

State vs . Praveen Gupta & Others on 31 October, 2022

IN THE COURT OF SH. APOORV GUPTA, MM-02,
CENTRAL DISTRICT, TIS HAZARI COURT, DELHI

STATE Vs. PRAVEEN GUPTA & OTHERS

FIR No. 154/2006

PS : TIMARPUR

U/S : 147/148/149/186/332/353/308 IPC

Date of institution of the case :	06.02.2008
Date of judgment reserved :	Not reserved.
CNR :	DLCT020003762008
Date of commission of offence :	On 31.03.2006 at about 4 pm
Name of the complainant :	SI B. M. Bahuguna
Name of accused and address :	(1) PRAVEEN GUPTA S/o Sh. Om Parkash Gupta. R/o H. No. 122, Rajdhani Nikunj, I P Estate, Delhi. (2) SURENDER SINGH S/o Sh. Joginder Singh R/o 8/4, Ashok Nagar, Near Hari Nagar, Delhi. (3) NAVEEN KUMAR S/o Sh. Sukhram R/o A-25, Double Storey, Motia Khan, Paharganj, Delhi. (4) Sonu @ Chattar Pal S/o Sh. Makkhan Lal (Proceedings already abated vide order dated 21.06.2017)
Offence complained of :	147/148/149/186/332/353/308 IPC
Plea of the accused :	Pleaded not guilty
Date of Judgment :	31.10.2022
Final Order :	CONVICTION

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JUDGMENT

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CASE OF THE PROSECUTION :

1. The case of the prosecution, in brief, is that on 31.03.2013 at about 4.00 p.m. at Arya Samaj Road near police booth no.10, Delhi within the jurisdiction of PS Karol Bagh accused persons alongwith other unidentified persons formed an unlawful assembly and in prosecution of common object of that unlawfully assembly the accused persons committed rioting. They voluntarily obstructed public servants

namely Ct. Ram dass, HC Balram and Ct.

Ramkesh besides other police officials in performance of their duties and also assaulted them to deter them from performing their duties and voluntarily caused hurt to complainant/injured Ct. Ram Dass, Ct. Ramkesh and HC Balram while they were discharging their duties.

COURT PROCEEDINGS :

2. After completion of investigation, charge sheet was filed against 4 persons under Section 147/148/149/186/353/332/308 IPC. Cognizance was taken. After completion of proceedings under Section 207 Cr.P.C., the case was committed to the Court of Sessions as offence u/s 308 IPC was exclusively triable by the court of sessions.

CHARGE :

3. After hearing arguments, vide detailed order dated 19.05.2010 Ld. ASJ came to the conclusion that no offence u/s 308 IPC is made out and remaining sections were triable by metropolitan magistrate and remanded the case. In view of the order dated 19.05.2010 charge was framed for the offences under Sections 147/186/332/353 IPC read with Section 149 IPC on 08.03.2013 STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 2 / 24 to which they pleaded not guilty and claimed trial. During trial, accused Sonu @ Chhatarpal died. Vide order dated 26.08.2017, proceedings against him abated.

PROSECUTION EVIDENCE:

4. The prosecution in support of its case has examined 12 witnesses.

5. PW□ Ct. Ram Dass is the first injured. He has deposed that on 31.03.2006 he alongwith his team was present at Karol Bagh Chamberi, Faiz Road, Delhi as there was MCD sealing arrangement. Many public persons were gathered there and were agitating against MCD sealing programme. At about 4.00 pm, the said gathering started pelting stones upon them and in the said incident, one stone thrown by the gathering hit on his head and injured him on his head. Balram and other police officials also received injuries in the said incident. He became unconscious. He was taken to Lady Harding Hospital for treatment. He was discharged from the hospital on the same day and his MLC is Ex.PW□/B. His statement Ex. PW□/A was recorded. Ld. APP cross□ examined him as he was resiling from his earlier statement. He deposed that the agitation was being done at police booth no. 10, Arya Samaj and not at Chamberi Faiz Road, Delhi. He stated that during the agitation, the crowd pushed him due to which, his helmet fell down and the stone hit him on his head and he received head injury. HC Balram and Ct. Ramkesh also received injuries. He further submitted that Ct. Ramkesh apprehended two accused persons namely Naveen Kumar and Parveen Gupta and HC Balram apprehended accused Surrender

