

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 356-358 OF 1999**

State of A.P.

....Appellant

Vs.

Rayaneedi Sitharamaiah & Ors.

...Respondents

WITH

S.L.P. [CRL.] NOS. 3788-3790 OF 1998

JUDGMENT

B.N. AGRAWAL, J.

1. Out of ninety four chargesheeted accused persons of the police case, who were committed to the court of sessions to face trial, five persons died during trial and case of other five were separated as they were absconding. Thus, the remaining eighty four accused persons along with accused persons in the complaint case filed for the same occurrence and also committed to the court of sessions to face trial, were charged and tried and by judgment rendered by trial court, out of eighty four persons of police case, five accused persons, viz., Rayaneedi Prasad [Accused No. 1, in short “A-1”], Chaganti Satyanarayana [A-4], Chaganti Subbarao [A-7], Rayani Alias Gammathu Raghavaiah [A-23] and Rayani Alias Gammathu Anjaiah [A-24] were convicted under Section 302 of the Indian Penal Code [hereinafter referred to as ‘IPC’] and sentenced to undergo imprisonment for life. They were further convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for a period of three years. Both the sentences were, however, ordered to run concurrently.

Fifty accused persons of the said case, viz., Rayannedi Sitaramaiah [A-2], Chaganti Nageswara Rao [A-5], Vankayalapati Laxminarayana [A-11], Yarlagadda Arjunarao [A-12], Pothina Raghavaiah [A-13], Yarlagadda Butchinaidu [A-14], Daggupati Masthanarao [A-15], Daggupati Nagamna [A-16], Perni Aajaiah [A-17], Perni Pratap [A-18], Perni Venkanna [A-19], Kondragunta Narasimha [A-21], Jagarlamudi Babi [A-22], Pothipa Tirupataiah [A-27], Pothina Rangaiah [A-29], Jagarlamudi Sanjivaiah [A-31], Jagarlamudi Ramu Alias Radhakrishnamurthy [A-32], Pthina Lakshminarayana [A-33], Perni Venkatasubbaiah [A-35], Yarlagadda Subbarao [A-36], Pothina Akkaiah [A-39], Goturu Alias Gottipati Lakshmiah [A-40], Goturi alias Gottipati Venkateswarlu [A-42], Daggupati Kishore [A-43], Daggupati Paparao [A-44], Gottipati Venkateswarlu [A-45], Daggupati Hari [A-48], Pothina Krishna Murthy [A-49], Yarlagadda Ramesh [A-50], Yarlagadda Apparao [A-52], Kampalli Veerananarayana [A-55], Pothina Venkatesubbaiah alias Venkatasubbaiah Chowdary [A-56], Pothina Prasad [A-57], Daggupati Brahmanaidu [A-58], Veerathu Prasad alias Ramprasad [A-59], Rayaneedi Venkateswarlu [A-65], Pothina Ranganayakulu [A-66], Talluri Paparao [A-67], Balija Subba Rao [A-68], Pothina Srinivasarao [A-69], Yarlagadda Venkateswarlu [A-72], Yarlagadda Singaiah [A-73], Yarlagadda Tirupataiah [A-76], Yarlagadda Veerananarayana [A-80], Mandava Vithal alias Panduranga Vithal [A-82], Gorantla Tirupathaiah [A-85], Daggupati Anjaiah [A-86], Pothina Gnanayyagari Subba Rao [A-91], Nadendla Papa Rao [A-92] and Jagarlamudi Satyam alias Sriramulugari Satyam [A-93], though acquitted of the other charges, were convicted under Section 148, IPC and out of them four persons, viz., A-27, A-35, A-44 and A-65 were sentenced to pay a fine of Rs. 10,000/- each, in default, to undergo simple imprisonment for a period of six months whereas the remaining forty six

accused persons undergo rigorous imprisonment for a period of three years.

The remaining twenty nine persons of the police case and other accused persons of the complaint case were acquitted of the charges.

