



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1868 of 1985

Mahtab Khan

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: A B Maurya, Navin Sinha
Counsel for Respondent(s)	: A.G.A.

A.F.R.

In chambers

Reserved on 10.02.2026

Delivered on 18.03.2026

HON'BLE SIDDHARTH, J.
HON'BLE GARIMA PRASHAD, J.

(Delivered by: Garima Prashad, J.)

1. Heard Sri Ajay Kumar Pandey, learned Amicus Curiae for the appellant; Smt. Manju Thakur, learned A.G.A. Ist for the State-respondent and perused the record.

2. This criminal appeal has been preferred against the judgment and order dated 18.07.1985 passed by the learned Additional Sessions Judge, Bareilly in Sessions Trial No. 389 of 1982, State versus Mahtab Khan and others, whereby the accused persons were convicted under Sections 147/148, 302 read with Section 149, 307 read with Section 149, 324 read with Section 149, 323 read with Section 149 and 426 read with Section 149 IPC and were sentenced accordingly.

3. By the said judgment, all the nine accused namely Mahtab Khan, Bundan Khan, Darab Khan alias Bhure Khan, Baz Khan, Israil Khan, Baley Khan, Mangal Khan, Mehrab Khan and Taj Khan were convicted under Section 302 read with Section 149 IPC and sentenced to imprisonment for life. They were also convicted under Section 307 read with Section 149 IPC and sentenced to rigorous imprisonment for four years, under Section 324 read with Section 149 IPC to rigorous imprisonment for one year, under Section 323 read with Section 149 IPC to rigorous imprisonment for six months, and under Section 426 read with Section 149 IPC to rigorous imprisonment for two months. Darab Khan alias Bhure Khan, Bundan Khan and Mahtab Khan were further convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for one year. Baz Khan, Israil Khan, Mangal Khan, Mehrab Khan, Taj Khan and Baley Khan were further convicted under Section 147 IPC and sentenced to undergo rigorous imprisonment for one year. All the sentences were directed to run concurrently.

4. During the pendency of the present appeal, all the appellants except Israil Khan and Baley Khan have died. Consequently, the appeal stands abated in respect of Mahtab Khan, Bundan Khan, Darab Khan alias Bhure Khan, Baz Khan, Mangal Khan, Mehrab Khan and Taj Khan. The appeal survives only with respect to appellant no. 5 Israil Khan and appellant no. 9 Baley Khan.

5. The prosecution case, as disclosed in the written report lodged by Babu Khan at Police Station Nawabganj on 14.06.1981, is that about five to six months prior to the occurrence he had constructed a new house in village Panua. The house of accused Baz Khan adjoined his own. To the south of his house, Babu Khan had constructed a latrine/toilet, the wall whereof had been raised about six days before the incident. The immediate source of friction

between the parties was this newly constructed wall. On 14.06.1981 at about 7:00 p.m., Babu Khan, his brother Sabir Khan and Liyakat Ali were present near the courtyard wall and were applying clay or plaster to it. At that time Baz Khan came there and asked them to demolish the toilet wall. Upon refusal, he went away and returned shortly thereafter with the remaining accused persons.

6. According to the prosecution, Darab Khan alias Bhure Khan and Bundan Khan were armed with spears, Mahtab Khan carried a kanta, Baz Khan had a kasi or spade, and the remaining accused were armed with lathis. Baz Khan then began demolishing the toilet wall with the spade. When the complainant side objected, the accused persons began abusing them and, upon exhortation, assaulted the prosecution party. In the course of the assault, Sabir Khan, Kallu Khan, Babu Khan and Liyakat sustained injuries. When Sabir Khan and Kallu Khan attempted to run, they were chased up to the chak road and overpowered. Babu Khan and Liyakat are stated to have snatched lathis from Taj Khan and Rehmatullah and used them in self-defence. Sabir Khan later succumbed to his injuries.

7. On the basis of the written report, the case was registered under Sections 147, 148, 307, 324 and 323 IPC and, after the death of Sabir Khan, converted into one under Section 302 IPC. After investigation, charge-sheet was submitted against ten accused and the case was committed to the Court of Session. Charges were framed against the accused accordingly. During the pendency of the trial, accused Rahmatullah died and proceedings against him stood abated. Consequently, the trial proceeded against the remaining nine accused persons.

