MAHENDRAN

v.

THE STATE OF TAMIL NADU

(Criminal Appeal No. 1266 of 2010)

FEBRUARY 21, 2019

[SANJAY KISHAN KAUL AND HEMANT GUPTA , JJ.]

Penal Code, 1860 – ss.141, 149, 302 and 326 – Statement of PW1-son-in-law of one 'M', that on 12.03.94 while going to Nangarari with his father, due to darkness they decided to stay at his father-in-law's house – He stated that his father-in-law shared the dispute between him and the Caste Hindus – On 13.03.1994 at about 7.30 AM, he heard noise when he and his father-in-law came outside to see what happened – A-1 to A-9 were standing with stones and aruvals (sickles) – A-1 poured the kerosene from tin container and A-2 set fire to the hut of PW1's father in law – PW1's father-in-law ran towards backside of the house – Accused hit on his head with the sickle – PW1's father-in-law died – 24 persons put on trial – Trial court found the charges proved only against accused nos.1-10 and 12-15, acquitting accused nos.11 and 16-24 – High Court acquitted accused nos. 10 and 12-15 by granting them benefit of doubt – On appeal by accused nos.1-9 (8 & 9 died during the pendency of the appeal), held: Presence of the appellants were disclosed in the FIR recorded soon after the occurrence – No reason to hold that the accused-appellants have been implicated falsely – Prosecution witnesses PW1, PW2 and PW3 clearly defined the role of each of the appellants in the occurrence which took the life of PW1's father-in-law– Such statement is corroborated by PW5 (PW1's mother-in-law) – Active participation of all the appellants stands proved on record – Both the Courts below found that the appellants had common object in burning the hut of the deceased and also attacking the deceased with aruvals (sickles) in view of the role of the deceased in the affairs of Panchayat against caste Hindus – Appellants other than A-1 and A-2 cannot be treated differently to convict them for the offences u/s.326 r/w. s.149 IPC as all the accused were part of the unlawful assembly which took the life of PW1's father-in-law in a murderous attack.

A *Penal Code, 1860 – s.141 – Unlawful assembly – Common Object of – Discussed.*

Maxims –"falsus in uno, falsus in omnibus" – *Application of, in India – Held: The maxim has no application in India – Entire testimony of the witnesses cannot be discarded only because, in* B *certain aspects, part of the statement has not been believed – General principle of appreciation of evidence is that even if some part of the evidence of witness is found to be false, the entire testimony of the witness cannot be discarded – Witnesses – Evidence of – General principle of appreciation.*

C *Judgments/Orders – Interpretaion of – Discussed.*

Dismissing the appeals, the Court

HELD: 1.1 The statement of PW1 was recorded at 8.45 AM by PW19-Police Inspector soon after the occurrence. Lodging of the FIR by PW1 is supported by PW2 and PW3 who D **have found that PW1 was already in Police Station lodging the complaint. The testimony of PW19 regarding lodging of FIR at 8.45 AM is not discredited in the cross-examination. He denied such suggestion and also the suggestion that the documents were sent to the Court at 4.15 PM. The trial court and the High Court** E **have believed the prosecution version in this respect. PW1 disclosed the receipt of injuries on the body of his father-in-law and denied the suggestion that he does not know how his father-in-law was killed, how his father-in-law's hut was set on fire and he did not go to Neikuppai Village. In the re-examination, he deposed that five sickles recovered were approximately 1^{ft} in** F **length; some may be longer or shorter. Such statement of PW1 is corroborated by PW2 who is resident of same Village as that of the deceased. He also deposed that houses of PW13 and one Manickam are situated on the School street, one facing North and the other facing South and at a distance of half a furlong. At** G **the time of incident Manickam's house was locked and people came running to Manickam's house from PW13's house. Similar is the statement of PW3 that A-1 poured the kerosene from a tin container on the roof of hut of the deceased and A-2 set ablaze the hut. Even PW5-wife of the deceased also deposed that A-1 poured kerosene and A-2 lit the matchstick. She stated that there**

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were other twenty or thirty people standing around as a group. The fact that she has not named other accused, will not absolve the role of the appellants, as their presence is disclosed by three other prosecution witnesses i.e. PW1, PW2 and PW3. The presence of witnesses examined by the prosecution at the place of occurrence is based upon the appreciation of the evidence by the two Courts. It is not found that such appreciation is perverse or wholly untenable which may warrant interference in the present appeals. There is no reasonable basis to hold that PW1 would not stay with his father-in-law in the circumstances explained by him. [Paras 26-30][397-A-H; 398-A-B]

1.2 The FIR was lodged soon after the occurrence when PW2 and PW3, residents of the same village reached the Police Station. Therefore, the fact that PW1 could not recollect the fathers name of three of the accused would not create doubt on the case set up by the prosecution. [Para 34] [399-D]

1.3 The trial court found that some discrepancies can be due to minor errors of perception or observation or due to lapse of memory. The witnesses were being examined after more than six years of the occurrence. The argument that the entire case set up is based on falsehood and thus not reliable for conviction of the appellants, is not tenable. It is well settled that the maxim "*falsus in uno, falsus in omnibus*" has no application in India only for the reason that some part of the statement of the witness has not been accepted by the trial court or by the High Court. Therefore, the entire testimony of the witnesses cannot be discarded only because, in certain aspects, part of the statement has not been believed. [Paras 37-39][400-B-D; 402-E]

