BINAY KUMAR SINGH

v.

THE STATE OF BIHAR

OCTOBER 31, 1996.

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

Criminal Law :

Code of Criminal Procedure, 1973: Section 154.

FIR—Requirements of—Held: Nebulous or cryptic information from somebody who did not disclose any authentic knowledge about commission of cognisable offence would not be sufficient to register FIR.

Evidence Act: 1872: Sections 145 and 155(3).

Impeachment of credibility of witness--Procedure of—Held: if witness disowned any statement which was inconsistent with any part of his statement in court he could be contradicted by calling his attention to those parts of statement which were to be used for contracdicting him--It was not enough if questions in cross-examination were asked with reference to such statement.

Section 9—Identification of accused—Attack by a large number of persons on inhabitants of place of occurrence which resulted in death of human beings and injuries to others—None of injured witness identified accused (except two or three assailants) but non-injured witness identified a bulk of them—Held: this could not have any adverse impact on the credibility of the non-injured witness.

Section 134—Number of witnesses identification of accused as member of unlawful assembly—Sufficient number of witnesses not examined—Held: number of witnesses examined not material—Testimony of one single witness, if wholly reliable, was sufficient—However, when size of unlawful assembly was quite large, it would be prudent to insist on at least two reliable witnesses to vouchsafe identification of accused.

Section 11—Alibi— Nature and meaning of—Plea of alibi disbelieved by courts below—Quite sturdy reasons for same—Held: Burden of proof

A *heavy for establishing alibi—Strict proof required for establishing alibi—Presumption about genuineness of official records for establishing alibi not enough—Presumption only a rule in realm of burden of proof—Hence, interference by Supreme Court not called for.*

Criminal Trial :

B

Witness—Injured witness—Power of observation—Held: vision of injured witness might get blurred—Thereby attention would get instinctively diverted to his injuries—Hence, his power of observation would be affected.

Penal Code 1860: Sections 147 and 149.

C

Identification of accused- Proof of—Held: where size of unlawful assembly was large it would be prudent to insist on at least two reliable witnesses to vouchsafe identification of accused.

Constitution of India, 1950: Article 136.

D

Concurrent findings of fact—Interference with—Minor discrepancies in testimony of witnesses—Held: concurrent findings of lower courts regarding reliability of evidence of those witnesses could not be disturbed.

E *Words and Phrases :*

"Alibi"—Meaning of—In the context of Section 11 of the Evidence Act. 1872.

F **The appellants were convicted under Section 302 read with Section 149 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for life.**

According to the prosecution on the night of the occurrence the appellants accused and a lot of their henchmen formed themselves G **into an unlawful assembly arming themselves with deadly weapons, guns, rifles and cutting instruments. When the inhabitants of the place of occurrence were sleeping the appellants set their houes ablaze. The occupants who emerged out of their burning houses were shot at by the appellants. Many human beings were killed and some others badly mauled. When the appellants were satisfied that they had** H **accomplished their object, they all retreated from the scene. The Sub-**

Inspector of the Police Station got information from P.W. 36 about some serious occurrence of arson involving large number of people. The Police officer elicited a detailed statement from PW-32 which was forwarded to the Police Station where an FIR was prepared . On completion of investigation charge sheet was filed against the appellants. A

B

On the basis of the evidence adduced on behalf of the prosecution, the Sessions Judge came to the conclusion that the charges levelled against the appellants accused were fully established. This finding was upheld by the High Court.

In the appeal before this Court, on behalf of the appellants— accused it was contended that the FIR under Section 154 of the Code of Criminal Procedure 1973 should have been the statement of PW-36 which was the earliest statement and not the statement made by PW-32 that PW-32 had told an official during an enquiry that his first statement was not recorded at the village but at the police station which was in contradiction with his previous statement that none of the injured had identified the appellants but only those witnesses who did not sustain any injury had identified the appellants that the appellants were entitled to the plea of alibi; that the courts should have presumed the genuineness of all official records and accepted the proof as more than sufficient to discharge the appellants burden regarding alibi that sufficient number of witnesses were not examined to establish the identity of the appellants and that there were discrepancies in the testimony of eye-witnesses. C D E

Dismissing the appeal, this Court

F

HELD : 1. Under Section 154 of the Code of Criminal Procedure, 1973 the information must unmistakably relate to the commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First Information Report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer incharge of a police station is not obliged to prepare FIR on any nebulous or cryptic information received from somebody who does not disclose any authentic knowledge about G H

A commission of the cognizable offence. It is open to the officer incharge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto. [233-H, 234-A-B]

Tapinder Singh v. *State of Punjab,* [1971] 1 SCR 599; *Soma Bhai* B v. *State of Gujarat,* AIR (1975) SC 1453 and *State of U.P.* v. *P.A. Madhu,* AIR (1984) SC 1523, relied on.

