

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal Nos. 65 ,66 & 67 of 2007.

Judgement reserved on: 25.2.2008.

Date of decision: 29.2.2008.

(For title, please see reverse)

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the Appellant	:]	
]	(See reverse)
For the Respondent	:]	

Kuldip Singh, Judge.

This judgement shall dispose of Criminal Appeal Nos. 65, 66 and 67 of 2007 all having arisen from judgement dated 19.3.2007 passed by learned Sessions Judge, Shimla in Sessions Trial No. 26-S/7 of 2005 whereby learned Sessions Judge has convicted and sentenced each of the appellant to undergo rigorous imprisonment for one year under Section 147 IPC and to pay a fine of Rs.2000/-, in default of payment of fine, each appellant shall undergo further simple imprisonment for one month, each appellant has further been sentenced to undergo rigorous imprisonment for five years under Section 333 read with Section 149 IPC and to pay a fine of Rs.5000/- each, in default of payment of fine each appellant has been directed to further undergo simple imprisonment for one year. All the sentences have been ordered to run concurrently.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

2. The prosecution case in brief is that HC PW 11 Vijay Kumar made a statement Ex. PW 8/A on 27.7.2001 to the effect that on 26.7.2001 he was posted in CIA Staff, Shimla and was present alongwith Constable Mohinder Singh at Shimla town. At about 8 p.m. he deputed Constable Mohinder Singh for local patrolling and he himself left for Boileauganj Police station for patrolling. Vide rapat Ex. PW 15/A he had asked Mohinder Singh Constable to inform him on his mobile phone about detection of any case.

3. It has been alleged that when PW 11 Vijay Kumar reached place Chakar on National Highway-22 Bye-pass he got a secret information that during the night a vehicle loaded with liquor would come from Tara Devi so PW 11 informed Mohinder Singh Constable that he himself was proceeding towards Tara Devi and Mohinder Singh should also reach there. When PW 11 Vijay Kumar reached National Highway, tipper No. HP-07-5382 which was being driven by PW 3 Bachiter Singh came there and it was stopped. Vijay Kumar boarded the tipper and went to Tara Devi and it was stopped near Resole tyre factory at Tara Devi. Vijay Kumar and PW 3 Bachiter Singh took meals in a hotel. At about 9.10 p.m. when both of them came out, 7-8 boys were present on the road under the influence of liquor. They recognized him because of in CIA Staff.

4. It has been further alleged that all the boys caught hold Vijay Kumar from throat and gave beatings with Knuckleduster (grips) and fists etc. The complainant saved himself and came to M/s Goel Motors. The incident was witnessed by Vineet etc. All the accused persons again came there and gave beatings to Vijay Kumar and

...3...

threatened to kill him. The accused removed mobile phone No. 84129 Airtel of Motorola Company alongwith Rs.1200/- from his pocket and at that time was about 9.30 p.m. The accused persons lifted him and threw him down a cliff. However, Vijay Kumar saved himself by holding some bushes and then the accused persons fled away in vehicle No. HP-51-0889. The complainant climbed up the cliff but he was having poor vision due to injuries, his body as well as eyes were bleeding. PW 3 Bachiter Singh came there and brought Vijay Kumar to Kachighati. Vijay Kumar told that residences of PW 2 Rameshwer and Jarnail are at Kachighati and they should be informed but Bachiter Singh left the place. The complainant was finding difficult to see anything but he came across a scooter having tarpaulin. The complainant covered himself under the tarpaulin and kept on sitting there throughout the night. Early in the morning, a vehicle came on the road and the driver of that vehicle called him and inquired from him as to what had happened. The said driver took him to his house and informed his landlord and neighbour Rameshwer informed the police and on the statement Ex. PW 8/A, formal FIR Ex. PW 8/B was recorded. The case was investigated by PW 14 Hari Ram. During investigation, Vijay Kumar produced his blood stained shirt Ex. P-1, pant Ex. P-2.