1.4 If the witness is reliable and dependable then the entire statement cannot be discarded. The general principle of appreciation of evidence is that even if some part of the evidence of witness is found to be false, the entire testimony of the witness cannot be discarded. Ex.P.6 is a disclosure statement of A-1, whereas, Ex.P.8 is a disclosure statement of A-10, A-21, one 'N.R' (died), A-22 and A-24. It is not the confessional statement of one accused which led to recovery of weapons used in the occurrence but on the basis of confessional statements of the accused, a

A **common recovery memorandum was prepared. Such common Memo of recovery of weapons used in the occurrence cannot create doubt on the prosecution story. DW4 is Assistant Doctor in the Kudavasal Government Hospital who has deposed that doctors were on duty on the date of occurrence. He deposed that**
B **Doctor 'G' was on duty in Out-Patient Ward from 7.30 AM. There was no duty at the Out-patient ward from 3.00 to 5.00 PM on that day. As is given on the record that the Village Kudavasal falls on the way to Thiruvarur and since the Doctor was not available, the injured were examined at Government Hospital Thiruvarur. The testimony of PW17-Doctor 'R' has not been questioned on the**
C **ground that the Doctor was available at Kudavasal Hospital and injuries should have been examined at that place as well. The only suggestion put to witness is that the injuries could have been caused within one hour before he examined them. The possibility of injuries is an opinion which cannot controvert the**
D **primary statement of the witness about the receipt of the injuries in the fateful morning of 13.3.1994. The prosecution has proved the active role played by A-1 and A-2. The presence of other accused at the time of occurrence as part of the crowd who lynched Murugaiyan also stands proved. There is physical severance on the parts of the body of the deceased. The presence of the**
E **appellants were disclosed in the First Information Report recorded soon after the occurrence. Therefore, there is no reason to hold that the accused- appellants have been implicated falsely. The prosecution witnesses PW1, PW2 and PW3 have clearly defined the role of each of the appellants in the occurrence which**
F **has taken the life of the the deceased. Such statement is corroborated by PW5-wife of the deceased who deposed that it is A-1 and A-2 who poured kerosene and lit the matchstick respectively along with twenty-thirty other persons. Therefore, the active participation of all the appellants stands proved on record. [Paras 40, 42-46][403-B-H; 404-A-D]**

G **1.5 There is no merit in the argument that all the appellants cannot be said to have common object in view, in the absence of an overt act attributed to the appellants other than A-1 and A-2 by PW5. Even PW5 is categorical that A-1 and A-2 were accompanied by twenty-thirty other people. Though she has not**
H **named other accused but the fact that the other accused have**

been named specifically by PW1, PW2 and PW3, clearly shows that all the accused came as a group to attack the hut of the deceased and then took his life. Common object 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 if the five or more 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. [Paras 47, 51][404-D, E; 405-F, G]

1.6 Judicial orders are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases, therefore, whether there was common object of the accused in each case would depend upon cumulative effects of the facts of that particular case. In the present case, both the Courts below have found that the appellants have common object in burning the hut of the deceased and also attacking the deceased with aruvals (sickles) in view of the role of the deceased in the affairs of Panchayat against caste Hindus. Therefore, appellants other than A-1 and A-2 cannot be treated differently to convict them for the offences under Section 326 read with Section 149 IPC as all the accused were part of the unlawful assembly which has taken the life of the deceased in a murderous attack on the fateful morning of 13.03.1994. [Paras 53, 54][407-F-H; 408-A, B]

Ram Laxman v. State of Rajasthan **(2016) 12 SCC 389 – held inapplicable.**

Noushad alias Noushad Pasha and Others v. State of Karnataka **(2015) 2 SCC 513**; *Suraj Mal v. State (Delhi Administration)* **(1979) 4 SCC 725**; *Joseph v. State, Represented by Inspector of Police* **(2018) 12 SCC 283 : [2017] 2 SCR 452**; *Najabhai Desurbhai Wagh v. Valerabhai Deganbhai Vagh and Others* **(2017) 3 SCC 261**; *Gangadhar Behera and Others v. State of Orissa* **(2002) 8 SCC 381 : [2002] 3 Suppl. SCR 183**; *Sanjeev Kumar Gupta v. State of Uttar Pradesh* **(2015) 11 SCC 69 : [2015] 5 SCR 122 – referred to.**

Case Law Reference

(2016) 12 SCC 389	**held inapplicable**	**Para 15**
(2015) 2 SCC 513	**referred to**	**Para 15**
(1979) 4 SCC 725	**referred to**	**Para 15**
[2017] 12 SCR 452	**referred to**	**Para 19**
(2017) 3 SCC 261	**referred to**	**Para 19**
[2002] 3 Suppl. SCR 183	**referred to**	**Para 23**
[2015] 5 SCR 122	**referred to**	**Para 24**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1266 of 2010

From the Judgment and Order dated 26.09.2008 of the High Court of Madras (Madurai Bench) in Criminal Appeal No. 586 of 2001

With

Criminal Appeal No. 1260 of 2010.

V. K. Shukla, Ms. V. Mohana, Sr. Advs., P. B. Suresh, Vipin Nair, Karthik Jayashankar, Udayaditya Banerjee, Advs. for the Appellant.