2. Three appeals were filed before the High Court against the judgment of the trial court, one by fifty persons who were convicted under Section 148 IPC, another by five accused persons who were convicted under Sections 302 and 148 IPC and the third appeal by the State of Andhra Pradesh challenging the order of acquittal in relation to twenty persons, viz., Yarlagadda Nayugamma [A-8], Mandava Radhakrishna Murthy [A-9], Gorantla Anjaiah [A-10], Yarlagadda Udayabhaskara Rao [A-20], Pothina Mohana Rao [A-28], Yarlagadda Anjaneyulu [A-30], J. Ramu [A-32] Puvvati Nageswararao [A-37], Yarlagadda Nageswara Rao [A-46], Charukuri Venkateswarlu [A-47], Yarlagadda Somaiah [A-53], Yarlagadda Brahmaiah [A-54], Ganta Tirupathaiah [A-60], Daggupati Krishnamurthy [A-61], Yarlagadda Venkanna [A-62], Daggupati Rattaiah [A-63], Pothina Laxminarayana [A-64], Chaganti Nayudamma alias Vaddila Nayudamma [A-74], Mandava Venkatesubbaiah alias Subbarayudu [A-75], and Yarlagadda Krishna Murthy [A-90] all of whom were accused in police case. No appeal was filed in relation to the remaining nine acquitted accused persons of police case and acquitted accused persons of complaint case. High Court allowed both the appeals filed by the accused persons and acquitted them of the charges and dismissed the appeal filed on behalf of the State of Andhra Pradesh and confirmed the order of acquittal.

3. Before this Court, three appeals have been filed by the State of Andhra Pradesh viz., Criminal Appeal No. 356 of 1999 against the order of acquittal rendered by the High Court in relation to fifty accused persons, Criminal Appeal No. 357 of 1999 against the same acquitting five persons who were convicted by the trial court under Sections 302 and 148 IPC and the third being Criminal Appeal No. 358 of 1999 which is against the order whereby acquittal of twenty accused persons has been

confirmed by the High Court. Apart from filing the appeals by the State, on behalf of the Tella Zedson [PW-1], three special leave petitions have been filed challenging the same very order of acquittal which were registered as SLP [Crl.] Nos. 3788-90 of 1998 and the same were directed to be heard along with the said appeals.

4. Prosecution case in short was that since long time past dispute was going on between two communities, viz., Kammas and Madigas [Harijans] in village Karamchedu. Members of the Kamma community were having grievances against the Madigas as they were not giving due regard and not extending courtesy to them which was being extended since time immemorial. During assembly elections, members of Kammas community supported Telugudesam Party and the Madigas Congress Party. The immediate cause for the incident was that on 16.07.1985 at 3.00 pm A-69 took his cattle to fresh water tank at Madigapalli, which is commonly known as Madiga Kunta, and when he was taking out water therefrom for drinking of buffaloes, the same was protested by Chandraiah [PW-21], upon which he was given a beating by A-69. At that time, Munnangi Suvatha [PW-20], who was also present there, protested whereupon A-69 assaulted her also and at that point of time Pandiri Nageswara Rao [PW-76] intervened and pacified the matter. Feeling humiliated, A-69 informed about the incident to his brother-in-law Rayaneedi Prasad [A-1]. Both of them went to Madiga Kunta and started abusing PW-76, who is nobody else than brother-in-law of PW-20. At that time A-1 and A-69 were pacified by PW-76, thereupon A-1 and A-69 went to the house of PW-20 along with Pothina Thirupathaiah [A-27] and others and abused and assaulted her [PW-20]. On the intervention of PW-76 the matter was again pacified. A-1, A-69 and their relatives who belonged to Kamma community felt humiliated and they wanted to teach a lesson to the Madigas with the help of their caste-men.