8. The prosecution, in support of its case, examined seven witnesses. PW-1 Babu Khan, PW-2 Babbu Khan (also referred to in

the record as Nabbu Khan) and PW-5 Kallu Khan were examined as witnesses of fact.

9. PW-1 Babu Khan is the informant as well as an injured witness. He stated that the dispute arose over the wall of the toilet constructed by him, that Baz Khan objected to it, went away and returned with the other accused persons. He described the weapons carried by the accused and stated that the accused persons, acting jointly, assaulted the prosecution side. He specifically named all the accused and gave the genesis and sequence of the occurrence. He also stated that when the assault intensified, he and Liyakat snatched lathis from two of the accused and used them in self-defence. He specifically named accused Israil Khan and accused Baley Khan as having come armed with lathis along with the other accused and as having attacked Babu Khan, Sabir, Liyakat and Kallu.

10. PW-2 Babbu Khan/Nabbu Khan was examined as an eyewitness. He is stated to be a neighbour of the complainant. He stated that he saw the accused persons rebuking the complainant and thereafter assaulting the prosecution party. He supported the prosecution on the genesis of the occurrence and on the fact that the accused came armed and attacked the prosecution side. He too specifically named Israil Khan and Baley Khan and stated that they were carrying lathis and attacked Babu Khan, Sabir, Liyakat and Kallu.

11. PW-3 Dr. Yuvraj Garg had medically examined the injured persons on the prosecution side conducted soon after the occurrence on 14.06.1981. He has proved the following injuries:

- On the person of Kallu Khan, he found a stab wound measuring 4 cm x 1 cm, chest deep, on the right side of the

chest, just below the clavicle, about 5 cm lateral to the suprasternal notch.

- On the person of Babu Khan, he found an incised wound measuring 4 cm x 0.5 cm x 1 cm over the right side of scalp, 13 cm above the right ear; an incised wound measuring 2 cm x 0.5 cm x 0.3 cm over the left ear, V-shaped; and an abraded contusion measuring 4 cm x 2.5 cm over the left cheek bone.
- On the person of Liyakat, he found a lacerated wound measuring 1.5 cm x 0.5 cm x 0.5 cm over the left side of scalp, 8 cm above the left ear; a lacerated wound measuring 0.8 cm x 0.5 cm x 0.5 cm over the right side of forehead, 4 cm above the right eyebrow; and a contusion measuring 7 cm x 8 cm over the dorsum of the left hand.

12. PW-4 Dr. M.C. Sharma had conducted the post-mortem examination of Sabir Khan and found the following ante-mortem injuries:

- a puncture wound measuring 2.5 cm x 1 cm, chest cavity deep, lying horizontally at 12 o'clock position, about 2 cm above the left nipple, directed towards the right side;
- an abrasion measuring 1 cm x 1 cm at the outer angle of the left brow;
- an old traumatic region/injury on the left elbow. The punctured chest wound was the fatal injury.

13. PW-5 Kallu Khan is an injured eyewitness. He stated that on hearing the noise he reached the spot and was himself assaulted by the accused persons. He identified all the accused and stated that accused including Israil Khan and Baley Khan attacked with lathis.

He supported the prosecution case that the accused persons were the aggressors and that the assault was launched by the accused party in prosecution of their common object.

14. PW-6 Dr. K.S. Tiwari proved the X-ray reports and gave radiological findings. He found a fracture in the injury of Liyakat. He also opined that the injury of Kallu Khan was dangerous to life.

15. PW-7 Vidyadhar Pandey, the Investigating Officer, proved the steps taken during the investigation. He also proved the site-related circumstances. During spot inspection he found the wall in a broken or demolished condition and found blood at the place of occurrence, which supports the prosecution case regarding the site and the immediate cause of the incident.

16. In support of its case, the defence relied upon injury reports pertaining to certain accused persons. The material indicates that Darab Khan sustained four injuries; Israil Khan and Mangal Khan one injury each; Mehrab Khan two injuries; and Baz Khan one lacerated and one incised wound. The injuries, as disclosed, comprise abraded contusions on Israil Khan and Mangal Khan, an incised wound on Mehrab Khan, and one lacerated along with one incised wound on Baz Khan. The defence further placed reliance upon documents of the cross-case, including the chik report.