M. Yogesh Kanna, S. Partha Sarathi, S. Raja Rajeshwaran, Advs. for the Respondent.

The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. The Criminal Appeal No. 1266 of 2010 preferred by Mahendran (Accused No. 3), and Criminal Appeal No. 1260 of 2010 preferred by Ravi (Accused No. 1), Singaravelu (Accused No. 2), Iyappan (Accused No. 4), Rajendran (Accused No. 5), Selvaraj (Accused No. 6), Karunakaran (Accused No. 7), Arunachalam (Accused No. 8) and Sundaramoorthy (Accused No. 9) arise out of a common judgment by the Madurai Bench of the Madras High Court on 26.09.2008. The High Court has acquitted Mohan (Accused No. 10), Ravi (Accused No. 12), P. Mohan (Accused No. 13), Palanivel Thevar (Accused No. 14) and Kannan (Accused No. 15) from all charges by granting them benefit of doubt. The accused are referred to with reference to their status before the trial court.

2. The prosecution had put on trial twenty-four persons for various offences, but the learned trial court found the charges proved only against Accused Nos. 1-10 and 12-15 and sentenced to imprisonment as per the order passed in respect of the offences proved against them, whereas, Manivasagam (Accused No.11), Ganapathy (Accused No. 16) Muruganandam (Accused No. 17), Saravanan (Accused No. 18), Kathiah (Accused No. 19), Maiyilaiyam (Accused No. 20), Subbaian (Accused No. 21), Santhanam (Accused No. 22), Mariappan (Accused No. 23) and Kannan (Accused No. 24) were acquitted. A B

3. Learned counsel for the appellants states that Accused Nos. 8 and 9 have died during the pendency of the appeals. Resultantly, the appeals survive in respect of Accused Nos. 1 to 7 only. One of the accused Balakrishnan had died even before the Charge-sheet could be filed, therefore, was not included in the report filed. C

4. Prosecution case was set in motion on the basis of statement of PW1-Ganesamoorthy, resident of Kumbakonam and son-in-law of Murugaiyan-deceased. He stated that on 12.03.1994, he along with his father went to Nangarari, but due to darkness, they decided to stay in his father-in-law's house at Neikuppai. D

5. He stated that his father-in-law shared the dispute between him and the Caste Hindus that evening and that dispute was getting intensified and that someone had set fire on the thatched hut in the Pilaiyar street. He also said that a Panchayat was going to be conducted in this regard but he had not informed the police. He stated that on 13.03.1994 at about 7.30 AM, he heard noise at the place of residence when his father had gone to have tea. He and his father-in-law came outside to see what happened. At that stage, A-1 to A-9 and Balakrishnan (since dead) son of Raamaiya Konur were standing with stones and aruvals (sickles). They exhorted that till such time you are alive, you will not allow caste Hindus to live and we won't leave you alive. At that stage, Ravi (A-1) poured the kerosene from tin container and Singaravelu (A-2) set fire to the roof. The hut was set ablaze. His father-in-law ran towards backside of the house, frightened of his life. He also ran behind him. He was questioned as to why he was running? Murugaiyan ran towards barber Mahalingam's house on School street. But the accused hit on the head of Murugaiyan with the sickle, inflicting injuries on the head, hand, leg and back. His father-in-law, Murugaiyan was lying in the pool of blood in front of the house of PW13-Mahalingam having E F G H

injuries on both legs and shoulders. About 100 persons of caste Hindus were standing around Murugaiyan. At that time PW3-Ramesh and PW2-Raja came but they escaped after being hit with stones. He also escaped without being seen by anybody. On the basis of such statement, FIR Ext.P-13 was lodged at about 8.45 AM against ten accused.

6. PW19-Ramakrishnan is the retired Police Inspector who recorded statement on the basis of which First Information Report was lodged. He was entrusted with the investigations. He sent FIR to the Judicial Magistrate, Thiruvarur at 09.30 A.M. He then went to the place of occurrence in the Village Neikuppai. The sketch Ex.P.18 was prepared of a place in front of Murugaiyan's house and prepared an observation Memo Ex.P.2. He also prepared sketch Ex.P.19 and observation Memo Ex.P.3 after seeing the place where the dead body was lying at 10.20 hours on that day. He prepared inquest report Ex.P.30 and sent the body for post-mortem. He associated the informant PW1-Ganesamoorthy, PW2- Raja, PW3-Ramesh, PW4-Ravanan and PW5-Lakshmi, wife of the deceased, for investigations and recorded their statements. He also associated PW6-Sankaran and Mariappan(A-23) and recorded their statements. He recovered burnt bamboo piece, a burnt coconut leaf lattice, one burnt polyester sari in red, blue, white and green colours, a burnt sprayer nozzle, and some burnt paddy as well as one plank taken from the burnt cart at about 1615 hours, recorded in Ex.P.4. The materials mentioned therein Ex.P.4 are M.Os. 10 to 15. He also took in possession the blood stains from the seating area in west of the house of Mahalingam; a sample earth without blood stain scratched from the above area; blood-stained earth was taken from the place where the dead body of Murugaiyan was lying as well as earth without blood stain was taken from the same place. He also associated some other witnesses to complete investigations.

7. It was on 13.3.1994, ten accused initially mentioned by the informant Ganesamoorthy were arrested. The disclosure statement Ex.P.6 was recorded of accused Ravi (A-1), and on the basis of disclosure statement five sickles were recovered from A-1 to A-5 and Balakrishnan, whereas, bamboo sticks of different lengths were recovered from A-6 to A-9. On 15.03.1994, he arrested other accused who stood acquitted, therefore, not relevant for the purpose of present appeals. In the cross-examination, he denied that the complaint Ex. P.1 was not registered at the stated time and that the same was prepared after discussion and that

the FIR Ex.P.13 was sent to Court on that day at around 4.00 PM. He deposed that deceased Murugaiyan belongs to Scheduled Caste and denied that the dead body was lying in the seating area near the Manickam's house. He also associated PW13-Mahalingam, his wife Theivakani, daughter Raji, son Selvam in the course of investigations and recorded their statements. But he stated that he had not gone to Manickam's house as mentioned by these persons. On completion of the investigations, Charge-sheet was filed. The accused pleaded not guilty and claimed trial.

