NAGARATHINAM AND ORS. A

v.

STATE REP. BY INSPECTOR OF POLICE

APRIL 5, 2006

[S.B. SINHA AND P.P. NAOLEKAR, JJ.] B

Penal Code 1860—Sections 147, 148, 324, 302, 307, 149 and 34—Fight between two groups—Accused and prosecution witnesses sustained stab injuries—Two died in the fight—Plea of self defence raised by the accused—Trial Court convicted the accused for murder under section 302 C *read with section 149 IPC and for other charges—High Court convicted the accused under section 302 read with section 34 IPC after holding that they were liable to be convicted for their individual acts—Correctness of—Held, High Court committed a manifest error by invoking section 34 IPC after holding that they were liable for their individual acts—Prosecution has* D *failed to explain the injuries on the person of the accused; the delay in arresting the accused; and that the accused were aggressors with their common intention to cause death of the deceased—Possibility of exercising right of self defence cannot be ruled out—Hence, the accused are acquitted since the prosecution has failed to prove the case beyond all reasonable doubt.* E

Appellant No. 1 was running a brick-kiln in a land belonging to a village temple. On a complaint by villagers President of the Panchayat Board lodged a complaint with Block Development Officer who imposed a fine on the appellant. The President later convened a panchayat meeting for taking action against the appellant for non-accounting of the amount entrusted by the F **villagers with him for temple festival. Appellant no. 1 along with his sons appellant nos. 2 and 3 attended the meeting. The meeting was attended by a large number of persons. At the meeting there was a wordy quarrel which resulted in a fight between the two groups. Appellant no. 1 stabbed the first deceased with a small knife which was brought by appellant no. 2 from a nearby** G **tea stall. Appellant no. 1 also assaulted on the head of the second deceased with a stick. Appellants and prosecution witnesses sustained injuries in the fight. Appellants and three others were charged by prosecution for offences under sections 147, 148, 324, 302 and 307 read with section 149 IPC. The trial court found the appellants guilty of all the offences. The High Court,**

 H

A however, acquitted the appellants of the charges against sections 324, 147, 148, and 302 read with section 149 IPC but held liable to be convicted for their individual acts and hence convicted them under section 302 read with section 34 IPC.

In appeal to this Court, the appellants contended that the High Court B was wrong in invoking section 34 IPC after holding that they are liable for their individual acts; that the injured witnesses did not state as to how the appellants received stab injuries on their person; the First information report was lodged at the instance of the President of the Panchayat, who was not examined by the prosecution; that the allegations made against appellant no. C 3 are not supported by medical evidence; and that the plea of self-defence raised was not considered.

Allowing the appeal, the Court

HELD: 1.1. The High Court committed a manifest error in invoking D Section 34 IPC. Once it was held that the appellants were liable to be convicted only for their individual acts, the question was required to be addressed differently. The High Court failed to consider the question that the prosecution has not been able to explain the injuries on the person of the appellants. The High Court also wrongly held that the burden of proof in respect thereof was on the appellants. [843-B]

E

1.2. The High Court, after finding the injuries suffered by the accused on the vital parts of their bodies, without discussing the evidences brought on record held that the same were not sustained by them while exercising their right of self-defence. It is true that it is not for the prosecution to prove injuries on the person of the accused, in each and every case irrespective of the nature F thereof, but in a case of this nature the same would require serious consideration as a plea of right of exercise of self-defence was raised. It is in that context that the apprehension of death or bodily injury in the mind of the accused persons would have to be determined having regard to the number of people assembled to take part in assaulting them, the manner in which they G were assaulted, the arms used as also the situs of injury received by them. It is now well settled that a person apprehends death or bodily injury cannot be weighed in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. [843-F-G; 844-A]