17. The accused persons, in their statements under Section 313 CrPC, denied the prosecution allegations and pleaded false implication. Accused Mahtab Khan specifically stated that the prosecution side had assaulted the accused persons and that the accused had sustained injuries. Accused Israil Khan specifically stated that he too had sustained injuries. Accused Baley Khan stated that his defence was the same as that of Mahtab Khan. A further plea raised on behalf of the accused was that Bhure Khan and Darab

Khan were two separate persons and that by treating them as one person the prosecution had introduced a material inconsistency in the naming and identification of the accused.

18. The learned trial court, upon consideration of the evidence, held that the prosecution version stood proved by the prompt FIR, the testimony of the injured witnesses and the medical evidence. It held that the dispute regarding the wall of the latrine was the immediate cause of the incident, that the place of occurrence was near the complainant's house, that the defence version of the occurrence having taken place at the house of the accused was not acceptable, that the injuries on the accused side were either explained or not shown to have been sustained in the same occurrence, and that the accused persons had formed an unlawful assembly and in prosecution of its common object had caused the death of Sabir Khan and injuries to the other members of the prosecution side.

19. Challenging the conviction recorded by the trial court, learned counsel for the surviving appellants Baley Khan and Israil Khan submitted that the prosecution has suppressed the true genesis of the occurrence and has not come to the Court with clean hands. It was submitted that there exists a cross-case arising out of the same incident and that the prosecution party was in fact the aggressor. Learned counsel submitted that the prosecution witnesses have falsely projected the place of occurrence near the house of the complainant whereas, according to the defence, the incident actually took place at the house of the accused.

20. Learned counsel further submitted that several accused persons had sustained injuries in the occurrence. It was submitted that the injuries on the accused side have been proved through defence material and that these injuries were specifically referred to by the accused in their statements recorded under Section 313 CrPC.

Learned counsel submitted that accused Mahtab Khan in his statement under Section 313 CrPC had stated that the prosecution side had assaulted the accused persons and that the accused had sustained injuries. It was also submitted that accused Israil Khan specifically stated in his statement under Section 313 CrPC that he himself had sustained injuries. Learned counsel submitted that accused Baley Khan had stated that his defence was the same as that taken by Mahtab Khan.

21. Learned counsel submitted that the prosecution has failed to properly explain the injuries sustained by the accused persons. It was argued that when injuries on the accused side are proved and remain unexplained, it creates serious doubt regarding the prosecution version and indicates that the prosecution has suppressed the true genesis of the occurrence.

22. Learned counsel for the appellants further submitted that the prosecution witnesses are interested witnesses and their testimony ought not to have been accepted without careful scrutiny. It was submitted that PW-1 Babu Khan is the informant and is an interested witness. It was further submitted that PW-2 Nabbu Khan is also a witness from the same locality and cannot be treated as an independent witness. Learned counsel submitted that PW-5 Kallu Khan is also from the prosecution side and therefore the prosecution evidence is essentially partisan in nature.

23. Learned counsel also submitted that there is uncertainty regarding the identity of one of the accused persons inasmuch as the prosecution has treated Darab Khan and Bhure Khan as one person whereas according to the defence they are two separate persons. Learned counsel submitted that this discrepancy creates doubt regarding the identity of the accused persons involved in the occurrence.

24. Learned counsel further submitted that no specific fatal blow has been attributed to the surviving appellants Israil Khan and Baley Khan. It was argued that in the absence of any specific overt act attributed to these appellants, their conviction under Sections 302 read with 149 IPC and 307 read with 149 IPC is unsustainable.

25. Learned counsel lastly submitted that even if the presence of the surviving appellants is assumed, there is no sufficient evidence to establish that they shared any common object to commit the murder of Sabir Khan. It was submitted that the ingredients of Section 149 IPC are not satisfied and therefore the surviving appellants cannot be held liable for the offences committed by other accused persons.