8. The post-mortem on the dead body of Murugaiyan was conducted by PW17-Dr. Razool. He found the following external injuries on the person of the deceased: -

"1. 6" long Elliptical, Horizontal cut injury with clear cut edges of skin, extending from angle of left mandible, cross left neck, up to lateral process of spine. "C2", without involving mastoid Bone on clearing dark blood clots. The sterno cleido Mastoid muscles and jugular veins & carotid arteries are found cut.

2. 1" below injury No.(1) a similar cut injury horizontal, extending from Adam's apple, across left of neck up to c 5 spine, lateral process in the back "6" long its depth extends, cutting the sterno-Mastoid muscles and jugular veins and common carotid artery with profuse dark blood oozing.

3. Similar cut injury 3" long horizontal and 1" below injury No. 2 over root of neck involving clavicle bone left.

4. Irregular edged 2" x 1" x ½" serrated edged abrasion over left scapula.

5. 10" long lacerated injury with clear edges very superficial running obliquely across left breast to right ribs with two packets on injury 1" deep lying on the same line with 3" gap in between. This injury does not involve heart, lungs and abdominal viscera.

6. Cut injury, 4" long horizontal and lateral side of left thigh, 4" above knee joint just embracing femur bone.

7. Below left knee joint similar injury 4" long over lateral side of leg, completely cutting away the Tibia and Fibula bones.

8. 2" below injury No. (7), 3" long cut injury over lateral side, 2" deep.

A 9. Complete severing of left wrist separating the hand from its joints, cutting the radial and ulnar arteries with only ½ " broad-skin bridging the gap.

10. They only injury found on the right side of body is 6" long cut injury, running over the shoulder from scapula to anterior of shoulder
B cutting the tender insertion of biceps muscles chopping of the head of humerus bone.

OTHERS:

Brain pale not liquefied. Skull bone, spinal, spinal column not fractured. Stomach, spleen, liver, kidney and lungs are pale, but
C not injured. Heart no injury. All the left chambers are empty with little clots."

The cause of death was injury Nos. 1 and 2 due to severing of left carotid artery and jugular veins, leading to profuse haemorrhage, hypo-volume shock and death in sequence. He produced his post-mortem
D report as Ex.P.14.

9. PW17-Dr. Razool also examined informant PW1-Ganesamoorthy on 13.3.1994 at 6.00 PM alleged to be assaulted by stones at 7.30 AM on the same day. The following injuries were reported:

E "1. Contusion left ear lobe with tenderness.

2. Abrasion with edema 1" diameter nape of neck."

10. PW17 Dr. Razool also examined PW2-Raja and PW3-Ramesh on the same day and found the following injuries respectively:

F "1. ½ " diameter recent abrasion with surrounded edema over right eye brow."

"1. Recent contusion with blood clot ½" diameter abrasion over left crown of head.

2.Tenderness over left half muscles."

G 11. To prove the allegations against the accused, the prosecution examined PW1-Ganesamoorthy, the informant and son-in-law of the deceased, PW2-Raja, PW3-Ramesh, PW5-Lakshmi wife of the deceased and PW13-Mahalingam, all residents of Village Neikuppai, PW4-Ravanan resident of Narsingampettai. Both the Courts have relied upon the

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statements of PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh to convict the appellants.

12. Learned counsel for the appellants argued that PW1-Ganesamoorthy is not a witness of occurrence, but has been introduced falsely. In support of the argument that the witness was not present at the place of the occurrence, the following aspects were pointed out:-

a). It is unbelievable that son-in-law will stay with his in-laws more so when his own village is around 15 Kms away only.

b). In his first statement Ex.P.1, he has not stated that he got injuries with the stones pelted by the aggressors, whereas, he has tried to prove his presence on the basis of self-inflicted injuries which were found not to be more than one hour old by Dr. Razool, who examined him at around 6.20 PM.

c). The FIR is ante-timed as there is no reason as to why FIR was delivered to the Judicial Magistrate at 4.00 PM but not soon after it was dispatched around 9.30 AM. It is unbelievable that the constable would not know that the Magistrate would not come to the Court being Sunday as he could have delivered the FIR at the residence of the Officer.

d). PW1-Ganesamoorthy has given parentage of all the ten accused in the statement Ext.P.1, but in Court he could not disclose the parentage of A4, A6 and Balakrishnan (since died). Thus, FIR was lodged after consultation, therefore, the delay in the receipt of FIR by the Magistrate

13. It is also argued that the place of occurrence is opposite house of Manickam as is deposed by PW13-Mahalingam, but the prosecution has shifted the place of occurrence near the house of Mahalingam. Since the place of occurrence itself has not been proved on the statement of PW13 Mahalingam, the prosecution story in respect of the manner of occurrence cannot be accepted. It is stated that PW1-Ganesamoorthy is not reliable and truthful witness, therefore, unworthy of reliance.

14. It is also argued that PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh have roped in many other accused during the course of investigations and that such part of the statement has not been found to be a truthful version resulting into acquittal of accused Nos. 10, 12, 13, 14 and 15 in appeal, whereas, some other accused were acquitted by

A the learned trial court itself. It is thus argued that the statements of witnesses are unreliable and lack credibility, therefore, such statements cannot be relied upon for the conviction of the appellants.