2. The credit of witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in court. This principle is delineated in Section 155(3) of the Evidence Act, C 1872 and it must be borne in mind when reading Section 145 which consists of two limbs. It is proved in the first limb of Section 145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him. But the second limb provides that "if it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to D those parts of it which are to be used for the purpose of contradicting him." There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made E by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed F in the second limb of Section 145. It is not enough if witness was asked questions in cross-examination with reference to his previous statement. [234-G,H, 235-A-D, 234-G]

Bhagwan Singh v. *State of Punjab,* AIR (1952) SC 214, held G inapplicable.

3.1. None of the injured had identified the assailants (except two or three appellants) but only those witnesses who did not sustain any injury have claimed to have identified a bulk of them. Even if so, it cannot have any adverse impact on the credibility of the witness relied H on by the two courts as it could happen many a time that persons

sustaining injuries in a mass attack might not be in the same position to observe men and events as the non-injured persons. It is quite probable that the vision of the injured might get blurred, as their focus of attention would instinctively get diverted to the injuries sustained by them. They could then be in a less advantageous position to watch or observe the events than the non-injured witnesses. [236-A-B] A

3.2. That apart, there is no justification in drawing a hitaus between injured witness into his case as for the capacity to identify the assailants while in action. [236-C] B

4.1. An *alibi* is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act, 1872 that facts which are inconsistent with the fact in issue are relevant. [237-H, 238-A] C

4.2. Latin word *alibi* means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it was extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of *alibi*. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of *alibi*, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of *alibi*. [238-B-F] D E F G H

A *Dudh Nath Pandey* v. *State of U.P.*, [1981] 2 SCC 166 and *State of Maharashtra* v. *Narsingrao Gangaram Pimple*, AIR (1984) SC 63, relied on.

4.3. Regarding the contention that courts below should have presumed the genuineness of all official records and accepted the proof B as more than reasonably sufficient to discharge the appellants burden, one should not forget that presumption is only a rule in the realm of burden of proof and the reasons concurrently weighed with the two courts below for disbelieving the plea of *alibi* put forth by the appellants are quite sturdy. [239-F]

C 5. There is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of single witness, if wholly reliable, is sufficient to establish the D identification of an accused as member of an unlawful assembly. All the same, when the size of the unlawful assembly is quite large (as in this case) and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as participant in the E rioting. [241-G-H, 242-A]

Masalti v. *The State of Uttar Pradesh*, AIR (1965) SC 202, followed.

6. The discrepancies in the testimony of the eye witnesses are not material or serious and, therefore, the concurrent finding of lower F courts regarding reliability of the evidence of those witnesses on such discrepancies cannot be disturbed. [241-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 277 of 1987 Etc. Etc.

G From the Judgment and Order dated 3.7.86 of the Patna High Court in Crl. A. No. 480 of 1984.

Sushil Kumar, U.R. Lalit, Krishna Ballabh Sinha, Uday Sinha, Kailash Vasdev, Pawan Kumar, Ranjit Kumar, Ms. Anu Mohla, Yatish Mohan, H Ranjit Kumar, L.R. Singh, Anil Kumar Jha, R.P. Singh, Ugra Shankar

