

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 891 OF 2006

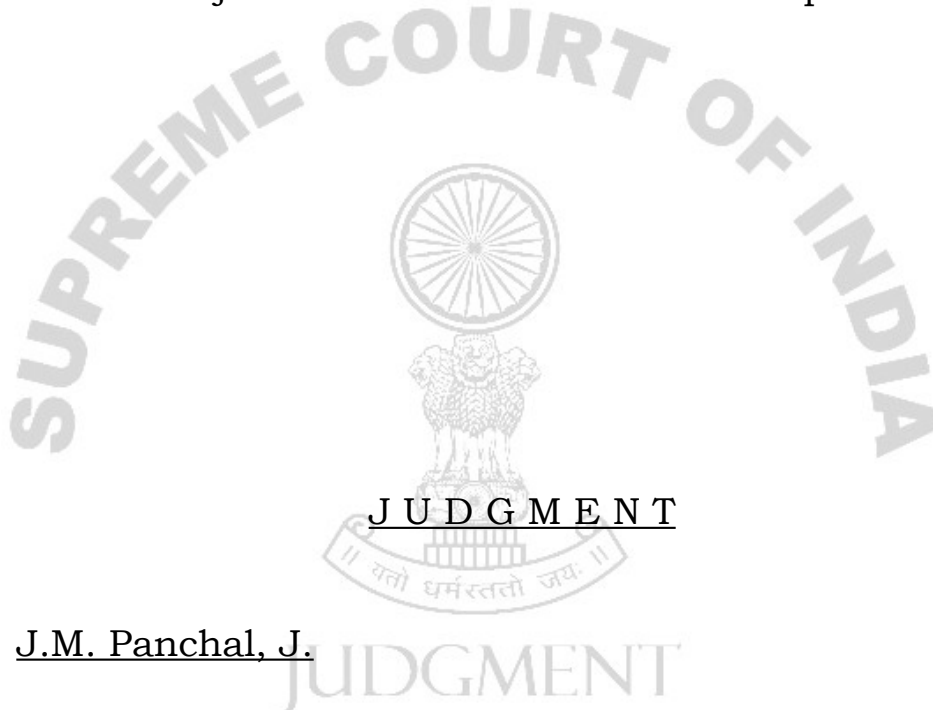
Vishnu & Ors.

... Appellants

Versus

State of Rajasthan & Anr.

... Respondents



J.M. Panchal, J.

The instant appeal by Special Leave is directed against Judgment dated August 3, 2005 rendered by Division Bench of High Court of Judicature of Rajasthan at Jaipur Bench, Jaipur in D.B. Criminal Appeal No. 359 of 1998 by which Judgment dated April 17, 1998 passed by Learned Sessions Judge, Karauli, in

Sessions Case No. 9 of 1996 convicting the five appellants under Sections 302 r/w 149, 325 r/w 149, 323 r/w 149 as well as convicting the appellant Nos. 1 and 4 under Section 147 and 148 IPC as well as sentences imposed therefore, are confirmed.

2. The facts emerging from the record of the case are as under:

There is a piece of land admeasuring about five Bighas situated in village Golara, Distt. Sawai Madhopur now Distt. Karauli in Rajasthan. The Government allotted the said land to the father and brother of the first informant Babu Lal but the appellants and others who are Brahmins by caste were not permitting them to cultivate the same, as a result of which disputes relating to the said land were going on between Brahmins and Jatavas of village Golara. The incident in question took place at about 7.00 P.M. on August 28, 1995. Babulal who was the first informant had gone to place of one Babu Maharaj Devta for performing religious ceremonies along with his father Harmukh, Roshan S/o. Cheta, Prahlad S/o. Sualal and

others. On the said day sports such as long jump etc. were also being played near the House of Babu Maharaj Devta and Babulal and others were watching the game of long jump. When the game was being played, one Kanhaiya Lal Sharma, resident of village Golara sent Lata daughter of Bhanwar Lal who is appellant no. 5 herein, to inform Bhanwar Lal and his brothers that Jatavas were tilling the disputed land with a tractor. At the time when the information was conveyed Kanhaiya Lal father of the appellant No. 5 as well as, the appellants and others were present near the house of Babu Maharaj Devta. Kanhaiya Lal father of the appellant No. 5 on learning about the information conveyed by Lata loudly shouted that where all their people had gone. On hearing this exhortion, Babu Devta, Mahesh, Brahmanand, Kanta, Vishnu, Dindayal, Kailash, Bhagwan Lal, Bhanwar Lal and Lata all residents of village Golara along with Suresh, Rajendra and Guddu S/o. Babulal who are residents of village Masalpur, armed with axes and lathis proceeded towards the land which was being cultivated by Ram