5. PW 4 Dr. Ramesh Chand examined Vijay Kumar vide MLC Ex. PW 4/B and as per X-ray report Ex. PW 6/A fracture of nasal bone was found. The maruti van No. HP-51-0889 was also recovered. The mobile phone of the complainant was recovered from Pawan Dogra vide memo Ex. PW 9/A. The report Ex. PW 14/B from

Forensic Science Laboratory, Junga was also obtained and as per that report human blood stains were found on the clothes. After completion of the investigation, challan was filed in the court against Amit Kumar, Sanjiv Verma, Sanjay Kumar, Sunder Singh Negi, Mohan Singh alias Santosh, Tilak Raj, Pawan Dogra and Vineet Kumar under Sections 147, 148, 149, 353, 333 and 392 IPC. All the accused were charged, under Sections 147, 148, 353 read with Sections 149, 332, 333 read with Section 147 and 392 read with Section 147 IPC to which all the accused –appellants and other co-accused pleaded not guilty and claimed trial. The prosecution examined 16 witnesses. The statements of appellants and other co-accused were recorded, under Section 313 Cr.P.C., wherein they have denied all the allegations against them and claimed that they are innocent. The appellants and other co-accused opted not to lead any evidence in defence. The learned Sessions Judge acquitted Sanjiv Kumar, Sanjay Kumar, Sunder Singh Negi, Tilak Raj and Vineet Kumar of all the charges. The appellants Amit Kumar, Mohan Singh alias Santosh and Pawan Dogra were also acquitted of the charge under Section 392 read with Section 149 IPC, but appellants Amit Kumar, Mohan Singh alias Santosh and Pawan Dogra were convicted for having committed offence punishable, under Sections 147 and 333 IPC read with Section 149 IPC and sentenced them as noticed above.

6. I have heard Mr. T.R. Chandel, learned counsel for the appellant in Criminal Appeal No. 65 of 2007, Mr. M.L.Bragta, learned counsel for the appellants in Criminal Appeal Nos. 66 and 67 of 2007,

learned Additional Advocate General for the State and gone through the record.

7. It has been submitted on behalf of the appellants that learned Sessions Judge has not properly appreciated the material on record. The prosecution story is highly improbable. The appellants have been falsely implicated in the case. The material witnesses have not been examined by the prosecution. There are material contradictions in the prosecution story. The learned Sessions Judge has not drawn proper inference from the material on record. It is not believable that PW 11 Vijay Kumar all alone would go to the spot during night hours to catch the culprits who would come to Tara Devi as per his alleged secret information. The learned Sessions Judge has not accepted the prosecution story at-least against five accused. The prosecution case is that all accused including the appellants committed the alleged offence, but the prosecution case has not been believed by the learned Sessions Judge when he acquitted five accused. The learned counsel representing the appellants have submitted that on the basis of material which has come on record the appellants are entitled to acquittal.

8. The learned Additional Advocate General has submitted that prosecution has proved the case against the appellants. The learned Sessions Judge has rightly appreciated the material on record and has correctly drawn inference from the evidence. The involvement of the appellants has been proved on record. Simply because the learned Sessions Judge has acquitted five accused, the appellants on this ground alone are not entitled to acquittal. In order

to appreciate the respective contentions of the parties, it is necessary to refer to the evidence led by the prosecution.

9. PW 1 Baldev Sharma has stated that he is running a hotel at Tara Devi. In his presence nothing has happened. Vijay Kumar was never assaulted or beaten by the accused in his presence. He did not support the prosecution and was declared hostile. The prosecution cross-examined him, but nothing favourable to the prosecution was extracted in the cross examination. PW 2 Rameshwer Dass has stated that he was running a mechanical shop at Ghora Chowki, Shimla. He was having a quarter in Vidya Bhawan, Ghora Chowki. HC Vijay Kumar and Jarnail Singh were also residing there. On 27.7.2001 Vijay Kumar was brought to his quarter by Rajesh driver at about 6 a.m. Vijay Kumar was having injuries on his face. Jarnail Singh and other labourer also came there, then they informed the police, Vijay Kumar was taken to hospital by the police. In the hospital, Vijay Kumar handed over blood stained T-shirt Ex. P-1 and pant Ex. P-2 to police vide memo Ex. PW 2/A. In cross examination, he has stated that signature on Ex. PW 2/A was taken at Police Station and the clothes were taken in the hospital. PW 3 Bachiter Singh has stated that he was working as driver with M.K. Auto Financers, Tutu. On 26.7.2001 he was driving vehicle on Bypass road and stopped the vehicle at Tutu barrier on signal given by HC Vijay Kumar who was known to him. It was around 8-9 p.m. Vijay Kumar alighted from his vehicle at Kachighati. In his presence no quarrel took place nor he has seen anybody beating Vijay Kumar. He was declared hostile and was cross examined by the prosecution. In

cross examination on behalf of the prosecution, he has denied that his statement was recorded by the police. He has denied that accused are known to him and he has deposed falsely to save them. In the cross examination on behalf of the accused, he has stated in affirmative that when Vijay took lift in his truck he was drunk. Vijay Kumar was dropped from his vehicle at Kachighati near liquor vend.

