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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: May 16, 2016

+ **CRL.A. 366/2009**

HARIDWAR PARSAD SINGH @ H.P. SINGH Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+ **CRL.A. 388/2009**

RAMA SHANKER SINGH Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+ **CRL.A. 392/2009**

GULAM NABI Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+

CRL.A. 393/2009

UMESH KUMAR GUPTA Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+

CRL.A. 398/2009

UTTAM KISHOR Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+

CRL.A. 399/2009

MAHENDER SINGH Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+

CRL.A. 400/2009

SHYAM AGHYA RAI Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+

CRL.A. 401/2009

MOHD.ABDULLAH Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+

CRL.A. 402/2009

MOHD.HASSRUDDIN Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+

CRL.A. 403/2009

MOHD.MOHAMMAD Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

+

CRL.A. 404/2009

RAJINDER SINGH

..... Appellant

Represented by: Mr.R.S.Malik, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

+

CRL.A. 405/2009

KAMAL KISHORE SINGH

..... Appellant

Represented by: Mr.R.S.Malik, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

+

CRL.A. 406/2009

MOHD. KALIM

..... Appellant

Represented by: Mr.R.S.Malik, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

+ **CRL.A. 407/2009**

MOHD.JAMIL Appellant
Represented by: Mr.R.S.Malik, Advocate
versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+ **CRL.A. 408/2009**

SHIV NANDAN SINGH Appellant
Represented by: Mr.R.S.Malik, Advocate
versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+ **CRL.A. 437/2009**

UTPAL VISHWAS Appellant
Represented by: Mr.R.S.Malik, Advocate
versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

+ **CRL.A. 439/2009**

ALI MOHD. Appellant
Represented by: Mr.R.S.Malik, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

+

CRL.A. 390/2009

NATH SINGH @ SURESH

..... Appellant

Represented by: Mr.R.S.Malik, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

+

CRL.A. 391/2009

VIJAY KUMAR SINGH

.... Appellant

Represented by: Mr.R.S.Malik, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Union rivalry of employees of the Food Corporation of India led to a civil dispute in which one H.P.Singh was restrained by an injunction issued by a learned Single Judge of this Court from holding himself out as

the General Secretary of the Union as also from addressing any gathering within the precincts of the premises of the Corporation.

2. It was 1st January of the year 2000, and the joyous occasion of celebrating new year turned into a battle ground. Admittedly, iron rods, bricks, stones and wooden sticks were liberally used by the H.P.Singh's faction and the rival J.S.Jaina faction. The place was FCI ground in Narela. Concededly a fight took place. Injuries were sustained by members of the two factions on either side.

3. Conceding as aforesaid, because it emerges from the evidence, learned counsel for the appellants concedes that a fight took place between members of two groups, and thus, the only issue which arises for consideration is : Whether it was pre-meditated, with the rival factions, anticipating trouble and arriving at the venue after forming an unlawful assembly and rioting using wooden sticks, iron rods, stones and bricks, or the fight suddenly erupted and it became : free for all. For if it is the latter, the appellants would be liable to be convicted, not as a group, but for the individual acts committed by each, because concededly the legal position is that if a fight suddenly erupts and it is a free for all, there is neither a common intention nor a common object and thus it is each one to himself and his God above.

4. The learned Trial Judge has opined it to be a case of rioting with the H.P.Singh faction, to which the appellants belonged, forming an unlawful assembly and having gathered with wooden sticks, iron rods, stones and bricks and thereafter liberally using the same when challenged by the other group. I hasten to note that since a cross complaint was pending against the J.S.Jaina group, the learned Trial Judge has rightly and consciously omitted

to discuss the participatory role of the other group. Keeping in view the nature of injuries caused, the conviction is for an offence punishable under Section 323/325/149 IPC, but the appellants have been released on probation of good conduct for a period of two years vide order dated April 25, 2009 and I note that the appellants have maintained good conduct during the period of two years and thus the conduct bonds and surety bonds are discharged.