Khiladi who is brother of the first informant. As Kanta, Vishnu etc. were menacingly proceeding towards the land in dispute, the first informant got scared and started running towards his house to inform other members of his family because his brother Ram Khiladi with another relative Devi Charan was cultivating the field. In fact, there was no tractor deployed on the land at all. Brahmanand, Kanta etc. gathered together at the disputed place. On seeing these people coming towards the field, Ram Khiladi started running away. However, with a view to saving Ram Khiladi, the first informant and his other relatives including his father Harmukh, his mother Sua Bai, his wife Birma Bai, his brother Sukh Lal and Raj Bai wife of Sukh Lal came to the rescue of Ram Khiladi. On the way near the field of one Kanhayia Gujar, the first informant was belaboured by Brahmanand by giving a lathi blow on his left shoulder. Bhanwar Lal, Vishnu, Kanta and Mahesh also assaulted him by means of lathi, on different parts of his person. The first informant fell down on the ground on receipt of injuries but the appellants and others did not spare him

and continued to beat him with sticks and fists blows when he was lying on the ground. Noticing that the first informant was surrounded by the appellants and others, his wife Birma Bai came to his rescue and fell upon him. This is how the complainant could be saved. The wife of the first informant was also not spared and beaten by sticks. When the appellants and others turned towards the father of the first informant, he pleaded with the appellants to spare him and his relatives but of no avail and he was also assaulted and injured. It was noticed by the first informant that his brother Sukh Lal and his wife were running towards the house to save themselves, but they were being chased by the appellants and others. Sukh Lal was overtaken and assaulted by Bhanwar Lal the appellant no. 5 herein, Bhagwan Lal, Din Dayal, Brahmanand who is appellant no. 3 herein, Vishnu who is appellant no. 1 herein, Mahesh who is appellant no. 2 herein and Kanta Prasad who is appellant no. 4 herein. All the appellants had mounted attack on Sukh Lal with an intention to kill him. Thereafter the appellants chased Raj Bai. She

was also overtaken and injured by means of lathi blows. Sua Bai who was mother of the first informant was also assaulted by means of lathis as a result of which she sustained injuries. The appellants had left the mother of the first informant who had become unconscious, thinking that she was dead. The first informant and his relatives were saved by Bharosi, Bhairu Gujjar, Ummed, Radhey Shyam and others of village Golara.

3. Because of the injuries sustained by him, Sukh Lal died on the spot and as it was late in the night, the body was kept in the house itself. On the date of incident itself, the first informant had got scribed complaint against the appellants and others and date mentioned in the complaint was August 28, 1995. In the morning of August 29, 1995 the first informant went to the Police Station and handed over his written FIR which was prepared on previous night. As the complaint was presented before the police on August 29, 1995, the first informant was asked to change the date of the complaint to August 29, 1995. Accordingly, the date mentioned in the complaint was changed by the

first informant from August 28, 1995 to August 29, 1995. On the basis of the complaint lodged by Babu Lal, offences punishable under Sections 147, 148, 302, 307, 326, 325, 323, 341 r/w 149 IPC and Section 3(1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1985 were registered. The dead body of Sukh Lal was sent for autopsy on August 29, 1995. During the course of investigation, the Investigating Officer recorded statements of those persons who were found to be conversant with the facts of the case. Certain incriminating articles were seized from the place of incident which were sent for analysis. On completion of investigation, the appellants and others were charge sheeted in the Court of Learned Judicial Magistrate First Class for the commission of offences punishable Sections 147, 148, 302, 307, 326, 325, 323, 341 r/w 149 IPC and Section 3(1) of Scheduled Castes and Scheduled Tribes ((Prevention of Atrocities Act) 1985. As the offences punishable under Sections 302 and 307 are exclusively triable by a Court of Sessions and as offence punishable under Section 3(1) Scheduled Castes

and Scheduled Tribes ((Prevention of Atrocities Act) 1985 is triable by Special Judge, the case was committed to the Court of Learned Sessions Judge, Karauli for trial.