Singh. On 16.04.2006, he arrested accused Sonu @ Chatter Pal vide arrest memo Ex.PW□/C and his personal search was conducted vide memo Ex.PW1/D. STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 3 / 24

6. PW□2 HC Balram Singh deposed that on 31.03.2006 he was present at Arya Samaj Road near Police Booth no. 10. Sealing drive of MCD was going on in the area. A large crowd gathered there. Suddenly public person started pelting stones on police officials. Two or three police officials sustained injuries. He also sustained injuries. He apprehended accused Surender Singh.

Other co□accused persons were apprehended by other police officials. Accused persons were arrested vide arrest memos Ex.PW□2/A, Ex.PW□2/B and Ex.PW2/C. IO also seized one handkerchief containing blood stains of Ct. Ram Dass vide seizure memo Ex.PW□/D2. Body protector was seized vide seizure memo Ex.PW□2/D. He failed to identify the accused persons as the case is very old.

7. PW□3 HC Ram Kesh is the third injured and has deposed on the same lines as PW□2.

8. PW□4 Inspector Samarjeet Singh, PW□5 Rtd. ACP Ishwar Singh Beniwal and PW□8 Insp. Investigation HS Chauhan were present at the spot alongwith IO/ACP Inderpal Singh and have deposed on the same line as PW11.

9. PW□6 SI Ashok Kumar deposed that on 31.03.2006 he was working as a duty officer in 1st Bat. DAP from 09.00 a.m to 09.00 p.m. He made entry in the rojnamcha register/daily dairy register at Sr. No. 26 (information regarding quarrel), at Sr. No. 27 (regarding ravangi of police officials) and at Sr. No. 35 (regarding information of injury to Ct. Ramdas). The said DD entries are Ex.PW6/A to Ex.PW6/C. STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 4 / 24

10. PW□7 HC Raj Kumar deposed that on 31.03.2006 he was working as Duty Officer from 4:00 PM to 12:00 midnight. At about 7:20 PM, he received rukka on the basis of which FIR Ex. PW□7/A was registered.

11. PW□9 Alok Kumar deposed that on 26.09.2007 he had given complaint Ex.PW□9/A under Section 195 Cr.P.C. as in the present case victim/injured namely Ct. Ramkesh was under his administrative control.

12. PW□10 Ashok Kumar identified signatures and handwriting of Dr. Simmi Kumari, Dr. Deepak and Dr. Rajeev Dhawan. He deposed that MLC No. 8446 Ex.PW□10/A dated 31.03.2006 of Ct. Balram was prepared by Dr. Simmi Kumari. The nature of injury is opined as simple. MLC No. 8445 Ex.PW□10/B dated 31.03.2006 of Ct. Ramkesh was prepared by Dr. Simmi Kumari. The nature of injury was given by Dr. Rajeev Dhawan as simple. MLC No. 8444 Ex.PW□11/B dated 31.03.2006 of Ct. Ram Dass was prepared by Dr. Simmi Kumari. The nature of injury is opined by Dr. Deepak as simple.