Prasad, D. Goburdhan and Ms. Pinky Anand for the appearing parties. A

The Judgment of the Court was delivered by

THOMAS, J. A veritable holocaust took place in a Bihar village (Paras Bigha, in Gaya District) on a moonlit night in early February, 1980. In that massacre lives of 13 human beings were snuffed out and 17 B others were badly mauled, a large number of mute cattle were burnt alive and many dwelling houses were gutted. The venue of that macabre was the area where houses of Harijans and people belonging to Backward Classes were clustered together in Paras Bigha village. After investigation the police charge-sheeted 56 persons for various offences committed in connection with the aforesaid incident, but due to different reasons only 44 of them C were put on trial. Sessions Court convicted 37 among them of various offences ranging from Section 302 IPC (read with Section 149) to minor offences such as Section 429 IPC and sentenced them to rigorous imprisonment for 10 years for the principal offence and to lesser terms of imprisonment for the lesser offences. The Patna High Court confirmed the conviction and while dealing with the sentences rectified an illegality D in awarding a sentence of imprisonment only for 10 years for the offence under Sections 302/149 IPC by enhancing it to imprisonment for life. The maximum fine imposed by the Sessions Court was reduced from Rs. 5,000 to Rs. 3,000 and made it applicable o all the convicted accused. We are now dealing with the appeals filed b the convicted persons in this Court E by special leave.

During the pendency of these appeals the appellant in Criminal Appeal No. 91 of 1994 (Surendra Prasad Singh) died and hence his appeal has abated. We may point out that appellant Moiddin Mian (ranked as 7th accused in the trail court) has not filed any appear before the High Court F and hence the conviction and sentence passed on him remained unchallenged. He is one of the many appellants arrayed in Criminal Appeal Nos. 280-283 of 1987 in this Court. But he could not have come to this court without approaching the High Court in appeal first. We, therefore, record that his appeal before us is not maintainable and hence the conviction and sentenced G passed on him by the Sessions Court would remain undisturbed. We, therefore, dismiss his appeal filed in this Court.

Due to the crowding of many accused persons in this case, we deem it convenient to refer to the individual appellant as far as practicable by the rank in which they were arrayed in the trial court. We do not think it H

A necessary to mention the facts elaborately, yet a brief narration of the story would be advantageous to deal with the questions raised before us.

One Ram Niranjan Sharma (father of A-3 Madan Mohan Sharma) was killed on 20.10.1979 for which the police charge-sheeted certain persons including Sukhdev Bhagat (PW-32) and some other prosecution witnesses B who were all inhabitants of the venue of this crime. From then onwards tension was mounting up in this locality. Police patrol as well as *bandobust* were provided and some measures, such as initiation of security proceedings under Section 107 of the Code of Criminal Procedure (for short 'the Code') for easing down the tension and to preserve law and order situation, were adopted but the police perambulation was subsequently lifted. On the C occurrence night these appellants and a lot of their henchmen formed themselves into an unlawful assembly arming themselves with deadly weapons, guns, rifles and cutting instruments. When the inhabitants of the place of occurrence were sleeping the rioters made a blitz on them around 11 in the night. Many houses occupied by the victims in this case were set on fire and haystacks (heap of straws) were set ablaze. The occupants who D emerged out of the burning houses were shot at by the appellants though some of them could escape either by fleeing off or by hiding from the spewing barrels of the firearms which prowled for them. When the assailants were satisfied that they had accomplished their object, they all retreated from the scene.

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The sub-Inspector of Jehanabad Police Station got information from Rabindra Bhagat (PW-36) about some serious occurrence involving arson and a large number of people. He then rushed to the scene. He spotted PW-32 (Sukhdev Bhagat) and elicited a detailed statement from him (Ext. 14). He forwarded it to the Police Station where an FIR was prepared on F its basis. Investigation was commenced, and inquests were held, autopsy on the dead bodies was arranged and hospitalisation of the injured was ensured. On completion of the investigation charge sheet was laid as aforesaid.

G We do not propose to refer to the evidence regarding the injuries sustained by the victims nor to the records showing the extensive damage inflicted on the cattle as well as to the dwelling houses. The trial court and the High Court have dealt with those aspects in extenso and reached findings substantially in favour of the prosecution. In fairness to all the learned senior counsel (who argued for the appellants) we must observe that none H of them disputed before us that on the dreadful night the devastating carnage

took place at this place in which those 13 persons died and a number of other persons were injured at the hands of armed assailants. The nub of the points stressed by the learned counsel is that these appellants were not the miscreants involved in the incident. In other words, basically the only point now to be considered is whether appellants were also among the assailants in the said occurrence?

A number of witnesses examined by the prosecution have identified these assailants in the trial Court. Learned Sessions Judge and the High Court did place reliance on the evidence of a large number of such witnesses on that aspect. However, the trial court did not act on the evidence of Raja Dev Bhagat (PW-1), Peru Bhagat (PW-2), Feken Yadav (PW-5), Bhagwan Das (PW-7), Alakh Deo Bhagat (PW-17) and Chandrika Paswan (PW-19).

