Menoka Malik vs The State Of West Bengal on 28 August, 2018

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Bench: Mohan M. Shantanagoudar, N.V. Ramana

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1198 OF 2006

Menoka Malik and others ..Appellants

Versus

The State of West Bengal and others ..Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. The instant appeal arises out of the judgment and order dated 30th June, 2004 passed in C.R.R. No. 765 of 2002 by the High Court of Judicature at Calcutta confirming the judgment of acquittal passed by the Sessions Judge at Burdwan dated 15 th December, 2001 in Sessions Case No. 91/1998 (Sessions Trial No. 10(7)/2000).

2. The case of the prosecution in brief is that on 30.05.1993, panchayat elections were held in Karanda village, wherein the CPI(M) party won and the IPF party lost. On the next day, i.e. on 31.05.1993, at about 8:30 a.m., 15 to 16 members of the IPF party took shelter in the house of PW2, Badal Malik, their party leader, upon being chased by some CPI(M) workers. At around 1:30 p.m., Bhanu Hathi, Kachi Hathi and Bhaluk Hathi (accused no.56/respondent no.57 herein) started to abuse PW3, Shyamali Pakrey, the wife of PW30, Sunil Pakrey, an IPF supporter, upon whose protest, the CPI(M) persons mobilised around 250–300 party workers, all being armed with weapons such as lathi, balam, tangi etc. It is further the case of the prosecution that the persons belonging to CPI(M) party set on fire the houses of IPF members, including the party leader Badal Malik, assaulted IPF members and broke into the houses of the locality and destroyed household articles, apart from stealing an amount of Rs.700/– and snatching a pair of gold earrings. In the assault on IPF members, five persons expired and 24 persons were seriously injured.

3. The first information came to be lodged by Menoka Malik (PW1/appellant no.1 herein) before Memari Police Station, Burdwan District, which came to be registered in Case No. 82/1993 dated 31.05.1993 for the offences punishable under Sections 147, 148, 149, 342, 448, 325, 326, 436, 379, 307 and 302 of the Indian Penal Code.

4. Charges were framed for the aforementioned offences. As many as 82 accused were tried. 49 witnesses were examined by the prosecution, which included 36 eye witnesses, i.e. PWs 1–23, 29, 30, 31, 33, 34, 35, 39, 40, 42, 43, 44, 45 and 47. Out of these, the testimonies of PWs 17 and 18 ran counter to the prosecution's case, and PW42 claimed to not recollect the incident on account of mental sickness.

5. The trial Court, at the outset, determined that there were cogent allegations only against 32 persons out of the 82 accused and proceeded to examine the evidence against those 32 persons only. On evaluation of the material on record, the trial Court acquitted all the accused by giving them the benefit of doubt. It was observed by the trial Court that the prosecution sought to establish the death of five persons through the use of sharp and pointed weapons, but such factum was not alleged in the first information report and only the factum of assault leading to the death of two persons was reported; the names of the assailants had not been disclosed in the first information report; several witnesses were found to have admitted to have made disclosures of allegations for the first time before the Court at the time of recording their depositions; the evidence of the investigating officer disclosed a number of contradictions in the evidence of eye witnesses; there was non–recovery of burnt articles, etc. It was also observed by the trial Court that the medical evidence was contrary to the ocular testimony of the witnesses, inasmuch as

the post mortem reports of the deceased and medical reports of the injured showed the absence of incised or punctured wounds, wherein the prosecution witnesses had stated that the deceased and injured had been assaulted with sharp weapons such as tangi, ballam, kencha, etc. The injuries found on the deceased as well as on the injured persons were in the nature of bruises, abrasions and lacerations, which, according to the trial Court, might have been suffered due to a stampede. On these, among other grounds, the trial Court acquitted the accused.

6. The State did not prefer any appeal against the judgment and order of acquittal passed by the trial Court. However, the first informant along with three others filed a revision petition under Section 401 of the Code of Criminal Procedure before the High Court. During the course of hearing of the revision petition, it was submitted on behalf of the revision petitioners that no case is made out against 48 of the 82 accused, and that the revision petition would be concerned only with rest of the 34 accused. It may be noted at this juncture that in the course of arguments before us, it was brought to our notice that 6 out of these 34 accused are now dead.