13. PW□1 ACP Inderpal Singh is the IO of the case. He deposed that on 31.03.2006 he was in an arrangement duty regarding sealing of unauthorized commercial shops in the area of Karol Bagh by MCD. He alongwith ACP PS Kushwaha, SHO Insp. Ishwar Singh, Addl. SHO Insp. Ramesh Kumar, Insp. Investigation SH Chauhan, SI Amarjeet, ASI Raj Kumar and DAP first Batallion, CP reserve were present at the spot. People gathered at Arya Samaj Road and protested against the MCD sealing. They were using foul words against the police officials and MCD. People who were gathered at the spot started pelting stone on police officials. Due to pelting of stones, complainant STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 5 / 24 Ram Das got injury on his head. HC Balram and Ct. Ramkesh also sustained injuries. Ct. Ramkesh and HC Balram apprehended the accused persons namely Naveen Kumar, Praveen Gupta, Surendra Singh. All the injured persons were taken to the Lady Harding Hospital for medical treatment. He obtained MLC of all the injured persons. He recorded the statement of Ct. Ram Das Ex.PW□/A on the basis of which rukka was prepared which was handed over to ASI Raj Kumar for registration of the case. He went to the spot alongwith HC Balram and Ct. Ramkesh where ASI Raj Kumar handed over FIR to him. Site plan Ex. PW□/D was prepared at the instance of HC Balram. He seized blood stained handkerchief of the complainant Ram Das vide seizure memo Ex.PW□/D2 and also seized the body protector worn by Ct. Ramkesh vide seizure memo Ex. PW□2/D. All the accused persons were apprehended from the spot. They were arrested vide arrest memo Ex.PW□2/A, Ex.PW□2/B and Ex.PW□2/C respectively. He also conducted personal search of accused persons vide personal search memo Ex.PW□3/A, Ex.PW□3/B and Ex.PW□3/C. Accused persons were taken to LHMC for medical examination. On 16.04.2006, he arrested Sonu @ Chatrapal vide arrest memo Ex.PW□/C and also conducted his personal search vide personal search memo Ex.PW□/D. On 15.07.2006 he got transferred from PS Karol Bagh and handedover the case file to MHCR, Karol Bagh.

14. PW□2 SI Mahipal Singh deposed that on 19.11.2006 MHCR marked the present matter for further investigation to him. On 20.05.2007, he submitted MLC of all the injured persons i.e. Ram Das, Ramkesh and Balram in LHMC for opinion. On 26.09.2007, he received sanction u/s 195 Cr.P.C. from DCP Central. On 24.10.2007, he received sanction u/s 195 Cr.P.C. DCP (Ist STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 6 / 24 BN. DAP). He prepared the challan and handedover the same to SHO Karol Bagh for filing the same in concerned Court.

STATEMENT OF ACCUSE PERSONS U/S 313 Cr.P.C:

15. After conclusion of this evidence, the prosecution evidence was closed and statement of the accused persons under Section 313 Cr.P.C. was recorded.

15.1 Accused Surender Singh stated that he has been falsely implicated in the present case. He stated that he had gone to Karol Bagh for purpose of shopping as his daughter's marriage was fixed in month of September, 2006. He further stated that on 31.03.2006 at about 6.30 PM he was apprehended by the officials from Karol Bagh, Bus stop where he was waiting for DTC bus plying on route no. 308 for going to his house at Tilak Nagar.

15.2 Accused Naveen Kumar stated that he was present at his shop no. 7, Baba Plaza, near MCD market, Karol Bagh, Delhi. He further stated that he was innocent and was not present at the spot at alleged time and date.

15.3 Accused Parveen Gupta stated that he has been falsely implicated in the present case. He stated that he had gone to Beaden Pura, Karol Bagh to meet his friend. He further stated that on 31.03.2006 at about 6.30 PM he was apprehended by the officials from Karol Bagh, bus stop where he was waiting for DTC bus plying on route no. 166 for going to the house of his in-laws at Shalimar Bagh. They all preferred not to lead any evidence in defence.

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16. I have heard the submissions of Ld. Counsels for the accused persons and Ld. APP for state and carefully gone through the material on record.

ANALYSIS AND FINDINGS :

17. The accused persons in the instant case have been charged with the offences under Section 147/186/353/332 IPC read with Section 149 IPC.

18. Rioting has been defined in Section 146 IPC as under :

"Whenever force or violence is used by an unlawful assembly or any member thereof, in prosecution of the common object of such assembly."

18.1 Section 147 IPC stipulates the punishment for rioting.

18.2 Section 186 IPC lays down the punishment for voluntarily obstructing any public servant in the discharge of his public functions.

18.3 Section 353 IPC punishes assaults or use of criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or as consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant.

18.4 Section 332 IPC lays down the punishment for voluntarily causing hurt to any person being a public servant in the discharge of his duty as such STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 8 / 24 public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant.

