

State vs Neel Daman Khatri And Ors on 24 December, 2024

CNR No. DLCT11-000455-2024

IN THE COURT OF MR. VISHAL GOGNE:
SPECIAL JUDGE (PC ACT) CBI-24
(MP/MLA CASES), RADC

In the matter of

CNR No. DLCT11-000455-2024
SC No. 1/2024
FIR No. 1439/2014
PS Narela
under sections 147/149/186/332/353 IPC
State Vs. Neel Daman Khatri & Ors.

State
versus

1. Neel Daman Khatri
S/o Lt. Sh. Satya Prakash
R/o H. No. 1691, Pana Mamur Pur, Narela
Delhi
2. Joginder Dahiya
S/o Sh. Dayanand
R/o Gali No. 15 Sanjay Colony, Safiyabad Road, Narela
Delhi
3. Raj Kumar
S/o Sh. Inderaj
R/o Gali No. 7 Rajiv Colony, Narela,
Delhi
4. Surender
S/o Sh. Maha Singh
R/o Gali No. 6A, Safiyabad Road, Gautam Colony,
Narela, Delhi

FIR No. 1439/2014 State Vs. Neel Daman Khatri & Ors Page No.1/ 56

5. Praveen
S/o Sh. Subh Ram
R/o H. No. 117, New Basti, Pana Mamur Pur, Narela,
Delhi

6. Bhim Sen
S/o Sh. Dharm Dutt Sharma
R/o H. No. 1462, Pana Paposian Narela,
Delhi

Date of Institution : 19.07.2017
Reserved for Judgment on : 21.11.2024
Judgment pronounced on : 24.12.2024

S. No.	Contents	Page No.
1.	Allegations	3- 5
2.	Charge	5-6
3.	Prosecution Evidence	6- 24
4.	Examination under section 313 Cr. PC	24-25
5.	Arguments on behalf of the State	25-26
6.	Arguments on behalf of the accused	26-28
7.	Discussion and reasons	28-52
A.	Unlawful assembly	28-36
B.	Applicability of section 149 IPC	36-37
C.	Culpability under section 143 IPC	38
(i)	Accused Raj Kuma, Surender, Praveen and Bhim Sen	38-43
(ii)	Accused Neel Daman and Joginder Dahiya	43-45
D.	Other articles of charge against accused Neel Daman and Joginder Dahiya	45-53
E.	Applicability of section 109 IPC	53-55
F.	Order	56

FIR No. 1439/2014 State Vs. Neel Daman Khatri & Ors Page No.2/ 56
JUDGMENT

1. Demolition drives against unauthorised construction are often met with violent resistance from public persons against the civil authorities and the police teams which are deployed for providing security. The present trial reflects one such incident.

Allegations

2. The FIR in the present investigation was registered on the written complaint made by a government official (Tehsildar) namely Raj Kumar to the SHO PS Narela, Delhi regarding obstruction in the official duties. The complainant asserted in this complaint dated 14.11.2014 that a letter regarding demolition of unauthorised construction in the area of Narela had been sent to the SHO PS Narela for providing a police force. On 14.11.2014, the Tehsildar and his staff reached the said police station along with the JCB machine and were thereafter accompanied by police officials towards the intended place of demolition. On the way, some women blocked the path of the JCB

machine but were removed by female police officials. The team proceeded to the place of intended demolition and started its proceedings.

3. In the mean while, a crowd comprising 250-300 persons came from the direction of Gautam Colony and attempted to stop the demolition proceedings. These persons started throwing bricks, lying at the spot, upon the demolition team and JCB machines. The mob was being led by some persons who appeared to be leaders, described in the Hindi complaint as (Neta type log).

4. It was alleged by the complainant that the stone pelting was committed upon the instigation by these leaders. Consequently, 2-3 police persons suffered injuries and 3-4 public persons were taken into custody for obstructing the discharge of public duties and for causing injuries to public servants.