26. Per contra, Learned AGA submitted that the FIR was prompt and detailed and that the prosecution case was supported by two injured witnesses, namely PW-1 and PW-5 and an independent witness PW-2 from the locality and his evidence gave corroboration. It was submitted that the medical evidence fully supported the ocular version and that the dispute over the construction of the toilet wall furnished a clear and immediate motive. It was further submitted that the prosecution had explained the injuries on the accused side to the extent they were caused when lathis were snatched and used in self-defence, whereas the injuries on the accused side were mostly minor and not shown to have been sustained in one and the same occurrence, particularly in view of the discrepancy in the duration of the injuries. It was submitted that the plea of private defence was not established since no defence witness entered the witness-box and there was no explanation for the fatal chest injury of Sabir Khan. It was lastly submitted that once membership of the unlawful assembly and participation in the group assault were proved, the absence of a specific fatal blow by

the surviving appellants did not exonerate them from liability under Section 149 IPC.

27. Having heard learned counsel and perused the record, this Court proceeds to examine the issues.

28. It is the principal submission advanced on behalf of the surviving appellants that the prosecution has suppressed the true genesis of the occurrence and has not come to the Court with clean hands, particularly in view of the existence of cross injuries on the side of the accused and the pendency of a cross-case arising out of the same incident. It has been contended that the failure of the prosecution to explain the injuries sustained by the accused persons is a material circumstance which casts serious doubt upon the truthfulness of the prosecution version.

29. At the outset, it may be observed that the law is well settled that where the prosecution fails to explain injuries on the accused, especially when such injuries are serious and are shown to have been sustained in the same occurrence, the Court may draw an adverse inference against the prosecution and may hold that the prosecution has suppressed the genesis of the occurrence. However, this principle is not of universal application and cannot be applied mechanically in every case. The effect of such non-explanation depends upon the facts and circumstances of each case, the nature of injuries, the quality of prosecution evidence and whether the injuries are shown to have been sustained in the same transaction.

30. In the present case, it is not the prosecution case that no injuries were sustained on the side of the accused. On the contrary, the prosecution from the very inception has stated that during the course of the incident Babu Khan and Liyakat had snatched lathis from Taj Khan and Rehmatullah and had used them in self-defence.

This part of the prosecution version itself provides an explanation for at least some of the injuries sustained by the accused persons, particularly those which could have been caused by blunt weapons. Further, the injuries said to have been sustained by the accused persons, as disclosed from the material on record, appear to be mostly minor in nature, such as abraded contusions, lacerations and a few incised wounds.

31. The plea of private defence, though faintly suggested, does not stand established on the evidence on record. Learned counsel for the appellants has sought to rely upon the principles laid down in *Darshan Singh v. State of Punjab, (2010) 2 SCC 333*. It is true that the said judgment reiterates that the right of private defence is a valuable right and that a person faced with imminent threat is not expected to weigh in golden scales the exact force necessary for defence. However, the same judgment equally clarifies that such right is subject to the limitations contained in Sections 99 and 100 of the Indian Penal Code.

32. Section 99 of the Indian Penal Code expressly provides that the right of private defence does not extend to the infliction of more harm than is necessary for the purpose of defence, nor can it be invoked where there is sufficient time to have recourse to public authorities. Section 100 of the Indian Penal Code further delineates the circumstances in which the right of private defence of the body extends to causing death, namely where there is reasonable apprehension of death or grievous hurt.

33. In the present case, the evidence clearly establishes that the accused persons came to the place of occurrence in a body, armed with deadly weapons, and initiated the assault. The prosecution version that the complainant side was engaged in work near their house stands corroborated by the prompt FIR, the testimony of

injured witnesses and the medical evidence. There is no material to indicate that the accused were acting under any reasonable apprehension of death or grievous hurt so as to attract Section 100 IPC. On the contrary, the nature of injuries on the prosecution side, including the fatal chest injury to Sabir Khan, demonstrates that the force used by the accused was not defensive but clearly aggressive and disproportionate.

34. Further, the injuries found on the accused side are minor in nature and do not probabilise a situation where the right of private defence extending to causing death could be legitimately exercised. In *Bhanwar Singh v. State of M.P.*, (2008) 16 SCC 657, the Supreme Court held that the burden to establish the plea of private defence lies on the accused and must be supported by material on record. In the absence of any such evidence, the plea cannot be accepted. Thus, even applying the principles laid down in *Darshan Singh* (supra), this Court finds that the statutory limitations under Sections 99 and 100 IPC are not satisfied in the present case. The plea of private defence is therefore untenable and stands rejected.