4. Necessary charges were framed against the appellants and others. The charges were read over and explained to them. The appellants and others did not plead guilty to the charges. Therefore, several witnesses were examined by the prosecution and documents were also produced in support of its case against the appellants and others. After recording of evidence of prosecution witnesses was over, the Learned Judge explained to the appellants and others, the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure 1973. In the further statements the case of the appellants was that they had not committed the offences alleged but were falsely implicated in the case, because of enmity between the parties relating to the land. The appellant No. 4 herein i.e. Kanta Prasad

pleaded alibi and claimed that on the date of the incident, he was in college at Karauli. The appellant No. 3 herein i.e. Brahma Nand also pleaded alibi by stating that on the date of incident, he was on his duty, whereas accused Kanhaiya Lal stated that he was unable to move and did not participate in the incident. On behalf of the appellants, witness Horilal was examined as D.W. No. 1.

5. On appreciation of evidence adduced by the parties, the Learned Sessions Judge concluded that it was proved by the prosecution beyond pale of doubt that deceased Sukh Lal died a homicidal death. The Learned Judge thereafter noticed the testimony tendered by the injured eye witnesses and held that the appellants with others had formed an unlawful assembly, common intention of which was to commit murder of Sukh Lal and to cause injuries to Babu Lal i.e. first informant, his father Harmukh, Raj Bai, Birma Bai and in furtherance of the said common intention had armed themselves with deadly weapons like axes etc. and sticks. The Learned Judge concluded that it

was proved beyond reasonable doubt that the appellants and others had assaulted Sukh Lal and committed his murder in furtherance of their common intention. It was further held that the appellants and another had assaulted Harmukh, Babu Lal, Raj Bai, Birma Bai and caused grievous as well as simple injuries on them in furtherance of their common intention. The learned Judge concluded that neither the presence of accused Kanhaiya Lal, at the place of occurrence nor his participation in the incident was proved by the prosecution. In view of the above mentioned conclusions, the Learned Sessions Judge convicted the appellants and Lata under Sections 302 r/w 149, 325 r/w 149, 323 r/w 149 and 147 IPC but acquitted accused Kanhaiya Lal. The Learned Judge also convicted the appellant Vishnu and appellant Kanta under Section 148 and 147 IPC respectively. After hearing the appellants and Lata , the Learned Judge sentenced them to life imprisonment for commission of offence punishable under Section 302 r/w 149 as well as fine of Rs. 200 in default simple imprisonment for a

period of two months, rigorous imprisonment for one year and fine of Rs. 200 in default simple imprisonment for two months for offence under Section 325 r/w 149, rigorous imprisonment for three months for the offence punishable under Section 323 r/w 149 and rigorous imprisonment for six months for commission of offence u/s. 147 I.P.C. The appellant Vishnu and appellant Kanta were also sentenced to undergo Rigorous Imprisonment for one year for commission of the offence punishable under Section 148.

6. Feeling aggrieved, the appellants and Lata preferred D.B. Criminal Appeal No. 359 of 1998 before High Court of Judicature of Rajasthan at Jaipur Bench, Jaipur. The Division Bench of the High Court has dismissed the appeal filed by the appellants but allowed that of Lata Bai i.e. original accused No.6 by Judgment dated August 3, 2005 giving rise to the instant appeal.

7. This Court has heard the Learned Counsel for the parties at length and in great detail. This Court had also considered the testimony tendered by the witnesses

as well as documents produced on the record of the case.

8. The fact that deceased Sukh Lal died a homicidal death is not disputed by the appellants before this Court at all. The injuries sustained by Sukh Lal are noted in the inquest report. The autopsy on the dead body of the deceased was performed by Dr. Hari Mohan Meena who was examined as prosecution witness No.

19. In his substantive evidence before the Court, the Medical Officer has enumerated the injuries noticed by him on the dead body of the deceased while performing post mortem. The injuries stated by the Medical Officer have also been mentioned in the contemporaneous record namely post mortem notes produced at exhibit P-38. It is nobody's case that deceased Sukh Lal died either because of self inflicted injuries or because of accidental injuries or he died a natural death. On the facts and in the circumstances of the case, this Court is of the view that the Sessions Court and High Court were justified in concluding that it was proved by the

prosecution beyond reasonable doubt that deceased Sukh Lal died a homicidal death.