7. The High Court found that there was no perversity or gross procedural defect or error of law leading to glaring injustice, to warrant interference with the decision of the trial Court. Though a number of contentions were raised by the revision petitioners before the High Court, the High Court proceeded to decide the revision petition merely on the basis of the above finding. The only other finding was that the non-determination of the issue of unlawful assembly by the trial Court in the manner suggested by the appellants was not a sufficient reason to remand the case. This was based on the reasoning that a direction for reappraisal of evidence would create an unconscious impression in the mind of the trial judge that the High Court wished the lower court to reach a particular conclusion, and would also complicate the issue in the given situation, where a large number of persons were involved but no evidence existed against most of them. The High Court further proceeded to observe that the trial Court had reached a finding of acquittal upon a consideration of the probative value of the evidence on record, in accordance with set canons of law, and upon a meticulous examination of the same. Certain general observations relating to the revisional powers of the High Court were adverted to by the High Court, while coming to its conclusion. Practically, the High Court has not touched the case of the prosecution on merits, at least prima facie, to find out as to whether the trial Court's reasoning is just and proper or not.

Preliminary Issue:

8. We have heard learned counsel on either side. Before proceeding further, we would like to decide the preliminary question that arose during the course of arguments regarding the

scope of interference by this Court with a judgment of the High Court in exercise of its revisional power, affirming a conviction. The question is no more res integra, inasmuch as this Court in the case of Dharma vs. Nirmal Singh, (1996) 7 SCC 471 has held that the bar under Section 401(3) does not restrict the power of the Supreme Court under Article 136 of the Constitution. While concluding so, the following observations were made:

> "4. Before we record our reading of the evidence produced in the case, let a legal submission advanced by Shri Lalit, appearing for the respondent□ accused, be dealt with. His submission is that as the complainant had approached the High Court in revision and as under the revisional power available to the High Court under Section 401 CrPC, the High Court could not have altered the finding of acquittal into one of conviction, because of what has been stated in sub□section (3) thereof, if we were to be satisfied that the acquittal was wrongful, it would not be within our competence to convict the respondent; at best the case could be sent back for retrial. We are not impressed with this submission inasmuch as the approach to this Court being under Article 136 of the Constitution. We do not read the limitation imposed by Section 401(3) of the Code qua the power available to us under the aforesaid provision. May it be pointed out that a similar submission had been advanced by Shri Lalit himself in the case of E.K. Chandrasenan v. State of Kerala [(1995) 2 SCC 99 :
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> 1995 SCC (Cri) 329 : JT (1995) 1 SC 496] , then contending that this Court is incompetent to issue rule of enhancement as had been done in those cases. It was held in the aforesaid decision that the power available to this Court under Article 136 is not circumscribed by any limitation. In any case, power under Article 142 is available to pass such order as may be deemed appropriate to do complete justice. We, therefore, reject this contention of Shri Lalit and proceed to examine the materials to find out whether case of conviction does exist, as the contention of the appellant."

9. In the case of State of Rajasthan vs. Islam, (2011) 6 SCC 343, this Court relying upon the earlier judgment in Dharma's case, held that if this Court is of the opinion that the acquittal is not based on a reasonable view, then it may review the entire material and there will be no limitation on this Court's jurisdiction under Article 136 of the Constitution to come to a just conclusion quashing the acquittal.

10. From the aforementioned decisions, it is amply clear that it is open for this Court to review the entire material and there is no

limitation on this Court's jurisdiction under Article 136 to come to a just conclusion if it determines that the High Court's view was not reasonable. The restriction as contained under Section 401(3) of the Cr.P.C. on the High Court cannot restrict the powers of this Court under Article 136 of the Constitution. Thus, it is for us to determine whether the view taken by the High Court was reasonable or not based on available records. Main Issue:

11. The trial Court, while coming to its conclusion, has observed that several eye witnesses had revealed the material facts before the trial Court for the first time, inasmuch as such statements of the witnesses before the Court are material improvements; such statements were not made by the witnesses during the course of investigation before the police officials and omissions are proved as per law.