5. Upon receipt of this complaint by SI Amit at PS Narela, he made an endorsement on the same complaint, thereby informing the duty officer at PS Narela that on 13.11.2014 at about 08:00 p.m., a letter had been received from the office of the SDM regarding a demolition programme in which the ACP had been requested to provide a police force. Accordingly, a police force comprising one Inspector, 3 Sub-Inspectors, 13 Head Constables, 37 Constables and 7 lady Constables were deputed for the said arrangement. The police team headed towards Gautam Colony, Narela at about 11:00 a.m. on 14.11.2014 with the Tehsildar and his staff.

6. SI Amit further stated in his endorsement that some ladies attempted to stop the JCB machines on the way but were removed with the help of women constables. The revenue officials thereafter commenced the work relating to demolition of the unauthorised construction and which was also subjected to videography as well as photography. The allegations of complainant Raj Kumar were echoed by SI Amit in his endorsement when he stated that in the meanwhile some (Neta Type Aadmi) came to the spot with a crowd of 200- 250 persons and started instigating the public to throw stones at the demolition team. The ensuing stone pelting led to the stoppage of the demolition work. When the police staff intervened, stones were thrown at them too. Resultantly, women constable Jyoti, Constable Hem Chandra and Constable Rakesh Kant suffered injuries and were taken to SRHC Hospital, Narela. All three injured suffered simple injuries. The police team also fired 10 rounds from the gas gun to control the mob. Four persons namely Raj Kumar, Surendra Singh, Praveen and Bhim Sen were purportedly apprehended at the spot. SI Amit lastly stated that Tehsildar Raj Kumar had thereafter given a written complaint to him.

7. SI Amit reported to the duty officer that the circumstances of the incident and the MLC of the injured police officials reflected the commission of the offences under sections 147/149/186/332/353 IPC and asked for the registration of the FIR on these allegations.

8. The actual place of incident was recorded as being near J.K. Farm House, Railway line, Gautam Colony, Narela, Delhi, with the date and time of incident being 14.11.2014 at 3:00 p.m.

9. Upon the investigation being concluded, the chargesheet was filed with six accused persons forwarded under column 11. These accused were Neel Daman Khatri, Joginder Dahiya, Raj Kumar, Surender, Praveen and Bhim Sen (Accused no. 1 to 6 respectively).

Charge

10. Charge was framed against the six accused persons in the following manner:-

i. Charge was framed against all six accused persons under section 143 read with section 149 IPC and under section 147 read with section 149 IPC. ii. Charge was framed against Neel Daman Khatri and Joginder Dahiya under section 353 read with section 109 IPC and also read with section 149 IPC. iii. Charge was framed against accused Raj Kumar, Surender, Praveen and Bhim Sen under section 353 read with section 149 IPC, section 332 read with 149 IPC and section 333 read with section 149 IPC.

11. The charge, apart from detailing the allegations of formation of an unlawful assembly, with the accused persons being members of the same, also brought it to the notice of the accused persons that three police officials namely Constable Jyoti, Constable Hem Chander and Constable Rakesh Kant had received injuries.

12. All accused persons pleaded not guilty to the respective articles of charge.

13. The prosecution examined 26 witnesses in support of the allegations. The evidence led by the prosecution is detailed below.

Prosecution Evidence Duty Officer and DD Writer

14. PW10 was the duty officer who recorded the FIR in the present case. He deposed that on 14.11.2024, he was posted as ASI/Duty Officer at PS Narela with his duty hours being from 08:00 a.m. to 04:00 p.m. He further stated that at about 10:50 a.m., he made a DD entry no. 20 A, proved by him as Ex. PW10/A, regarding the departure of police officials upon their deployment in a demolition drive at Gautam Colony on the orders of SI Amit Kumar.

15. PW10 further stated that on the same day (14.11.2014), he had also entered another DD bearing No. 21A (Ex. PW10/B) at about 10:52 a.m. regarding deployment of HC Naresh, Ct. Yunus and other police officials in same demolition drive as they had come from PS Alipur. At about 03:00 a.m., PW10 received a rukka brought by Ct. Kapil and having been sent by SI Amit Kumar. He next proved his endorsement on the rukka as Ex. PW10/C and stated that on the basis of said rukka, he registered the present FIR no. 1439/2014 on a computer with the help of woman Ct. Vimla.

