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SUKHBIR SINGH

v.

STATE OF HARYANA

FEBRUARY 20, 2002

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[R.P. SETHI AND K.G. BALAKRISHNAN, JJ.]

Penal Code, 1860:

C *Section 300, Exception 4—Benefit of Exception—Entitlement of—Absence of existence of common object—Accused person is proved to have committed culpable homicide without pre-meditation in a certain fight in heat of passion upon a sudden quarrel-Acts not cruel and of unusual manner—Held, in such a situation accused entitled to benefit under Exception 4 of Section 300.*

D *Sections 302 and 149—Existence of common object of unlawful assembly amongst accused persons—Findings of High Court regarding sharing of common object—Evidence of witnesses—No enmity between parties—Time gap between quarrel and fight was few minutes—Trial Court on the basis of evidence proved by the prosecution that accused persons shared a common*

E *object convicted the accused persons—However, High Court held that all persons did not share common object—On appeal, held prosecution could not specifically refer to any of the objects for which accused alleged to have formed unlawful assembly—Hence, findings of High Court cannot be held to be totally improbable.*

F *Constitution of India, 1950—Article 136—Special leave jurisdiction—Review of evidence for third time—Scope of—Held, unless there is some serious infirmity or grave failure of justice, Supreme Court normally refrains from re-appreciating the matter.*

According to the prosecution case, there was an altercation between the

G **appellant and son of one 'L' over a trival issue. 'L' intervened and gave slaps to the appellant. Thereafter appellant went away declaring that he would teach a lesson. After some time appellant along with other accused persons came at the spot armed with weapons and fight ensued. Appellant gave blows with bhala on the chest of 'L' and other accused persons accompanied him. In the**

H **fight the son, wife, father and brother of 'L' also received injuries and 'L'**

died. FIR was lodged and after investigation appellant and the accused persons were committed for trial. Appellant contended that he along with two other accused persons caused injuries to the complainant party and others in self defence. However, remaining accused persons denied their participation and stated that they had been falsely implicated. Trial Court on being satisfied that the occurrence had taken place in which all the accused participated, convicted them under Section 302 read with Section 149 of the Penal Code. However, High Court held that all the accused persons did not share common object and thus were not liable to be convicted for commission of the main offence with the aid of Section 149 IPC. Hence these cross appeals.

Appellant contended that as the occurrence had taken place without pre-meditation, in a sudden fight in the heat of passion upon a sudden quarrel, appellant is entitled to the benefit of Exception 4 of Section 300 of the Code. It is further contended that the finding of the High Court that the appellant has acted in a cruel or unusual manner cannot be sustained after it is held that the accused did not have common object because the injuries inflicted on the deceased were neither cruel nor of unusual manner.

Appellant-state contended that the High Court was not justified in disturbing the finding of the trial court that all the accused shared the common object and holding that the prosecution had failed to prove the sharing of the common object of all the accused persons. It was suggested that the manner in which the accused came to the spot armed with deadly weapons and the nature of the injuries inflicted upon the persons of the deceased and other injured persons demonstrated in unequivocal terms that the common object of the unlawful assembly was to commit the offences for which they were charged.

Disposing of the appeals, the Court

HELD : 1. In view of the facts and circumstances of the case, in the absence of the existence of common object appellant is proved to have committed the offence of culpable homicide without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and did not act in a cruel or unusual manner and thus his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) of the IPC. [1166-D-E]

2. The findings of the High Court regarding the non-existence of the common object cannot be held to be totally improbable particularly in the

A absence of a positive finding in that behalf by the trial court. It was not satisfied that the finding returned by the High Court with respect to the version of the prosecution was not at all probable or that conclusions were based upon only on surmises and conjectures or inadmissible evidence. Thus there does not appear to be any justification to set aside the judgment of the High Court in so far as it holds the non-existence of common object amongst the accused B persons and the appeal filed by the State is liable to be dismissed on this ground alone. [1160-G; 1162-B-D]