15. Learned counsel for the appellants relies upon judgments reported in **Ram Laxman vs. State of Rajasthan[1], Noushad alias Noushad Pasha and Others vs. State of Karnataka[2]and Suraj Mal Vs. State (Delhi Administration)[3]** to contend that if the testimony of the witness is found to be unreliable in respect of part of the statement, then the other part of the statement cannot be made basis to convict the accused.

C 16. It is argued that Ravi (A-1) is said to have suffered a disclosure statement under Section 27 of the Indian Evidence Act, 1872 as per the statement of PW8-Veeraiyan and got recovered five sickles, but, the Investigating Officer has distributed the recovery to the five different accused.

D 17. The explanation of the prosecution witnesses that doctor was not available at Kudavasal stands controverted on the basis of statement of DW4-Assistant Doctor Balakumaravelu in Kudavasal Government Hospital who has deposed that the doctor was available. Therefore, medical examination in respect of injuries which in opinion of doctor is not more than one hour earlier totally discredits the prosecution story.

E 18. The story of receipt of injuries by the witnesses PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh is highly doubtful as their blood-stained clothes were given to the Investigating Officer after two days, whereas, if they had received injuries on the date of occurrence, it was mandatory for the prosecution to take into possession of the blood-F stained clothes on the day of occurrence itself.

19. It is also argued that PW5-Lakshmi wife of the deceased has named Ravi (A-1) and Singaravelu (A-2) only as the persons who had poured kerosene and lit the match stick but has not deposed in respect of role of the other accused. Thus, in view of the absence of any overt G act attributed to the appellants other than A-1 and A-2, their conviction for offences under Section 302 IPC and other offences are not made

[1] (2016) 12 SCC 389
[2] (2015) 2 SCC 513
[3] (1979) 4 SCC 725

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out and they can at best be punished for the offence under Section 326 read with Section 149 IPC. The reliance is placed upon the Supreme Court judgment reported as **Joseph vs. State, Represented by Inspector of Police**[4]and **Najabhai Desurbhai Wagh vs. Valerabhai Deganbhai Vagh and Others**[5]. Learned counsel for the appellants also argued that the prosecution has failed to prove the common object so as to attract the offence under Section 149 IPC.

20. On the other hand, learned counsel appearing for the State pointed out that much stress has been laid on shifting the place of occurrence from near the house of Manickam to near the house of PW13-Mahalingam. It is argued that it is factually incorrect and the discrepancy is minor, if any. The reliance is placed upon statement of PW2-Raja who deposed that houses of Mahalingam and Manickam are in the same street, one facing north and the other facing south meaning thereby, facing to each other and they are located half a furlong from each other. Therefore, the place of occurrence is in the street, in which houses of PW13-Mahalingam and Manickam are located. The evidence that blood-stained earth and the sample earth have been taken in possession from the place of occurrence near the house of Mahalingam, therefore, the minor discrepancy in respect of place of occurrence is inconsequential as the occurrence is in the same street.

21. It is also argued that PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh have explained their injuries which part of their evidence has not been challenged in their cross-examination. The statement of DW4- Balakumaravelu does not support the argument raised by the learned counsel for the appellants as it is stated by the witness that the Doctors give treatment to the patients in the Out-Patient Ward from 7.30 -10.30 AM and give treatment to the patients in In-Patient Ward from 10.30 AM to 12.30 PM and then there is a lunch break from 12.30 PM – 2.00 PM. Thereafter, the administrative work is performed up to 2.30 PM. Thus, the witnesses have been medically examined at the earliest opportunity.

22. As per PW2-Raja, the road from Kumbakonam goes to Kudavasal, Pudukudi and Thiruvarur. The witness has stated that the distance between Pudukudi and Thiruvarur is 15 K.Ms., whereas, bus

[4] (2018) 12 SCC 283
[5] (2017) 3 SCC 261

A will take twenty-five minutes from Kudavasal to reach Thiruvarur. Therefore, the argument raised that PW1-Ganesamoorthy has manipulated his Medical Report from a Hospital near to his residence is not correct as he has travelled on the other side of his village as the Medico-Legal Examination was conducted at Thiruvarur.

B 23. Learned counsel refers to the judgement in **Gangadhar Behera and Others Vs. State of Orissa**[6] to contend that the offence under Section 149 is made out if the unlawful assembly shared common object and not common intention, though mere presence in an unlawful assembly cannot render a person liable unless there was a common object. The common object is as set out in Section 141. It is not necessary C to prove overt act against a person who is alleged to be a member of an unlawful assembly. 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. D 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.

24. The Judgment in **Sanjeev Kumar Gupta vs. State of Uttar Pradesh**[7] was relied upon to contend that Section 149 has two components (*i*) offence committed by any member of an unlawful E 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. For 'common object', *it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly.*

F 25. The reliance is placed upon the Judgment reported as **Gangadhar Behera** to argue that the maxim "*falsus in uno, falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The maxim "*falsus in uno, falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of G rule of law. It is merely a rule of caution.

26. The first and foremost challenge is to the testimony of PW1-Ganesamoorthy for the reason inter alia that he was not present at the

[6] (2002) 8 SCC 381
[7] (2015) 11 SCC 69

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place of occurrence and that FIR has been ante dated. We do not find any merit in the said argument. The statement of PW1-Ganesamoorthy was recorded at 8.45 AM by PW19-Police Inspector Ramakrishnan soon after the occurrence. Lodging of the FIR by PW1-Ganesamoorthy is supported by PW2-Raja and PW3-Ramesh who have found that PW1-Ganesamoorthy was already in Police Station lodging the complaint. The testimony of PW19-Ramakrishnan regarding lodging of FIR at 8.45 AM is not discredited in the cross-examination. He denied such suggestion and also the suggestion that the documents were sent to the Court at 4.15 PM. There is nothing on record not to believe statement so the said witnesses more of the trial court and the High Court have believed the prosecution version in this respect.