5. Further prosecution case was that on 17.07.1985 at about 7.00 am the accused persons went to Madiga Palli armed with spears, axes, crowbars and stout sticks with an ulterior motive to commit offences. When they arrived there deceased Duddu China Vandanam (D-1) was washing in a Kostam called "Dharmaraju Kostam" near a church when A-6, A-7, A-15 and A-16 upon the instigation of A-14, A-18, A-36 to A-43, A-66, A-73, A-75, A-76 and A-77 assaulted D-1 with axes and spears. So far as deceased Tella Moshe [D-2] is concerned, he is said to have been chased by A-23 to A-25 and assaulted him with spear on his head as well as on his left leg by A-23, with an axe on right leg and head by A-24 and with a stout stick on his left hand by A-25. At that point of time upon the instigation of A-1, A-2, A-19, A-36, A-37 & A-77 to A-79; A-3, A-14, A-16 and A-20 are said to have chased deceased Tella Muthaiah [D-3] and assaulted him with a stout stick by A-3, with an axe by A-14 and with spears by A-16 and A-20. Thereupon A-4, A-12 and A-23 to A-26 and some other persons are said to have chased deceased Tella Yevasu [D-4] and assaulted him indiscriminately with stout sticks by A-4, A-25 and A-26, with spears by A-12 and A-23 and with an axe by A-24. Deceased Duddu Ramesh [D-5] is also said to have been assaulted by the accused persons. Thereafter other accused persons assaulted Munnangi Ankaiah [PW-2], Manda Pentaiah [PW-5], Chunduru Doss [PW-6], Tella Symon [PW-7], Nune Visranthamma [PW-8], Munnangi Nageswara Rao [PW-9], Tella Yebu [PW-10], Vusurupati Ramanamma [PW-11], Tella Solomon [PW-12], Tella Kanthamma [PW-13], Tella Mariyamma [PW-14], Munnangi Laxmaiah [PW-15], Tella Victoria [PW-16], Duddu Sulochana [PW-17], Benthath Veeraiah [PW-18], Daddu Yesu [PW-19], Duddu Veeramma [PW-22], Thella Leelamma [PW-24], Pilli Mastan [PW-25], Tella Mukkanti [PW-46], Tella Moshe [PW-47] and Pandiri Nageswara Rao [PW-76]. The said five deceased persons succumbed to their injuries. Although one more person is said to have received injuries but it is not known whether he received injuries during the course of the present occurrence as no

accused person in the present case has been charged for his murder. After the occurrence the accused persons fled away.

6. A First Information Report [hereinafter referred to as 'FIR'] was lodged in which the police upon registration of the case took up investigation and upon completion thereof submitted chargesheet against ninety four accused persons whereupon a complaint was filed before the learned Magistrate in which apart from ninety four accused persons against whom chargesheet was submitted names of seventy more persons were disclosed who were not sent up by the police. Learned Magistrate took cognizance in both the cases and summoned accused persons of both the cases and they were committed to the Court of Sessions to face trial.
7. Defence of the accused persons was that they were innocent, had no complicity with the crime and no occurrence much less the occurrence alleged had taken place but they were falsely implicated on account of two factions in the village.
8. Trial in both the cases was taken up jointly and only one set of evidence was recorded therein. Prosecution examined 104 witnesses and adduced documentary evidence. Defence examined four witnesses and adduced documentary evidence. Some of the accused persons had taken the plea of alibi.
9. During trial out of the accused persons of police case five persons died and cases of five were separated, consequently 84 persons were tried along with accused persons of complaint case. Upon conclusion of trial, out of 84 accused persons of police case, trial court convicted five accused persons under Sections 302 and 148 IPC whereas fifty accused persons under Section 148 IPC. The remaining 29 accused persons of police case and the other accused persons of complaint case were acquitted. On appeal being preferred by the convicted accused persons their convictions have been

set aside whereas appeal filed by the State challenging the order of acquittal in relation to 20 persons of police case has been dismissed by the High Court whereupon the present appeals have been filed by the State by special leave and special leave petitions by Tella Zedson [PW-1] as stated above.

10. Out of fifty respondents of Criminal Appeal No. 356 of 1999 five persons, viz., respondent no. 19 - P.V. Subbaiah [A-35], respondent no. 25 - D. Papa Rao [A-44], respondent no. 28 - P. Krishna Murthy [A-49], respondent no. 35 - D. Brahmanaidu [A-59] and respondent no. 48 - P.G. Subba Rao [A-91] died. Likewise, in Criminal Appeal No. 357 of 1999 respondent no. 2 - C. Satyanarayana [A-4], respondent no. 3 - C. Subba Rao [A-7] and respondent no. 4 - R. Raghavaiah [A-23] died during its pendency. So far as Criminal Appeal No. 358 of 1999 is concerned, therein also three persons, viz., respondent no. 1 - Y. Naidumma [A-8], respondent no. 3 - G. Anjaiah [A-10] and respondent no. 15 - Y. Venkanna [A-62] died. In this way these three appeals in relation to the aforesaid eleven respondents abated. In these appeals out of seventy five respondents eleven persons having died only sixty four persons remain.