Learned counsel pointed out that neither the trial court nor the High Court has treated Ext. 14 (statement of PW-32 Sukh Dev Bhagat) as forming the FIR in this case, instead the statement made by PW-36 Ravindra Bhagat which was marked as Ext. 10/3 was treated as the FIR. True it is, that before the Sub-Inspector of Jehanabad Police Station (PW-42 Kalika Prasad) could record the statement of Sukhdev Bhagat (PW-32) some information had already reached the Police Station when Rabindra Bhagat (PW-36) went there by early morning. It has been marked as Ext. 10/3. That information was entered in the station diary in the following words:

> "At this time Rabindra Bhagat son of Soharai Bhagat resident of Paras Bigha, P.S. Jahanabad came to Police Station accompanied by Bhangi Yadav resident of village Titai Bigha and gave the information that the sons (probably he meant sons and grand sons) of late Ram Niranjan Sharma had collected, with large number of persons in his village and they have set fire to the houses and piles of straws and has also resorted to firing. He had fled away seeing the fire and he was not aware of the full facts as to what had happened."

But we do not find any error on the part of the police in not treating Ext. 10/3 as the first information statement for the purpose of preparing the FIR in this case. It is evidently a cryptic information and is hardly sufficient for discerning the commission of any cognizable offence therefrom. Under Section 154 of the Code the information must unmistakably relate to the commission of a cognizable offence and it shall

A be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First Information Report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer incharge of a police station is B not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer incharge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto. *Tapinder Singh* v. *State of* C *Punjab,* [1971] 1 SCR 599, *Soma Bhai* v. *State of Gujarat,* AIR (1975) SC 1453, *State of U.P.* v. *P.A. Madhu,* AIR(1984) SC 1523.

Learned counsel who argued for the appellant, however, contended that first information statement in this case is neither Ext. 14 nor Ext. 10/3 but it should have been the statement which PW-32 (Sukhdev Bhagat) D had given before Jehanabad Police Station much prior to the other two statements. Learned counsel submitted that the police had, for reasons best known to them, hushed up that statement. Basis for the above submission is the evidence given by DW-19 (Nawal Kishore Prasad) a member of the Board of Revenue of the State of Bihar who conducted an official enquiry into the administrative lapses involved in this incident. Of E course, DW-19 claimed that one Sukhdev Bhagat had told him during such enquiry that his first statement was not recorded at the village but at the police station.

In this context, we may point out that Sukhdev Bhagat (PW-32) has stated in his evidence in the trial court that many officials would have F recorded his statements though he could not remember precisely whether an officer by name, Nawal Kishore Prasad would have examined him. PW-32 has further said in his evidence that Ext. 14 statement was recorded at the place of occurrence and that he had not given any other statement to the police. If he was to be contradicted with any other statement, the G defence should have adopted the procedure prescribed in Section 145 of the Evidence Act. Learned counsel contended that it is enough if he was asked questions in cross-examination with reference to such statement. In support of it he relied on the decision of this Court in *Bhagwan Singh* v. *State of Punjab,* AIR(1952) SC 214.

H The credit of a witness can be impeached by proof of any statement

which is inconsistent with any part of his evidence in court. This principle is delineated in Section 155(3) of the Evidence Act and it must be borne in mind when reading Section 145 which consists of two limbs. It is provided in the first limb of section 145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him. But the second limb provides that "If it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him." There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of Section 145.

In Bhagwan Singh's case, Vivian Bose, J. pointed out in paragraph 25 that during cross-examination of the witnesses concerned the formalities prescribed by Section 145 are complied with. The cross-examination in that case indicated that every circumstance intended to be used as contradiction was put to him point by point and passage by passage. Learned Judges were called upon to deal with an argument that witnesses" attention should have been specifically drawn to that passage in addition thereto. Their lordships were, however, satisfied in that case that the procedure adopted was in substantial compliance with Section 145, and hence held that all that is required is that the witness must be treated fairly and must be afforded a reasonable opportunity of explaining the contradictions after his attentions has been drawn to them in a fair and reasonable manner. On the facts of that case, there is no dispute with the proposition laid therein.