H 1.3. The prosecution witnesses belonged to one group. They were

supporting one influential person of the village. The appellants were accused of defalcation of the temple property. The President of the Panchayat Board not only saw to it that a heavy penalty is imposed upon the appellants, but also called a Panchayat meeting to reprimand appellant No. 1 for not furnishing of accounts. It is difficult to believe that despite the fact that a large number of persons were present near the tea shop, the appellants would kill two persons one after another, without receiving any injury or threat to their lives or bodily injury or without having been not provoked by any of them or in any manner whatsoever. The fact that they were not armed is not disputed. It is not the case of the prosecution that they were carrying sticks with them. It is admitted that appellant no. 2 all of a sudden picked up a small knife from the shop of P.W. 4. The knife has not been identified in the court. The accusation made as against the appellant no. 3 that he had assaulted the 2nd deceased with a stick, is not corroborated by medical evidence. None of the appellants have been attributed of the said overt acts. How and in what manner the appellants came to have such bamboo sticks in their possession had not been disclosed. All the appellants have suffered at least three injuries each. Whereas only one injury is said to have been caused by the appellant no. 2 in the stomach of the 1st deceased by a knife, all other injuries have been caused by hard and blunt substance, whereas the appellants suffered injuries inflicted on them by knife and bottles. [846-A-G]

1.5. The Investigating Officer did not explain as to why the appellants were not put under arrest on the date of occurrence itself, despite the fact that they were admitted in the hospital. The cause for delay in arresting the accused has not been explained at all.

1.6. In the facts and circumstances of this case, it was obligatory on the part of the prosecution to explain the injuries on the person of the appellants. The prosecution has not been able to show beyond all reasonable doubt that the appellants were the aggressors. The prosecution has also not been able to establish any common intention on the part of the appellants to cause the death of that person. Keeping in view the totality of the circumstances, the possibility that the appellants have exercised their right of private defence cannot be totally ruled out. The prosecution had made all attempts to suppress a part of the occurrence. The genesis of the occurrence has, thus, not been proved. The totality of the circumstances brought on record do not point out to the guilt of the appellants. They are, therefore, entitled to be acquitted.

[847-B-F; 848-F-G]

Bishna @ Bhiswadeb Mahato & Ors. v. *State of West Bengal,* (2003) 9

A **Scale 204;** *Jalaram* **v.** *State of Rajasthan,* **(2005) 9 Scale 505 and** *Munna Chanda* **v.** *State of Assam,* **JT (2006) 3 SC 366, referred to.**

CRIMINAL ORIGINAL JURISDICTION : Criminal Appeal No. 397 of 2005.

From the Judgment dated 23.6.2004 of High Court of Judicature at
B Madras in Crl. A. No. 234/1996.

R. Sundaravaradan, V.G. Pragasam and G.N. Reddy for the appellants.

Subramonium Prasad, Abhay Kumar, Gopal Krishnan and Jai Kishore Singh for the Respondents.

C

The Judgment of the Court was delivered by

S.B. SINHA, J. Maiyoor is a small village situate in the district of Chenglepet. Appellant No.1 had a brick-kiln therein, which was being run in a land belonging to a village temple known as one Gangaiamman temple. The villagers were opposed to it. They complained thereabout to one Rajendran,
D who was president of the Panchayat Board. He, in turn, lodged a complaint with the Block Development Officer who imposed a fine of Rs.25,000/- on the said appellant. The amount of fine was not paid. The President, Panchayat Board filed a suit therefor, which was decreed. Furthermore, allegedly a sum of Rs.12,000/- collected by the villagers for temple festival and entrusted to
E the 1st appellant had not been accounted for by him. Rajendran convened a meeting of the Gram Panchayat for taking further action against the 1st appellant. The appellant Nos. 2 and 3 are sons of the 1st appellant.

