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NAND KUMAR

v.

STATE OF CHHATTISGARH
(Criminal Appeal No. 906 of 2012)

OCTOBER 31, 2014

B

**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
ABHAY MANOHAR SAPRE, JJ.]**

C *Penal Code, 1860 – s.302 r/w ss.149, 148 – Unlawful
assembly – Murder – Three deceased – Weapons of offence
including lathis, battle axe, sword and rods – Conviction of
accused-appellants – Justification – Held: Justified – Ocular
evidence of two eye witnesses (PWs 1 and 3) conclusively
D prove not only the involvement of accused persons but their
actual active role in killing the three persons – Corroboration
from medical evidence of three doctors PW12 and 13 and 14
and their respective post-mortem reports (Exs-P-56, 59 and
61) – Accused persons did not listen to the prayer of PWs1
and 3 and with a pre-determined motive killed the deceased
E persons by beating them due to which two of them died on
the spot and one succumbed in the hospital after some time
– PWs-1 and 3 elaborately narrated the entire incident by
taking the names of every accused whom they knew to be the
residents of the same area.*

F *Penal Code, 1860 – ss. 141, 142 and 149 – Unlawful
assembly – Common object – Circumstances, in which a
member of an unlawful assembly can be held to have
committed an offence in pursuance of the common object of
such assembly of which he is a member – Principles of law
G discussed.*

*Evidence – Related witness – Appreciation of – Murder
case – Plea that since PWs 1 and 3 were in close relation*

H

with the deceased persons being wife/mother or daughter/ sister and that they should not be believed for want of evidence of any independent witness, rejected. A

Evidence – Evidence of witness – Discrepancies – Appreciation of. B

Dismissing the appeals, the Court

HELD:1.1. In the case on hand, the mother and daughter saw from their naked eyes that their father/ husband and two sons/brothers were being killed in their presence with the use of Lathis, battle axe, sword and rods by the accused persons mercilessly and both the helpless ladies standing in front of the mob (accused persons) with folded hands praying “please do not kill them and leave them”. The accused persons did not listen to their prayer and with a pre-determined motive killed the deceased persons by beating them due to which two of them died on the spot and one succumbed in the hospital after some time. The sworn testimonies of these two eye-witnesses remained consistent throughout on material issues. Indeed, there is no valid reason for this Court to disbelieve them. [Paras 27, 28] [1161-B-E] C D E

1.2. When several people participate in commission of an offence with deadly weapons and attack one or more persons with an intention to kill them then the witnesses who are closely related to the victim(s) are not expected to describe the incident in graphic detail and with such precision that which member and in what manner he participated in the commission of offence. Their evidence is required to be appreciated in its totality. In the case on hand, PWs-1 and 3 elaborately narrated the entire incident by taking the names of every accused whom they knew to be the residents of the same area. The law does not say that the prosecution must examine F G H

- A all the eye-witnesses cited by the prosecution. When the evidence of two eye-witnesses, PWs 1 and 3 was found worthy of acceptance to prove the case then it was not necessary for the prosecution to examine any more eye-witnesses. It is for the prosecution to decide as to how many and who should be examined as their witnesses for proving their case. [Paras 33, 34, 36] [1163-C-H]

- C *Masalti etc. etc. vs. State of U.P.* AIR 1965 SC 202: 1964 SCR 133; *Om Prakash vs. State of Haryana* (2014) 5 SCC 753; *Dalbir Kaur and Ors. vs. State of Punjab* (1976) 4 SCC 158: 1977 (1) SCR 280; *Harbans Kaur and Anr. vs. State of Haryana* (2005) 9 SCC 195: 2005 (2) SCR 450; *Namdeo vs. State of Maharashtra* (2007) 14 SCC 150: 2007 (3) SCR 939 and *Munshi Prasad and Ors. vs. State of Bihar* (2002) 1 SCC 351: 2001 (4) Suppl. SCR 25 – relied on.

- D *Baladin and Ors. vs. State of Uttar Pradesh* AIR 1956 SC 181 –referred to.

Case Law Reference:

- | | | | |
|---|------------------------|-------------|---------|
| E | AIR 1956 SC 181 | referred to | Para 22 |
| | 1964 SCR 133 | relied on | Para 22 |
| | (2014) 5 SCC 753 | relied on | Para 23 |
| F | 1977 (1) SCR 280 | relied on | Para 29 |
| | 2005 (2) SCR 450 | relied on | Para 29 |
| | 2007 (3) SCR 939 | relied on | Para 29 |
| | 2001 (4) Suppl. SCR 25 | relied on | Para 31 |

- G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 906 of 2012.

From the Judgment and Order dated 11-05-2007 of the

High Court of Chhatisgarh at Bilaspur in Criminal Appeal A
No.785 of 2001.

WITH

Crl.A. Nos. 900-902, 908, 909-910, 911, 912, 913 & 914 of
2012. B

Dharam Bir Raj, Vohra, Yash Pal Dhingra, Binay Kr. Das
for the Appellant.