So long as the attention of PW 32 (Sukhdev Bhagat) was not drawn to the statement attributed to him as recorded by DW-19 (Nawal Kishore Prasad) we are not persuaded to reject the evidence of PW 32 that he gave Ex.14 statement at the venue of occurrence and that he had not given any other statement earlier thereto.

Learned counsel for the appellant next pointed out as a peculiar

A feature in the case that none of the injured had identified the assailants (except two or three appellants) but only those witnesses who did not sustain any injury have claimed to have identified a bulk of them. Even if so, it cannot have any adverse impact on the credibility of the witness relied on by the two courts as it could happen many of time that persons sustaining injuries in a mass of attack might not be in the same position to B observe men and events as the non injured persons. It is quite probable that the vision of the injured might get blurred, as their focus of attention would instinctively get diverted to the injuries sustained by them. They could then be in a less advantageous position to watch or observe the events than the non-injured witnesses.

C That apart, there is no justification in drawing a hiatus between injured witnesses and non-injured witnesses in this case as for the capacity to identify the assailants while in action. PW-4 (Babanand Bhagat), PW-9 (Doman Bhagat), PW-14 (Krishna Das,) PW-27 (Damyanti Devi) PW-33 (Ajay Kumar) are the witnesses who sustained injuries in this episode. Among them PW-14 is a small boy who said he got up from sleep on D hearing gun shots and even at the first sight of occurrence he fell under a shock and became unconscious. The other injured witnnesses have said that they woke up from sleep and on seeing the surroundings in flames, they ran for life and some sustained gun shots during the flight while the others sustained burns. If this was the position, we cannot find fault with them as to their inability to identify a good number of assailants.

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Some of the appellants have putforth the plea of *alibi*. The appellants who resorted to the plea of *alibi* in this case are A-1 (Krishnadev), A-2 (Shyam Sunder Singh), A-3 (Madan Mohan Sharma) and A-34 (Vinay Kumar Singh). As against the testimony of a large number of witnesses who claimed to have noticed those appellants actively participating in the F occurrence the above noted appellants have led evidence to show that during the relevant time they were at far away places. Such plea was emphatically reiterated by the learned counsel in this Court also.

According to the appellants-Krishnadev (A-1) and Shyam Sunder G Singh (A-2) on 5.2.1980 evening they were arrested by police in connection with case No.9(2)90 of Kankerbagh Police Station and was remanded to judicial custody by the Chief Judicial Magistrate, Patna and were interned in the Central Jail, Patna where they remained till 19.2.1980 and were shifted to sub-jail at Jehanabad where they remained till 23.2.1980 until they were released on bail. Those appellants examined official and H non-official witnesses to prove the plea of alibi; the Public Prosecutor in

the trial court had mounted a severe onslaught on the said plea by contending that jail records were manipulated at the instance of these appellants, though perhaps in the later period of incarceration in connection with the said those accused might have been detained in jail.

Appellant Madan Mohan Sharma (A-3) advanced his plea of alibi by saying that he was on the security guard of a Minister of the Bihar Government (Thakur Prasad Singh—DW-38) and that on the night of 6.2.1980 a dinner was hosted by that Minister in his official residence and that A-3 (Madan Mohan Sharma) was then attending his security duty at the residence of the Minister. The said appellant examined a number of witnesses including the Private Secretary to the Minister and some MLAs, besides the Minister himself, to establish his plea. Public Prosecutor who cross-examined the witnesses took the stand that PW-38 had stopped down to speak to the false evidence only to salvage himself from the murk of accusation flung on him inside the legislative assembly that someone in his personal staff played the main role in the carnage which shocked Bihar State.

Appellant, Binay Kumar Sharma (A-32) adopted the defence that he was admitted as an inpatient at Nalanda Medical College Hospital with acute appendicitis and was treated there for a long period which covered this crucial period of 6.2.1980 also. He examined Dr. Binod Bihari Sinha (DW-6) and DIG of Police-Kapil Dev Dubey (DW-8) to prove his plea. The Public Prosecutor who cross-examined those witnesses assailed DW6-Doctor suggesting that he became privy to the fabrication of documents to concoct the plea of *alibi*.