5. With the assistance of learned counsel for the appellants I have perused the testimony of the witnesses as also the reasoning given by the learned Trial Judge, but before discussing the same, I note that 20 persons were put up for trial, of which one Ramji Yadav died during trial and thus qua him the proceedings abated. During the pendency of the appeals, as informed today, Haridwar Parsad Singh, the appellant of Crl.A.No.366/2009 and Shiv Nandan Singh, the appellant of Crl.A.No.408/2009 have also expired and thus the said appeals filed by the two are declared and disposed of as having abated.

6. As regards the remaining 17 appellants, the testimony of Ram Raj PW-2, Desh Raj PW-3, Ram Prasad PW-4, Suraj Pal PW-5, Parmod Kumar Linka PW-8, Duryodhan Sahu PW-9, Ashok Kumar PW-10, Ram Saran PW-11, Babu Ram Nayak PW-17, Gyanender PW-20, Hari Das, PW-21, Ram Ashre PW-23 and Narender Kumar PW-24 have been perused by me along with their cross-examination, and with the usual variations which are natural when 13 persons depose to the same incident, I find consistency in their statements, sufficient to concur with the view taken by the learned Trial Judge that the H.P.Singh faction had gathered at Narela with the appellants arming themselves with lathies, iron rods, stones and bricks i.e.

formed an unlawful assembly having common object to commit an offence i.e. fight with J.S.Jaina faction, and in furtherance thereof used force.

7. MLC Ex.PW-6/A, PW-6/B, PW-7/A, and PW-7/B duly proved by Dr.G.K.Aggarwal PW-6 and Dr.Sanjay Dass PW-7 established that Suraj Pal, Ram Raj, Parmod Kumar and Raghuraj, of whom, Suraj Pal and Parmod Kumar, as noted above, appeared as PW-5 and PW-8, suffered simple and grievous injuries during rioting. Medical treatment paper Ex.PW-12/A proved by Dr.P.L.Arora, PW-12 established that one injured : Ram Lal brought to him by Insp.V.P.Yadav had also suffered a simple injury. X-ray reports Ex.PW-14/A, Ex.14/B, Ex.PW-14/C and Ex.PW-14/C pertaining to Suraj Pal and Ram Raj, proved by Dr.Suparna PW-14, evidence grievous hurt caused to Suraj Pal and Ram Raj.

8. The testimony of SI K.P.Singh PW-16, who was present with police personnel at the Narela ground of FCI, because he had prior information of possibility of situation turning ugly, also establishes an unlawful assembly formed by the H.P.Singh faction, which includes the appellants and their deceased comrade Ramji Yadav.

9. Concurring with the view taken by the learned Trial Judge and rejecting the argument that different eye witnesses named different accused and therefore none of them could be believed, on the reasoning that when large number of persons indulge in rioting it is not possible for a witness to recollect the names of all, I dismiss all appeals except CrI.A. No.366/2009 and CrI.A.No.408/2009, which as noted above are abated on account of the death of Haridwar Prasad Singh and Shiv Nandan Singh, the appellants of the two appeals respectively.

10. As regards the sentence, none has been imposed and all accused have

been let of on probation. I note that as per Section 12 of the Probation of Offenders Act, 1958 neither appellant would suffer any disqualification attached to their conviction and even otherwise said issue is irrelevant because learned counsel for the appellants states that the posts held by the appellants had no promotional avenues and thus none of them suffered or possibly could suffer a civil consequence concerning their career progression under FCI due to being held guilty of rioting.

11. Crl.A.No.366/2009 and Crl.A.No.408/2009 are disposed of as having abated.

12. Crl.A.388/2009, Crl.A.392/2009, Crl.A.393/2009, Crl.A.398/2009, Crl.A.399/2009, Crl.A.400/2009, Crl.A.401/2009, Crl.A.402/2009, Crl.A.403/2009, Crl.A.404/2009, Crl.A.405/2009, Crl.A.406/2009, Crl.A.407/2009, Crl.A.437/2009, Crl.A.439/2009, Crl.A.390/2009 and Crl.A.391/2009 are dismissed.

13. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

MAY 16, 2016

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