27. In respect of manner of occurrence, PW1-Ganesamoorthy in the cross-examination stated that fifteen hundred people belonging to different castes live in the Village Neikuppai. He denied the suggestion that Thiruvarur Government Hospital was near to his house. He also disclosed the receipt of injuries on the body of his father-in-law and denied the suggestion that he does not know how his father-in-law was killed, how his father-in-law's hut was set on fire and he did not go to Neikuppai Village.

28. In the re-examination, he deposed that five sickles recovered were approximately 1^{ft} in length; some may be longer or shorter. Such statement of PW1-Ganesamoorthy is corroborated by PW2-Raja who is resident of same Village as that of the deceased Murugaiyan. He also deposed that houses of PW13-Mahalingam and Manickam are situated on the School street, one facing North and the other facing South and at a distance of half a furlong. At the time of incident Manickam's house was locked and people came running to Manickam's house from PW13 Mahalingam's house. Similar is the statement of PW3-Ramesh that Ravi (A-1) has poured the kerosene from a tin container on the roof of hut of the Murugaiyan and Singaravelu (A-2) set ablaze the hut. Even PW5-Lakshmi wife of the deceased also deposed that he was Ravi (A-1) who poured kerosene and Singaravelu (A-2) who lit the matchstick. She has stated that there were other twenty or thirty people standing around as a group. The fact that she has not named other accused, will not absolve the role of the appellants, as their presence is disclosed by three other prosecution witnesses i.e. PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh.

29. The presence of witnesses examined by the prosecution at the place of occurrence is based upon the appreciation of the evidence by the two Courts. We do not find that such appreciation is perverse or wholly untenable which may warrant interference in the present appeals.

30. The argument that it is unbelievable that son-in-law will not stay with his in-laws, when his own village is around 15 KMs away, is purely conjectural. There is no reasonable basis to hold that PW1-Ganesamoorthy would not stay with his father-in-law in the circumstances explained by him.

31. The argument that in statement Ex.P.1, PW1-Ganesamoorthy has not stated the injuries suffered by him, will render his presence at the time of occurrence as doubtful. The said fact when examined in the context of a complete statement loses its significance. As per PW1-Ganesamoorthy soon after the incident, he went to Kudavasal located at the distance of 4 KMs from Neikuppai Village when he lodged the Report as statement Ex.P.1 and thereafter he went to Thiruvarur Government Hospital. The Kudavasal and Thiruvarur are located on the other side of his village.

32. PW17-Dr. Razool, an Assistant Surgeon in Thiruvarur Government Hospital conducted post-mortem examination at 4.30 PM. Thereafter, he conducted Medico-Legal Examination of PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh. He proved injury report Ex.P.15-Report of PW1, Ex.P.16-Report of PW2-Raja and Ex.P.17-Report of PW3-Ramesh. He has deposed that the injuries are possible in the manner disclosed by the witnesses. In the cross-examination, he disclosed that he cannot say possible time of causing the injuries found on the persons of three witnesses but he opined that the injuries could have been caused within one hour before he examined them. The opinion of the Doctor in respect of the timing of injuries is not conclusive based on possibility of injuries within one hour of the examination when the presence of prosecution witnesses as also the role attributed to each appellant's presence has been found to be proved by the oral testimony. The opinion of an expert witness cannot be given preference over the primary statement of the witnesses in respect of manner of injuries suffered by them.

33. In respect of the argument that FIR was delivered at 4.45 PM on 13.03.1994 to the Judicial Magistrate at Nagapattinam, though the

report was said to be sent at 9.30 AM, again does not create doubt on the prosecution version. The argument that the competent Magistrate was at Thiruvarur but the FIR has been delivered to the Judicial Magistrate, Nagapattinam which shows that the FIR was ante-timed, is again not acceptable. PW15-H.C. Narayanan, deposed that he went to Thiruvarur and waited for the arrival of the Magistrate. Since, it was a holiday, he handed over the FIR to the Judicial Magistrate at his residence at Pauthiramanickam at 4.45 PM. Therefore, the delay in the receipt of the FIR by the Judicial Magistrate is explained and cannot be made basis to reject the case of the prosecution as the FIR was proved to be lodged soon after the occurrence from the testimony of PW19-Police Inspector Ramakrishnan.

34. In respect of an argument that PW1-Ganesamoorthy has given parentage of all the ten accused in the statement Ex.P.1, but could not disclose the parentage of three accused in Court shows that the first version was lodged after prior consultation, is again not tenable. The FIR was lodged soon after the occurrence when PW2-Raja and PW3-Ramesh residents of the same village reached the Police Station. Therefore, the fact that he could not recollect the fathers name of three of the accused would not create doubt on the case set up by the prosecution.

35. The argument that the place of occurrence is based upon the statement of PW13-Mahalingam who deposed that the dead body was lying cut in front of Manickam's house and that the members of the Dravid Kazhagham left the body in the seating area of his house and that blood of the deceased was pooled at the seating area of Manickam's house, we find that such argument cannot be accepted.