11. In Criminal Appeal No. 358 of 1999, we are required to consider cases of 17 respondents only, three having died. In relation to these seventeen respondents the High Court has confirmed order of acquittal. Learned counsel appearing on behalf of the appellant State could not point out any infirmity either in the judgment of acquittal rendered by the trial court or the same confirmed by the High Court. In our opinion, the view taken by the trial court and upheld by the High Court in relation to these accused persons was reasonable one and same cannot be said to be perverse in any manner as such no interference by this court is called for.

12. Now we are required to consider cases of forty seven respondents in these appeals, forty five respondents in Criminal Appeal No. 356 of 1999, viz., A-2, A-5, A-11, A-

12, A-13 A-14, A-15, A-16, A-17, A-18, A-19, A-21, A-22, A-27, A-29, A-31, A-32, A-33, A-36, A-39, A-40, A-42, A-43, A-45, A-48, A-50, A-52, A-55, A-56, A-57, A-58, A-65, A-66, A-67, A-68, A-69, A-72, A-73, A-76, A-80, A-82, A-85, A-86, A-92, A-93, and two respondents, viz. A-1 and A-24 in Criminal Appeal No.357 of 1999.

13. First we proceed to consider the cases of two respondents, viz., R. Prasad [A-1] and R. Anjaiah [A-24] in Criminal Appeal No. 357 of 1999, who are respondent nos. 1 & 5 therein respectively.

14. So far as A-1 is concerned, the prosecution has placed reliance upon the evidence of three witnesses, viz., Munnangi Ankaiah [PW-2], Pilli Mahalaxmi [PW-58] and Duddu Subbulu [PW-59]. PW-2 has stated about his own assailant and assailants of D-4 and D-5. So far as A-1 is concerned, as per prosecution case, he was not the assailant of D-1 for which he was convicted by the trial court under Section 302 IPC. PW-2 has nowhere stated in his evidence that this accused was present at or near the place where D-1 was assaulted. According to his evidence he could not see who killed D-1. This being the position, the evidence of this witness can be of no avail to the prosecution for convicting this accused for the charge of murder of D-1.

15. The next witness in this regard is Pilli Mahalaxmi [PW-58]. This witness has disclosed the name of Rayaneedi Prasad [A-1] for the first time in Sessions Court after seven years of the date of the alleged occurrence as he did not disclose his name in his statement made before the police as would appear from the evidence of two investigating officers, viz., D. Sridhar Reddy [PW-102] and E. Purna Prakash [PW-104] wherein they have categorically stated that this witness did not even mention before them the name of A-1. Thus, no reliance can be placed on the evidence of this witness so far the charge of murder against this accused is concerned.

16. Last witness is Duddu Subbulu [PW-59] who in his evidence in court has nowhere disclosed the name of A-1 as such for convicting this accused for the charge of murder his evidence cannot be relied upon. Thus to prove the charge of murder against A-1 evidence of PWs. 2, 58 and 59 having not been found to be credible, and there being no other evidence against him, we are of the view that the High Court was quite justified in acquitting him of the charge under Section 302, IPC.
17. Coming now to the case of Rayani alias Gammathu Anjaiah [A-24] who has been acquitted by the High Court of the charge under Section 302 IPC it may be stated that to prove the charge under Section 302, IPC against this accused the prosecution has placed reliance upon the evidence of two witnesses, viz., Munnangi Abraham [PW-4] and Manda Pentaiah [PW-5].
18. Munnangi Abraham (PW-4) stated that a large number of Kammas, including all the accused persons, were gathering under the *neem* tree and were armed with spears, axes, sticks and casurina sticks. Apprehending that something untoward may happen, when the witness started running towards the tank, accused Chatanti Subba Rao (A-27), Puvvada Rattaiah Nageswara (A-57) and Puvvada Rattaiah (A-91) were running behind him. The witness then stated that D-2 and D-3 were running and accused Yarlagadda Butchinayudamma (A-14), Gammathy Anjaiaha (A-24), Pothina Krishna Murthy (A-49), Yarlagadde Siviah (A-51), Daggupeti Brahmanayudu (A-58) armed with sticks, axes and spears were chasing them shouting that they should be done to death. During the course of cross-examination, it was suggested to the witness that in his statement made before the police he did not state that he was chased by the accused persons which suggestion was denied by him though Investigation Officer, PW-104 deposed that PW-4 did not state before him that some of the Kammas chased him. No suggestion was given to the witness that he did not make any statement before the police that the aforesaid accused persons,