They, allegedly, having felt insulted and aggrieved over the convening of the meeting, formed themselves into an unlawful assembly at about 2.00
F p.m. on 22.7.1990 and questioned the authority of the said Rajendran to convene it. He used some filthy language whereupon Shanmugam (the 1st deceased), a nephew of the said Rajendran, asked him not to do so and express his grievance, if any, in the meeting itself which was to be held at 5.00 p.m on that day. On that, the first appellant allegedly caught hold of his hands from the back side and asked the others to finish him once for all
G whereupon the appellant No.2, Sankar, brought a small knife from the tea stall and stabbed him (1st deceased) in his stomach. Krishnan, (the 2nd deceased), was coming from his agricultural field. He, on witnessing the said incident, cried. He tried to lift the 1st deceased whereupon the appellant No.1 with a Thadi (stick) assaulted him on his head. The third appellant is said to have
H assaulted Krishnan with another stick on his shoulder. He also fell down.

P.W.1- Gajendran, P.W.2- Elumalai, P.W.3-Paramasivam and P.W.10-Chandran, were sitting near a tea stall. They went to the place of occurrence and made an attempt to lift the two deceased persons. The appellant then, allegedly, threatened them also. One Mohan, who allegedly had come with the appellants is said to have assaulted P.W.1 with a stick. The appellant No.3 is said to have stabbed P.W.3 on his back and when P.W.2 came near him, caused injury on his right hand fingers. Accused No.4, who is not an appellant before us, is said to have caused a cut injury on the head of P.W.10. The appellants allegedly fled from the scene after the prosecution witnesses started assaulting them with stones and sticks.

Indisputably, all the appellants were also injured. They went to hospital and in view of the nature of injuries on their persons were admitted as indoor patients. The hospital registers indicate that they were admitted in the hospital at about 4.00 p.m. In the Accident Register the nature of injuries on their persons were said to have been caused by knife and bottle. The injuries on the person of the appellants herein were found by the attending doctors as under:

"Appellant No. 1:

(1) Stab wound extending to the muscle 3 x 2 cms. over the left thigh.

(2) Stab wound extending to the muscle and (NC) 5 x 6 cms. over the left fore arm

(3) Incised wound over the scalp over frontal region 6 x 1 cms.

Appellant No. 2:

(1) Deep cut wound 5 x 6 cms. over the left knee joint.

(2) Incised wound over the scalp left side parietal region 4 x 5 cms.

Appellant No. 3 :

(1) Incised scalp over the front parietal region 7 x 1 cms."

The prosecution witnesses, together with the deceaseds, also came to the hospital. The said Rajendran also came to the hospital at 7.00 p.m. A detailed First Information Report was lodged by P.W.1 at about 8.00 p.m. He gave the history about the dispute between the parties as noticed hereinbefore in the First Information Report. He stated about the incident in great details.

Although, the appellants were admitted as in-door patients in the hospital

A and despite the fact that two persons, namely, Shanmugam and Krishnan, had allegedly been done to death by them, they were arrested only on 26th July, 1990.

The appellants herein, together with three others, were prosecuted for alleged commission of an offence under Sections 147, 148, 324, 302 and 307 B read with 149 of the Indian Penal Code ('the Code, for short). The appellants, while pleading not guilty, also raised a plea of self-defence.

They moreover raised a contention that having regard to the manner in which the occurrence took place, could not have been held to be the aggressors. In any event as they had no intention to kill the deceased and C as such, they could not be held to be guilty for commission of an offence under Section 302/149 of the Code. So far as the appellant No.3 is concerned, the contention raised was that no material was brought on record to sustain the judgment of conviction.

D The Trial Court found all the six accused before it to be guilty of commission of all the offences with which they were charged. The appellants Nos.1 and 2 were found guilty under Section 302/34 of the Code for causing the death of the 1st deceased and were sentenced to rigorous imprisonment for life. The appellants Nos.1 and 3 were also convicted under Section 302/34 of the Code for causing the death of the 2nd deceased and were awarded E the same sentence. The accused No.1, accused No.3, accused No.5 and accused No.6 were convicted under Section 147 of the Code, whereas accused No.2 and accused No.3 were convicted both under Sections 147 and 148 of the Code. Accused Nos. 3 to 6 were also convicted under Section 302 read with Section 149 of the Code for causing the death of the 1st deceased and F were awarded life imprisonment, whereas accused Nos.2, 4, 5 and 6 were held to have caused the death of 2nd deceased and were awarded the sentence of life imprisonment. All the accused were furthermore convicted under Section 324 of the Code and were sentenced to undergo rigorous imprisonment for one year.