10. PW 4 Dr. Ramesh Chand has stated that on 27.7.2001, he examined Vijay Kumar and found the following injuries on his person:-

1. The face was swollen with black eye both sides both upper and lower eye lids swollen. Eyes closed due to swelling with subconjunctival haemorrhage.
2. Abrasion on forehead with contusion.
3. Swelling up to nose with clotted blood coming out of nostril.
4. Both elbows on posterior aspect there was abrasion and contusion.
5. There was abrasion on right side of chest.

The case was referred to eye specialist. MLC, X-ray of the skull and nasal bones was advised. The probable duration of the injuries was 4 to 12 hours. Injuries were caused with blunt weapon. On receipt of the X-ray report, there was fracture of nasal bone. After examination he issued MLC Ex. PW 4/B. Injury No. 3 was grievous in nature. All other injuries were simple. Injury on person could have been caused with fist blow as well as with hard substance like iron grip. In cross examination, he has stated that injuries No. 2 to 5 are possible due to fall from stairs or rolling on rough sloppy surface. Injury No.1 can be suffered on account of fall on rough surface. The urine and

blood samples of the patient were not taken for testing. The breath analyzer was not used by him as that facility was not available in the hospital.

11. PW 5 Rakesh Thakur is a witness to seizure memo Ex. PW 5/A of van No. HP-51-0889. PW 6 Dr. Ashwani Kumar has stated that in the year 2001 he was posted as Registrar Radiology Department, I.G.M.C., Shimla. On 27.7.2001 at 10 a.m. Vijay Kumar was referred to him by Casualty Medical Officer for MLC X-ray. The X-rays were conducted under his supervision. After examining the X-rays, there was fracture of nasal bone. He issued report Ex. PW 6/A, which bears his signature. The X-ray films are Ex. PW 6/B, Ex. PW 6/C and Ex. PW 6/D.

12. PW 7 Ramesh Kumar Inspector has stated that in the year 2001, he was posted as SHO, Police Station, Boileauganj and on completion of investigation, he prepared the challan and presented the same in the court. PW 8 Shakti Chand, ASI has stated that in the year 2001 he was posted as ASI, Police Station, Boileauganj. On 27.7.2001, on receipt of rukka Ex. PW 8/A, he recorded an FIR Ex. PW 8/B, which was signed by him. He made an endorsement on rukka Ex. PW 8/C and returned the file to Hari Ram, Investigating Officer. PW 9 Kanwar Singh has stated that in the year 2001, he was posted as Investigating Officer, Police Station, Boileauganj. During the investigation, Pawan Dogra handed over a mobile phone of Motorola company, which was taken into possession vide memo Ex. PW 9/A, which was signed by Dogra, Jai Singh and Vijay Kumar. PW 10 HC Jai Singh has stated that he is posted as Investigation Officer,

Police Post, Summer Hill for the last two years. Pawan Kumar presented mobile phone Motorola company to police which was taken into possession vide recovery memo Ex. PW 9/A, which bears his signatures as a witness.

13. PW 11 HC Vijay Kumar has stated that in the year 2001 he was posted in CIA Staff, Shimla. He received a secret information that on 26.7.2001 there will be some unloading of illicit liquor at Tara Devi from a vehicle, he took a lift in tipper No. HP-07-5382, which was being driven by PW 3 Bachiter Singh. At 9 p.m. they stopped at the Dhaba of Vineet at Tara Devi, where he and Bachiter Singh took dinner. In the meantime, maruti van No. HP-51-0889 came there from which 7-8 boys let in. Those boys remarked that he caught the people who were doing business of liquor and picked up quarrel with him. Amit Kumar, Pawan Dogra, Sanjay Dogra, Santosh alias Mohan Singh, Sunder Negi and Vineet caught him from his neck and started beating him with fist and kicks blows. He ran away from the spot towards Goel Motors, Tara Devi. After sometime all the abovesaid accused reached there and again picked up quarrel with him. They gave beatings to him and took away his Motorola mobile phone and Rs. 1200/- and had thrown him from the road in a cliff. This was witnessed by PW 12 Sirmour Singh. After throwing him, accused ran away from the spot. He caught hold of the bushes, PW 3 Bachiter Singh came in his tipper on the spot who took him on the road and left him at Kachighati where he was residing in a quarter. Due to beating, there were swelling in his eyes and he could not see anything and could not go to his quarter from the road. He took