9. The evidence of Dr. Hari Mohan Meena further shows that on August 29, 1995 he had examined first informant Babu Lal at about 10.00 P.M. and found that he had sustained six injuries. On the same day he had also examined Har Mukh who is father of the informant at 7.30 P.M. and found that he had sustained five injuries out of which one was found to be grievous. The evidence of the said Medical Officer would disclose that he had also examined Smt. Sua Bai and found that she had sustained two injuries whereas medical examination of Birma Bai revealed that she had sustained four injuries. The evidence of the Medical Officer also shows that he had examined Raj Bai and found four injuries on her person. The testimony of Dr. Nandlal Sharma P.W. 18, shows that on the request of Deputy Superintendent of Police, a Medical Board was constituted by Chief Medical and Health Officer, Karauli. His evidence further indicates that he was heading the Board so constituted whereas Dr. Makkhan

Lal Kawat and Dr. Hukam Chand Gard were its other members. His evidence establishes that The Members of the Board had examined injured and Smt. Birma Bai at 12.10 P.M. and injured Sua Bai at 12.30 P.M. On the same day, X-ray of Sua Bai was also taken but it was found that she had not sustained any grievous injury. The evidence of Dr. Sharma further shows that on the same day, Raj Bai was examined at 11.00 A.M. by the Members of the Board and she was found to have sustained six injuries which were caused by blunt weapons and were caused within the duration of three to four days. Her X-ray was also taken but the same did not indicate that she had sustained grievous injury. On the same day at about 1.00 in the after noon, the Members of the Board had examined Har Mukh who was found to have sustained five injuries caused by blunt weapon and were of the duration of three to four days. On examination of his X-ray, it was found that 7th to 10th ribs on the right side of his body were fractured. On the same day the Members of the Board had also examined the first informant Babu Lal and found that

he had sustained five injuries on his person. However, it was also noticed that he had not received any grievous injury. During the cross-examination of Dr. Sharma it was brought by the defence on the record of the case that the injuries sustained by first informant Babu Lal could have been received by him on August 28, 1995. The Medical Officer opined that the injuries could have been caused to the injured witnesses examined by the Board within three to four days. Thus, the testimony of Dr. Hari Mohan Meena stands amply corroborated by the testimony of Dr. Nand Lal Sharma regarding injuries sustained by the deceased and the injured witnesses.

10. The contention that several complaints were given which were conflicting with each other regarding time and place of occurrence and as the prosecution story was manipulated the appellants should be acquitted has no substance. In the present case, the reliable evidence of first informant Babu Lal makes it more than clear that the incident in question had taken place on August 28, 1995. Though the evidence of complainant

Babu Lal shows that his brother Ram Khiladi who had managed to escape from the village had reached house of his uncle and scribed one FIR, the record does not indicate that any endeavour whatsoever was made by Ram Khiladi to lodge the same with the Police Station. It may be mentioned that village Golara is a small village and incident relating to the death of one person of village and injuries to several must have caused sensation as well as anxiety in the minds of villagers residing in the village. Therefore, some of the villagers had also given vague information relating to the incident in question. However, having regard to the facts of the case this Court is of the firm opinion that Babu Lal had got his FIR scribed from witness Prahlad who is examined as PW-13 on August 28, 1995 but the same was lodged on August 29, 1995 because the incident had taken place at about 7.30 P.M. on August 28, 1995 and it was too late to go to the Police Station for the purpose of lodging complaint. Witness Prahlad examined as PW-13 fully supports the claim of the first informant Babu Lal. He has in no uncertain terms

mentioned before the Court that at the instance of Babu Lal, he had reduced the FIR into writing. The evidence of first informant Babu Lal read with that of witness Prahlad would show that Babu Lal was scared because of the incident in question and he could not muster courage to lodge the complaint on the date of incident. Mangati Ram examined as prosecution witness No. 22 has stated that on August 29, 1995 he was serving as Constable at Masalpur Police Station and that four persons had come to the Police Station and told S.H.O. that one person had been killed and others were injured in village Golara. The testimony of said witness further shows that on the said information being conveyed, he alongwith S.H.O. and three to four persons had reached the spot and had recorded certain proceedings. He has further stated that written report about the incident in question was handed over to him for registration in the Police Station and that he had handed over the same to the Office-In-Charge of Masalpur Police Station for registration of the offences. Thus the testimony of first informant Babu Lal and that of witness Prahlad gets