Dharmendra Kumar Sinha, Apoorv Kurup, V.C. Shukla,
C.D. Singh, for the Respondent. C

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. These appeals have
been directed against the final common judgment dated D
11.05.2007 passed by the High Court of Chhatisgarh at
Bilaspur in Criminal Appeal Nos. 785, 866, 762, 868, 761,
853, 875, 970, 851, 873 and 842 of 2001, whereby the High
Court upheld the conviction and sentence of the appellants
herein under Section 302 read with Sections 149 and 148 of E
the Indian Penal Code, 1860 (in short "IPC") which was
awarded to them by the Sessions Court whereas the High
Court allowed the Criminal Appeals of other accused and
acquitted them of the charges by setting aside the judgment of
the Sessions Court dated 12.07.2001 in Sessions Trial No. 342 F
of 1995 to that extent.

2. The concluding part of the impugned judgment of the
High Court reads as under:

"In the result, the appeals filed by accused Raj Kumar G
Singh, Dhananjay, Rohit, Nirmal, Surjan, Santosh Singh,
Gopal Das, Chhatram, Balchand and Devilal succeeds.
Conviction and sentences imposed upon them under
Sections 302 read with Sections 149 and 148 of the IPC
are set aside. They are acquitted of the said charges. H

A a. Balchand, Devilal, Chhatram & Surjan are on bail. Their bail bonds are discharged and they need not surrender to their bail bonds.

B b. Santosh Singh, Rohit, Gopal Das, Raj Kumar Singh, Nirmal and Dhananjay are in detention since 18-1-1995. They are directed to be released forthwith, if not required in any other case.

The appeal filed by accused Rameshwar Singh stands abated.

C The appeals filed by accused Kumar Singh, Nande Singh, Nand Kumar, Baran, Jaipal, Resham Lal, Guharam, Amritlal and Basant Das are dismissed. Conviction and sentences imposed upon them under Sections 302 read with Sections 149 and 148 of the IPC are maintained.

D Baran, Jaipal and Resham Lal are on bail. Their bail bonds are discharged and they are directed to surrender before the trial court forthwith to serve out the remaining sentence."

E 3. The question that arises for consideration in these appeals is whether the High Court was justified in upholding the conviction and sentence of the present appellants.

F 4. In order to appreciate the issue involved in these appeals, it is necessary to state the prosecution case in brief *infra*.

G 5. In a village - Bhaismudi in District Janjgir, there were two groups of villagers. One group consisted of deceased - Jawahar Singh, Bhupendra Singh and others whereas the other group consisted of the appellants herein and other accused. There were disputes between the two groups on account of Panchayat elections in the village and also several other reasons.

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6. In the intervening night of 16th & 17th January 1995, the
accused persons convened a meeting and hatched up a
conspiracy to eliminate Jawahar Singh and others. The accused
persons accordingly formed an unlawful assembly with a
common object to murder Viki Singh, Jawahar Singh,
Bhupendra Singh, Shailendra Singh - both sons of Jawahar
Singh, and Kalicharan and in furtherance of this common object,
all accused persons with deadly weapons (lathi, sword, ballam,
Tabbals, iron roads) first went to the residence of Viki Singh
near a place called Nawa Talab, and killed Viki Singh by
severely beating him with the weapons which they had carried
with them. The accused persons then proceeded towards the
agriculture field of Jawahar Singh where they killed Jawahar
Singh and his two sons - Bhupendra Singh and Shailendra
Singh by severely beating them with the weapons, which they
were carrying with them. Thereafter, the accused party
proceeded to a place called - Holha Chowk of Bhaismudi and
killed Kalicharan with the aid of same weapons.

7. Madhubala Bai (PW-1) reported this incident by lodging
Dehati Nalishi (Ex-P-1) on the spot on 17.01.1995 around 3.00
P.M.

8. At this stage it is proper to reproduce the substance of
the contents of Ex-P-1 herein below: -

".....that she is resident of village Bhaismudi, at
about 11.30 a.m. she was at her shop, at that time, Karia
Sabaria came crying to her shop and said that Viki Singh
has been murdered near Nawa Talab by Shiv Sena
persons namely, Kumar Singh, Nande Singh, Guharam,
Rohit, Jaipal, Resham, Rajkumar Singh, Prahlad Singh,
Rameshwar Singh, Dhananjay, Nand Kumar, Santosh &
others. When she reached the spot, she saw that all these
persons were carrying lathi, rod, battle axe etc. They were
crying and saying 'let us now go to the field of Jawahar
Singh and finish them there', they started going towards

A the agricultural field of her father. She and her mother also
 followed them and requested that once they should save
 their life, but they did not accede to their request. While
 going to the agricultural field, she informed Vinay Singh
 that Babuji has been murdered near Nawa Talab, Nirmal
 B Kashyap, Amrit, Basant and Baran were also along with
 them. After reaching the agricultural field, these persons
 attacked her father Jawahar Singh and brothers
 Bhupender Singh and Shailender Singh with lathi and
 C Tabbal as a result of which her father Jawahar Singh and
 brother Bhupender Singh succumbed to the injuries
 sustained by them instantaneously, and brother Shailender
 Singh succumbed to the injuries after 15-20 minutes. All
 these persons have committed the murder of her father and
 brothers."