3.1. On facts and circumstances of the case, the prosecution did not succeed in proving the existence of common object amongst the accused C persons to attract the provision of Section 149 IPC. It appears that after altercation over the splashing of mud on his person and receiving two slaps on his face from the complainant-party, appellant declared to teach the complainant party, a lesson and went home. Immediately, thereafter he along with others came to the spot and as held by the High Court wanted to remove the obstructions ceased in the flow of water. As the common object of the D assembly is not discernible, it can, at the most be held that appellant intended to cause the fatal below to the deceased and the other accused accompanied him for the purposes of removing the obstruction or at the most for teaching a lesson to deceased and others. At no point of time any of the accused persons threatened or otherwise reflected their intention to commit the murder of the E deceased. Merely because the other accused persons were accompanying him when the fatal blows were caused by appellant to the deceased cannot prove the existence of the common object specifically in the absence of any evidence of the prosecution in that behalf. [1162-D-E; 1163-E-G]

3.2. The High Court, on appreciation of evidence, has rightly found that F the common object of the accused persons, if any, was not to accuse the death of the deceased and such an intention could be attributed only to appellant. The prosecution evidence probabilise the version of the accused that the occurrence was sudden and unanticipated. The occurrence, including the quarrel and the causing of fatal blows to the complainant-party, all took place G within such a narrow compass which renders the story of the prosecution highly improbable. [1164-A-C]

4.1. In the instant case, concededly, there was no enmity between the parties and there is no allegation of the prosecution that before the occurrence, the appellant and others had pre-meditated. The quarrel appeared to be H sudden on account of heat of passion and the time gap between the quarrel

and the fight is stated to be few minutes only. It is, therefore, probable that there was no sufficient lapse of time between the quarrel and the fight which means that the occurrence was "sudden" within the meaning of Exception 4 of Section 300 IPC. [1165-B, C, F,] A

4.2. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exemption 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner. [1165-G-H; 1166-A-B] B C D

Virender v. *State (NCT) of Delhi,* IV (2000) CCR 266 SC, distinguished.

5. It is now well established that this Court does not, by special leave, convert itself into a Court to review evidence for a third time. However, where the High Court is shown to have failed in appreciating the true effect and material change in the version given by the witnesses, in such a situation it would not be right for this Court to affirm such a decision when it occasions a failure of justice. The power under Article 136 of the Constitution of India, is no doubt, extraordinary in amplitude and this Court goes into action only to avert miscarriage of justice if the existence of perversity is shown in the impugned judgment. Unless some serious infirmity or grave failure of justice is shown, this Court normally refrains from re-appreciating the matter on appeal by special leave. The findings of the High Court have to be judged by the yardstick of reason to ascertain whether such findings were erroneous, perverse and resulted in miscarriage of justice. If the conclusions of the courts below can be supported by acceptable evidence, this Court will not exercise its overriding powers to interfere with such a decision. If two views of an occurrence are possible the view taken by one of the courts which is favourable to accused should be given credence. [1160-G-H; 1161-A-C] E F G

Ramniklal Gokaldas Oza v. *State of Gujarat,* [1976] 1 SCC 6; *Duli Chand* H

A *Delhi Admn.*, **[1975] 4 SCC 649 and** *Ramanbhai Barabhai Patel and Ors.* **v.** *State of Gujarat,* **[2000] 1 SCC 358, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 650 of 1992.

B From the Judgment and Order dated 14.2.1992 of the Punjab and Haryana High Court in Crl. A.P. No. 220-DB of 1989.

WITH

Crl. A. No. 257 of 2002.

C

U.R. Lalit, Annam D.N. Rao, Rajiv K. Garg, J.P. Dhanda, Ms. Raj Rani Dhanda, D.S. Nagar, K.P. Singh for Ranbir Singh Yadav, Sudhir Kulshreshtha, S.S. Khanduja, Yash Pal Dhingra and S. Srinivasan for the appearing parties.