complete corroboration from the testimony of Constable Mangati Ram, examined as prosecution witness No.22. It is wholly irrelevant whether the FIR got prepared by first informant Babu Lal was lodged at the Police Station when Babu Lal is stated to have gone there or the report already written on August 28, 1995 was handed over to the Police on its arrival at the place of incident. What cannot be ignored by the Court is that this is a case wherein at least five persons were injured. Those five injured persons are closely related to the deceased. When a person receives injuries in the course of occurrence, there can be hardly any doubt regarding his presence at the spot. Further, injured witnesses would not spare the real assailants and falsely involve innocent persons. The testimony of injured witnesses which has inspired confidence of Learned Sessions Judge who had advantage of observing the demeanor of the witnesses and accepted by the High Court on re-appreciation of evidence, unerringly proves that the incident in question had taken place on August 28, 1995, wherein Sukh Lal lost his life and at least five of

his close relatives were injured. Merely because the incident had taken place on August 28, 1995, but FIR was handed over to the Police on the next day, would not in any manner go to show that no incident had taken place at all and that because of manipulations the appellants were falsely involved in the case.

11. The argument that those who were injured had got admitted in the hospital on August 29, 1995 but none of them had reported the incident to the Police Station during the night of August 28, 1995, and therefore the prosecution case should be disbelieved is devoid of merits. The very examination of the injuries sustained by the injured witnesses almost after 24 hours would not indicate in any manner as suggested by the defence that as a matter of fact the occurrence had taken place somewhere between 8.00 and 9.00 A.M. in the morning of August 29, 1995. It is for this precise reason that Dr. Meena who had initially examined the injured witnesses, stated that the duration of the injuries sustained by the injured was between 7 to 17 hours. The information given by Medical Board, specially

constituted to examine the injured perfectly synchronizes with the time of injuries mentioned by the injured witnesses. It is true that none of the injured had gone to the Police Station in the night of August 28, 1995 to lodge the complaint. However, as noticed earlier, the dead body of deceased Sukh Lal was lying in the house and therefore it is but natural that the injured would like to be by the side of the dead body of the deceased. Therefore, non filing of complaint on the same day, by any of them would not exhibit unnatural conduct on their part so as to give benefit of doubt to the appellants. This Court further notices that deceased Sukh Lal had expired on August 28, 1995 itself and the post mortem on his dead body was conducted at 12.45 P.M. on August 29, 1995. As per the post mortem report his death had occurred within 18 hours which supports the claim made by the first informant and others that Sukh Lal had expired on August 28, 1995 in the incident which took place at about 7.00 P.M. The medical evidence on record is absolutely in tune with the prosecution version in so far

as time and date of occurrence is concerned. There is no dispute that Sukh Lal was not taken to the hospital immediately on receipt of injuries by him because he was dead and the other injured witnesses were examined medically only on August 29, 1995. The injured witnesses were subjected to searching cross-examination by the defence but this Court finds that not a single question was put to any of the injured witnesses as to why he had not taken medical treatment immediately or shortly after receipt of injuries by him. Only Birma Bai stated in her evidence that the injured had gone to the hospital in jeep. However, in cross-examination she made herself very clear by stating that they had gone to the hospital next day after cremation of Sukh Lal was over.

12. Based on age of injuries mentioned in injury certificate produced at Exhibit P-8 relating to the injuries sustained by first informant Babu Lal and age of injuries mentioned in injury certificate produced at Exhibit P-13 which relates to the injuries sustained by Harmukh, it was argued that the incident in question