19. It is apposite first of all to refer to Section 141 IPC.

"Section 141. Unlawful assembly: □An assembly of five or more persons is designated an "un□lawful assembly", if the common object of the persons composing that assembly is:

First □To overawe by criminal force, or show of criminal force the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or Second □To resist the execution of any law, or of any legal process; or Third □To commit any mischief or criminal trespass, or other offence; or Fourth □By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth □By means of criminal force, or show of criminal force, to compel any person to do what he is not legally STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 9 / 24 bound to do, or to omit to do what he is legally entitled to do.

Explanation. □An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly".

20. It is important to note that it is not the mandate of Section 141 IPC that five or more persons must be named as known individuals. They can be known or unknown, identified or unidentified individuals. Merely because some members of the unlawful assembly are not known or identified, the other members of the unlawful assembly numbering less than five cannot be obviously contend that they were not members of the unlawful assembly. To constitute an unlawful assembly there must be five or more persons. But the composition of the unlawful assembly can be less than five known and ascertained individuals, the others being unknown, unidentified or unascertained. It is imperative that there must be five or more persons sharing the common object to make the assembly an unlawful assembly under Section 141 IPC.

21. It will also be apposite to refer to Section 149 IPC which reads as follows:

"Section 149: If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 10 / 24 of the committing of that offence, is a member of the same assembly, is guilty of that offence".

22. Before vicarious liability can be attracted towards any member of the assembly, it must be shown that the assembly was of five or more persons and that all the persons had shared the common object of the unlawful assembly. In such event, whether the culpable act was committed by him or not, such member of the unlawful assembly sharing the common object of the unlawful assembly shall be guilty of the offence committed by any other member of the unlawful assembly if

the act be committed in prosecution of the common object of that assembly or such member of the unlawful assembly knew that such offence was likely to be committed in prosecution of the common object.

23. Recently in Gurmail Singh & Anr. Vs. State of Uttar Pradesh & Anr. Criminal Appeal No. 965 of 2018 decided on 17.10.2022 one of the issues before Hon'ble Supreme Court was when once the prosecution established the membership of an accused/convict in the unlawful assembly whether the individual overt act also to be established by the prosecution to bring culpability on him on the principle of constructive/vicarious liability. It was observed as under:

"According to us, no such burden can be fastened on the prosecution in view of the phraseology under Section 149, I.P.C. Though there are catena of decisions on that question we think it suffice to refer to the decisions in Amerika Rai & Ors. Vs. State of Bihar (AIR 2011 SC STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 11 / 24 1379), Surendra & Ors. Vs. State of Uttar Pradesh (AIR 2012 SC 1743) and in Yunis alias Kariya Vs. State of M.P. (AIR 2003 SC 539).

In Amerika Rai's case (supra) this Court held that even the presence in an unlawful assembly, with an active mind, to achieve the common object, would make a person vicariously liable for the acts of the unlawful assembly. In Surendra's case (supra) this Court held that inference of common object has to be drawn from the various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. In Yunis's case (supra) it was held that the presence of the accused as a part of the unlawful assembly is sufficient for his conviction. It was further held that when the presence of the accused at the place of occurrence as part of the unlawful assembly was not disputed it will be sufficient to hold him guilty even if no overt act was attributed to him."

24. The essence of the offence in question is the common object of the persons forming the assembly. Whether the object is in their minds when they come together or whether it occurs to them afterwards, is not material. But it is necessary that the object should be common to the persons who compose the assembly, that is, they should all be aware of it and concur in it. It seems also that there must be some present and immediate purpose of carrying into effect STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 12 / 24 the common object. It is also trite that section 149 creates a specific offence and before convicting any person or persons of an offence by the aid of section 149 IPC, a clear finding about the common object of the assembly is mandatory.