16. After registration of the FIR, PW10 handed over a copy of the FIR (Ex. PW10/D) and original rukka to Ct. Kapil with the direction to hand over the same to SI Amit. He also proved the certificate under section 65B of Indian Evidence Act pertaining to the FIR as Ex. PW10/E.

17. The DD writer who made multiple entries regarding the arrival and departure entries of the revenue officials as well as police officials at PS Narela deposed as PW12. He stated that on 14.11.2014, he was posted as DD Writer at PS Narela and at about 10:00 a.m. on that day, he made a DD entry no. 26B, proved by him as Ex. PW12/1, regarding the deployment of driver namely Constable Parvinder (Home Guard) along with Government tempo bearing registration no. DL1LM 6767 for heavy arrangements in Gautam Colony. He further deposed that on the same day at about 11:00 a.m., Gyanendra Rana Patwari along with two Tehsildars, two Panchayat Secretaries and five JCBs came to police station for the demolition programme. They also went to the spot at Gautam Colony and he entered their arrival as well as departure entry vide DD. No. (Ex. PW12/2). He further stated that Insp. Subash Chand along with three Sub- Inspectors, 12 Head Constables, 30 Constables and 7 Lady Constables along with ERV went for demolition programme at Gautam Colony, Safiabad Road. He recorded their departure entry vide entry no. 33B which he proved as (Ex. PW12/3).

Videographer

18. The videography of the incident was conducted by an employee of a photo studio namely Ravinder (PW11) who deposed that in the year 2014, he was working as a videographer in the photo studio named Deep Photo Colour Lab and Studio, shop no. 502, Pana Udan, Narela, Delhi. He further stated that the owner of the shop was Amardeep who had asked him to go with police officials to the area of Gautam Colony for the purpose of videography of a demolition exercise. PW11 next stated that certain government officials, including police officials, were present during the said exercise and he did not recall the date, month or year of the said exercise on account of passage of time. He handed over the digital camera used for conducting the videography of the incident to the owner of the photo studio namely Amardeep. The video footage itself was exhibited by him from a DVD which was played in the court room during the course of his evidence as Ex. P-1.

19. PW11 tendered the certificate under section 65B of Indian Evidence Act relating to the DVD Ex. P-1 as Ex. PW11/1.

Sanction under section 195 Cr.P.C.

20. PW24 (Ms. Purva Garg), deposed that she was posted as SDM, Narela in the month of February, 2018, when she received a request from SI Karamvir upon being forwarded through SHO PS Narela. The matter pertained to permission under Section 195 Cr.P.C. She stated that upon going through the case file and after application of mind, she granted permission under section 195 Cr.P.C. to prosecute the accused persons. The sanction dated 23.02.2018 was proved by her as Ex. PW21/1.

Medical Witnesses

21. The three Doctors who were examined in proof of the injuries upon the various police persons were Dr. Mukesh Bharti (PW20), Dr. Shipra Rampal (PW21) and Dr. Kunal Sharma (PW22).

22. PW20 identified the signatures of Dr. Joginder Kumar who had prepared the MLC of injured constable Jyoti as Ex. PW20/1 and deposed that she had suffered simple injuries. He also proved the MLC of injured constable Rakesh Kant, also prepared by Dr. Joginder Kumar as Ex. PW20/2. The opinion on the said MLC was that Constable Rakesh Kant had suffered grievous injuries. The X-Ray report which formed the basis of the said finding was identified as Mark PW20/M1.

23. PW20 lastly identified the signatures of Dr. Joginder Kumar on the MLC of the third injured Constable namely Hem Chander and proved it as Ex. PW20/3. The X-Ray report of constable Hem Chander was denoted as mark PW20/M2.