did not take place at the time stated by the witnesses and therefore, prosecution case ought to have been disbelieved. It is true that, Dr. Hari Mohan Meena had stated that he had examined injured Babu Lal on August 29, 1995 at 8.10 P.M. and in the injury certificate Exhibit P-8, the age of injuries was mentioned to be 12 hours. It was further stated by him that on August 29, 1995, he had examined injured Harmukh at 7.30 P.M. and in his injury certificate produced at Exhibit P-13, it was mentioned that the age of injuries was 7 hours. However, an explanation was sought from the said witness during his cross-examination regarding age of the injuries and it was explained by him that he could not mention correct opinion about the age of injuries in the certificates because he was all alone and there was no light. According to him, he was also not well and confused and therefore correct opinion about the age of injuries could not be mentioned and on realizing the mistake committed by him, on the next day i.e. on August 30, 1995 he had informed S.H.O. as well as C.M. and H.O. of the hospital after making correction

about the age of the injuries in the office copies of the injury certificates. The testimony of this witness is accepted by the Learned Judge of the Trial Court who had obvious advantage of observing demeanor of the witnesses and also by the High Court, on re-appreciation of evidence. No convincing reason could be pointed out by the learned counsel for the appellants as to why explanation offered by Dr. Meena regarding mention of incorrect age of injuries in the injury certificates should not be accepted by this Court. Therefore, the argument based on age of injuries stated in injury certificates, has no substance and is rejected. As observed earlier, in the present case Medical Board consisting of three doctors, on re-examination of the injuries of the witnesses, unanimously gave opinion about the age of the injuries sustained by the witnesses which is not even disputed. What is relevant to notice is that no question was put to any of the two doctors examined from the panel of the Medical Board specially constituted, relating to the duration of injuries mentioned by them. There is nothing on the record to

disbelieve the testimony of the two doctors and come to the conclusion that the duration of injuries mentioned by them was not correct. It is well to remember that except one of the injured witnesses, others had received simple injuries and therefore there was nothing wrong if the injured witnesses had got themselves admitted in the hospital on August 29, 1995 after cremation of Sukh Lal. The plea based on incorrect age of injuries mentioned in the two certificates has no merits and is therefore, rejected.

13. The plea that the provisions of Section 149 would not be attracted to the facts of the case and therefore the appellants who had not played overt act in causing injury to deceased Sukh Lal could not have been convicted under Section 302 with the aid of Section 149 has no substance. Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object,

every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behavior of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf. The record unmistakably indicates that accused Lata who is now acquitted by the High Court, had gone to the place where the first informant and his relatives were watching sport event, to inform appellant Bhanwar Lal and others that Jatavas were plying tractor in the

disputed land. The evidence of complainant shows that moment the said information was conveyed by Lata, Kanhaiya Lal i.e. father of appellant Bhanwar Lal had loudly shouted that where all their people had gone, upon which Babu Devta, Mahesh, Brahma Nand, Kanta, Vishnu, Din Dayal, Kailash, Bhagwan Lal, Bhanwar Lal, Lata etc. had armed themselves with different weapons including axes and started proceeding towards the disputed land. The appellants were knowing fully well that the land was allotted to Jatavas and they were entitled to cultivate the same, but with a view to preventing them from cultivating the land, the appellants with others had gone to the disputed land with weapons and started attacking the first informant and his relatives. Having regard to the definition of the word 'unlawful assembly' as given in Section 141 I.P.C. there is no manner of doubt that the appellants were members of unlawful assembly, common intention of which was to mount attack and cause injuries to Jatavas. The evidence of the informant proves that first of all he was assaulted after which his wife was

assaulted and thereafter his brother Ram Khiladi was assaulted. His evidence further establishes that his father Harmukh, his mother Sua Bai, his wife Birma Bai were also assaulted by the appellants and others. His evidence further shows that deceased Sukh Lal with his wife was running towards house to save himself but the appellants had chased him and after overtaking him, delivered blows with dangerous weapons and sticks as a result of which he lost his life on the spot. The appellants and others who had come in a group had left the place of incident together. The cumulative effect of the circumstances proved by the prosecution is such is that the intention of the unlawful assembly was to cause death of Sukh Lal and to cause injuries to the injured witnesses. Thus the conviction of the appellants under Section 302 r/w 149 cannot be said to be erroneous at all and no ground is made out to interfere with the same in the instant appeal. For the foregoing reasons the appeal fails and is dismissed.

14. As the appeal is dismissed, the two applications for bail do not survive. Hence they stand accordingly disposed of.

.....J.
(Harjit Singh Bedi)

.....J.
(J.M. Panchal)

New Delhi;
September 15, 2009