The Judgment of the Court was delivered by

D

SETHI, J. Appellant Sukhbir Singh (in Crl. A. No. 650 of 1992) and 8 other accused, persons were arrested in FIR No. 166 dated 22.9.1986 of the Police Station Ganaur and after investigation charged for the offences punishable under Sections 302, 307, 326, 324, 323, 148 and 452 read with Section 149 of the Indian Penal Code by the Additional Sessions Judge, E Sonepat. After completion of the trial, appellant Sukhbir Singh was convicted under Section 302 IPC and sentenced to imprisonment for life besides paying a fine of Rs. 1000. The other accused persons were convicted under Section 302 read with Section 149 and sentenced to imprisonment for life besides paying a fine of Rs. 1000 each. All the accused persons were also convicted F under Sections 326/149 and sentenced to three years Rigorous Imprisonment and fine of Rs. 500 each. Upon conviction under Section 148 IPC, the respondents were sentenced to undergo Rigorous Imprisonment for one year and upon conviction under Sections 324/149 IPC to undergo Rigorous Imprisonment for one year each. They were also convicted under Sections 323/149 and sentenced to six moths Rigorous Imprisonment. All the substantive G sentences were directed to run concurrently. The appeals filed by the accused persons were disposed of vide the judgment impugned in these appeals by which the conviction and sentence of Sukhbir Singh, appellant under Section 302 IPC was upheld. The conviction and sentence of all the other accused persons under Sections 302/149 was, however, set aside. Their convictions H and sentences under Sections 326, 323, 324 with the aid of Section 149 IPC

was also set aside. Detention already suffered by accused Pala, Ram Chander, Behari, Baljit, Kidara, Raj, Darya and Tara was considered as sufficient sentence for their respective convictions and for their individual acts under Sections 324 and 323 of the IPC. Pala, accused was further convicted under Section 326 of the IPC and sentenced to undergo three years Rigorous Imprisonment besides paying a fine of Rs. 500. The Court found that the said accused had already undergone the sentence awarded.

Not satisfied with his conviction and sentence. Accused, Sukhbir Singh has filed Criminal Appeal No. 650 of 1992 whereas the State of Haryana has filed SLP against the acquittal of the rest of the accused persons. Leave has been granted in the SLP and as the respondents are represented, no separate notices have been issued to them. As accused Ram Chander died after the judgment of the appellate court, he has not been impleaded as a party-respondent in the SLP filed by the State. As Sukhbir Singh convict-accused-appellant has wrongly been added a party-respondent in the appeal filed by the State, his name is deleted from the array of the respondents therein.

As the facts of the case and the question of law is common in both the appeals, they are being disposed of by this common judgment.

The case of the prosecution, as disclosed by Gulab Singh (PW10) in his report lodged in the police station, is that on 22nd September, 1986 it had rained in Village Tiwari. At about 5-5.15 p.m. when the rain had not completely stopped and it was still drizzling, Gulab Singh (PW10), brother of the deceased, had come at his brother's residence where they were smoking Hukka and chatting. Ram Niwas, son of Lachhman (deceased) was sweeping the street in front of his house with a broom and that some mud splashes stuck Sukhbir Singh at a time when he was passing in the street. Sukhbir Singh felt offended and is alleged to have abused Ram Niwas. When Sukhbir Singh and Ram Niwas were abusing each other, Lachhman separated them and gave two slaps to Sukhbir Singh. Sukhbir Singh went away declaring that a lesson would be taught to them. After sometime all the 9 accused persons came at the spot. Sukhbir Singh, Behari and Ram Chander accused were carrying Bhalas, accused Pala, Tara and Baljit were carrying Gandasas and accused Kedara, Darya and Raj were carrying Jailwas. Sukhbir Singh challenged Lachhman to come out so that a lesson could be taught to him. When Lachhman proceeded towards the door of his house saying that the matter should not be aggravated and as soon as he reached the door of his house, accused Sukhbir Singh gave two thrust blows with his bhala on the