tarpaulin of the scooter which was parked nearby and remained there throughout the night. In the morning at 5.30 a.m. Rajesh and PW 12 Sirmour Singh came in a vehicle and they came to him to whom he narrated the incident and on his request they left him in his quarter. Rameshwer and Jarnail Singh also came to his quarter, Rameshwer informed the police and police came to his quarter and took him to I.G.M.C., Shimla, where he made statement Ex. PW 8/A and produced T-shirt Ex. P-1 and pant Ex. P-2. In cross examination, he has stated that he knew Amit Kumar, Santosh and Pawan Dogra prior to the incident. The names of other accused except appellants Amit Kumar, Santosh and Pawan Dogra were told to the police by PW 3 Bachiter Singh. The quarrel started firstly at the Dhaba of Vineet at Tara Devi. There are 5-7 shops at Tara Devi. In the Dhaba apart from he himself, Bachiter Singh and the servants and one Dhaba owner were present. Goel Motors is at a distance of 100 yards from the Dhaba. The quarrel had taken place for about half an hour in the Vineet Dhaba. The accused persons had quarreled with him for the second time after a gap of 15-20 minutes, he was all alone when he was given beatings second time. Bachiter Singh came on the spot after about half an hour of the occurrence. All the accused were heavily drunk on that date.

14. PW 12 Sirmour Singh has stated that in the year 2001, he was posted as Security Guard in Goel Motors, Tara Devi. He has no knowledge of incident nor incident took place in his presence. He knew Vijay Kumar. He was never given beating in his presence. He was declared hostile and was cross examined by the prosecution. In

cross examination, he has stated that he was not interrogated by the police. In the cross examination on behalf of the accused, he has stated that there are many residential houses adjoining Goel Motors. PW 13 SI Gopal Singh has placed on record the appointment letter Ex. PW 13/A and posting order Ex. PW 13/B of HC Vijay Kumar. PW 14 SI Hari Ram has stated that in the year 2001, he was posted in Police Station, West Shimla. On 27.7.2001 Rameshwer Singh made telephonic call regarding beating given to Vijay Kumar. On that information he reached Ghora Chowki, where Vijay Kumar was lying in an injured condition. He took him to I.G.M.C., Shimla for treatment and after medical treatment Vijay Kumar made statement Ex. PW 8/A to him, which he sent for registration of case. Accordingly, an FIR Ex. PW 8/A was registered at Police Station, West Shimla. He visited the spot alongwith complainant and prepared spot map Ex. PW 14/A. He took into possession T-shirt Ex. P-1 and pant Ex. P-2 which were produced by Vijay Kumar. He also took into possession the maruti van No. HP-51-0889. He recorded the statements of Baldev Sharma, Bachiter Singh and Sirmour Singh. He handed over the investigation to H.C. Kanwar Singh. After completion of investigation, he handed over the file to S.H.O. In cross examination, he has stated that Vijay Kumar had told him the names of all the accused persons. There were 3-4 shops at Tara Devi at the time of occurrence. He inquired from the servants of Dhaba and other persons but they did not tell about the occurrence. There are houses at the back of Goel Motors. The place of occurrence is a busy road being national highway. The identification of the accused persons was not got

conducted. PW 15 Sita Ram has proved PW 15/A rapat No. 63 dated 25/26.7.2001. PW 16 Mammohan Singh has stated that he is working as Credit Officer in Airtel Office, Shimla. Mobile phone No. 84129 was in favour of Vijay Kumar. The appellants- accused were examined, under Section 313 Cr.P.C. and they have denied the case.