D 9. On receipt of the aforesaid report, Brajender Singh (PW-
 16) - the Head Constable of Police Station Janjgir, registered
 the FIR (Ex-P-64) for commission of the offence under Sections
 302, 147, 148 and 149 IPC. Brajender Singh (PW-16) gave
 intimation in respect of the death of Shailendra Singh - (Ex-P-
 E 65) whereas intimation in respect of the death of Bhupendra
 Singh and Jawahar Singh were given by M.L. Shandilya (PW-
 22), Inspector of police - Exs-P-70 and P-71.

F 10. After giving necessary notices (Exs. P-2, 51, and 63),
 the Investigating Officer prepared inquest of Bhupendra Singh
 (Ex-P-3), Shailendra Singh (Ex-P-52) and Jawahar Singh (Ex-
 P-64). Dr P.K. Narula (PW-12) conducted post-mortem on the
 body of Bhupendra Singh (Ex-P-56). In his opinion, the cause
 of death of Bhupendra Singh was due to shock as a result of
 hemorrhage on account of extensive homicidal head injury. Dr.
 G U.C. Sharma (PW-13) conducted post-mortem on the body of
 Jawahar Singh, who vide his report (Ex.P-59) opined that cause
 of death of Jawahar Singh was due to shock and hemorrhage
 as a result of extensive head injury and that the death is
 homicidal in nature. Dr. A.K. Paliwal (PW- 14) conducted post-
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mortem on the body of Shailendra Singh and vide his report (Ex-P-61) opined that cause of death was due to shock resulting from hemorrhage caused by extensive head injury and that death is homicidal in nature. A

11. After completing the investigation and collecting all the evidence, the charge-sheet was filed against 29 accused persons for commission of offences punishable under Sections 147, 148, 149 and 302 of the IPC in the Court of Judicial Magistrate First Class, Janjgir, who in turn committed the case to the Session Judge, Bilaspur, who in turn transferred it to the Additional Sessions Judge. During the trial, one of the accused - Prahlad Singh, died. B C

12. Prosecution examined as many as 22 witnesses at the trial to prove the case. Statements of accused persons were then recorded under Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.), in which all the accused persons denied their involvement in the commission of the offences and also denied the material collected against them in the form of evidence. They stated that they were falsely implicated in the crime and are thus innocent. One of the accused, Ganesh, stated that the deceased and their party members were indulged in selling illicit liquor and since members of their party -Shiv Sena were not allowing them to do such acts which included accused, who were also the members of Shiv Sena, they were falsely involved in this case due to this grudge against them. He also stated that since in Panchayat elections, some candidates of the deceased party had lost the election and hence, they were hostile to the accused persons. Another accused - Gopal Das stated that on the date of incident, he was at Raigarh for medical test. The accused in defence examined Lalit Kumar (DW-1) and Dinesh Chandra Pathak (DW-2). D E F G

13. The trial Court, by judgment dated 12.07.2001, acquitted eight accused and convicted the remaining accused. H

- A All the convicted appellants were directed to undergo life imprisonment under Section 302 read with Sections 148 and 149 with a fine of Rs. 2000/- each.

- B 14. The convicted accused persons filed appeals in the High Court. By impugned judgment, the High Court upheld the conviction of nine accused persons by dismissing their appeals and acquitted the remaining accused persons by allowing their appeals. One appeal was held abated due to death of accused.

- C 15. The details regarding conviction/acquittal of accused persons by the High Court are mentioned herein below:

Name and Number of the Accused-Appellant Acquittal / Conviction

D	Gopal Das (A 3)	Acquitted
	Kumar Singh (A 4)	Conviction Upheld
	Rajkumar Singh (A 5)	Acquitted
E	Baran (A 6)	Conviction Upheld
	Amrit (A 7)	Conviction Upheld
	Guharam (A 8)	Conviction Upheld
F	Jaipal (A 9)	Conviction Upheld
	Santosh Singh (A 10)	Acquitted
	Nande Singh (A 11)	Conviction Upheld
G	Resham (A 13)	Conviction Upheld
	Rameshwar Singh (A 14)	Appeal Abated
	Dhananjay (A 15)	Acquitted
H	Rohit Kumar Karsh (A 16)	Acquitted

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Nirmal (A 17)	Acquitted	A
Basant (A19)	Conviction Upheld	
Surjan (A 20)	Acquitted	
Chhatram (A 24)	Acquitted	B
Balchand (A 25)	Acquitted	
Devilal (A 27)	Acquitted	
Nand Kumar (A 28)	Conviction Upheld	C

16. Against this judgment of the High Court, the convicted accused persons have preferred these appeals before this Court questioning the correctness of the impugned judgment in so far as their conviction and sentence is concerned.