The trial court and the High Court concurrently repelled, in toto, the plea of *alibi* putforth by the above appellants after dealing, in extenso, with the materials produced by them in the Court in support of the plea. Learned counsel who argued for the appellants in this Court submitted first that the strict view adopted by the two Courts below that unless the plea of *alibi* is conclusively established no benefit would enure to the accused, is not a sound proposition in criminal cases. Learned counsel further contended that if an accused succeeded in creating a reasonable doubt regarding the possibility of himself to be elsewhere then the plea of *alibi* needs acceptance.

We must bear in mind that *alibi* is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a

A rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (A) given under the provision is worth reproducing in this context:

> "The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore
B is relevant."

The Latin word *alibi* means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence take place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the
C crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of *alibi*. The plea of the accused in such cases need be considered only when the burden has been
D discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of *alibi*, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily
E by the prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the
F benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of *alibi*. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey* v. *State of Uttar Pradesh,* [1981] 2
G SCC 166, *State of Maharashtra* v. *Narsingrao Gangaram Pimple,* AIR (1984) SC 63.

The appellants Krishnadev (A-1) and Shyam Sunder Singh (A-2) adopted the defence that they were taken to Central Jail, Patna on 5.2.1980 on a remand order passed by the Chief Judicial Magistrate, Patna. We
H

need not vex our mind with the evidence pertaining to the internment of those appellants in the sub-jail, Jehanabad from 19.2.1980 till 23.2.1980. Let that be as they say. But their detention in the Central Jail, Patna from 5.2.1980 which continued any day beyond 6.2.1980 is the crucial period so far as this case is concerned. In considering that crucial aspect the first question to be pondered over is, why should they have been arrested at all. Their case is that one Anil Kumar lodged a complaint with the police alleging that these two appellants had snatched Rs. 10 from one of them and so an FIR was registered against them which included the offence under Section 379 IPC and the arrest is said to have been made on its basis. The two Courts below have observed that the said Anil Kumar is a fictitious character and he was never traced out later. It was beyond comprehension for the two Courts as to why these two appellants did not even move for bail inspite of very clear advantageous factors for them. One is, they are nephews of appellant Madan Mohan Sharma (A-3) who was a police personnel on the security of one of the Ministers and he was stationed at Patna itself. Second is, bailing out the appellants would have been only a matter for making a motion as the offences lodged against them were seemingly trivial. Besides those incongruity, the very unsatisfactory way the gate register of the Central Jail, Patna was maintained, has been specifically noticed by the two Courts. In view of all such broad circumstances the trial judge agreed with the contention of the Public Prosecutor that a bogus complaint with the fictitious complainant would have been created in advance for using it for a plea of *alibi*. After exhaustively dealing with the evidence on this aspect, the High Court also concurred with that view.

Of course, Sri UR Lalit, learned Senior Counsel has vehemently argued that the courts should have presumed the genuineness of all official records and accepted the proof as more than reasonably sufficient to discharge their burden. We shall not forget that presumption is only a rule in the realm of burden of proof and the reasons concurrently weighed with the two courts below for disbelieving the plea of *alibi* put forth by these two appellants are quite sturdy. At any rate, in an appeal by special leave granted under Article 136 of the Constitution, this Court would not be inclined to upset the finding of fact based on such weighty reasons, more so when the reasons advanced by both the courts in support of the finding appeal to us also.

Sri UR Lalit, learned Senior Counsel, next contended that the plea of *alibi* advanced by the appellant Madan Mohan Sharma (A-3) that he

A was on guard duty in the Minister's bungalow should have been accepted. The distance between the Minister's residence and the place of occurrence is 60 kilometres. It is possible for anyone to cover the said distance in two hours. Perhaps, he was doing guard duty in the bungalow of the Minister but to hold that he was at the Minister's bungalow on the night of 6.2.1980 the evidence must be very credit-worthy. Those defence witnesses who B have spoken to this aspect, including the Minister himself (DW-36), have simply said long after that date that one particular person was doing guard duty on 6.2.1980. It should be remembered that Madan Mohan Sharma (A-3) had no special role to play during the dinner hosted by the Minister. The witness could not say who were the other persons on guard duty on any other day. Those aspects apart, it is revealed in the evidence of the C Minister (DW-36) that on the next day of occurrence a furore had erupted in the Bihar Legislative Assembly with the allegation that a member of the personal staff of the Minister, by name Madan Mohan Sharma, was involved in the Paras Bigha massacre and then the Minister has said on the floor of the assembly that Madan Mohan Sharma was not on his personal staff but was only a security guard. He did not say, in the Legislative Assembly, D that Madan Mohan Sharma was at his official residence at Patna during the relevant time. For these reasons, we are satisfied that the trial court and the High Court have rightly rejected his plea of *alibi*.