15. The prosecution case is that incident had taken place in two parts, firstly at the Dhaba at Tara Devi and then at Goel Motors, Tara Devi. PW 11 has stated that at Vineet Dhaba at the time of incident Bachiter Singh, two servants and one Dhaba owner were present. At Vineet Dhaba quarrel took place for about half an hour and at Goel Motors he was beaten up by the accused for about 15-20 minutes. He has further stated that the time gap between first and the second incident was about 15-20 minutes. In other words, the accused persons remained at two places of incident which is on busy national highway for about one hour. PW 14 SI Hari Ram has stated that incident has taken place on a busy road. PW 11 has stated that there are 5-7 shops at Tara Devi and Vineet Dhaba is at Tara Devi. PW 14 has stated that there are houses at the back of Goel Motors and PW 12 has stated that there are many residential houses adjoining Goel Motors. The incident allegedly took place on 26.7.2001 at about 9 p.m. and at that time in the month of July normally people do not go to bed at 9 p.m. The prosecution has not examined any servant from the Dhaba. PW 14 SI Hari Ram has stated that he had inquired from the servants of the Dhaba, owner and other persons but they did not tell about the occurrence. In other words, nobody from the vicinity where first incident allegedly took

place supported the prosecution story. The prosecution has also not examined anyone from the houses situated near Goel Motors. As per prosecution story both the incidents took place within the gap of one hour on a busy road, it is not believable that during this period nobody noticed the incident and brought the fact to the notice of police or other lawful authorities. PW 1 Baldev Sharma owner of a hotel at Tara Devi has stated that nothing has happened in his presence. Vijay Kumar was never assaulted or beaten up by the accused persons in his presence, as per note on spot map Ex. PW 14/A Baldev Sharma is the owner of Vineet eating house. PW 3 Bachiter Singh has stated that he dropped Vijay Kumar at about 8-9 p.m. at Kachighati and no quarrel with Vijay Kumar had taken place in his presence nor anyone had beaten him in his presence. PW 3 is the person on whom the prosecution has relied on the fact that Vijay Kumar took lift in the tipper which was being driven by him and both of them took dinner in the Dhaba where first part of the incident took place. PW 3 some time after the second incident allegedly took Vijay Kumar in his tipper from the second place of incident to Kachighati, but surprisingly even at that stage police was not informed. PW 3 however has not supported the prosecution that he gave lift to Vijay Kumar in his tipper up to Kachighati as claimed by PW 11 Vijay Kumar. PW 3 on the contrary has stated that he gave lift to Vijay Kumar at Tutu barrier and dropped him at Kachighati from his tipper on 26.7.2001 at about 8-9 p.m. and not at the Dhaba of Vineet at Tara Devi as alleged by the prosecution. Tara Devi and Kachighati are two different places.

16. PW 11 has stated that second incident was seen by Sirmour Singh, but Sirmour Singh as PW 12 has stated that he had no knowledge of the incident nor any incident took place in his presence. PW 12 was declared hostile and cross examined, but nothing favourable to prosecution was extracted in his cross examination. PW 11 has stated that accused had taken away his Motorola mobile set and Rs.1200/-. It has been submitted that no recovery of money has been made during investigation. Recovery of Motorola set is a very weak piece of evidence and not sufficient to bring home the charge against the appellants. As per spot map Ex. PW 14/A, the first occurrence is alleged to have taken place at point-D, which is almost middle of the road and not in or in front of Vineet Dhaba, which has been shown by mark-B. In Ex. PW 14/A, other shops etc. near the place of occurrence have been shown but no one from the shops has been examined.

17. The prosecution case is that PW 11 was having secret information that some illicit liquor would be unloaded at Tara Devi, therefore, he went to Tara Devi where the incident took place as alleged by the prosecution. PW 11 has stated that at one point of time on 26.7.2001, he was with Constable Mohinder Singh. The prosecution has not examined Constable Mohinder Singh. It is not understandable why PW 11 having secret information of unloading of illicit liquor through a vehicle went to Tara Devi all alone to nab the culprits knowing fully the risk involved. It is not the case of the prosecution that PW 11 was confronted with the situation all of a sudden without having prior information. In the normal course on

having prior information, PW 11 was expected to be on the spot alongwith some more persons from the force even in plain clothes to help him but PW 11 decided to meet the situation all alone which is not believable. It is the prosecution case that after second incident near Goel Motors PW 11 Vijay Kumar in an injured condition with great difficulty climbed up, but remained almost on the road and he covered himself by a tarpaulin which was taken from a parked scooter. It is surprising to note that on a busy road he was not noticed by anybody in that condition throughout the night nor he sought any help. The accused have denied the occurrence. They have taken the defence that PW 11 sustained injuries due to fall as he was heavily drunk. PW 4 Dr. Ramesh Chand has found five injuries on the person of PW 11 Vijay Kumar and has stated that injury No.1 can be suffered on account of fall on a rough surface and injuries No. 2 to 5 are possible due to fall from stairs or rolling on rough sloppy surface. He has also stated that breath analyzer was not used by him nor urine and blood samples of the patient were taken for testing. PW 3 has stated that when he gave lift to PW 11 from Tutu to Kachighat at that time PW 11 was drunk and he dropped him at Kachighati near liquor vend. Therefore, possibility cannot be ruled out that PW 11 Vijay Kumar was under the influence of liquor and he otherwise sustained injuries due to fall.