35. Another important circumstance is the discrepancy regarding the duration of injuries on the accused side. From the material placed on record, it appears that the injury of Baz Khan was shown to be fresh, whereas the injuries of other accused persons were shown to be about half a day old. If all the injuries were sustained in the same occurrence, one would expect a reasonable degree of uniformity in their duration. This inconsistency weakens the defence suggestion that all the injuries were sustained in one and the same transaction and thereby reduces the evidentiary value of such injuries in discrediting the prosecution case.

36. The existence of a cross-case by itself does not necessarily lead to the conclusion that the prosecution has suppressed the genesis of

the occurrence. It is well settled that in cases of group clashes or village factional disputes, it is not uncommon for both sides to lodge cases against each other. The Court is required to independently assess the evidence in each case and determine which version is more probable and is supported by reliable evidence. It is true that in *Lakshmi Singh v. State of Bihar*, (1976) 4 SCC 394, the Supreme Court held that failure to explain injuries on the accused may be a relevant factor. However, the same judgment also clarifies that such non-explanation is not always fatal and must be examined in light of the entire evidence. In *Krishnan v. State of Tamil Nadu*, (2003) 7 SCC 56, it has been held that where the prosecution case is supported by reliable eyewitnesses and medical evidence, failure to explain minor injuries on the accused does not affect the core of the prosecution case.

37. In the present case, the prosecution version is supported by the prompt first information report, the consistent testimony of two injured witnesses namely PW-1 and PW-5, and corroboration from PW-2, who is a witness from the locality. The ocular version is further supported by the medical evidence, including the post-mortem report of Sabir Khan which establishes that he died a homicidal death as a result of a punctured wound on the chest. The presence of blood at the place of occurrence and the broken wall found during investigation further lend assurance to the prosecution case regarding the place and manner of occurrence.

38. On the other hand, the defence has not led any evidence to substantiate its version. No defence witness has entered the witness-box to explain how the accused came to sustain the injuries or to establish that the occurrence took place at a place different from that alleged by the prosecution. The defence has also failed to offer

any plausible explanation for the fatal injury sustained by Sabir Khan.

39. In these circumstances, the mere fact that some injuries were found on the accused persons or that a cross-case exists is not sufficient to discard the otherwise reliable prosecution evidence. The non-explanation of minor or doubtful injuries on the accused side cannot be treated as fatal to the prosecution case when the evidence of the injured eyewitnesses is clear, cogent and trustworthy. The testimony of injured witnesses stands on a higher footing because their presence at the scene is established by their injuries and they are ordinarily not expected to spare the actual assailants and falsely substitute others. This principle has been reiterated by the Supreme Court in *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719.

40. Therefore, upon a careful consideration of the entire material on record, this Court is of the opinion that the prosecution cannot be said to have suppressed the genesis of the occurrence. The existence of cross injuries and cross-case does not create any reasonable doubt so as to discredit the prosecution version. The submission advanced on behalf of the appellants in this regard is accordingly rejected.

41. In so far as the role attributed to the surviving appellants Israil Khan and Baley Khan is concerned, their names had been disclosed in the first information report as well as the ocular testimony of the witnesses. It has been proved that the accused persons had assembled at the place of occurrence after the dispute arose regarding the wall of the latrine constructed by Babu Khan. Baz Khan, after objecting to the construction of the wall, went away from the spot and returned shortly thereafter accompanied by several accused persons including the present surviving appellants.

42. The prosecution case is that the accused persons arrived at the place of occurrence armed with various weapons. While some of the accused persons such as Darab Khan alias Bhure Khan and Bundan Khan were armed with spears and Mahtab Khan carried a kanta and Baz Khan had a kasi or spade, the remaining accused including Israil Khan and Baley Khan were armed with lathis. It is alleged that when the complainant side objected to the demolition of the wall of the latrine by Baz Khan, the accused persons began abusing them and thereafter launched an assault upon the complainant party.

43. The testimony of PW-1 Babu Khan, who is both the informant and an injured witness, clearly states that the accused persons jointly attacked the complainant party and that Israil Khan and Baley Khan were among those who participated in the assault with lathis. PW-1 further stated that in the course of the incident he and Liyakat managed to snatch lathis from Taj Khan and Rehmatullah and used the same in self-defence. The presence of PW-1 at the spot cannot be doubted inasmuch as he himself sustained injuries during the occurrence.