including A-24, chased D-2 and D-3. Thus the statement of this witness in court that the aforesaid accused persons, including A-24, chased D-2 and D-3 is quite consistent with his statement made before the police and shows complicity of A-24 to prove the charge of murder, as such we do not find any ground to reject his evidence so far charge of murder against A-24 is concerned.

19. Another witness to prove the charge of murder against A-24 is Manda Pentaiah [P.W. 5]. This witness categorically stated in his evidence that nine accused persons named by him including A-24 stabbed Tella Moshe (D-2) with spear when he was hiding himself in a manure heap. During the course of cross examination the witness admitted that he did not state before the police or C.B. C.I.D Police about the nine Kammas assaulting D-2, while he was hiding himself in a manure heap. From the aforesaid statement it cannot be said that the witness had not stated before the police that the nine Kammas, including A-24 assaulted D-2, rather it appears that he did not state before the police that at the time when D-2 was assaulted by the nine Kammas he was hiding himself in manure heap. Thus we find that the statement of this witness in court that A-24 and other eight Kammas assaulted D-2 with spears is consistent his with previous statement and the same is corroborated by medical evidence.

20. Thus, we are of the view that prosecution has succeeded in proving its case beyond reasonable doubt against A-24 so far as the charge of murder of D-2 is concerned and the impugned judgment rendered by the High Court acquitting him of the charge under Section 302 IPC suffers from the vice of perversity.

21. Now we proceed to consider cases of 47 accused persons, i.e., forty five accused persons of Criminal Appeal No. 356 of 1999 and two persons of Criminal Appeal No. 357 of 1999 in relation to the charge under Section 148 I.P.C. A-1 has been named by

Tella Mariyamma [PW-14], Tella Victoria [PW-16], Duddu Sulochna [PW-21], Tella Bennu [PW-45], Tella Singaiah [PW-51], Tella Bujji [PW-53], Duddu Issack [PW-57], Duddu Makaiah [PW-66], Duddu Bhaskar Rao [PW-72], Pandiri Nageswara Rao [PW-76], Tella Papaiah [PW-78] and Kommuri Lyman [PW-79] as member of unlawful assembly. A-2 was identified by Munnangi Laxmaiah [PW-15], Tella Victoria [PW-16], Tella Salomi [PW-30], Tella Singaiah [PW-51] and Duddu Makaiah [PW-66] who have specifically stated that this accused was present at the place of occurrence and was armed with *lathi*. A-5 was been named by Tella Soloman [PW-12], Tella Yesobu [PW-32] and Tella Subba [PW-55] as a member of the unlawful assembly and was armed with a stick. So far as A-11 is concerned, no witness stated that he was member of unlawful assembly. A-12 was identified by PW-38 and PW-68 as a person who was present at the place of occurrence with a spear. A-13 was identified by Tella Moshe [PW-47] and Duddu Prasad [PW-68] as a person present at the time of the occurrence with a spear. A-14, according to the evidence of Tella Sundaramma [PW-34] and Tella Moshe [PW-38] was armed with an axe and was present at the time of the occurrence. A-15 was identified as a member of unlawful assembly armed with a stick by Duddu Veeramme [PW-22] and Duddu Prabhakar [PW-23]. About A-16, Tella Moshe [PW-47] and Duddu Makaiah [PW-66] have stated that this accused was member of the unlawful assembly. A-17 was identified by Duddu Makaiah [PW-66] and Kommuri Lyman [PW-79] as a person who was present at the time of the occurrence with other accused persons. A-18 was identified by Pilli Mahalakshmi [PW-58] and Duddu Bennu [PW-61] as a member of the unlawful assembly who was armed with axe. A-19 was identified by Munnangi Laxmaiah [PW-15] and Benthath Beeraiah [PW-18] as a person who was at the place of occurrence along with other accused persons. A-21 was identified by Pilli Mastan [PW-25] and PW-58 as a person who was present at the place of occurrence along with other accused persons. About A-22, Tella Mariyamma [PW-14] stated that he