18. PW 11 has given the names of three persons, namely Amit Kumar, Santosh and Pawan Dogra and according to him the names of other accused were given by PW 3 Bachiter Singh to the police. He has stated that he knew Amit Kumar, Santosh and Pawan

Dogra for the last 5-6 months prior to the incident, but he has not stated how he knew Amit Kumar, Santosh Kumar and Pawan Dogra. PW 11 is an interested witness, his testimony has not been corroborated by any other prosecution witness on material particulars. The prosecution has not examined some material witnesses from the first and second place of alleged incidents. It is not safe to convict the accused- appellants on the sole testimony of PW 11, more particularly, when the story unfolded by him is full of infirmities and improbabilities and does not inspire confidence. In **Toran Singh vs. State of Madhya Pradesh** AIR 2002 SC 2807, the trial court convicted the accused on the sole testimony of the eye witness, the appeal filed by the appellant was dismissed by the High Court. The Hon'ble Supreme Court in para-7 of the judgement has held as follows:-

“..... The trial court, in our view, was not right and justified in lightly brushing aside the infirmities and improbabilities brought out from the prosecution case, that too when the entire prosecution case rested on sole eye witness, who was interested being the son of the deceased; moreso in the absence of any corroboration of his evidence by other independent evidence on material aspects of the prosecution case.....”

19. The appellants have been convicted, under Sections 147 and 333 read with Section 149 IPC. In para 62 of the judgement, the learned Sessions Judge has observed as follows:-

“It is sufficiently proved on record that the aforesaid three accused persons had formed an unlawful assembly and in prosecution of common object of such

assembly had voluntarily assaulted and caused simple as well as grievous injuries to Head Constable Vijay Kumar, a public servant, in the discharge of his duties and had thereby prevented him from performing his duties as such.”

20. There were in all eight accused and learned Sessions Judge has acquitted five of them and convicted the appellants. It has not been pointed out that State has filed an appeal against the acquittal of five accused. The learned Sessions Judge has not believed the prosecution story against five out of eight accused persons. PW 11 Vijay Kumar has not specified the part played by individual accused during the two alleged incidents. The unlawful assembly is defined in Section 141 IPC for which assembly of five or more persons is required to constitute an unlawful assembly to achieve the common object. In **K. Nagamalleswara Rao and others vs. State of Andhra Pradesh** AIR 1991 SC 1075, the appellants alongwith 11 other persons were tried by the learned Sessions Judge for different charges for causing murder of one Appikatla Tataiah and for causing injuries on Jarugu Rama Koteswararao. The learned Sessions Judge by his judgement dated 16.7.1982 acquitted A-3, A-4, A-6 to A-10, A-12 and A-15 of all the charges. He convicted Kurakula Nagamelleswararao (A-1), Jarugu Kotaiah (A-2), Appikatla Krishnamurthy (A-5) and Appikatla Nagulu (A-11) under Section 148, Indian Penal Code and sentenced each of them to undergo two years rigorous imprisonment. A-1 was further convicted under Section 302, I.P.C. and sentenced to imprisonment for life. A-2 was convicted under Section 302 read with Section 34 I.P.C. and sentenced to

imprisonment for life. A-5 and A-11 were convicted under Section 302 read with Section 149, I.P.C. and each of them was sentenced to undergo imprisonment for life. Regarding the attack on PW -2 Jarugu Rama Koteswararao the learned Sessions Judge convicted A-1 and A-2 under Section 326 I.P.C. read with Section 149 and sentenced each of them to undergo rigorous imprisonment for four years. The learned Sessions Judge further convicted A-5 and A-11 under Section 324 I.P.C. for causing simple hurt to PW -2 and sentenced each one of them to undergo rigorous imprisonment for two years. A-1 and A-2 were also convicted under Section 324 read with Section 149 I.P.C. and each of them was sentenced to two years rigorous imprisonment. The sentences awarded against each accused under various grounds were ordered to run concurrently. The convicted accused preferred appeal and the State appealed against the acquittal of the rest of the accused. At the time of admission of appeal, however, the State appeal was dismissed as against A-9, A-10, A-12, A-13, A-14 and A-15 and it was admitted only as against acquittal of A-3, A-4 and A-6 to A-8. The High Court confirmed the conviction and sentence of A-1, A-2, A-5 and A-11 under Section 148 IPC. However, it altered the conviction of A-1 and A-2 under Section 302 IPC and Section 302 read with Section 34 respectively into one under Section 302 read with Section 149 IPC and the sentence for imprisonment for life was confirmed. The conviction of A-5 and A-11 under Section 148 and Section 302 read with Section 149 and the sentences awarded thereunder were also confirmed. The High Court also confirmed the conviction and sentences on the accused under