A upper right portion of his chest. Lachhman fell down whereafter accused Ram Chander caught hold the legs of Lachhman and dragged him out in the street. Accused Behari gave a bhala blow on the left side of the chest of Lachhman. When Murti, wife of Lachhman tried to rescue her husband, accused Tara dealt a blow with gandasa which she warded of on her hand. Accused Pala and Baljit also gave two Gandasa blows each to Lachhman. By that time Jagdev, Kitab Singh and Azad Singh had also arrived at the spot. Ram Niwas, son of Lachhman was given a spear blow on the right side of his chest by Ram Chander while accused Darya gave blow with Jailwa lathiwise on his head. When Prem Raj, father of the deceased Lachhman and his brother Bikram tried to rescue Lachhman, accused Pala hurled a gandasa blow on the head of Pema which was warded of on his left hand. Accused Kidara gave two blows with jailwa on the head of Pema. Accused Raj gave three jailwa blows lathiwise to Bikram on his right hand. Accused Pala gave two gandasa blows on the head of Gulab Singh while Accused Baljit gave a gandasa blow on his left foot. Kitab Singh, Azad Singh and Jagdev Singh (PWs) then pushed the accused towards their houses. All the injured persons were removed to the Primary Health Centre, Ganaur. Lachhman injured succumbed to the injuries and the other injured persons were given medical treatment. As condition of Ram Niwas was stated to be serious, he was referred to Civil Hospital, Sonepat for treatment where Dr. Budh Ram (PW7 examined him and further referred him for treatment to Medical College Hospital, Rohtak. All the accused were arrested by the police on 25th September, 1986. They made disclosure statements, in consequence of which Bhalas, Gandasas and Jailwas were recovered. After completion of the investigation all the accused were committed for trial before the Court of Additional Sessions Judge, Sonepat. To prove its case, the prosecution examined 17 witnesses besides the formal witnesses being the police officials. The reports of Forensic Science Labouratory Exhs. PR and PS were also tendered in evidence. Out of 17 witnesses Gulab Singh, Ram Niwas, Jagdev Singh and Azad Singh were stated to be eye-witnesses to the occurrence.

In his statement recorded under Section 313 Cr. P.C. Sukhbir Singh, appellant, stated that the complainant-party had placed earth in the street in front of their house and thereby blocked the flow of the rainy water. When he was removing the blockage to facilitate the flow of water, Lachhman (deceased), Gulab Singh, Bikram, Prem Raj and Ram Niwas came there and restrained him from removing the earth. When he was insisting to remove the blockage, accused Behari and Pala also came in the street. The accused persons were attacked by the complaintant-party. Sukhbir Singh, along with

two other accused persons, also caused injuries to the complainant-party in their self-defence. In their statements accused Behari and Pala supported the version of Accused Sukhbir Singh but the remaining accused persons denied their presence or participation in the occurrence and maintained that they had been falsely implicated being relations of Accused Sukhbir and Behari. Accused Tara set up the plea of alibi contending that he remained in the factory till 5.30 p.m. on the day of occurrence. The accused persons also examined Dr. Bhupesh Chaudhary (DW1) as a defence witness to prove the injuries on the person of accused Pala, Sukhbir Singh and Behari.

Assailing the acquittal of the accused by the High Court vide judgment impugned, Mr. J.P. Dhanda, Advocate submitted that the High Court committed a mistake of law by ignoring the statements of the eye-witnesses, namely, Gulab Singh (PW10), Ram Niwas (PW11), Jagdev Singh (PW12) and Azad Singh (PW13). He further contended that the prosecution had proved, beyond doubt, that all the accused shared the common object in furtherance of which they caused the death of Lachhman (deceased) and inflicted injuries on the PWs and Smt. Murti, wife of the deceased. It is contended that in view of the conviction by the learned Additional Sessions Judge of the aforesaid respondents for the commission of offence under Section 302 read with Section 149 IPC, the High Court was not justified in disturbing such a finding and holding that the prosecution had failed to prove the sharing of the common object of all the accused persons. It was suggested that the manner in which the accused came on the spot armed with deadly weapons and the nature of the injuries inflicted upon the person of the deceased and other injured persons demonstrated in unequivocal terms that the common object of the unlawful assembly was to commit the offences for which they were charged.