24. The doctor who had prepared the X-Ray reports of injured Hem Chander and Rakesh Kant was PW21 (Dr. Shipra Rampal). She deposed that on 19.11.2014, she was posted as Specialist, Radiology in Satyawadi Raja harischandra Hospital, Narela and had prepared X-ray report on X-ray no. 1471 for injured Hem Chander (MLC No. 3699). Upon examining the report, she found dislocation at the right shoulder joint. The copy of the X-ray report was tendered in evidence as Ex. PW21/1 whereas the X-ray plate was tendered in evidence as Ex. PW21/2.

25. She next stated that on the same day i.e. 19.11.2014, she had also prepared X-ray report on X-ray no. 1472 of injured constable Rakesh Kant (MLC No. 3701). As per the report, she found fractured pubic bone, both sides, in the X-ray of the pelvis. The copy of the report was proved as Ex. PW21/3 while the X-ray plates of injured were Ex. PW21/4.

26. The last doctor to depose was PW22 who also deposed regarding the injuries upon constable Hem Chander and constable Rakesh Kant. He stated that on 14.11.2014, he was posted as Medical Officer in Satyawadi Raja Harischandra Hospital, Narela. On the said date, at about 2:03 p.m., one injured namely Constable Hem Chander was brought in emergency and he was examined. Thereafter, at about 2:05 p.m., he was called for expert opinion as Orthopedics Surgeon. He examined him and found him to be suffering from pain in the right shoulder. He advised X-ray examination to evaluate the injury and proved the previously exhibited MLC Ex. PW20/3 by identifying his noting and signature on the same.

27. He further deposed that on the same day, around 2:18 p.m., one injured namely Constable Rakesh Kant was brought in the emergency department and was examined by him at about 2:20 p.m. PW22 found that the said constable had sustained injuries over the back and hip region. PW22 stated that he advised X-ray examination to evaluate the injury. He identified his signatures on the previously exhibited MLC (Ex. PW20/2).

Eye witnesses

28. The prosecution examined as many as 18 persons as eye witnesses. While 17 witnesses had been the members of the police team which was deputed for the arrangement to safeguard the demolition exercise on the date of incident, one witness from the revenue team viz the Tehsildar also came to be examined.

29. The eye witnesses from the police team were PW1, PW2, PW4 to PW9, PW13 to PW19, PW23 and PW25.

The complainant Tehsildar namely Raj Kumar was PW3 whereas the police official, namely SI Amit, on whose complaint the FIR was registered, was examined as PW23.

30. The testimony of these witnesses is next recounted in the expanse of relevant details.

Summary of the deposition of the eye witnesses

31. It may be observed at the outset that the deposition of the eye witness police officials was largely in consonance with each other regarding the presence of accused Neel Daman Khatri and Joginder Dahiya at the place of incident around the time when it occurred. The witnesses also stated in unison that the crowd of persons had pelted stones at the police team resulting in injuries to the three police officials in question. However, the witnesses were at some measure of variance in describing the role of accused Neel Daman Khatri and Joginder Dahiya as alleged instigators of the violence that followed. Most of the eye witnesses did not identify the remaining four accused viz Raj Kumar, Surender, Praveen and Bhim Sen as being present at the spot whereas the few eye witnesses who did assert the presence of these four persons and their detention at the spot also rendered somewhat differing accounts regarding the circumstances of their detention and release. The role of these four persons was not elucidated by the eye witness police officials.

32. The deposition of these police witnesses is thus recounted in the above understanding of the combined import of their testimony.

Detailed testimony of the eye witnesses

33. PW1 (SI Somveer) and PW2 (Inspector Subhash), who was the Inspector Incharge of Investigation at Police Station Narela, similarly stated that accused Neel Daman Khatri and Joginder Dahiya had instigated the mob which then started pelting stones at police officials.

34. The role or presence of the remaining four accused was only admitted by PW1 during cross-examination by the state after he had failed to identify the four persons who had been detained at the spot. Upon the leading question from the prosecutor, PW1 admitted that these four namely Raj Kumar, Surender, Praveen and Bhim sen were the same persons who had been apprehended from the spot and who were the part of the crowd which had pelted stones on revenue officials and police officials. PW1 next identified these four accused persons during the cross-examination by the State.