44. The prosecution version in this regard also receives support from the testimony of PW-2 Babbu Khan / Nabbu Khan, who is a resident of the same locality and who stated that he saw the accused persons assaulting the complainant party. According to him, the surviving appellants were among the accused persons who had come armed with lathis and who participated in the beating of the complainant side.

45. Further corroboration is provided by the testimony of PW-5 Kallu Khan, who is another injured eyewitness. He stated that on hearing the commotion he reached the spot and that the accused persons assaulted the complainant party. He also sustained injuries

in the course of the assault. His evidence establishes that the accused persons including the surviving appellants were present at the place of occurrence and participated in the assault.

46. It is true that the fatal injury which resulted in the death of Sabir Khan appears to have been caused by a sharp-pointed weapon wielded by another accused person. However, the role attributed to Israil Khan and Baley Khan is that of members of the unlawful assembly who actively participated in the assault with lathis. Their presence at the spot and participation in the occurrence stand proved by the consistent testimony of the eyewitnesses.

47. In such circumstances, even if no specific fatal injury has been attributed to the surviving appellants, their liability does not stand excluded. Once it is established that they were members of the unlawful assembly and that the offence was committed in prosecution of the common object of that assembly, the principle of vicarious liability embodied in Section 149 IPC becomes applicable.

48. Coming to the reliability of the eyewitnesses, PW-1 Babu Khan is an injured witness and the informant. His presence is beyond doubt. His testimony is consistent on the origin of the dispute, the arrival of the accused as a group, the weapons carried and the assault that followed. He specifically named Israil Khan and Baley Khan as coming armed with lathis and participating in the assault. His evidence stands materially supported by the medical report of his own injuries and by the post-mortem of Sabir Khan. The testimony of an injured witness stands on a higher pedestal and ordinarily carries greater evidentiary value because such a witness is unlikely to spare the actual assailant and falsely implicate another. That principle has been reiterated by the Supreme Court in

***Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719 and *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259.**

49. PW-5 Kallu Khan is also an injured witness. He suffered a stab injury on the chest, dangerous to life. He too identified Israil Khan and Baley Khan and stated that they attacked with lathis. There is no reason why an injured witness would spare the actual assailants and falsely implicate others, particularly in a case arising out of a specific and immediate village dispute. His evidence gives strong corroboration to PW-1. The law regarding the special status of an injured witness equally supports reliance on PW-5.

50. PW-2 Nabbu Khan, though not injured, is a local witness whose presence is not unnatural. He specifically named Israil Khan and Baley Khan and stated that they attacked Babu Khan, Sabir, Liaqat and Kallu with lathis. Merely because he is from the same locality does not make him a planted witness. No substantial contradiction has been pointed out which would justify discarding his testimony. In *State of U.P. v. Krishna Master*, (2010) 12 SCC 324, it was held that testimony cannot be discarded merely because the witness is related or known, if it is otherwise trustworthy.

51. All the three eyewitnesses have remained consistent in their narration of the material events. Minor variations do not detract from otherwise reliable evidence. In ***State of U.P. v. M.K. Anthony*, (1985) 1 SCC 505**, the Supreme Court explained that normal discrepancies and trivial variations not going to the root of the case should not lead to rejection of otherwise trustworthy testimony.

52. The medical evidence fully corroborates the ocular version. The injuries on Babu Khan, Kallu Khan and Liyakat, as also the fatal punctured chest wound of Sabir Khan, fit the prosecution account that the accused party, armed with sharp and blunt weapons,

attacked the prosecution side. The injury to Kallu Khan being dangerous to life and the fracture in the injury of Liyakat materially reinforce the prosecution version. The consistency between ocular and medical evidence lends assurance to the prosecution case, in line with the principle noted in ***Solanki Chimanbhai Ukabhai v. State of Gujarat***, (1983) 2 SCC 174.