17. Learned Counsel for the appellants, while assailing the conviction and sentence of the appellants, contended that the High Court was not right in upholding the conviction of the appellants. It was further contended that there was no role played by any of the appellants in the commission of the offence in question and nor was there any overt act played by any of them so as to render them liable to suffer conviction and sentence under Sections 302/147/148/149 of the IPC. Learned Counsel urged that non-examination of Kariya Sabaria, who was important eyewitness even according to the prosecution, has rendered the appellants' conviction bad in law. Learned counsel maintained that where group of persons commits any crime, it becomes necessary for the prosecution to prove the role of every person of such group in commission of the offence including what every person actually did such as whether he actually assaulted the deceased, which weapon he used, how much force he used, whether he was aggressor, whether his role was prominent and if so to what extent etc. Learned Counsel submitted that since evidence adduced by the

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A prosecution is lacking on these material issues and hence the appellants must be given the benefit of doubt and they be acquitted of the charges alike those acquitted by the trial court and the High Court and lastly, it was urged that since the conviction is based solely on the testimony of interested witnesses (PW- 1 and 3), who were related to the deceased persons and, therefore, their testimony was not reliable for convicting the appellants for want of any other independent eye-witness.

C 18. Learned Counsel for the respondent-State, in reply, while supporting the impugned judgment contended that no case is made out to call for any interference in the impugned judgment. Firstly, he submitted that the High Court was right in upholding the appellants' conviction and sentence; secondly, both the courts below rightly appreciated the evidence adduced by the prosecution, which was sufficient in the ordinary course to sustain the finding of conviction under Section 302 read with Sections 147/148/149 of IPC; thirdly, the appellants' conviction was based on the testimony of two eye-witnesses, namely, Madhubala Bai (PW-1) and Saraswati Bai, (PW-3), whose presence at the time of occurrence was not disputed; fourthly, keeping in view the law laid down by this Court in several decisions explaining therein the parameters to be applied for convicting any member of unlawful assembly, the prosecution was able to adduce sufficient evidence to sustain the appellants' conviction; and lastly, looking to the gruesome murders committed by the appellants killing as many as five persons with a pre-determined motive, this Court should uphold the conviction and sentence of all the appellants, who are sailing in the same boat and dismiss these appeals.

G 19. Coming first to the question as to whether the death of three persons, which is the subject matter of these appeals, namely - Jawahar Singh, Shailendra Singh & Bhupendra Singh is homicidal. We are of the considered opinion that it is homicidal in nature. It is amply established from the medical

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evidence of three doctors namely, Dr. P.K. Narula (PW-12), Dr. U.C. Sharma (PW-13) and Dr. A.K. Paliwal (PW-14) and their respective post-mortem reports (Exs-P-56, 59 and 61) as also ocular evidence of two eye-witnesses, Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3). We, therefore, uphold the finding of two courts below on this issue.

20. This takes us to the main question as to whether the courts below were justified in holding the appellants guilty for committing murder of three persons named above?

21. Before we peruse the ocular evidence adduced by the prosecution, it is necessary to take note of the law on the question as to under what circumstances, a member of an unlawful assembly can be held to have committed an offence in pursuance of the common object of such assembly of which he is a member.

22. While distinguishing on facts and then explaining the view taken by this Court in **Baladin and Ors. Vs. State of Uttar Pradesh**, AIR 1956 SC 181, the four Judge-Bench speaking through Justice Gajendragadkar in **Masalti etc. etc. Vs. State of U.P.**, AIR 1965 SC 202, laid down the following principle of law on the aforesaid question:

"17.in the case of *Baladin v. State of Uttar Pradesh*, AIR 1956 SC 181,, it was observed by Sinha, J., who spoke for the Court that it is well-settled that mere presence in an assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142 IPC. The argument is that evidence adduced used by the prosecution in the present case does not assign any specific part to most of the accused persons in relation to any overt act, and so, the High Court was in error in holding

A that the appellants were members of an unlawful assembly.....

B It appears that in the case of *Baladin* the members of the family of the appellants and other residents of the village had assembled together; some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained long with the other members of the assembly the common object as defined by Section 141 IPC Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common object specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of *Baladin* assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of

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some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. Therefore, we are satisfied that the observations made in the case of *Baladin*² must be read in the context of the special facts of that case and cannot be treated as laying down an unqualified proposition or law.....”

