  
missing in respect of the present appellant; there was D  
contradiction in the version stated by P.W.1 in the F.I.R. and in  
his deposition in Court; the credibility of P.W.1 as an eye  
witness is weakened by the medical version. Further there was  
no test Identification Parade conducted which was imperative  
as there were some members who were stated to be outsiders. E  
P.W.1 and P.W.3 are not consistent in their deposition. In  
addition to the above, the evidences of the alleged crime do  
not connect with the accused appellant as no weapon of offence  
was recovered by the Police and the blood on the shirt of the  
deceased could not be ascertained. F

22. Learned counsel appearing for Nitin@ Vippu  
submitted that the name of this appellant is mentioned in the  
F.I.R. without parentage. There is no specific allegation against  
him of having weapon and only a general allegation of assault G  
is made against him. The allegation of causing a Khukhri blow  
by him below the left eye of the deceased is not supported by  
medical evidence.

23. The injury attributed to appellant Bhagat Singh is H

- A the knife blow on the back of the deceased. Learned counsel appearing for the appellant has taken similar grounds, of absence of common object and not being part of unlawful assembly. In addition to this, there is contradiction in the statement of P.W.1 in the F.I.R. and his deposition in Court.
- B Along with this the counsel has taken the plea of contradictions in the ocular version and the medical version and the absence of a Test Identification Parade.

- C 24. Learned counsel appearing for appellant Som Prakash took similar grounds of defense as in the cases of abovementioned appellants. The role attributed to Som Prakash was that he attacked the deceased with Khukri on the neck of Alok Chandana from behind. The additional defense taken was of no common object being present.

- D
- E 25. We believe that the following issues have emerged from the arguments put forward by the defense and from the testimonies of the prosecution witnesses. Firstly, the place of occurrence of the incident; Secondly, the inconsistencies in the statements given by the prosecution witnesses in the F.I.R and their statements in Court; Thirdly, the question of unlawful assembly and common object being present.

- F 26. The appellants in the present case have raised the common defense that there has been an improvement by the prosecution witnesses with respect to the place of occurrence of the incident. However, from a perusal of the site map it becomes clear that the incident originally took place near the cycle stand and on receiving the injuries Alok Chandana (deceased) ran away from the place and fell down after 10-20 steps. Out of the seven accused, he was chased by four accused and injuries were caused to him by them near I.G.N.O.U building, which was hardly 10-20 steps from the place
- G where he fell down after getting trapped with the wire. The
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veracity of the above-mentioned distance has come forth in the cross-examination of the witnesses. We believe a person may presume them to be one place or two separate places. Therefore, in our opinion, the discrepancy with respect to the place of occurrence has no bearing on the prosecution case.

27. We believe that the testimonies of the prosecution witnesses are consistent, on the whole, and minor discrepancies are such that those will not weaken the prosecution case. The prosecution witnesses have established the presence and participation of all the accused in the offence. The medical examination has gone further to strengthen their testimonies. The statement of P.W.1 Vipin Singh Negi gets corroborated by the injury report prepared by Dr. Bharat Kishore (P.W.8) of Coronation Hospital who recorded the injuries on the person of Vipin Singh Negi (P.W.1). Dr. Bharat Kishore found a lacerated wound on the head of P.W.1, which supported the version of the prosecution witness. Another eyewitness P.W.3 Suyash Kukreti has supported the version given by P.W.1. He has named all the seven accused with respect to their presence at the cycle stand. He has also supported P.W.1 with respect to their individual roles played in assaulting the deceased and P.W.1. With respect to the question of presence of the seven accused persons and the individual role played by them, we find that there is no inconsistency in the statements of the prosecution witnesses.