25. That being the legal position, let me now revert to the factual matrix of the case. PW□ Ct. Ram Dass is the first injured. He stated that on 31.03.2006 he alongwith his team was present at police booth no. 10, Arya Samaj, Karol Bagh Delhi as there was MCD sealing arrangement. Many public persons were gathered there and were agitating against MCD sealing programme. At about 4.00 pm, the said gathering started pelting stones upon them and in the said incident, the crowd pushed him due to which, his helmet fell down and the stone hit him on his head and he received head injury. PW□ HC Balram and PW□ Ct. Ramkesh also received injuries. He became unconscious and was

taken to Lady Harding Hospital for treatment. He was discharged from the hospital on the same day and his MLC Ex.PW□/B was prepared. His statement Ex. PW□/A was recorded. All the accused persons except Sonu were apprehended from the spot. On 16.04.2006, accused Sonu @ Chatter Pal was arrested. He correctly identified all the accused persons. PW□ HC Balram and PW□ Ct. Ramkesh have also deposed on the same lines as PW1, however they failed to identify accused persons.

26. PW□ Ishwar Singh Beniwal deposed that due to pelting of stones, several police officials including Ct. Ram Dass, HC Balram and Ct. Ramkesh sustained injuries in the incident. PW□ ACP Harmohan Singh Chauhan deposed that crown at the spot misbehaved, assaulted and started pelting stones towards police official. In the said incident, DBG Road police staff i.e Ct. Ram STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 13 / 24 Dass, HC Balram and Ct. Ramkesh sustained injuries. PW□1 ACP Inderpal Singh also deposed that on 31.03.2006 he was in an arrangement duty regarding sealing of unauthorized commercial shops in the area of Karol Bagh by MCD with other police staff. People gathered at Arya Samaj Road and protested against the MCD sealing. They were using foul words against the police officials and MCD. People who were gathered at the spot started pelting stone on police officials. Due to pelting of stones, complainant Ram Das, HC Balram and Ct. Ramkesh sustained injuries.

27. It is discernible from the testimonies of all the above□mentioned police officials that all the accused persons were members of the mob who created chaos at police booth no. 10, Arya Samaj, Karol Bagh on 31.03.2006. Although PW□ and PW□ could not identify the accused persons and to that extent, they were declared hostile by the prosecution but the law is well settled that testimony of a hostile witness is not to be discarded altogether and so much part of their testimony can be considered which find corroboration from the other evidence. In Sathya Narayanan v. State rep. by Inspector of Police, (2012) 12 SCC 627, Hon'ble Supreme Court referred to its earlier decision rendered in Mrinal Das & Others. v. State of Tripura, (2011) 9 SCC 479 where while reiterating that corroborated part of evidence of hostile witness regarding commission of offence is admissible, it was held as under : □"67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross□examine the witness furnishes no STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 14 / 24 justification for rejecting en bloc the evidence of the witness. However, the Court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The Court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."

28. The law is now well settled that even if a witness does not wholly support the case of the prosecution his testimony is not to be discarded altogether, and that part of the testimony of the witness can be considered and relied upon as supports the case of prosecution. It is the consistent view taken by Hon'ble Apex Court and Hon'ble High Court that the fact that the witness has been declared hostile at the instance of public prosecutor and was allowed to be cross-examined furnishes no justification for rejecting en block the STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 15 / 24 evidence of the witness. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof, as held in number of judgments viz. State of Gujarat vs. Anirudh Singh and Anr., (1997) 6 SCC 514; Radha Mohan Singh @ Lal Sahib and Ors. Vs. State of U.P., (2006) 2 SCC 450; Mahesh vs. State of Maharashtra, (2008) 13 SCC 271; Rajender and Anr. Vs. State of U.P., (2009) 13 SCC 480; Govindapa and Anr. Vs. State of Karnataka, (2010) 6 SCC 533; Paramjit Singh @ Pamma vs. State of Uttarakhand, AIR 2011 SC 200; Rameshbhai Moahanbhai Koli and Ors. Vs. State of Gujarat, (2011) 3 SCC (Cri) 102; Koli Lakhmanbhai Chanabhai Vs. State of Gujarat, (1999) 8 SCC 624; Prithi vs. State of Haryana, (2010) 8 SCC 536 and Ramesh Harijan Vs. State of Uttar Pradesh, (2012) 5 SCC 777.