G On appeal, the High Court while recording a judgment of acquittal in favour of accused Nos. 5 and 6 of all the charges, convicted the accused No.4 only under Section 324 of the Code. The appellants herein, as also accused Nos.5 and 6 were acquitted from the charge of Section 324 of the Code. They were also acquitted of commission of the offences punishable under Sections 147, 148 and 302 read with Section 149 of the Code. The High Court, upon H recording a finding that there was no sufficient material to show that all the

accused persons have committed offences under Section 302 read with Section 149 of the Code, opined :

> "Therefore, the accused persons are liable to be convicted for their individual acts. Accordingly, the conviction imposed upon A1 and A2 for the offence under Section 302 read with 34 I.P.C. for having caused the death of the first deceased is confirmed."

The conclusion of the High Court are as under :

"To sum up :

(i) The conviction and sentence imposed upon A1 (two counts) A2 and A3 for the offence under Section 302 read with 34 I.P.C. is confirmed;

(ii) The conviction and sentence imposed upon A4 under Section 324 I.P.C. is confirmed;

(iii) The conviction and sentence imposed upon A1 to A6 for the offence under Sections 147, 148 and 302 read with 149 I.P.C. is set aside they are acquitted of these charges;

(iv) The conviction and sentence imposed upon A1 to A3, A5 and A6 for the offence under Section 324 I.P.C. is set aside and they are acquitted to this charge."

Mr. R. Sundaravaradan, learned senior counsel appearing on behalf of the appellants took us through the depositions of the principal prosecution witnesses and contended:

(1) The materials placed on record clearly go to show that the First Information Report was lodged at the instance of Rajendran, who for reasons known had not been examined by the prosecution.

(2) Although, P.W.1, P.W.2, P.W.3, P.W.9 and P.W.10 are stated to be injured witnesses, they have not in their depositions stated as to how the appellants received stab injuries on their person;

(3) The allegations made against appellant No.3 are not supported by medical evidence.

(a) The High Court having come to the conclusion that a case under Section 149 of the Code was not made out, wrongly invoked the provisions

A of Section 34 thereof.

(b) If the appellants, in view of the findings of the High Court, were liable for the individual acts, Section 34 of the Code could not have been invoked, particularly in view of the fact:

B (i) None of the appellants were armed.

(ii) They were not aware as to whether the prosecution witnesses were armed or not.

(iii) Appellant No.2 suddenly picked up a small knife used for cutting C lemon from the shop of P.W.4 and inflicted the stab injury to the 1st deceased and thus, it is not a case where it can be said that there was any common intention on the part of the appellants to commit an offence of murder.

(4) It was for the prosecution to prove the manner in which the incident took place. The Trial Court or the High Court did not consider the plea of D right of private defence raised on behalf of the appellants in its right perspective.

(5) The courts had also not considered that a private complaint was filed by the appellants against the prosecution witnesses and the deceased.

Mr. Subramonium Prasad, learned counsel appearing on behalf of the E State, on the other hand, would submit that from the perusal of the injuries on the dead bodies of the deceased it would appear that the nature of injuries caused to them was sufficient to cause death. In this regard, our attention was drawn to the fact that 1st deceased suffered 11 injuries, the 2nd deceased also suffered multiple injuries which, in view of the depositions F made by the prosecution witnesses, were caused by the appellants herein.

Admittedly, an occurrence took place in which two persons on the one side and four persons on the other received injuries on their person. The appellants also admittedly suffered injuries on their person. Each of them has suffered injuries on vital parts of their bodies.

G

In the aforementioned backdrop of events, we may notice the evidences adduced by the prosecution.