28. Coming to the question of inconsistency with the statement given by P.W.1 in the F.I.R and the statement given in the Court, we do not find this to be fatal to the prosecution case. We cannot rule out the possibility of post incident trauma and shock which might have been caused to the injured eye witness. In such a situation one cannot expect the witness to depose about every detail with accuracy. Further, this Court

A has held in a number of cases that the testimony of an injured eye witness has to be given much credence. Apart from this, this Court has also laid down in *Dharmendrasinh alias Mansing Ratansinh Vs. State of Gujarat*, (2002) 4 SCC 679, that when other evidence, such as medical evidence, B supports the prosecution's case, the difference in what is stated in the F.I.R. and in Court as regards the weapon of offence is a very insignificant contradiction. This Court in paragraph 10 of the above-mentioned judgment observed:

C "...In this connection, the other related argument which has been raised is that in the F.I.R. P.W.3 had mentioned that the appellant had assaulted the children with an axe but later on changed her statement in the Court saying D that it was by mistake she had mentioned 'axe' in the F.I.R. but in fact it was dharia. In our view it is a very insignificant contradiction which may not lead to any worthwhile conclusion in view of the fact that it was immaterial whether the weapon was an axe or a dharia E as both are sharp-edged weapons and according to the statement of the doctor the injuries as received by the two children were caused by a sharp-edged weapon. There was thus no design or purpose in changing the statement or deliberately giving out something wrong in F the first information report about the weapon used by the appellant to cause the injuries upon the deceased persons. The medical evidence supports the prosecution case in all respects. We therefore find no force in this submission as well."

G In the present case also, the testimonies of the prosecution witnesses have been fully corroborated by the medical reports of the doctors who examined the deceased and the injured witness. Therefore, we hold that the testimonies of the

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prosecution witnesses are fully reliable and there has been no A  
improvement made.

29. We do note that the investigation suffers from certain  
flaws such as non-recovery of the weapon used by the accused  
appellants and recovery of the blood stained shirt after six days B  
of the date of the incident. However, merely on the basis of  
these circumstances the entire case of the prosecution cannot  
be brushed aside when it has been proved by medical evidence  
corroborated by testimonies of the prosecution witnesses that  
the deceased died a homicidal death. This Court has held in C  
***Manjit Singh and Anr. Vs. State of Punjab and Anr.***, (2013)  
12 SCC 746, that when there is ample unimpeachable ocular  
evidence and the same has received corroboration from  
medical evidence, non-recovery of blood stained clothes or D  
even the murder weapon does not affect the prosecution case.

30. Now, we come to the question as to whether the  
accused persons formed an unlawful assembly. It is not  
disputed that the accused persons were present at the site of  
the incident and were armed with deadly weapons. They had E  
shared the common intention of stopping the deceased from  
contesting for the elections. These circumstances are indicative  
of the fact that all the accused persons, at that time, were the  
members of unlawful assembly because their common object F  
was to threaten and prevent the deceased and other persons  
from contesting the College elections. As far as the argument  
regarding the absence of a common intention to kill the  
deceased or the prior concert is concerned, we are of the  
view that it can arise at the spur of the moment. This Court in G  
the case of ***Ramachandran and Ors. Vs. State of Kerala***,  
(2011) 9 SCC 257, has observed:

"17. Section 149 IPC has essentially two ingredients viz.  
(i) offence committed by any member of an unlawful H

A assembly consisting of five or more members, and (ii) such offence must be committed in prosecution of the common object under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

B

18. For 'common object', **it is not necessary that there should be prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on the spur of the moment; it is enough if it is adopted by all the members and is shared by all of them.**"

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(Emphasis supplied)

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31. We are of the view that in the present case, even if it is assumed that there was no common object of killing, but only of stopping the deceased and others from contesting the elections, it cannot be ruled out that the common intention to kill might have arisen on the spur of the moment. The actions of the appellants and the injuries inflicted on the body of the deceased also go to substantiate the same. We, therefore, uphold the judgment and order passed by the High Court of Uttarakhand at Nainital, confirming the judgment and order of the Additional Sessions Judge/Special Judge, Anti Corruption, U.P. (East), Dehradun. Accordingly, these appeals are dismissed.

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Nidhi Jain

Appeals dismissed.

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