We have perused the judgment of the trial court and found that no finding regarding the existence of a common object amongst the accused was returned. The trial court convicted all the accused persons on being satisfied that the occurrence had taken place in which all the accused participated and that as they stood already charged under Sections 302/149 IPC, they were liable to be convicted for the commission of the offence with the aid of Section 149 IPC. The High Court, for the first time, examined the whole evidence to come to a conclusion that all the accused persons did not share common object and thus were not liable to be convicted for the commission of the main offence with the aid of Section 149 IPC. Facing this situation, the learned counsel appearing for the appellant-State contended that the evidence led by the prosecution and the attending circumstances of the case proved the

A existence of the common object. The argument, if accepted, can also probabilies the said version of the occurrence but does not totally negative the probable conclusions arrived at by the High Court. In its judgment the High Court found that there was no previous ill-will or enmity between the parties. The occurrence had taken place only on a trivial issue when Sukhbir Singh got splashes of mud while Ram Niwas was sweeping the street. The B conclusion of the High Court "consequently it appears that the possibility of the incident having taken place over the removal of earth from the street by Sukhbir accused in order to clear the flow of water is more probable", cannot be completely ruled out. Such a case was projected by the aforesaid appellant by putting suggestions to the prosecution witnesses and in his own statement C recorded under Section 313 of the Cr. P.C. The High Court further held that, "the possibility cannot be ruled out that Sukhbir accused had himself reacted to the situation of Lachhman deceased having given him slaps and wanted to teach him a lesson after picking up a spear from his nearby house. The version of Gulab Singh and Ram Niwas eye-witnesses that Sukhbir accused mustered help of all the other eight accused and returned to the spot along D with them variously armed is not acceptable.....". It was then held that, "On the other hand the possibility of all the accused except Sukhbir having individually reacted to the situation and came to the rescue of Sukhbir on hearing altercation between him on the one side and Lachhman deceased and Ram Niwas on the other cannot be ruled out especially when the perusal E of rough site plan Ex.PZ prepared by Sub Inspector Kewal Ram and the scaled plan Ex.PX prepared by Chandgi Ram PW9 shows that the houses of Prem Raj and Bikram injured witnesses are located far off from the spot." Analysing the statements of prosecution witnesses, the court concluded: "If that is so then it cannot be said by any stretch of imagination that all the accused had formed an unlawful assembly with the common object of killing F Lachhman deceased or causing injuries to the other witnesses". The High Court thereafter examined the role played by each of the accused persons and held them responsible for their individual acts for which they were convicted and sentenced vide the impugned judgment. The Court had also found that accused Sukhbir Singh, Pala, Behari had suffered injuries at the hands of the G complainant-party and not at the hands of the co-accused. Gulab Singh (PW10) and Ram Niwas (PW11) injured witnesses were held to have suppressed the genesis of the occurrence by not disclosing true facts. In our opinion, the findings of the High Court regarding the non existence of the common object cannot be held to be totally improbable particularly in the absence of a positive finding in that behalf by the trial court.

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It is now well established that this Court does not, by special leave, convert itself into a court to review evidence for a third time. However, where the High Court is shown to have failed in appreciating the true effect and material change in the version given by the witnesses, in such a situation it would not be right for this Court to affirm such a decision when it occasions a failure of justice. The power under Article 136 of the Constitution of India is, no doubt, extraordinary in amplitude and this Court goes into action only to avert miscarriage of justice if the existence of perversity is shown in the impugned judgment. Unless some serious infirmity or grave failure of justice is shown, this Court normally refrains from re-appreciating the matter on appeal by special leave. The findings of the High Court have to be judged by the yardstick of reason to ascertain whether such findings were erroneous, perverse and resulted in miscarriage of justice. If the conclusions of the courts below can be supported by acceptable evidence, the Supreme Court will not exercise its overriding powers to interfere with such a decision. If two views of an occurrence are possible the view taken by one of the courts which is favourable to accused should be given credence. This Court in *Ramaniklal Gokaldas Oza* v. *State of Gujarat,* [1976] 1 SCC 6 observed :

> "It is a wholesome rule evolved by this Court, which has been consistently followed, that in a criminal case, while hearing an appeal by special leave, this Court should not ordinarily embark upon a reappreciation of the evidence, when both the Sessions Court and the High Court have agreed in their appreciation of the evidence and arrived at concurrent findings of fact. It must be remembered that this Court is not a regular court of appeal which an accused may approach as of right in criminal cases. It is an extraordinary jurisdiction which this Court exercises when it entertains an appeal by special leave and this jurisdiction, by its very nature, is exercisable only when this Court is satisfied that it is necessary to interfere in order to prevent grave or serious miscarriage of justice. Mere errors in appreciation of the evidence are not enough to attract this invigilatory jurisdiction. Or else, this Court would be converted into a regular court of appeal where every judgment of the High Court in a criminal case would be liable to be scrutinised for its correctness. This is not the function of this Court."