Section 326 and 324 read with Section 149 and Sections 324 and 326 read with Section 149 IPC. The sentences were directed to run concurrently. The High Court dismissed the appeal preferred by the State in respect of acquittal of the other accused. In appeal before the Hon'ble Supreme Court the four accused A-1, A-2, A-5 and A-11 did not canvass the conviction under Sections 324 and 326 IPC and Section 324 read with Section 149 IPC and Section 326 read with Section 149, IPC without prejudice to their contention and on the facts that Section 149 could not have been invoked in relation to the offence under Section 302 IPC. On those facts, the Hon'ble Supreme Court has noticed the following ratio of *Amar Singh vs. State of Punjab*, AIR 1987 SC 826:-

“As the appellants were only four in number, there was no question of their forming an unlawful assembly within the meaning of Section 141, I.P.C. It is not the prosecution case that apart from the said seven accused persons, there were other persons who were involved in the crime. Therefore, on the acquittal of three accused persons, the remaining four accused, that is, the appellants, cannot be convicted under Section 148 or Section 149, I.P.C. for any offence, for the first condition to be fulfilled in designating an assembly an ‘unlawful assembly’ is that such assembly must be of five or more persons, as required under Section 141, I.P.C. In our opinion, the convictions of the appellants under Sections 148 and 149, I.P.C. cannot be sustained.”

In para-12 of the judgement, the Hon'ble Supreme Court has allowed the appeal, as follows:-

“In the result the appeal of the appellants against the conviction and sentence under Section 302 read with Section 149, IPC is allowed and the same is set aside.

We, however, confirm the conviction and sentence of the appellants under the other charges.”

In the present case after acquittal of five accused persons, it cannot be said that the present three appellants constituted unlawful assembly. Therefore, the learned Sessions Judge has erred in convicting the three appellants by taking the help of Section 149 IPC. The prosecution has failed to point out individual part played by each appellant in the alleged incident, therefore, benefit of this lapse will also go to the appellants. The prosecution has failed to prove the case against appellants beyond reasonable doubt and therefore, appellants are entitled to the benefit of doubt.

21. The learned Sessions Judge, in the facts and circumstances of the case, has not properly appreciated the material on record and has not drawn proper and right inference from the evidence led by the prosecution. The judgement of conviction and sentence in each appeal is thus liable to be set-aside.

22. No other point was urged.

23. The result of above discussion, all the appeals, being Criminal Appeals No. 65, 66 and 67 of 2007 are allowed. The judgement of conviction and sentence dated 19.3.2007 passed by learned Sessions Judge, Shimla in Sessions Trial No. 26-S/7 of 2005 in each appeal is set aside. The appellants are acquitted of the charges framed against them. They be set free immediately, if not required in any other case.

February 29, 2007.
(Hem)

(Kuldip Singh)
Judge.

1. **Criminal Appeal No. 65 of 2007.**

Amit Kumar Appellant.

Vs.

State of H.P.Respondent.

For the Appellant : Mr. T.R.Chandel, Advocate.

**For the Respondent : Mr. A.K. Bansal, Additional
Advocate General.**

2. **Criminal Appeal No. 66 of 2007.**

Pawan Dogra Appellant.

Vs.

State of H.P.Respondent.

For the Appellant : Mr. M.L.Brakta, Advocate.

**For the Respondent : Mr. A.K. Bansal, Additional
Advocate General.**

3. **Criminal Appeal No. 67 of 2007.**

Mohan Sigh alias Santosh Appellant.

Vs.

State of H.P.Respondent.

For the Appellant : Mr.M.L.Brakta, Advocate.

**For the Respondent : Mr. A.K. Bansal, Additional
Advocate General.**