P.W.1 is the informant. He accepted that he, in view of the dispute as regard encroachment caused by him on the land where the appellants were H running their brick-kiln, was assaulted by Sankar. He accepted that they

reached the hospital at about 4.30 p.m. and at that time Krishnan, the 2nd deceased, was alive and at that time the appellants had already been admitted in the hospital. On that day the police did not come to the hospital. He went to the police station, but did not think it fit to receive any treatment for his injuries. Although, when he went to the police station his clothes were blood stained, but despite the same he was not sent to the hospital by the Sub-Inspector although his injuries had been noticed by him. According to him, he made a very brief statement before the police at the time of lodging of the FIR. He had merely stated that two lives were in danger and Shanmugam was dead which they took down and obtained his signatures. According to him, he told only that much. When he was examined by the Investigating Officer on the next day, his statement was confined only to that extent. He said that he had not stated any other thing.

The First Information Report lodged by him, however, runs in three typed pages. Not only the incident was fully described, the First Information Report discloses overt acts attributed to each of the appellants, as also the accused No.4, in great detail as if he witnessed the entire occurrence very minutely. In his cross-examination he accepted that he did not make any statement that 2nd deceased, Krishnan, was assaulted by the appellant No.3 twice on his shoulder. He accepted that the President of the Panchayat Board Rajendran had been demanding share in the brick-kiln run by the appellants. He, however, denied the suggestions relating to the plea of self-defence raised by the appellants herein.

P.W.2 is also an injured witness. In his deposition he admitted that he did not make any attempt to rescue the deceased and did not even go near them. According to him, 'at the time *when the clashes took place'*, the prosecution witnesses were sitting on cemented bench near the bus stand. According to him, the knife with which the appellant No.2 inflicted the injury on the 1st deceased, onions or lemons could be cut. The knife is said to have a handle but the one which he identified, did not have any. In his statements under Section 161 of the Criminal Procedure Code made by him, he had stated the appellants were armed with sticks. He could not, however, say about the nature of the sticks. Before the investigating officer he made statements that both the deceased were beaten by wooden logs. He accepted that except the appellants herein, the other accused did not do anything. According to him, till next day morning when he informed the Investigating Officer as regard role played by each of the appellants, the same was not known to them. It was also not known as to whether if any other person received injuries.

A P.W.3 accepted that on the date of occurrence the police did not come. He did not say as to how the appellants received injuries on their persons. P.W.9, Saroja, is the wife of P.W.3. According to her, the quarrel continued for a long time. She stated that for obtaining the presence of the appellants in the Panchayat meeting, announcements were made by beating of drums. She accepted that when the appellants came they had not been carrying any B weapon. She accepted that the appellant No.2 got the knife only after the quarrel started. She could not say as to whether her husband was involved in the quarrel and according to her, she only took her husband to the hospital. Admittedly, as regard the incident or the stab injuries received by her husband, she did not inform any other person till the police came to the village. She C furthermore accepted that the accused were also injured and she also took part in throwing stones at them. She alleged that she also received injuries, although no such statement was made before the Investigating Officer. She admitted that Rajendran, President of the Panchayat Board came to the hospital at about 7.00 p.m., after the darkness had set in. She found the respective wives of the appellants present in the hospital.

D

P.W.10 is said to be another eye-witness. He admitted that the appellants were assaulted with sticks and stones. He also took part in assaulting the appellants. His statement was recorded by the Investigating Officer after four or five days of the incident. According to him, all the persons were assaulted E separately and not conjointly. According to this witness that assaults were from both sides and actual beating could not be seen. According to him, he was the last person to be assaulted.