36. PW6-Sankaran, Village Administrative Officer reached the scene of occurrence immediately on hearing about the incident and deposed that the dead body of Murugaiyan was lying in front of PW13-Mahalingam's house. PW7-Kollimalai has also deposed that the bloodstained earth was seized from the house of PW13-Mahalingam in his presence and in the presence of Kunjupillai. The fact remains that houses of PW13- Mahalingam and that of Manickam are in the same street and at a distance of half a furlong. The witnesses have deposed the house of Manickam was locked and residents from the house of Mahalingam rushed to the place where dead body was lying. It explains

A the reason as to why the witnesses have deposed that the dead body was lying near the house of PW13.

37. The learned trial court found that some discrepancies can be due to minor errors of perception or observation or due to lapse of memory. It may be noticed that the witnesses were being examined after more
B than six years of the occurrence.

38. It is argued that prosecution has put on trial twenty-four accused, but presence of A-11 and A-16 to A-24 was doubted by learned trial court and they were acquitted on benefit of doubt. Five accused, A-10, A-12, A-13, A-14 and A-15 have been granted benefit of doubt in
C appeal as well. The argument that the entire case set up is based on falsehood and thus not reliable for conviction of the appellants, is not tenable. It is well settled that the maxim "*falsus in uno, falsus in omnibus*" has no application in India only for the reason that some part of the statement of the witness has not been accepted by the trial court or by the High Court. Such is the view taken by this Court in **Gangadhar**
D **Behera's case**, wherein the Court held as under:-

> **"15.** To the same effect is the decision in *State of Punjab* v. *Jagir Singh*[8] and *Lehna* v. *State of Haryana*[9]. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the
E entire prosecution case. In essence prayer is to apply the principle of "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number
F of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material
G 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 witnesses cannot be branded as liars. The maxim "*falsus*

[8] (1974) 3 SCC 277
[9] (2002) 3 SCC 76

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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. *State of U.P.*[10]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See *Gurcharan Singh* v. *State of Punjab*[11]). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a 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 respects 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* v. *State of M.P.*[12] and *Ugar Ahir* v. *State of Bihar*[13].) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the 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

[10] AIR 1957 SC 366
[11] AIR 1956 SC 460
[12] (1972) 3 SCC 751
[13] AIR 1965 SC 277

A by the prosecution 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 M.P.*[14] and *Balaka Singh* v. *State of Punjab*[15].) As observed by this Court in *State of Rajasthan* v. *Kalki*[16] 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 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. These aspects were highlighted recently in *Krishna Mochi* v. *State of Bihar*[17]. Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned."

39. Therefore, the entire testimony of the witnesses cannot be discarded only because, in certain aspects, part of the statement has not been believed.

40. The judgment referred to by learned counsel for the appellants in **Ram Laxman'scase** is not applicable to the facts of the present case, as in that case, the Court found the testimony of the witnesses as undependable and unreliable so as to grant benefit to some accused while maintaining the conviction of the others. The Court noticed that the maxim "*falsus in uno, falsus in omnibus*" is not applicable. Therefore, if the witness is reliable and dependable then the entire statement cannot be discarded.

41. Similarly, in the **case of Noushad** the Court found that the statement of PW11 that he has witnessed the incident with much of exactitude as to which accused assaulted his brother with what weapon cannot be said to have been really witnessed by him. Again, in **Suraj Mal's case**, the Court was examining the legality of conviction under

[14] AIR 1954 SC 15
[15] (1975) 4 SCC 511
[16] (1981) 2 SCC 752
[17] (2002) 6 SCC 81

the provisions of Prevention of Corruption Act, 1947. It was found that the evidence of witnesses against the two accused was inseparable and indivisible, when on such evidence one of the accused was acquitted and not the other accused.

42. All these judgments are in respect of appreciation of evidence of witnesses in the facts being examined by the Court. The general principle of appreciation of evidence is that even if some part of the evidence of witness is found to be false, the entire testimony of the witness cannot be discarded.

43. The argument that five aruvals (sickles) were recovered only on the basis of disclosure statement of Ravi (A-1) is not factually correct. Ex.P.6 is a disclosure statement of Ravi (A-1), whereas, Ex.P.8 is a disclosure statement of Mohan (A-10), Subbaiyan (A-21), N. Rajamanickam (died), Santhanam (A-22) and Kannan (A-24).

44. In presence of such disclosure statements, a common memorandum of recovery as Ex.P.7 was prepared. Therefore, it is not the confessional statement of one accused which led to recovery of weapons used in the occurrence but on the basis of confessional statements of the accused, a common recovery memorandum was prepared. Such common Memo of recovery of weapons used in the occurrence cannot create doubt on the prosecution story.

45. The argument that non-availability of a Doctor at Kudavasal stands controverted on the statement of DW4-Balakumaravelu is again not tenable. DW4-Balakumaravelu is Assistant Doctor in the Kudavasal Government Hospital who has deposed that doctors were on duty on the date of occurrence. He has deposed that Doctor Geetha was on duty in Out-Patient Ward from 7.30 AM. There was no duty at the Out-patient ward from 3.00 to 5.00 PM on that day. As is given on the record that the Village Kudavasal falls on the way to Thiruvarur and since the Doctor was not available, the injured were examined at Government Hospital Thiruvarur. The testimony of PW17-Doctor Razool has not been questioned on the ground that the Doctor was available at Kudavasal Hospital and injuries should have been examined at that place as well. The only suggestion put to witness is that the injuries could have been caused within one hour before he examined them. The possibility of injuries is an opinion which cannot controvert the primary statement of the witness about the receipt of the injuries in the fateful morning of 13.3.1994.