Sri Sushil Kumar, learned Senior Counsel arguing for the appellant Binay Kumar Singh (A-34) persued the plea of alibi put forth by that E accused in the trial court. He examined one Dr. Binod Bihari Sinha who was Associate Professor of Medicine at Nalanda Medical College, Patna as DW-36. The witness of course, said that appellant Binay Kumar Singh was admitted as an in-patient of the said Medical College Hospital for appendicitis and was not in a position to move out of his bed even on 6.2.1980. The witness said this with reference to the Bed-head Ticket F produced by him. But the cross-examination of DW-6 has exposed the falsity of his evidence. That a patient admitted for acute case of appendicitis in a Medical College Hospital was never shown to a surgeon creates a serious doubt as to whether this appellant was really admitted in that hospital as claimed by DW-6. The witness said in cross-examination that the patient G left the hospital soon after his admission but again returned on the next day. PW-6 also admitted that the Bed-head Ticket referred to by him did not contain any entry made by him. No mark of identification of the patient was noted in such Bed-head Ticket and DW-6 had no previous acquaintance with this appellant. No other document was produced to support the plea. On such a meagre and unsatisfactory evidence, the two H Courts below have rightly discarded his plea of *alibi*.

Turning back to the prosecution evidence regarding identification of the appellants Sri Sushil Kumar, learned Senior Counsel adverted to certain anomalies which crept in the deposition of some witnesses; one such anomaly relates to the evidence against appellant Binay Kumar Sharma.

There were two accused in this case bearing that name Binay Kumar Sharma. One of them is the appellant in Criminal Appeal No 277 of 1987 and he was arrayed as A-34 in the trial court. The other Binay Kumar Sharma is from Sarthua Village and he has jumped the bail and hence his trial was separated from the rest of the accused as per order of the trial court dated 15.5.1982. It is true that PW-11 (Mithlesh Paswan) who was examined in Court on 29.11.1982 mentioned two persons as Binay Sharma as having been identified by him. On the strength of it, learned senior counsel tried to make out a strong point as seriously affecting the prosecution case against appellant Binay Kumar Sharma (A-34). At the first blush, we too felt that it has some serious implication on the identification evidence of that appellant, but on closer scrutiny, we are convinced that there is no merit in that contention. What PW-11, in fact, said was that he recognised those two persons participating in the occurrence. It was not as though he identified two persons in the trial court bearing that name from out of the accused arrayed.

Arguments were addressed before us for reappreciation of evidence of the eye-witnesses on the strength of some discrepancies highlighted from their testimony. But we are not disposed to disturb the concurrent finding regarding reliability of the evidence of those witnesses on such discrepancies as they do not appear to us to be material or serious.

We have noticed that Mritunjaya (A-23) and Permanand Sharma (A-20) and Madan Mohan Sharma son of Ambica (A-24) were identified by more than two eye witnesses as participants in the occurrence. Out of those witnesses the testimony of PW-10 and PW-32 was accepted by both courts. As for the remaining appellants both courts have accepted the testimony of at least three witnesses each as referring to each appellant. There is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as member of an unlawful assembly. All the same, when the size of the unlawful

A assembly is quite large (as in this case) and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as participant in the rioting. In *Masalti* v. *The State of Uttar Pradesh,* AIR (1965) SC 202, a Bench of four Judges of this Court has adopted such a formula. It is useful to extract it here:

B

> "Where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a
C consistent account of the incident."

We feel that the said proposition can profitably be followed in this case also as the said proposition has stood the test of time.

D We are satisfied that the two courts have considered the evidence from the correct angle and found the appellants guilty of the offences keeping in view the above proposition. There is no reason for us to interfere with the conviction and sentences passed on the appellants. The appeals are accordingly dismissed. Bail bonds executed by the appellants shall stand cancelled. They shall be taken into custody to undergo the remaining
E part of sentence.

V.S.S. Appeals dismissed.