29. In the instant case, Ct. Ram Dass i.e PW identified the accused person and his testimony find corroboration from all the other police officials, who have specifically identified and proved the presence of all the accused persons in the said mob. Moreover, all the accused except Sonu were apprehended from the spot.

30. All of them preferred not to lead any evidence in their defence. They have claimed false implication at the hands of police officials of PS Karol Bagh but none of them has been able to substantiate their claim by adducing any tenable evidence except for putting certain suggestions to the prosecution witnesses.

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31. In the light of the abovesaid evidence, it has to be examined whether on 31.03.2006 at Karol Bagh all the accused persons joined hands to form an unlawful assembly in prosecution of common object and, if yes, then what was the common object intended to be achieved by the accused persons. As is seen in the preceding paragraphs, one of the objects cited in section 141 IPC is to overawe by criminal force any public servant in discharge of his lawful duties. The act in question of the accused persons certainly falls in this category. It was none of their business to take law in their hands by stopping the MCD sealing arrangement and by their act of forming a mob and hurling the stones at the police officials, they have become members of unlawful assembly.

32. Now what is to be seen is whether the said unlawful assembly was actuated by any common object. For applicability of section 149 IPC, there need not be prior meeting of mind. It is enough that each has the same object in view. The elements of section 149 are (i) commission of an offence by any member of an unlawful assembly; (ii) commission of the offence in prosecution of the common object of the unlawful assembly; (iii) the offence must have been such as the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object.

33. The meaning of prosecution of common object is attainment of the common object and object means purpose or design and in order to make it common, it must be shared by all and no proof of overt act is necessary. The act must be one which must have been done with a view to accomplish the common object as attributed to the members of unlawful assembly. Common object is to be ascertained from the membership, the weapons used and the nature of STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 17 / 24 injuries as well as other surrounding circumstances. In so far as the prosecution of the common object of the accused persons is concerned, from the evidence of PW□, PW□2 and PW□3, it clearly transpires that all the accused persons had the common object of overawing the police officials by hurling stones at them. Although, PW□2 HC Balram and PW□3 Ct. Ramkesh have not identified the accused persons but they have not been cross examined on the point of happening of incident despite opportunity being granted to them. Their mere presence in an unlawful assembly would make them liable. Therefore, it stands established beyond reasonable doubt that all the accused persons were part of an unlawful assembly whose common object was to pester the police officials for not acceding to their demand.

34. Now embarking upon the charge u/s 147 IPC □Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

35. Section 147 IPC provides for rioting and rioting is defined under Section 146 IPC as force or violence being used by a wrongful assembly or by any member thereof in prosecution of the common object by such assembly. A riot is an unlawful assembly in a particular state of activity, which activity is accompanied by the use of force or violence. The words force and violence under this section connotes different and distinct concept. Force is narrowed down by the definition u/s 350 IPC to persons while the word violence includes violence to property and other inanimate objects.

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36. In order to better appreciate the definition of word force used in Section 146 IPC, let me also examine Section 350 IPC which defines criminal force as whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other. According to Section 349 IPC, a person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

Firstly□By his own bodily power.

Secondly□By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly□By inducing any animal to move, to change its motion, or to cease to move.

37. Criminal force as defined u/s 350 contemplates force used to a person and not to a thing. The word force has to be understood not in a restricted sense but in the sense in which it is understood in common parlance.

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38. As discussed hereinabove, it has been successfully proved by the prosecution that all the accused persons were members of an unlawful assembly with an object to overawe the police officials by throwing stones at them, thus this act of the accused persons would also bring their case within the province of section 349/350 IPC in as much as the stone is a substance by the use of which accused persons had affected their sense of feeling, which would tantamount to using force against them. The use of any force, even though, it be of the slightest possible character, by anyone of an assembly once established as unlawful, constitutes rioting, thus all the accused persons are also held guilty for offence punishable u/s 147 IPC.

39. The assault or use of force on the person of police officials is further fortified by MLCs of injured persons Ct. Ram Dass, HC Balram and Ct. Ramkesh which have been exhibited and proved as Ex. PW 10/A, Ex. PW 10/B and Ex. PW 11/B. Their MLCs manifest the injuries suffered by them. All the MLC's have not been assailed by the accused persons. Thus, ocular evidence of the prosecution witnesses have been duly supported by medical evidence.