However, we have endeavoured to satisfy our conscience regarding the consistency/inconsistency of the eyewitness accounts. To that end, we have gone through the testimonies of the PWs. As we do not wish to burden this judgment by discussing the testimonies of all PWs, we would like to revisit, as examples, the testimonies of PWs 5, 7 and 14. Moreover, we are mindful of the principle that in cases of this nature involving a large number of offenders and a large number of victims, the evidence of only two or three witnesses who give a consistent account of the incident is sufficient to sustain conviction, as was observed by this Court in the case of Masalti vs. State of U.P., AIR 1965 SC 202.

PW5, Anna Pakrey, deposed that on the day of the incident, some IPF workers took shelter in the house of PW2, Badal Malik on being threatened by some CPI(M) workers. After some time, around 200-250 CPI(M) workers, including Harigopal Goswami (A-80/R-81 herein), Ram Tah (A-68/R-69 herein) and Satya Chakroborty (A-71/R-72 herein) assembled around the house, hurling abuses at the persons inside. The CPI(M) workers asked Bhanu Hati (chargesheeted as accused, since deceased) to set the house on fire, upon which the hiding people rushed out and took shelter in the house of PW9, Mantu Mal, which was set on fire by one Kachi Hati (a reference to Kartik Hazra, A-28/R-29 herein). Thereafter, the IPF workers started running from room to room. Dilip Pakrey (deceased), PW5's husband, came out of the house, at which point he was assaulted by Jiten Kora (A-1/R-2 herein), Kena Kora (A-7/R-8 herein), Bhola Mukherjee (A-77/R-78 herein), and Sitaram Makar (A-70/R-71 herein), with deadly weapons such as tangi, bogi, and kencha. Pranab Bouri (A-40/R-41 herein), struck Dilip Pakrey with a ballam. Sakti Gadi (A-15/R-16 herein) passed urine in his mouth. At this point, PW5 fainted. After she regained consciousness, she went around looking for her children and got assaulted by Radhi Kora (A-8/R-9 herein) with a shavol and by one Santana Majhi (a reference to Sanatan Mandi, A-44/R-45 herein) by a bamboo lathi. PW5 further stated that Manik Hazra (deceased) was assaulted by Sudeb Hati (a reference to Sudeb Hazra, A-30/R-31 herein), and

that one Rajib Kora cut off Manik Hazra's penis.

PW7, Nemai Hazra is an injured witness. He deposed that on the day of the incident, on being threatened by CPI(M) workers, he, his elder brother Manik Hazra (deceased), PW10, Uttam Hazra, PW33, Uday Hazra, one Madan Hazra (referring to PW43, Madau Hazra) and Narayan Hazra (referring to PW39, Harayan Hazra) took shelter in PW2 Badal Malik's house. At around 11–11.30 am, around 100–150 persons armed with lathis, rods, sabol, tangi, etc. assembled nearby, upon which Badal Malik left the house and did not return. Soon, the mob outside surrounded the house, and started throwing stones, brickbats, etc. at the house. Thereafter, they set the house on fire, with a view to smoke out the hiding persons, upon which the people hiding inside took shelter in PW9 Mantu Mal's house. This house was also set on fire, though PW7 did not see the perpetrator. As the hiding persons came out, they started getting assaulted. PW7 was assaulted by Sudeb Hazra (A–30/R–31 herein) with a tangi, Jeydeb Hazra (A–29/R–30 herein) with an iron rod, Sitaram Makar (A–70/R–71 herein) with a lathi, Sadhan Some (A–78/R–79 herein) with a lathi and by Becha Duley (A–67/R–68 herein) as well.