The genesis of the occurrence is, therefore, shrouded in mystery. This occurrence, admittedly, took place, but who were thus initial aggressors, i.e., F the prosecution witnesses or the appellants, is difficult to say. The High Court has found that the prosecution had not been able to prove the charge of rioting. The appellants and others did not have any common object to cause death of the accused of the prosecution witnesses. We have noticed hereinbefore the nature of injuries on the person of the appellants. The first appellant received two stab wounds and also an incised wound over the scalp G at frontal region. The appellant No.2 received deep cut wound and an incised wound over the scalp left side parietal region. The appellant No.3 also received an incised scalp wound over frontal parietal region. It is not denied and disputed that they were in the hospital as indoor patients for a few days. We have furthermore noticed hereinbefore that they were also arrested after H a few days.

On the afore-mentioned factual backdrop the findings of the High Court that the appellants had formed common intention to cause the murder of two persons must be considered. A

In our opinion, the High Court committed a manifest error in invoking Section 34 of the Code. Once it was held that the appellants were liable to be convicted only for their individual acts, the question was required to be addressed, in our opinion, differently. The High Court failed to consider the question that the prosecution has not been able to explain the injuries on the person of the appellants. The High Court also wrongly held that the burden of proof in respect thereof was on the appellants stating that: B

> "The question is whether those injuries could have been caused by Kattai, Thadi and all as stated by the witnesses. Exs.P7, P8 and P9 would show that A1 to A3 were attacked with knife and bottles. When those were the statements made by these accused persons before the Doctor as mentioned in Exs.P7, P8 and P9, no attempt has been made by the defence to elicit from P.W.5, the Doctor who examined them, that those injuries found on A1 to A3 could not have been caused by Thadi and Kattai. One of the witnesses would and threw it at the accused. In such circumstances, the nature of the injuries could depend upon the shape of the weapon used. In the absence of any medical evidence to show that these injuries could not have been caused by Thadi and stone, we are not able to reject the evidence of the injuries eye witnesses that those injuries were caused by them by using Thadi and stone for driving them out." C D E

The High Court although saw that the injuries suffered by the accused were on the vital parts of their bodies but without discussing the evidences, brought on record held that the same were not sustained by them while exercising their right of self-defence. It is true that it is not for the prosecution to prove injuries on the person of the accused, in each and every case irrespective of the nature thereof, but in a case of this nature the same would require serious consideration as a plea of right of exercise of self-defence was raised. It is in that context that the apprehension of death or bodily injury in the mind of the accused persons would have to be determined having regard to the number of people assembled to take part in assaulting them, the manner in which they were assaulted, the arms used as also the situs of injury received by them. It is now well settled that a person apprehends death or bodily injury cannot be weighed in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm F G H

A the assailants who were armed with weapons.

In *Bishna @ Bhiswadeb Mahato & Ors.* v. *State of West Bengal*, (2005) 9 SCALE 204 this Court held that :

> "....In moments of excitement and disturbed equilibrium it is often
> B difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force. All circumstances are required to be viewed with pragmatism and any hypertechnical approach should be avoided.

C What would amount to private defence was stated therein in the following terms :

> "Private defence can be used to ward off unlawful force to prevent unlawful force, to avoid unlawful detention and to escape from such detention. So far as defence of land against trespasser is concerned,
> D a person is entitled to use necessary and moderate force both for preventing the trespass or to eject the trespasser. For the said purposes, the use of force must be the minimum necessary or reasonably believed to be necessary. A reasonable defence would mean a proportionate defence. Ordinarily, a trespasser would be first
> E asked to leave and if the trespasser fights back, a reasonable force can be used.
>
> Defence of dwelling house, however, stand on a different footing. The law has always looked with special indulgence on a man who is defending his dwelling against those who would unlawfully evict him;
> F as for "the house of every one is to him as his castle and fortress"."

It was opined that private defence and prevention of crime are sometimes indistinguishable. It was held that such a right could be exercised because there is a general liberty as between strangers to prevent a felony.