53. The evidence also clearly establishes common object. The accused arrived together, they were armed, the dispute was common, exhortation was made, several members of the prosecution side were assaulted, one person was killed, others were grievously and dangerously injured, and the assault was not the isolated act of a single person in a sudden individual quarrel. These circumstances are sufficient to establish the existence of an unlawful assembly and a common object to use force and violence against the prosecution side. Once such common object is proved, every member of the unlawful assembly becomes vicariously liable for the offences committed in prosecution of that common object or for offences which the members knew to be likely to be committed. It is not necessary that every member must himself inflict a fatal blow. In ***Masalti v. State of U.P.***, AIR 1965 SC 202, it was held that in dealing with an unlawful assembly, proof of a specific overt act by every individual member is not indispensable if membership and common object are proved. This principle has been consistently reaffirmed in later decisions, including ***Daya Kishan v. State of Haryana***, (2010) 5 SCC 81 and ***Ramesh v. State of Haryana***, (2017) 1 SCC 529, wherein it has been held that once participation in the assembly with the requisite common object is proved, individual attribution of injury is not a sine qua non for conviction.

54. The controversy whether Darab Khan and Bhure Khan were one person or two does not materially affect the present surviving

appellants. Even assuming some confusion in relation to that accused, the identity and participation of Israil Khan and Baley Khan have been consistently asserted in the FIR and in the eyewitness accounts. The prosecution case against the surviving appellants does not rest upon resolving that controversy.

55. Upon an independent and detailed evaluation of the evidence on record, this Court finds that the prosecution has proved the place, genesis and manner of occurrence; that the testimony of PW-1, PW-2 and PW-5 is reliable and materially corroborated by medical evidence; that Sabir Khan died a homicidal death as a result of the chest puncture wound sustained in the occurrence; that the injuries on the accused side do not demolish the prosecution case and do not probabalise the plea of private defence; that the accused persons had formed an unlawful assembly and the offences were committed in prosecution of its common object; and that the participation of the surviving appellants Israil Khan and Baley Khan as members of that unlawful assembly stands proved beyond reasonable doubt.

56. It had also been urged that the surviving appellants have remained on bail for a prolonged period of time, and that the appeal itself has remained pending for several decades. While this Court cannot be unmindful of the long lapse of time, it is equally well settled that mere delay in disposal of a criminal appeal, by itself, cannot be a ground to set aside a conviction which is otherwise found to be well-founded. In *State of Punjab v. Bawa Singh*, (2015) 3 SCC 441, the Supreme Court has categorically held that lapse of time or long pendency of appeal does not dilute the gravity of the offence nor does it furnish a valid ground for acquittal. Similarly, in *Amit v. State of Uttar Pradesh*, (2012) 4 SCC 107, it has been observed that sympathy or misplaced leniency has no role to play where the conviction is otherwise sustainable in law.

57. In the present case, the offence involves a fatal assault resulting in the death of Sabir Khan, and the participation of the surviving appellants as members of the unlawful assembly stands proved beyond reasonable doubt. The delay in disposal of the appeal, howsoever long, cannot enure to the benefit of the appellants so as to defeat the ends of justice. The legal position being clear, no indulgence or leniency can be extended on this ground alone.

58. For all the aforesaid reasons, this Court finds no illegality, infirmity or perversity in the judgment of conviction recorded by the learned trial Judge, so far as the surviving appellants are concerned. The conviction of appellant no.5 Israil Khan and appellant no.9 Baley Khan under Sections 147, 302 read with Section 149, 307 read with Section 149, 324 read with Section 149, 323 read with Section 149 and 426 read with Section 149 IPC is fully justified. The sentences awarded also call for no interference.

59. Accordingly, the appeal stands abated in respect of Mahtab Khan, Bundan Khan, Darab Khan alias Bhure Khan, Baz Khan, Mangal Khan, Mehrab Khan and Taj Khan, who have died during the pendency of the appeal. The appeal, so far as it relates to appellant no. 5 Israil Khan and appellant no. 9 Baley Khan, is dismissed. The judgment and order dated 18.07.1985 passed by the learned Additional Sessions Judge, Bareilly in Sessions Trial No. 389 of 1982 convicting and sentencing Israil Khan and Baley Khan are hereby affirmed.

60. The appellant no. 5 and appellant no.9 are stated to be on bail. Their bail bonds are cancelled and securities are discharged. They shall be taken into custody forthwith to serve out the sentence awarded to them.

61. Let the trial court record be remitted forthwith along with a certified copy of this judgment for compliance.

62. Sri Ajay Kumar Pandey, Advocate is entitled to his professional fee of Rs. 15,000/- for appearing as Amicus Curiae to argue this appeal.

(Garima Prashad,J.) (Siddharth,J.)

March 18, 2026

Sachin Mishra