In his cross examination, PW7 stated that he did not know of any provocation for the incident. He also stated that around 40–50 persons had hidden inside Badal Malik's house. He further stated that he was beaten severely by the mob, and received 8–10 lathi blows, one rod blow, and was also assaulted by tangi, sabol, etc. PW14, Subhadra Malik is the mother of Manik Hazra (deceased) and PW2, Badal Malik. She deposed that on the day of the incident, Manik Hazra along with several IPF supporters took shelter in Badal Malik's house, where PW14 also lived, after CPI(M) workers started threatening IPF workers. Soon, several CPI(M) workers surrounded the house. Bhanu Hati and his son Bhaluk Hati (A–56/R–57 herein) entered the house, and the latter set the house on fire on his father's instruction. After being thus smoked out, the hiding persons sought shelter in PW9 Mantu Mal's house, which was set ablaze by Kachi Hati (possibly Kartik Hazra, A–28/R–29 herein, see supra). The IPF persons started coming out one by one and got assaulted. Sitaram Makar (A–70/R–71 herein), Abhoy Roy (A–69/R–70 herein), one Sakti Duley, Joydev Duley, Joydev Hati (Joydeb Hazra, A–29/R–30 herein), Sudeb Hati (Sudeb Hazra, A–30/R–31 herein), one Khudi Tah, Ganesh Kshetrapal (A–39/R–40 herein), one Promod Kshetrapal and one Angad Kshetrapal began to assault Dilip Pakrey. One Pranab Pakrey pierced his belly with a ballam. Sona (Som) Kora (deceased) was assaulted by Sitaram (A–70/R–71 herein), Abhoy Roy (A–69/R–70 herein), Joydeb (A–20/R–21 herein), Sudeb Hari (Sudeb Hazra, A–30/R–31 herein), Joydeb Hari (Joydeb Hazra, A–29/R–30 herein) and others. Sadhan Nayak (deceased) was dragged out of PW9 Mantu Mal's house and assaulted by Sitaram (A–70/R–71 herein), Abhoy (A–69/R–70 herein) and others. Suko Kora (A–53/R–54 herein) assaulted Sadhan with an axe and killed him. Manik Hazra (deceased) was assaulted by Sitaram (A–70/R–71 herein) with a ballam, and by Sudeb Hari (Sudeb Hazra, A–30/R–31 herein) with a sabol, after which he died. Sudeb inserted

a sabol in his rectum. Rajib Kora cut off Manik's penis with a banti. PW14 further deposed that she herself was assaulted by one Sudeb Tah, one Kena Bagdi and others with a lathi, after which she lost consciousness. She was in hospital for a number of days due to her injuries. In her cross examination, she stated that she did not recollect stating the above facts to the IO.

12. We could not find any significant variation in the testimonies of all these witnesses. No major contradiction or variation is found. The presence of the witnesses on the spot has not been seriously doubted by the defence during the cross□ examination. It is but natural to have certain minor variations in the evidence of eye□ witnesses, when a large number of people had gathered to assault a smaller group of people and which resulted in death of five persons and injuries to 24 persons. In such a scenario, it could not have been possible to meticulously observe all the actions of each and every accused. The Court also should not expect from the witnesses to depose in a parrot□like fashion. However, the overall evidence of these witnesses, prima facie, appears to be untainted.

13. It is also evident that the above testimonies are consistent on material facts, such as that on the day of the incident, CPI(M) workers threatened IPF workers, who hid in PW2 Badal Malik's house. Thereafter, a mob of CPI(M) workers assembled outside the house, which was set on fire to smoke out the hiding persons. When they tried hiding in PW9 Mantu Mal's house, that house was set on fire as well. Finally, the IPF supporters ran out, at which point they were assaulted by CPI(M) persons. All the witnesses may not be consistent on each and every detail, such as who set the house on fire and who hit who with which weapon, etc. It may be true that their depositions are found to contain exaggerations such as the mutilation of deceased Manik Hazra's penis, which was found to be intact upon medical examination. However, such embellishments and inconsistencies do not go to the root of the matter. Additionally, we find from the material on record that the improvements, if any, were only with respect to weapons that had been used in the assaults and not to the factum of assaults per se. The improvements, if any, made for the first time before the Court, no doubt, need to be eschewed. But that does not mean that the entire evidence of the witnesses should be ignored only on the said ground.

14. It is a well settled position of law that the testimony of a witness cannot be discarded in toto merely due to the presence of embellishments or exaggerations. The doctrine of falsus in uno, falsus in omnibus, which means "false in one thing, false in everything" has been held to be inapplicable in the Indian scenario, where the tendency to exaggerate is common. This Court has endorsed the inapplicability of the doctrine in several decisions, such as

Nisar Ali v. State of Uttar Pradesh, AIR 1957 SC 366, Ugar Ahir v. State of Bihar, AIR 1965 SC 277, Sucha Singh v. State of Punjab, (2003) 7 SCC 643, Narain v. State of Madhya Pradesh, (2004) 2 SCC 455 and Kameshwar Singh v. State of Bihar, (2018) 6 SCC 433. In Krishna Mochi v. State of Bihar, (2002) 6 SCC 81, this Court highlighted the dangers of applying the doctrine in the Indian scenario:

> "51. ...The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali v. State of U.P. [AIR 1957 SC 366 : 1957 Cri LJ 550])... The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and Ugar Ahir v. State of Bihar [AIR 1965 SC 277 :
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> (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood."