35. PW2 was more forthcoming regarding the presence of these four accused. He stated during the examination in chief that these four had been detained at the spot but were released subsequently. Though he did not name these four accused, he identified them by appearance.

36. PW3 (Raj Kumar), the Tehsildar who reported the violence to the police, did not name or identify either of the six accused by his own knowledge during the examination in chief. He did maintain that a crowd of 200- 300 persons led by some 'leader type persons' had pelted stones on the revenue staff, police officials and the machines. However, he stated that it was his staff who had informed him that the local Ex-MLA namely Neel Daman Khatri had led the crowd. He then identified Neel Daman Khatri before the court. PW3 did not state that other persons had been detained at the spot. He, however, maintained that two-three police persons and also two- three public persons were injured in the incident. Further, that the police had started a Lathi Charge (Baton charge).

37. PW4 (SI Roop Chand) rendered a different account regarding the role of accused Neel Daman Khatri and Joginder Dahiya. He did not state that they had instigated the crowd but they had come with the crowd which pelted stones. He did not refer to the detention or identity of the other four accused persons at the spot. PW4 also stated that one lady police constable and two male constables had been injured in the incident.

38. The deposition in chief of PW5 and PW6 was similar in tenor to the statement of PW4. They too asserted that accused Neel Daman Khatri and Joginder Dahiya had accompanied the crowd which pelted stones on the police team. However, they did not allege instigation of the mob by these two accused persons.

39. PW5 and PW6, however asserted the detention of four persons by the police at the spot. Both of them identified the said four accused viz Raj Kumar, Surender, Praveen and Bhim Sen.

40. Since the allegations disclosed injuries upon three police officials, their deposition is taken up together.

41. PW7 (Head Constable Hem Chander) deposed regarding accused Neel Daman Khatri and Joginder Dahiya having come to the spot with 200-250 persons and having argued with the demolition team for stopping the demolition. He stated that "in the meantime" the public persons started pelting stones on the revenue team and police officials, causing injuries to his right shoulder apart from injuries to one male constable and one female constable.

42. This witness identified accused Neel Daman Khatri and Joginder Dahiya but only indicated the detention of three-four unnamed persons by the police. He did not name or identify the remaining four accused persons.

43. The next injured person was Head Constable Jyoti who deposed as PW8 in consonance with PW7 and identified one accused namely Neel Daman Khatri as having come to the spot with 200-300 persons and arguing with the demolition team for stopping the demolition. She also stated that the public persons then started pelting stones on the revenue team and police officials. She stated that she had suffered injuries on her left shoulder and scratches on her right hand and that two other police officials namely constable Hem Chander and constable Rakesh Kant also suffered injuries. PW-8 stated that four- five persons were detained at the spot. However, unlike PW7, PW8

could identify or name only one accused viz Neel Daman Khatri and did not identify either Joginder Dahiya or the other four accused.

44. The last injured person examined as a witness was Constable Rakesh Kant (PW25) who supported PW17 in asserting that accused Neel Daman Khatri and Joginder Dahiya came to the spot with 200-250 persons and started arguing with the demolition team for stopping the demolition while public persons started pelting stones. He stated that he had suffered pelvic injuries while another male constable as well as female constable too suffered injuries. He maintained that three-four persons had been detained at the spot by the police. While he did not name these three-four persons or identify them in court, he did identify accused Neel Daman Khatri and Joginder Dahiya.

46. PW9 identified accused Neel Daman Khatri and Joginder Dahiya and also stated that four persons had been detained at the spot. However, he did not indicate whether the said four persons had taken part in the violence. He also did not identify the four accused namely Raj Kumar, Surender, Praveen and Bhim Sen as the said four persons.

47. PW13 (ASI Baljeet Singh) was the next police witness who also stated that the Ex-MLA and Joginder Dahiya had come to the spot with a crowd of 200-250 persons and that public persons pelted stones at the police. He identified the Ex-MLA before the court by pointing towards accused Neel Daman Khatri. He also identified Joginder Dahiya. He did not mention the detention of any other person and did not identify or name the other four accused persons.