23. Recently, this Court in *Om Prakash Vs. State of Haryana*, (2014) 5 SCC 753, placed reliance on the aforesaid principle laid down in *Masalti* (*supra*) in following words:

“15. The aforesaid enunciation of law was considered by a four-Judge Bench in *Masalti v. State of U.P.*, AIR 1965 SC 202 which distinguished the observations made in *Baladin* AIR 1956 SC 181 on the foundation that the said decision should be read in the context of the special facts of the case and may not be treated as laying down an unqualified proposition of law. The four-Judge Bench, after enunciating the principle, stated as follows: (AIR p. 211, para 17)

“17. ... it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149

A makes it clear that if an offence is committed by any
 member of an unlawful assembly in prosecution of the
 common object of that assembly, or such as the members
 of that assembly knew to be likely to be committed in
 prosecution of that object, every person who, at the time
 B of committing of that offence, is a member of the same
 assembly, is guilty of that offence; and that emphatically
 brings out the principle that the punishment prescribed by
 Section 149 is in a sense vicarious and does not always
 proceed on the basis that the offence has been actually
 committed by every member of the unlawful assembly".
 C

24. Keeping the aforesaid principle of law in mind, when
 we peruse the prosecution evidence, we have no hesitation in
 upholding the findings of the courts below. We do this for the
 following reasons.

D 25. In the first place, names of these accused are
 mentioned in Dehati Nalish (Ex-P-1). Secondly, their names are
 also mentioned in the statements of P.W-1 and P.W-3, which
 were recorded under Section 161 of the Cr.P.C. Likewise these
 E two witnesses (PWs 1 and 3) also categorically stated in their
 evidence in Court about the overt act played by the accused
 persons in committing the murders of Jawahar Singh and his
 two sons, Bhupendra and Shailendra. In other words, a conjoint
 reading of these two statements clearly establishes the overt
 acts played by the accused persons while killing these three
 F persons one after another on the same day. Thirdly and most
 importantly, the ocular evidence of two eye witnesses (PWs 1
 and 3) conclusively prove not only the involvement of the
 accused persons but their actual active role played in killing
 these three persons. We have undertaken the exercise of
 G appreciating the evidence and especially of two eye witnesses
 (PWs 1 and 3) and we find that their sworn testimonies deserve
 to be accepted.

H 26. It is not in dispute, as it has come in evidence, that

Madhubala (PW-1) is the daughter of the deceased- Jawahar Singh, and sister of the deceased Bhupendra and Shailendra, whereas Saraswati Bai (PW-3) is the wife of the deceased Jawahar and mother of Madhubala (PW-1) and the deceased Bhupendra and Shailendra.

27. In the case on hand, the mother and daughter saw from their naked eyes that their father/husband and two sons/ brothers were being killed in their presence with the use of Lathis, battle axe, sword and rods by the accused persons mercilessly and both the helpless ladies standing in front of the mob (accused persons) with folded hands praying "please do not kill them and leave them". The accused persons did not listen to their prayer and with a pre-determined motive killed the deceased persons by beating them due to which two of them died on the spot and one succumbed in the hospital after some time.

28. It will be a travesty of justice, if we do not believe the sworn testimonies of these two eye-witnesses, which in our considered opinion, remained consistent throughout on material issues. Indeed, there is no valid reason for this Court to disbelieve them.

29. The submission of learned Counsel for the appellants that since PWs 1 and 3 were in close relation with the deceased persons being wife/mother or daughter/sister and that they should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in *Dalbir Kaur and Ors. Vs. State of Punjab*, (1976) 4 SCC 158, and *Harbans Kaur and Anr. Vs. State of Haryana*, (2005) 9 SCC 195, which lays down the following proposition:

"There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that

A the witnesses had reason to shield actual culprit and falsely implicate the accused.”

In **Namdeo Vs. State of Maharashtra**, (2007) 14 SCC 150, this Court further held:

B “38. it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

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30. We follow this well settled principle of law for rejecting the submissions of learned counsel for the appellants.

31. Yet another submission of learned counsel that due to discrepancies in the evidence of PWs 1 and 3 and in their statements recorded under Section 161, should not be relied on and deserves to be rejected in the light of the law laid down by this Court in **Munshi Prasad and Ors. vs. State of Bihar**, (2002) 1 SCC 351, which reads as under:

E

F “Incidentally, be it noted that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of, and

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we do not see any justification to pass a contra-note, as well, on perusal of the evidence on record."

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32. As mentioned above, we have not been able to notice any major discrepancies in their statements and whatever discrepancies, which were relied on by the learned counsel, were so minor and insignificant that they do not, in any way, dilute their version.

B

33. In our considered view, when several people participate in commission of an offence with deadly weapons and attack one or more persons with an intention to kill them then the witnesses who are closely related to the victim(s) are not expected to describe the incident in graphic detail and with such precision that which member and in what manner he participated in the commission of offence. Their evidence is required to be appreciated in its totality.

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34. In the case on hand, PWs-1 and 3 elaborately narrated the entire incident by taking the names of every accused whom they knew to be the residents of the same area. We, therefore, find no merit in the submission of the learned counsel and accordingly reject it.

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35. We are also not impressed by the arguments of the learned counsel appearing for the appellants when he contended that one eye-witness, Kariya was not examined and hence it has weakened the case of the prosecution.