In *Duli Chand* v. *Delhi Admn.,* [1975] 4 SCC 649 it was held :

> "We have had occasion to say before and we may emphasise it once again, that this Court is not a regular court of appeal to which every

A judgment of the High Court in criminal case may be brought up for scrutinising its correctness. It is not the practice of this Court to reappreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the High Court and the subordinate courts is correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice that this Court would interfere with such finding of fact."

B

The same view was followed by this Court in *Ramanbhai Barabhai Patel & Ors.* v. *State of Gujarat,* [2000] 1 SCC 358.

C Learned counsel appearing for the appellant-State was not in a position to satisfy us that the finding returned by the High Court with respect to the version of the prosecution was not at all probable or that a conclusions were based upon only on surmises and conjectures or inadmissible evidence.

D In view of the settled position of law, as noticed by us, there does not appear to be any justification to set aside the judgment of the High Court in so far as it holds the non-existence of common object amongst the accused persons and the appeal filed by the State is liable to be dismissed on this ground alone.

E In the facts and circumstances of the case we are also of the opinion that the prosecution did not succeed in proving the existence of common object amongst the accused persons to attract the provisions of Section 149 IPC. An accused is vicariously guilty of the offence committed by other accused persons only if he is proved to be a member of an unlawful assembly sharing its common object. There is no dispute to the legal provision that F once the existence of common object of unlawful assembly is proved, each member of such an assembly shall be liable for the main offence notwithstanding his actual participation in the commission of the offence. It is not necessary that each of the accused, forming the unlawful assembly, must have committed the offence with his own hands.

G Unlawful assembly has been defined under Section 141 of the Indian Penal Code as under :

"141. *Unlawful assembly.*—An assembly of five or more persons is designated as "unlawful assembly", if the common object of the persons composing that assembly is—

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First.—To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any other public servant in the exercise of the lawful power of such public servant; or

Second—To resist the execution of any law, or of any legal process; or

Third—To commit any mischief or criminal trespass, or other offence; or

Fourth—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

The prosecution in the instant case could not specifically refer to any of the objects for which the accused are alleged to have formed the assembly. It appears, from the circumstances of the case, that after altercation over the splashing of mud on his person and receiving two slaps on his face from the complainant-party, Sukhbir Singh declared to teach the complainant-party, a lesson and went home. Immediately thereafter he alongwith others came on the spot and as held by the High Court wanted to remove the obstructions caused in the flow of water. As the common object of the assembly is not discernible, it can, at the most, be held that Sukhbir Singh intended to cause the fatal blow to the deceased and the other accused accompanied him for the purposes of removing the obstruction or at the most for teaching lesson to Lachhman and other. At no point of time any of the accused persons threatened or otherwise reflected their intention to commit the murder of the deceased. Merely because the other accused persons were accompanying him when the fatal blows were caused by Sukhbir Singh to the deceased cannot prove the existence of the common object specifically in the absence of any evidence of the prosecution in that behalf. The members of the unlawful assembly can be held liable under Section 149 of the IPC if it is shown that they knew

A before hand that the offence actually committed was likely to be committed in prosecution of the common object. It is true that the common object does not require prior concert and a common meeting of mind before the attack. It can develop even on spot but the sharing of such an object by all the accused must be shown to be in existence at any time before the actual occurrence.