G In *Jalaram* v. *State of Rajasthan*, (2005) 9 SCALE 505, this Court upon noticing that the appellant frowned dispossession from the agricultural lands and furthermore only one blow was hurled on the forehead of the deceased by the Appellant therein accepted his right of private defence but opined that he exceeded the said right holding:

H "The right of way on the agricultural land belonging to Sonaram has

not been established. If there was no established right of way by way of easement or otherwise and if there had been an apprehension in the mind of the accused that there was a threat of trespass in their land, indisputably they could exercise their right of private defence. In any event, such an apprehension on the part of the Appellant and other accused persons cannot be ruled out.

We have noticed hereinbefore, that the only one blow was hurled by the Appellant herein was on the forehead of the deceased. The genesis of the occurrence, appears also not to have been disclosed by the prosecution. It is not the case of the prosecution that the Appellant herein and other accused persons had been nurturing any grudge against the deceased or the informant from before or had any motive to commit the aforementioned offence. Any motive on the part of the Appellant and other accused persons for hiding themselves near the place of occurrence and committing the offence has not been established. It is, thus, difficult to accept that part of the prosecution case.

Sonaram and Kisana Ram had also received one injury each. It is true, as has been held by the High Court, that the nature of injuries was simple one but it was, in the peculiar facts and circumstances of this case, obligatory on the part of the prosecution to prove as to how they received the same. It is also true that in all situations the injuries received by the accused persons need not be explained but a different situation may arise when a right of private defence is claimed. The prosecution has not placed any material before this Court to prove that it was the Appellant and other accused persons who were aggressors. If they were not the aggressors, the plea of right of private defence was available to them. Non-explanation of injuries on the person of Sonaram and Kisana Ram, thus, gains significance. Injuries on the persons of the accused persons having not been explained by the prosecution gives rise to the credibility to the defence put forth by the Appellant as regard exercise of his right of private defence."

The matter might have, thus, been otherwise if the prosecution could have established that the appellants have exceeded their right of private defence. The exercise of the right of private defence, in our opinion, must be determined, having regard to the entire factual scenario.

A The prosecution witnesses belonged to one group. They were supporting one influential person of the village, namely, Rajendran, President of Panchayat Board. There were motives and counter motives. The appellants were accused of defalcation of the temple property. They were said to have been running a brick-kiln unauthorisedly. The President of the Panchayat Board wanted a share in it. He not only saw to it that a heavy penalty is B imposed upon the appellants, evidently a Panchayat meeting was called for as to reprimand the appellant No.1 for not furnishing of accounts. They were summoned by beating of drums. It may be that the appellants started the quarrel. The first appellant might have used filthy language against Rajendran. But it is difficult to believe that despite the fact that a large number of persons C were present near the tea shop, the appellants would kill two persons one after another, without receiving any injury or threat to their lives or bodily injury or without having been not provoked by any of them or in any whatsoever manner. The fact that they were not armed is not disputed. It is not the case of the prosecution that they were carrying sticks with them. It is admitted that appellant No.2 all of a sudden picked up a small knife from D the shop of P.W.4. The knife has not been identified in the court. The accusation made as against the appellant No. 3 that he had assaulted the 2nd deceased with a stick, is not corroborated by medical evidence. The 1st deceased is said to have received 11 injuries. The prosecution case is that only the appellant No.2 caused injury No.8 which was fatal. The deceased E has received, according to the autopsy report, two injuries caused by hard and blunt substance. None of the appellants have been attributed of the said overt acts. The other eight injuries, according to opinion of the doctor, might have been caused by fall. On the body of the 2nd deceased only one injury was found which is said to have been caused by a bamboo stick by the appellant No.1, whereas according to the prosecution witness, Appellant No.3 F also hurled blows on the person of the deceased.

How and in what manner the appellants came to have such bamboo sticks in their possession had not been disclosed. All the appellants have suffered at least three injuries each.

G Whereas only one injury is said to have been caused by the appellant No.2 in the stomach of the 1st deceased by a knife, all other injuries have been caused by hard and blunt substance, whereas the appellants suffered injuries inflicted on them by knife and bottles.

The Investigating Officer did not explain as to why the appellants were H

not put under arrest on the date of occurrence itself, despite the fact that they were admitted in the hospital. The cause for delay in arresting the accused has not been explained at all.