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36. The law does not say that the prosecution must examine all the eye-witnesses cited by the prosecution. When the evidence of two eye-witnesses, PWs 1 and 3 was found worthy of acceptance to prove the case then it was not necessary for the prosecution to examine any more eye-witnesses. It is for the prosecution to decide as to how many and who should be examined as their witnesses for proving their case. Therefore, we find no merit in this submission.

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A 37. In the light of the foregoing discussion, we find no merit in the appeals, which fail and are accordingly dismissed. As a result, the conviction and sentence awarded to the appellants by the courts below are upheld.

Bibhuti Bhushan Bose

Appeals dismissed.

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P.S.C. 4 XII 2014 (4)
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(i) Interference with order of Labour Court/Industrial tribunal – Jurisdiction of High Court – Held: High Court can interfere with an order of the Tribunal only on the procedural level and in cases, where decision of the lower courts was arrived at in gross violation of the legal principles – High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts – Constitution of India, 1950 – Arts. 226 and 227 – Judicial review.

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(iii) Termination – Entitlement for reinstatement with full back wages and other consequential reliefs – Held: Termination of appellant being found illegal and void ab initio, he was entitled to reinstatement – Burden of proof that appellant was gainfully employed post termination of his service was on respondent-employer – However, claim of respondent that appellant was gainfully employed somewhere was vague and could not be considered and accepted – Appellant accordingly entitled to full back wages from the date of termination till the date of reinstatement – High Court erred by exceeding its jurisdiction u/Art.227 of the Constitution in holding that appellant in fact,

resigned by not joining his duty as a 'badly' worker and also awarding that retrenchment compensation to the tune of 1,00,000/- will do justice to appellant without assigning reasons, which was wholly unsustainable in law.

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LAND ACQUISITION ACT, 1894:

ss.4, 23 and 54 – Compensation enhancement – Acquisition of land measuring 40 guntas for establishment of Medical Research Centre by State Government – Award of compensation @ Rs. 1050/- per gunta by Land acquisition Officer which was enhanced to Rs. 7,000/- by Reference Court – Land owners seeking enhancement of the quantum of compensation payable – High Court enhanced the compensation from Rs. 7000/- per gunta to Rs. 99,000/- per gunta being the fair market value of the acquired lands on the date of acquisition along with the other statutory benefits – Justification of – Held: Having regard to all the relevant factors, the fair market value of the land reasonably worked out at Rs. 70,000/- per gunta in place of Rs. 99,000/- per gunta which is just and reasonable – Thus, the award modified accordingly.

Indian Council of Medical Research v. T.N. Sanikop & Anr. Etc. Etc.

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MAHARASHTRA LAND REVENUE CODE, 1966:

s.48(7) – Imposition of penalty – Whether the excavation activity even for the purposes of laying foundation of the building or for the purpose of widening of the channel to bring adequate quantity of sea water for the purpose of cooling the nuclear plant would attract rigours of s.48(7) of the Code – Held: Ordinary earth has been brought within the fold of a Minor Mineral by Notification of 3.2.2000 issued u/s.3(e) of the Act of 1957 – In terms of the said Notification, “ordinary earth” used for filling or levelling purposes in construction of embankments, roads, railways, buildings is deemed to be a minor mineral – An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling – The construction of buildings was in terms of a sanctioned development plan under the MRTP Act whereas the excavation/widening of the channel to bring sea water was in furtherance of the object of the grant of the land in favour of the Nuclear Power Corporation – Penalty not leviable – Maharashtra Regional and Town Planning Act, 1966 – s.31 – Mines and Minerals (Development and Regulation)

Act, 1957 – s.3(e) – Notification dated 3.2.2000
issued under 1957 Act – Maharashtra Land
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1968 – r.6.

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s.42, 2(o), 40, 43 and 60 – Goods brought into the
port and warehoused by the Port Trust Authority –
Consignee of the goods not attempted to clear bill
of lading and also not responded to the notices
issued – Payment of demurrage and port charges
to the Board of Trustees of a Port – Held: Agent of
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s.3(e).

(See under: Maharashtra Land Revenue
Code, 1966) 347

MOTOR VEHICLES ACT, 1988:

Accident claim – Permanent disability – Loss of earning capacity – Assessment of – Held: Appellant was working as Goundi i.e. at the building construction sites – Such work required good health and extreme fitness as it was a strenuous task which involved lot of physical activities – Appellant suffered permanent disability of 58% to the whole body and was not capable of doing heavy work – He was even unable to walk and stand for a long time – Hence, his functional disability to be taken at 85% – Applying formula contained in Note (5) of the Second Schedule to the Act, loss of future income would work out to Rs.5,35,500/- – Similarly, for pain and suffering, amount of Rs.25,000/- awarded by High Court increased to Rs.60,000/- – Appellant to get interest @ 9% per annum from the date of claim petition till payment – Total compensation payable to appellant coming to Rs.6,72,000/- as against Rs.2,59,500/-, awarded by High Court.