B

The High Court, on appreciation of evidence, has rightly found that the common object of the accused persons, if any, was not to cause the death of the deceased and such an intention could be attributed only to appellant, Sukhbir Singh. The prosecution evidence probabilise the version of the accused C that the occurrence was sudden and unanticipated. The occurrence, including the quarrel and the causing of fatal blows to the complainant-party, all took place within such a narrow compass which renders the story of the prosecution highly improbable. In the facts and circumstances of the case, it cannot be said that the findings returned by the High Court were completely improbable. The appeal filed by the State is not sustainable even on merits.

D

Appearing for the appellant Sukhbir Singh, Shir U.R. Lalit, learned Senior Counsel submitted that even if the occurrence is admitted to have taken place in the manner found by the High Court, his client cannot be held guilty for the commission of offence punishable under Section 302 IPC. It is E argued that as the occurrence had taken place without pre-meditation, in a sudden fight in the heat of passion upon a sudden quarrel, the said appellant is entitled to the benefit of Exception 4 of Section 300 of the Indian Penal Code. It is further contended that the finding of the High Court that the appellant has acted in a cruel or unusual manner cannot be sustained after it is held that the accused did not have common object because in that case the F appellant Sukhbir Singh is shown to have inflicted two blows on the body of the deceased which are neither cruel nor unusual to deprive him the benefit of aforesaid exception.

To avail the benefit of Exception 4, the defence is required to probabilise G that the offence was committed without pre-meditation in a sudden fight in the heat of passion upon sudden quarrel and the offender had not taken any undue advantage and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of pre-meditation and on account of total deprivation of self-control but on account of heat of passion, the offence was committed which, normally a man of sober urges H would not resort to. Sudden fight, though not defined under the Act, implies

mutual provocation. It has been held by courts that a fight is not *per se* palliating circumstance and only unpre-meditated fight is such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this exception.

In the instant case, concededly, there was no enmity between the parties and there is no allegation of the prosecution that before the occurrence, the appellant and others had pre-meditated. As noticed earlier, occurrence took place when Sukhbir Singh got mud splashes on account of sweeping of the street by Ram Niwas and a quarrel ensued. The deceased gave slaps to the appellant for no fault of his. The quarrel appeared to be sudden on account of heat of passion. The accused went home and came armed in the company of others though without telling them his intention to commit the ultimate crime of murder. The time gap between the quarrel and the fight is stated to be few minutes only. Accordingly to Gulab Singh (PW10) when Sukhbir Singh was passing in the street and some mud got splashed on his clothes, he abused Ram Niwas. They both grappled with each other whereupon Lachhman (deceased) intervened and separated them. Accused Sukhbir had abused Lachhman who gave him two slaps. The said accused thereafter went to his home after stating that he would teach him a lesson for the slaps which had been given to him. After some time he, along with other accused persons, came at the spot and the fight took place. His own house is at a different place. There is a street in between his house and the house of Lachhman (deceased). On the northern side of his house, the house of the appellant is situated. Similarly Ram Niwas (PW11) has stated that after the quarrel the accused went towards his house and within a few minutes he came back with other accused persons. It is, therefore, probable that there was no sufficient lapse of time between the quarrel and the fight which means that the occurrence was "sudden" within the meaning of Exception 4 of Section 300 IPC.

The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the

A deceased. He is proved to have inflicted two blows on the persons of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of B Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did C not act in a cruel or unusual manner.

To support the case of the prosecution, learned counsel for the State of Haryana relied upon *Virender* v. *State (NCT) of Delhi,* IV [2000] CCR 266 (SC). We have perused the aforesaid judgment and find it totally distinguishable because in that case nothing was shown to the court that the D occurrence had taken place in a sudden fight and in the heat of passion.

Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the offence of culpable homicide without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and E did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) of the IPC. The findings of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not F amounting to murder punishable under Section 304 (Part I) of the IPC and sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 5000. In default of payment of time, he shall undergo further Rigorous Imprisonment for one year.

The Criminal Appeal No. 257 of 2002 is dismissed and Criminal Appeal G No. 650 of 1992 is partly allowed. The Bail Bonds of appellant Sukhbir stand cancelled and is directed to be taken into custody forthwith for serving out the remaining part of his sentence.

N.J. Criminal Appeal No. 650/92 partly allowed.

Criminal Appeal No. 257/2002 dismissed.