15. It is not uncommon for witnesses to make exaggerations during the course of evidence. But merely because there are certain exaggerations, improvements and embellishments, the entire prosecution story should not be doubted. In Ranjit Singh v. State of Punjab, (1974) 4 SCC 552, this Court observed:

> "26. It is trite that even when exaggerations and embellishments are galore the courts can and indeed

are expected to undertake a forensic exercise aimed at discovering the truth. The very fact that a large number of people were implicated in the incident in question who now stand acquitted by the High Court need not have deterred the High Court from appreciating the evidence on record and discarding what was not credible while accepting and relying upon what inspired confidence. That exercise was legitimate for otherwise the Court would be seen as abdicating and surrendering to distortions and/or embellishments whether made out of bitterness or any other reason including shoddy investigation by the agencies concerned. The ultimate quest for the court at all times remains "discovery of the truth" and unless the court is so disappointed with the difficulty besetting that exercise in a given case, as to make it impossible for it to pursue that object, it must make an endeavour in that direction." This Court in State of Punjab v. Hari Singh (1974) 4 SCC 552, observed as follows:

"16. As human testimony, resulting from widely different powers of observation and description, is necessarily faulty and even truthful witnesses not infrequently exaggerate or imagine or tell half truths, the Courts must try to extract and separate the hard core of truth from the whole evidence. This is what is meant by the proverbial saying that Courts must separate "the chaff from the grain". If, after considering the whole mass of evidence, a residue of acceptable truth is established by the prosecution beyond any reasonable doubt the Courts are bound to give effect to the result flowing from it and not throw it overboard on purely hypothetical and conjectural grounds."

16. Thus, it cannot be doubted that it is the duty of the Court to separate the chaff from the grain. Moreover, minor variations in the evidence will not affect the root of the matter, inasmuch as such minor variations need not be given major importance, inasmuch as they would not materially alter the evidence/credibility of the eye witnesses as a whole.

17. In light of the above discussion, prima facie, we find from the records that the versions of the eye witnesses cannot be said to be untrustworthy, especially in light of the observation of this Court in Masalti's case (supra). There are as many as 24 injured eye witnesses in the case and their presence cannot be doubted. In this situation, we find that the High Court has not applied its judicial mind in determining whether the judgment of the trial court was perverse inasmuch as the entire body of evidence was discarded, simply on the basis that some of the witnesses had deposed for the first time before the Court.

18. Curiously, the High Court has not at all considered the evidence concerning charges other than murder. Although, the

charges had been framed on questions such as burning houses, unlawful assembly, etc., the evidence on these questions was entirely overlooked and no finding was made by the trial Court as well as the High Court. For instance, the Trial Court has overlooked the entire evidence related to burning of houses, on the sole ground that the burnt articles were not produced before the Court. On the other hand, we find from the records that the burnt articles were seized and produced before the Court, as is clear from the seizure list (Ex. 1).

19. So far as the issue of unlawful assembly and common object of the unlawful assembly is concerned, the Court generally could determine those aspects based on the evidence on record. In the matter on hand, 36 eye□ witnesses are available. According to the case of the prosecution, all the accused came in a group to the house of PW2, Badal Malik and PW9, Mantu Mal, and torched these houses knowing fully well that the IPF party men had assembled in those houses. Prima facie, the Court can visualize the common object of unlawful assembly from this evidence. The Court cannot expect the prosecution to prove its case by leading separate evidence with respect to unlawful assembly and common object. If those factors can be found out based on the available material on record, there is no reason as to why the Courts should ignore the same.

20. The non□consideration of such vital issues by the High Court, without which a question before the Court could not have been satisfactorily determined, has led to injustice of a serious and substantial character, warranting interference of this Court and remand of the matter to the High Court for rehearing. We find that the High Court has failed to consider whether the trial Court brushed aside material evidence related to the issue of murder, attempt to murder and grievous hurt, and entirely overlooked material evidence on vital issues such as house burning, grievous hurt and unlawful assembly. Thus, in this aspect too, the High Court has failed to apply its judicial mind to verify whether the judgment of acquittal passed by the trial Court was perverse or not.