40. Section 186 IPC reads as under :

"Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

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41. Section 353 IPC reads as under :

"Whosoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both."

42. Section 332 IPC reads as under :

"Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

43. The gravamen of offence under Section 186 IPC is voluntary obstruction to public servant in discharge of his public function. It must be shown that the obstruction or resistance was offered to a public servant in the STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 21 / 24 discharge of his duties or public functions as authorized by law. To attract the provisions of sections 353/332 IPC, prosecution has to prove that accused person has assaulted or used criminal force upon the complainant with the intention to prevent or deter him from discharging his duty as a public servant.

44. As per the provision of Section 195 Cr.P.C., the written complaint for the offence under section was given by the competent officer as the complainant was discharging his official function under the supervision and control of Assistant Commissioner of Police. The circumstances in which the injuries were sustained by PW□ Ct. Ram Dass, PW□ HC Balram and PW□ Ct. Ramkesh have been proved by PW□ Ishwar Singh Beniwal and PW□ ACP Harmohan Singh Chauhan who have deposed that crowd at the spot misbehaved, assaulted and started pelting stones towards police official. PW□1 ACP Inderpal Singh also deposed on the similar lines.

45. There is no material defect found in the investigation. The investigation has been conducted in fair and legal manner. No major contradictions have been pointed out by defence counsel in the testimony of the prosecution witnesses. In these circumstances, the prosecution has succeeded in proving the charges against the accused for the offence under Section 186/353/332 IPC since the testimony of the prosecution witnesses is corroborated and the deposition of Ct. Ram Dass, HC Balram and Ct. Ramkesh inspire confidence and proved that the accused persons were the same person who caused injuries to the injured while they were discharging their official function and obstructed in discharging the sovereign function.

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46. Now coming to the defence of all the accused. All of them have taken plea of alibi. In his statement u/s 313 of the Code, accused Surender Singh stated that he had gone to Karol Bagh for purpose of shopping for his daughter's marriage. He further stated that on 31.03.2006 at about 6.30 PM he was apprehended by the officials from Karol Bagh, Bus stop where he was waiting for DTC bus plying on route no. 308 for going to his house at Tilak Nagar. Accused Naveen Kumar stated that he was present at his shop no. 7, Baba Plaza, near MCD market, Karol Bagh, Delhi. Accused Parveen Gupta stated that he had gone to Beaden Pura, Karol Bagh to meet his friend. He further

stated that on 31.03.2006 at about 6.30 PM he was apprehended by the officials from Karol Bagh, Bus stop where he was waiting for DTC bus plying on route no. 166 for going to house of his in-laws at Shalimar Bagh. In Jitender Kumar v. State of Haryana (2012) 6 SCC 204 Hon'ble Apex Court stated that:

"71. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives."

47. In the instant case, onus of proving the fact that accused persons were not present at the spot or were present elsewhere was on accused persons. However, except for alleging these facts, no evidence has been led by them to STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 23 / 24 substantiate this plea. On the other hand, as stated above, all the accused persons except Sonu were apprehended at the spot.

48. Therefore, keeping in view of the facts and circumstances of the present case as well as the testimony of the prosecution witnesses and the material on record, the prosecution is able to prove the case beyond all reasonable doubts against the accused persons. Accordingly, they are held guilty and hereby convicted for the offence punishable under Section 147/186/353/332 IPC read with Section 149 IPC.

ANNOUNCED IN THE OPEN
COURT ON 31th OCTOBER, 2022

(Apoorv Gupta)
MM-02, Central District
Tis Hazari Courts/31.10.2022

This judgment consists of 24 pages and each and every page of this judgment is signed by me.

(Apoorv Gupta) MM-02, Central District Tis Hazari Courts/31.10.2022 STATE Vs. PRAVEEN GUPTA & ORS. FIR No. 154/2006 PS TIMARPUR PAGE NO. 24 / 24