Basappa S/o Sanganasappa Bahvikatti v. T. Ramesh S/o Tangavelu and Anr.

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NATIONAL SECURITY ACT, 1980:

s.3(1)(a) – Preventive detention – High Court setting aside the order of detention – Held: The

detenu was taken into custody in September, 2012, and the order of detention was passed in December, 2012 – The said order of detention was finally quashed by the High Court in April 2013 – Apparently, therefore, a long time lapsed inasmuch as the period of detention fixed in the order of detention already expired in April, 2014 – The detenu shall not be taken into custody for serving the remaining period of detention unless there still exist materials to the satisfaction of the detaining authority for putting him under detention – In the facts and circumstances of the case, the impugned order is set aside – However, initial detention order having been expired long back, it is for the detaining authority to take a decision in accordance with law – Constitution of India, 1950 – Article 21.

The Secretary to Government, Public (Law and Order-F) and Another. v. Nabila and Another 405

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ss. 138 and 142 – Dishonour of cheque – Complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served on the drawer of the cheque – Held: Not maintainable.

Yogendra Pratap Singh v. Savitri Pandey & Anr 26

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ORISSA ESTATES ABOLITION ACT, 1951:

s.8 – Requirement u/s.8 for being recognized as tenants under the State Government – Benefit of continuity of tenure – When available – Held: To confer the benefit of continuity of tenure to the tenant, possession as well as cultivation of the land are relevant as on the date of vesting of the land under the Act.

State of Orissa and Anr. v. Fakir Charan Sethi and Ors.

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PENAL CODE, 1860:

(1) s.147 and 302/149 – Prosecution under – Plea of acquittal on parity with the acquitted accused – Held: It is always open to the court to distinguish the case of acquitted accused with the convicted ones – High Court rightly declined to acquit accused No. 1 on the principle of parity.

Uma Shankar Gautam v. State of Madhya Pradesh

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(2) s.300, Exception 4 and s. 304, Part-II – Earlier quarrel – Fire shots exchanged between both the parties resulting in the death of two on the complainant side and one on the appellant side – Conviction and sentence of the appellant u/s. 302 for causing murder of two by the courts below – Interference with – Held: On basis of the sketch drawn, FSL Report, evidence of the wife of the appellant's brother, death of two on the

complainant's side occurred due to the firing resorted to as part of self defence by the appellant – It would amount to culpable homicide not amounting to murder, which was committed without any pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and that the offender did not take undue advantage or acted in a cruel or unusual manner, which would normally fall under Exception 4 to Section 300 – Thus, conviction modified to one u/s. 304 Part-II with the punishment of ten years – Since the sentence already suffered by the appellant is more than sufficient, the appellant to be released if not required in any other offence – Arms Act – s.27.

Rajinder Singh v. State of Haryana 564

(3) s. 302 and 302/120B – Murder by seven accused – Two of the accused convicted u/s. 302 and s. 25 of Arms Act and their conviction confirmed by High Court – Five of the accused convicted by trial court u/s. 302/120B and acquitted by High Court – Appeal against conviction order of two accused and acquittal order of the five accused – Held: conviction order against two accused is affirmed – Prosecution case against them is supported by evidence of eye-witnesses who are further corroborated by the evidence of finger-print expert – High Court rightly acquitted the five accused giving them benefit of doubt after proper appreciation of evidence – Arms Act, 1959 – s. 25.

State of Punjab v. Jagga Singh Etc. 505

(4) (i) s.302 r/w ss.149 and 148 – Unlawful assembly – Murder – Three deceased – Weapons of offence including lathis, battle axe, sword and rods –

Conviction of accused-appellants – Held: Ocular evidence of two eye witnesses (PWs 1 and 3) conclusively prove not only the involvement of accused persons but their actual active role in killing the three persons – Corroboration from medical evidence of three doctors and their respective post-mortem reports – Accused persons did not listen to the prayer of PWs 1 and 3 and with a pre-determined motive killed the deceased persons by beating them due to which two of them died on the spot and one succumbed in the hospital after some time – PWs-1 and 3 elaborately narrated the entire incident by taking the names of every accused whom they knew to be the residents of the same area.

(ii) ss. 141, 142 and 149 – Unlawful assembly – Common object – Circumstances, in which a member of an unlawful assembly can be held to have committed an offence in pursuance of the common object of such assembly of which he is a member – Principles of law discussed.

Nand Kumar v. State of Chhattisgarh 1146

(5) s. 304 Part II, s. 300 Exception 4 – Murder – Scuffle between accused-husband and wife and the victim-deceased, resulting in the death of the victim – Complainant and others witness to the incident – Conviction and sentence u/s. 302 – Accused pleading provocation on the part of the deceased and lack of evidence, however, order passed by trial court upheld by High Court – Held: Death of the victim was homicidal in the light of the evidence produced by prosecution witnesses – There was no premeditation on the part of the accused and the scuffle took place due to sudden

provocation on the part of the deceased – Thus, accused entitled to the benefit of s. 300 Exception 4 – Conviction of the accused modified to s.304 Part II – Sentence of imprisonment for 10 years would meet the ends of justice.