21. With regard to the conflict between the ocular testimony and the medical evidence, in our considered opinion, the High Court has ignored the fact that lathis were also used while assaulting along with sharp edge weapons. Moreover, it is by now well settled that the medical evidence cannot override the evidence of ocular testimony of the witnesses. If there is a conflict between the ocular testimony and the medical evidence, naturally the ocular testimony prevails. In other words, where the eye witnesses account is found to be trustworthy and credible, medical opinion pointing to alternative possibilities is not accepted as conclusive [See State of U.P. vs. Krishna Gopal, (1988) 4 SCC 302]. We do not wish to comment further on the merits of the matter at this stage since the matter needs remittance to the High Court.

22. The High Court has not at all assigned any cogent reason for reaching its conclusion. We are conscious of the fact that revisional jurisdiction must be exercised by the High Court only in exceptional circumstances, where there is a gross miscarriage of justice, manifest illegality or perversity in the judgment of the lower court. Interference would be warranted only if there is a manifest illegality in the judgment of the lower court. But in the matter on hand, in our considered opinion, because of non furnishing of valid reasons by the Trial Court, while coming to its conclusion, there is manifest illegality, and thus, the view taken by the High Court cannot be termed as reasonable. When there is a glaring defect or manifest error leading to a flagrant miscarriage of justice, this Court cannot shut its eyes merely on technicalities, particularly while exercising jurisdiction under Article 136 of the Constitution. In our considered opinion, the revisional jurisdiction vested in the High Court has not been properly exercised by the High Court. The High Court should not have proceeded casually while affirming the judgment of the trial Court. Having regard to the material on record and having regard to the magnitude of the offence, the High Court should have been more serious while considering the revision petition.

23. In the case of Sheetala Prasad vs. Shree Kant (2010) 2 SCC 190, this Court noted the principles on which the revisional jurisdiction can be exercised. The relevant observations of this Court are as under:

> "12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-section (3) of Section 401 of the Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of a private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and (5) where the acquittal is based on the compounding of the offence which is invalid under the law.

13. By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered."

(Emphasis Supplied)

24. From the aforementioned decision, it is clear that where the material evidence has been overlooked either by the trial Court or by the appellate Court or the order is passed by considering irrelevant evidence, the revisional jurisdiction can be exercised by the High Court. In the matter on hand, as already mentioned, material evidence has been overlooked by the Trial Court and the High Court was incorrect in observing that the witnesses have deposed for the first time before the court. We have already clarified that the contradictions and improvements were minor in nature, e.g. mainly with regard to weapons used. In the matter on hand, the presence of the witnesses is not in dispute, and the fact that 24 witnesses have suffered injuries cannot be disputed either. Five deaths have also taken place. Curiously, the Courts have observed that the injuries must have been suffered in a stampede. There is no reason as to why only one group of people would sustain injuries in the alleged stampede, if any. Thus, the theory of stampede also prima facie may not be available to the defendant having regard to the evidence on record. Moreover, the material evidence regarding the charges other than murder has also been ignored.

25. Thus, the High Court has failed to consider whether the Trial Court discarded material evidence in the form of eye-witness testimony on the issues of murder, attempt to murder and grievous hurt and completely overlooked evidence on other charges such as unlawful assembly and house-burning. Consequently, we find that the High Court has not given due consideration to the evidence on record to arrive at a reasoned conclusion and has thus failed to exercise its revisional jurisdiction in accordance with established principles. In our opinion, it would be appropriate for the High Court to undertake proper consideration of the material of the matter once again with due application of the judicial mind to find out as to whether the trial Court's order has caused gross miscarriage of justice, manifest illegality or perversity.

26. Before parting with the matter, we hasten to add that any observations made in this order will not influence the High Court in deciding the revision petition on merits. With these observations, the appeal is allowed, the impugned judgment and order of the High Court dated 30.06.2004 passed in C.R.R. No. 765 of 2002 is set aside and the matter is remitted to the High Court to decide the revision petition on merits, in accordance with law.

.....J.
[N.V. RAMANA]

NEW DELHI; .....J.
AUGUST 28, 2018. [MOHAN M. SHANTANAGOUDAR]