was member of the unlawful assembly and was armed with a stick. So far as A-24 is concerned, he was identified as a member of unlawful assembly as well besides assailant by PW-4 and PW-5. A-27 was identified by Tella Yebu [PW-10], Munnangi Suvatratha [PW-20] and Tella Bennu [PW-45] as a person armed with an axe. A-29 who was identified by Tella Prakasam [PW-35] and Tella Sundaramma [PW-38] as a person who was armed with spear. A-31 was identified by PW-38 as a person armed with an axe. A-32 has been named by PW-15 as a person present along with accused person. So far as A-33 is concerned, no witness has stated that he was a member of the unlawful assembly. A-36 was named by Tella Ammaiah [PW-62] who was not examined by the police and no explanation is forthcoming for the same. A-39 was identified by PW-15, PW-35 and Duddu Yacob [PW-42] as a person who was present along with other accused persons and armed with spear. So far A-40 is concerned no witness stated that he was member of unlawful assembly. A-42 was identified by Duddu Prabhakar [PW-23], Thella Leelamma [PW-24], Tella Sujanamma [PW-26], PW-28, PW-35 and Duddu Marthamma [PW-48] as a member of the unlawful assembly. A-43 was identified by PW-15, Tella Ankamma [PW-63] and Kommuri Lyman [PW-79] as a person present with other accused persons. A-45 was identified to be member of unlawful assembly by a solitary witness Tella Prakasanm [PW-35]. A-48 was named by PW-3 and PW-47 as a person who was present along with other accused persons. A-50 was identified by PW-13, PW-16, Duddu Sulochana [PW-17] and PW-79 as a member of the unlawful assembly. A-52 was identified by Tella Anandam [PW-39] as a person present with other accused persons. A-55 was named by PW-17 and Duddu George [PW-41] as a person present along with other accused persons. A-56 was identified by PW-15 and Tella Singaiah [PW-51] as a member of unlawful assembly. A-57 has been named by Tella Kanthamma [PW-13], PW-15 and Tella Anandam [PW-39] as a person present along with other accused persons. A-58 was identified by the solitary witness PW-79. A-65 was identified by Tella Yacob

[PW-31] and Duddu Issack [PW-57] as a member of the unlawful assembly. A-66 was identified by PW-14 and Tella Leelamma [PW-24] as a person present along with other accused persons. So far A-67 is concerned, no witness stated that he was member of the unlawful assembly. A-68 has been identified by Duddu Bennu [PW-61] as a member of unlawful assembly. A-69 was named by PW-15, PW-20, Katti Chandraiah [PW-21], PW-35, Duddu Masthnamma [PW-40], PW-45 and Tella Bujji [PW-53] as a person present along with other accused persons. A-72 was identified by Tella Symon [PW-7] and Benthath Veeraiah [PW-18] as a member of unlawful assembly. A-73 was named by Pilli Mastan [PW-25] and Tella Yesobu [PW-32] as a person who was present with other accused persons. A-76 was identified as a member of the unlawful assembly by PW-32 alone. Likewise A-80 was identified as a member of unlawful assembly by PW-57 alone. A-82 was identified by PW-15 and PW-41 to be a person who was present along with the accused persons. A-85 was named by Tella Rebunu [PW-36], PW-39 and PW-58 as a member of the unlawful assembly. A-86 was identified by PW-13, PW-16, PW-17, PW-41 and Tella Yesu [PW-74] as a person who was present with other accused persons. A-92 is said to have been identified by PW-18 alone. So far A-93 is concerned no witness stated that he was member of the unlawful assembly.