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(6) ss. 304B/34, 498A and 201 – Dowry death – Death of victim-wife within four months of marriage – Allegations by victim's father that the appellants-husband, his father, his brother and brother-in-law committed murder of his daughter and tried to destroy the dead body by burning – Allegation of dowry demand and threat of dire consequences – Acquittal by trial court, however, order of conviction and sentence u/ss. 304B/34, 498A and 201 passed by the High Court – Held: Presumption can safely be drawn that death was caused by the husband or his relatives, who caused the cruelty or harassment as all the ingredients u/s. 304B were proved beyond doubt particularly since there was no direct evidence on the part of the appellants to rebut the same – Conviction and sentence as against husband and father-in-law u/ ss. 304B/34, 498A and 201 upheld – However, conviction and sentence of father-in-law and husband set aside since offence not proved against them.

*Vijay Pal Singh and Others v. State of
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POLICE ENCOUNTERS:

Investigation – Procedure to be followed in investigating police encounters – Issue as regards

genuineness or otherwise of nearly 99 encounters between the Mumbai police and the alleged criminals resulting in death of about 135 persons between 1995 and 1997 – Direction by the High Court to the police of the State to follow certain guidelines – SLP thereagainst as also other matters – Held: It is the constitutional duty of this Court to put in place certain guidelines adherence to which would help in bringing justice to the perpetrators of the crime who take law in their own hands – Certain guidelines issued to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation – The same would be applicable to grievous injury cases in police encounter – Said guidelines to be treated as law declared u/Art. 141 – Code of Criminal Procedure, 1973 – ss.174, 175 and 176 – Constitution of India, 1950 – Arts. 21 and 141 – Guidelines.

People's Union for Civil Liberties & Anr. v. State of Maharashtra & Ors.

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Recusal of Judges – Held: Calculated psychological offensives and mind games adopted to seek recusal of Judges, need to be strongly repulsed – Such tactics deprecated.

Subrata Roy Sahara v. Union of India and Others

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Administrative order in compliance of Supreme Court decision regarding promotion –

Challenged – High Court set aside the order holding that judgment of Supreme Court was per incuriam – Held: High Court committed serious error in law by not following the judgment passed by Supreme Court – Such a course adopted by High Court was against the law of precedents and ratio-decidenti and violative of Art. 141 of the Constitution – Constitution of India, 1950 – Art. 141 – Service Law – Promotion.

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B. Yashodabai and Ors. 370

PREVENTION OF CORRUPTION ACT, 1947:

s. 17 – Persons authorized to investigate – Complaint alleging case of bribery against respondent-Inspector of income tax – Investigation by Inspector of Police – Special Judge for CBI cases permitting Sub-Inspector of police to investigate the matter under the 1988 Act – Completion of investigation by Sub-Inspector as also submission of charge sheet and court took cognizance – Held: No case of prejudice or miscarriage of justice by reason of investigation by the Sub-Inspector of Police made out – Order of the High Court setting aside the permission granted by the Magistrate to investigate the matter by Sub-inspector not sustainable.

Union of India Etc. Rep. Through Superintendent of Police v. T. Nathamuni 297

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s.4 – Land allotted on lease – Termination of the
tenancy – In eviction proceedings, R-1 appeared
as power of attorney holder of R-2 (the allottee) –
Eviction order – Challenged by R-1 and not R-2 –
Locus of R-1 to maintain the statutory appeal – Held:
R-1 being power of attorney holder of R-2, cannot
be allowed to maintain the appeal on his behalf –
s. 4(2) is not applicable to such unauthorised
occupants, who enter into possession after initiation
of eviction proceedings against their predecessor
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Punjab State Electricity Board now Punjab State Power Corporation Ltd. v. Raj Kumar Goel 171

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Selection process for regular promotion from the post of Superintendent Engineer – Power to relax the qualification as to minimum length of service under Reg. 20 – Permissibility of – Held: On facts, the power of relaxation under the Regulations was always available and has been exercised in a manner which does not call for any interference – Order of High Court that it amounts to retrospective amendment of rules of eligibility after the selection process has begun and that it was for dubious reasons only to accommodate the appellant cannot be accepted – Direction to the Parishad and the State Government to expedite the process of selection – U.P. Eligibility List Rules 1986 – r. 4 – U.P. Avas Evam Vikas Parishad (Appointment and Conditions of Service of Chief Engineer) Regulations, 1990.

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funds of an individual – Mens rea was established from the fact that false bank receipts were issued for non-existent securities – Diversion of public funds by committing forgery/use of forged documents amounted to criminal breach of trust as well as offence under POCA Act – Conviction upheld.

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