48. PW14 (HC Kapil) rendered an account similar to PW1 and PW2 regarding instigation of the public persons by accused Neel Daman Khatri and Joginder Dahiya, leading to stone pelting and injuries upon the police officials. He identified Neel Daman Khatri and Joginder Dahiya. He also asserted that four public persons had been detained at the spot though he did not mention their names and also did not identify any of the other four accused persons as the said detainees.

49. PW14 also stated that IO had prepared a rukka and handed it over to him for registration of the FIR. PW14 then went to the police station and returned to the spot with a copy of the original rukka and FIR so registered. These documents were handed over to the IO by him.

50. PW15 (ASI Naresh) similarly maintained that accused Neel Daman Khatri and Joginder Dahiya had instigated the public which then started pelting stones upon the revenue officials and police officials causing injuries to one lady constable and two male constables. PW15 also stated that three-four persons had been detained at the spot. However, he only identified accused Neel Daman Khatri and Joginder Dahiya before the court and did not incriminate the other four accused persons in the incident.

51. PW16 (SI Ram Kishan) maintained that accused Neel Daman Khatri and Joginder Dahiya had come to the spot along with the crowd of 150-200 persons. He stated with respect to the circumstances of stone pelting that " I do not know how but suddenly the public persons started throwing stones at the revenue staff". Further, that when the police officials tried to intervene, stones were also thrown at them, thereby causing injuries to one lady constable and two male constables. Though he stated that four public persons had been detained at the spot, he did not name them or identify them before the court. He however, identified accused Neel Daman Khatri and Joginder Dahiya.

52. PW17 (SI Sudhir) also deposed in conformity with the other witnesses regarding the particulars of the incident wherein he too asserted that after the demolition proceedings had commenced, 150-200 persons came to the spot along with former MLA Neel Daman Khatri and Joginder Dahiya. He did not assert any previous familiarity with these two persons and rather stated that the names of these two persons were given to him by other police officials. He next stated that "suddenly the public persons started throwing stones at the revenue staff. When the police persons tried to intervene, stones were also thrown at the police officials". He also stated that three police officials including one lady constable and two male constables had been injured. He did not assert the detention of four persons at the spot by the police officials, however, he correctly identified accused Neel Daman Khatri and Joginder Dahiya.

53. PW18 (SI Rajbir Singh) was the next in the line of police witnesses who witnessed the incident. His deposition mirrored the account given by the other witnesses to the extent that he claimed that the crowd of 200-250 persons had been accompanied by Ex-MLA Neel Daman Khatri and Joginder Dahiya. Further, that the public had suddenly pelted stones leading to injuries to one lady constable and two male constables. He did not refer to the detention of four other persons and only identified accused Neel Daman Khatri and Joginder Dahiya before the court.

54. The account given by PW19 (ASI Bhim Sen) was quite the same as the deposition of PW18 in its identification of accused Neel Daman Khatri and Joginder Dahiya as the persons who accompanied the crowd which then pelted stones on the police officials.

Investigating Officers First Investigating Officer

55. The court may next cite the deposition of the two investigating officers. The first investigating officer was SI Amit (PW23) who had also prepared the rukka and sent the same for registration of the FIR. He was also cited as an eye witness, being a member of the police team which had gone to the site of demolition proceedings.

56. PW23 deposed that on the date of incident viz 14.11.2014, he had been posted as Sub Inspector at PS:

Narela. Further, that on the said day, a demolition programme had been planned at Gautam Colony, Narela. PW23 stated that he left for the said area along with ACP Ghanshyam, Inspector Subash Chand, SI Somvir and SI Roop Chand and other Police staff, Tehsildar and other revenue staffs. He stated that as they were approaching the area of demolition along with a JCB in the direction of Gautam Colony, some women blocked the passage of the JCB by standing in front of it. However, they were removed with the help of lady police staff.