22. In this way, out of the aforesaid 45 respondents of Criminal Appeal No. 356 of 1999 who were facing charge under Section 148 I.P.C., A-22 (Respondent No-13), A-31 (Respondent No-16), A-32 (Respondent No.-17), A-45 (Respondent No-26), A-52 (Respondent No-30), A-58 (Respondent No. 34), A-68 (Respondent No-39), A-76 (Respondent No-43), A-80 (Respondent No-44) and A-92 (Respondent No-49) have been identified as a member of unlawful assembly by a solitary witness, as such it is not safe to place reliance thereon in the facts and circumstances of the present case. So far A-11 (Respondent No. 3), A-33 (Respondent No-18), A-40 (Respondent No-22),

A-67 (Respondent No-38) and A-93 (Respondent No-50) are concerned, no witness stated that they were members of unlawful assembly. As such it is not possible to convict them for the charge under Section 148 I.P.C. As regards, A-36 (Respondent No-20) it appears that the sole witness examined during trial was not examined by the Police and in absence of any explanation for the same, it is not possible to place reliance upon his evidence.

23. Thus, we are of the view that the order of acquittal passed by the High Court in relation to the aforesaid sixteen accused persons of Criminal Appeal No. 356 of 1999 acquitting them of the charge under Section 148 I.P.C. cannot be said to be perverse in any manner.

24. So far as the remaining accused persons, viz., twenty nine accused persons of Criminal Appeal No. 356 of 1999 and two, viz., A-1 and A-24 of Criminal Appeal No. 357 of 1999 are concerned, having perused the evidence of witnesses, we are of the view that prosecution has succeeded in proving the charge under Section 148 I.P.C. and High Court was not justified in acquitting them.

25. In the result, Criminal Appeal No. 356 of 1999 against respondent Nos. 19, 25, 28, 35 and 48 is held to have abated in view of the fact that they died during the pendency of appeal and the appeal is dismissed against Respondent Nos. 3, 13, 16, 17, 18, 20, 22, 26, 30, 34, 38, 39, 43, 44, 49 and 50. The appeal against the remaining twenty nine respondents is allowed, the impugned order of acquittal passed by the High Court acquitting them of the charge under Section 148 IPC is set aside and the order of their conviction under Section 148 recorded by the trial court is restored. Criminal Appeal No. 357 of 1999 in relation to respondent Nos. 2, 3 and 4 is held to have abated in view of the fact that they died during the pendency of this appeal and the appeal filed against respondent No. 1 is dismissed so far as charge under Section 302

I.P.C. is concerned but allowed in relation to charge under Section 148 I.P.C., the judgment of acquittal rendered by the High Court in relation to the charge under Section 148 I.P.C is set aside and his conviction under Section 148 I.P.C. recorded by the Trial Court is restored. But so far as appeal in relation to respondent no. 5 is concerned, the same is allowed, the impugned order passed by the High Court acquitting him of the charges under Section 302 and 148, IPC is set aside and the order of Trial Court convicting him under Section 302 and 148, IPC is restored. Bail bonds of the said respondents of Criminal Appeal Nos. 356 of 1999 and Criminal Appeal Nos. 357 of 1999 in relation to whom conviction recorded by Trial Court has been restored, are cancelled and they are directed to be taken into custody forthwith to serve out the remaining period of sentence for which the matter must be reported to this Court within three months from the date of receipt of this order by the trial court. The other respondents of these appeals are discharged from the liability of bail bonds. Criminal Appeal No. 358 of 1999 in relation to respondent nos. 1, 3 and 15 is held to have abated in view of the fact that they died during the pendency of this appeal. The appeal in relation to the remaining seventeen respondents is dismissed and they are discharged from the liability of bail bonds.

26. In view of the afore-mentioned order passed in the appeals, it is not necessary to pass any further order in the Special Leave Petition [Crl.] Nos. 3788-90 of 1998 which are accordingly disposed of.

..... J.
[B.N. AGRAWAL]

..... J.
[G.S. SINGHVI]

December 19, 2008
NEW DELHI.