A 46. The prosecution has proved the active role played by Ravi (A-1) and Singaravelu (A-2). The presence of other accused at the time of occurrence as part of the crowd who lynched Murugaiyan also stands proved. There is physical severance on the parts of the body of the deceased. The presence of the appellants were disclosed in the First Information Report recorded soon after the occurrence. Therefore, there B is no reason to hold that the accused- appellants have been implicated falsely. It may be noticed that the appellants are also Backward Class Hindus. The prosecution witnesses PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh have clearly defined the role of each of the appellants in the occurrence which has taken the life of the Murugaiyan. Such C statement is corroborated by PW5-Lakshmi wife of the deceased who deposed that it is Ravi (A-1) and Singaravelu (A-2) who poured kerosene and lit the matchstick respectively along with twenty-thirty other persons. Therefore, the active participation of all the appellants stands proved on record.

D 47. We do not find any merit in the argument that all the appellants cannot be said to have common object in view, in the absence of an overt act attributed to the appellants other than Ravi (A-1) and Singaravelu (A-2) by PW5-Lakshmi. Even PW5-Lakshmi is categorical that Ravi (A-1) and Singaravelu (A-2) were accompanied by twenty-thirty other people. Though she has not named other accused but the fact that the E other accused have been named specifically by PW1-Ganesamoorthy, PW2-Raja and PW3-Ramesh, clearly shows that all the accused came as a group to attack the hut of the deceased and then took his life.

48. In the **Joseph's** case as relied upon by the counsel for the appellants, the Court held that if the prosecution succeeds in improving F the existence of common object amongst the accused and that accused actuated the prosecution of common object and knew that the death was likely to be committed, the conviction under Section 302 IPC read with 149 is made out. The Court held as under:

G "11.3. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was the one which the members knew to be likely to be committed. Once the court finds that the ingredients of Section 149 IPC are fulfilled, every person who at the time of committing that offence was a member of the assembly has to be held guilty H of that offence. After such a finding, it would not be open to the

court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the above two ingredients. Before recording the conviction under Section 149 IPC, the essential ingredients of Section 141 IPC must be established."

49. In the above case, the Court held that as to whether the members of the unlawful assembly really had the common object to cause the murder of the deceased has to be decided on the facts and circumstances of each case. The nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place are the factors to decide as to whether, the accused had common object. It is an inference to be deduced from the facts and circumstances of each case. The Court held that there is no evidence to prove that Accused 1 to 11 had any common object to commit the murder of Kennedy which activated all of them to join in furtherance of the common object.

50. In **Najabhai's** case, there was no evidence that there was a common object of murder amongst the accused, as accused No. 1 was infuriated on the question by the appellant regarding the damage to the electricity pole near his house. There is nothing on record to suggest any previous enmity between the parties. Such judgment is again on the appreciation of the evidence in the case in hand.

51. In **Gangadhar Behera's** case, while considering the Section 141 of IPC, it was held that common object is not common intention as the 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. Common object 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 if the five or more 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. The Court while considering the plea that definite roles ascribed to the accused and therefore Section 149 is not applicable was not accepted. It is held as under:

"25. The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is

untenable. A four-Judge Bench of this Court in *Masalti case*[18] observed as follows: (AIR p. 210, para 15)

> "*15*. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."

26. To similar effect is the observation in *Lalji* v. *State of U.P.*[19] It was observed that: (SCC p. 441, para 8)

> "Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

27. In *State of U.P.* v. *Dan Singh*[20] 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

[18] AIR 1965 SC 202
[19] (1989) 1 SCC 437
[20] (1997) 3 SCC 747

made to *Lalji case* where it was observed that: (SCC p. 442, para 9)

> "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."

28. Above being the position, we find no substance in the plea that evidence of eyewitnesses is not sufficient to fasten guilt by application of Section 149. So far as the observations made in *Kamaksha Rai case*[21] are concerned, it is to be noted that the decision in the said case was rendered in a different factual scenario altogether. There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases (see *Padma Sundara Rao* v. *State of T.N.*[22]). It is more so in a case where conclusions relate to appreciation of evidence in a criminal trial, as was observed in Krishna Mochi case."

52. In **Sanjeev Kumar'scase**, the conviction under Section 302 with the aid of Section 149 was maintained when, it was found that there was no object of killing but only of stopping the deceased and other contestants from elections. It was held that it cannot be ruled out that the common intention to kill might have arisen on the spur of the moment.

53. It is held in the **Gangadhar Behera'scase** that the words of a judgment cannot be treated as words in a legislative enactment. It is to be remembered that judicial orders are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases, therefore, whether there was common object of the accused in each case would depend upon cumulative effects of the facts of that particular case.

54. In the present case, both the Courts below have found that the appellants have common object in burning the hut of the deceased

[21] (1999) 8 SCC 701
[22] (2002) 3 SCC 533

A and also attacking the deceased with aruvals (sickles) in view of the role of the deceased in the affairs of Panchayat against caste Hindus. Therefore, appellants other than Ravi (A-1) and Singaravelu (A-2) cannot be treated differently to convict them for the offences under Section 326 read with Section 149 IPC as all the accused were part of the unlawful assembly which has taken the life of the deceased in a murderous B attack on the fateful morning of 13.03.1994.

55. Consequently, we do not find any merit in the present appeals and the same are dismissed.

The appellants are on bail. They shall surrender within four weeks C to undergo their remaining part of the sentence.

Divya Pandey Appeals dismissed.