In the facts and circumstances of this case and keeping in view the defence raised by them, we are of the view that it was obligatory on the part of the prosecution to explain the injuries on the person of the appellants. In *Bishna @ Bhiswadeb Mahato & Ors.,* (supra) this Court held:

> "The fact as regard failure to explain injuries on accused vary from case to case. Whereas non-explanation of injuries suffered by the accused probabilises the defence version that the prosecution side attacked first, in a given situation it may also be possible to hold that the explanation given by the accused about his injury is not satisfactory and the statements of the prosecution witnesses fully explain the same and, thus, it is possible to hold that the accused had committed a crime for which he was charged. Where injuries were sustained by both sides and when both the parties suppressed the genesis in the incident, or where coming out with the partial truth, the prosecution may fail. But, no law in general terms can be laid down to the effect that each and every case where prosecution fails to explain injuries on the person of the accused, the same should be rejected without any further probe. [See *Bankey Lal and Ors* v. *The State of U.P.,* AIR (1971) SC 2233 and *Mohar Rai* v. *The State of Bihar,* AIR (1968) SC 1281].

In that case, however, the injuries were held to have not been necessary to be explained as the appellants therein were found to have been guilty of commission of an offence under Section 148 of the Indian Penal Code. In the instant case, the prosecution has not been able to show beyond all reasonable doubt that the appellants were the aggressors. The prosecution has also not been able to establish any common intention on the part of the appellants to cause the death of that person. In *Munna Chanda* v. *State of Assam,* reported in (2006) AIR SCW 1058 : JT (2006) 3 SC 366, this Court held:

> "It is, thus, essential to prove that the person sought to be charged with an offence with the aid of Section 149 was a member of the unlawful assembly at the time the offence was committed.
>
> The appellants herein were not armed with weapons. They except Bhuttu were not parties to all the three stages of the dispute. At the

A third stage of the quarrel, they wanted to teach the deceased and others a lesson. For picking up quarrel with Bhuttu, they might have become agitated and asked for apologies from Moti. Admittedly, it was so done at the instance of Nirmal, Moti was assaulted by Bhuttu at the instance of Rattan. However, it cannot be said that they had common object of intentional killing of the deceased. Moti, however, B while being assaulted could free himself from the grip of the appellants and fled from the scene. The deceased, was being chased not only by the appellants herein but by many others. He was found dead next morning. There is, however, nothing to show as to what role the appellants either conjointly or separately played. It is also not known C as to whether if one or all of the appellants were present, when the last blow was given. Who are those, who had assaulted the deceased is also not known. At whose hands he received injuries is again a mystery. Neither Section 34 nor Section 149 of the Indian Penal Code is, therefore, attracted. [See *Dharam Pal and Ors.* v. *State of Haryana,* reported in [1978] 4 SCC 440 and *Shambhu Kuer* v. *State of Bihar,* D reported in AIR (1982) SC 1228.]

We are, however, not obliviously that in *Bishna @ Bhiswadeb Mahato & Ors.* v. *State of West Bengal,* reported in JT (2005) 9 SC 290, it was stated:

E "For the purpose of attracting Section 149 and/or 34 IPC, a specific overt act on the part of the accused is not necessary. He may wait and watch inaction on the part of an accused; may some time go a long way to hold that he shared a common object with others. ""

Keeping in view the totality of the circumstances, the possibility that F the appellants have exercised their right of private defence cannot be totally ruled out. We are satisfied that the prosecution had made all attempts to suppress a part of the occurrence. The genesis of the occurrence has, thus, not been proved. The totality of the circumstances brought on record do not, thus, point out to the guilt of the appellants. They are, therefore, entitled to G be acquitted.

The appeal for the foregoing reasons is allowed. The judgment of conviction and sentence passed against the appellants are set aside. They are directed to be set at liberty, unless wanted in connection with any other case.

H B.S. Appeal allowed.