57. PW23 described the sequence of events at the location of the demolition proceedings in detail. He stated that when they reached Gautam Colony, the demolition proceedings were commenced by the revenue officials.

These proceedings were also photographed and videographed. Further, that a crowd of 200-250 persons soon came to the spot along with Ex-MLA Neel Daman Khatri and Joginder Dahiya. PW-23 described the incident of stone pelting by next stating that "I do not know how but suddenly the public persons started throwing stones at the revenue staff. When the police officials tried to intervene, stones were also thrown at the police officials. This lead to injuries to three police officials including one lady constable Jyoti, constable Hem Chander and Constable Rakesh had sustained injuries". Further, that the injured police officials were taken to Raja Harischandra hospital for medical treatment and additional force was called at the spot. PW-23 stated that four public persons were detained at the spot by the police officials and that public persons also stopped the trains going through the nearby train route of Gautam Colony. PW-23 confirmed the circumstances of recording of the FIR by stating that the Tehsildar, Narela had handed over a written complaint to him on the basis of which he prepared a rukka which was proved by him as Ex. PW23/1. He asserted that after preparation of the rukka, he had handed over the same to Constable Kapil who duly got the FIR registered at PS Narela and came back to hand over the copy of the FIR and original rukka to him.

58. PW-23 next proved the site plan prepared by him at the instance of complainant Tehsildar Raj Kumar as Ex. PW23/2. PW-23 then went to PS Narela where he recorded the statements of witnesses. It was stated by him in the context of detentions that four public persons who had been apprehended from the spot were released at the police station after verification of their addresses. PW-23 thereafter deposited the MLC of Constable Rakesh and Constable Hem Chander in Raja Harischandra Hospital for opinion. After receiving opinion on the MLC of Rakesh and Hem Chander, section 333 IPC was added in the present case.

59. According to PW-23, he was subsequently transferred from Narela police station.

60. The deposition of PW-23 regarding the four persons detained at the spot was not certain in any measure. He stated that on account of the passage of time, he was unable to remember the names of the four public persons who were apprehended from the spot. He, however, asserted that their names were mentioned in the rukka. Upon consulting the rukka, PW-23 stated the names of the four

public persons who were apprehended from the spot as (i) Raj Kumar, son of Indra Raj, (ii) Surender Singh, son of Mahar Singh, (iii) Praveen, son of Subhraj and (iv) Bhim Sen, son of Dharam Dutt Sharma.

61. Yet, PW-23 did not identify these four accused before the court though he pointed towards accused Neel Daman Khatri and accused Joginder Dahiya to correctly identify them. He qualified his stance on identification by stating that he could identify the accused persons to the best of his recollection as several years had passed.

62. On account of his failure to identify four of the accused, PW-23 came to be cross examined by the Ld. Prosecutor. Upon the prosecutor pointing towards these four accused, namely Raj Kumar, Surender Singh, Praveen and Bhim Sen and being asked whether these four were the same as had been apprehended at the place of incident, PW-23 still failed to identify them. He maintained that on account of the passage of ten years, he was unable to say whether these four accused persons were the same as had been apprehended at the spot. (For reference of the time frame, the court may note that the incident was dated 14.11.2014 and PW-23 was examined on 04.09.2024).

63. Infact, PW-23 denied the suggestion from the Ld. Prosecutor to the effect that these four accused had been apprehended at the spot on 14.11.2014.

Second Investigating Officer

64. The second investigating officer namely SI Karamveer, who filed the chargesheet, was PW26.

65. PW-26 stated that in January 2015, he was transferred to PS Narela and investigation of the present case was marked to him on 30.01.2015. Upon examining the case file, he found four accused persons namely Raj Kumar, Surender, Praveen and Bhim Sen to have been bound down by the previous Investigating Officer. He also noticed allegations against accused Neel Daman Khatri (Ex-MLA) and Joginder Dahiya (President Narela Federation). These two accused persons were interrogated on 16.08.2016. PW-26 stated that he had recorded the statement of constable Kapil and also examined photographer Ravinder. The photographer handed over a certificate under Section 65B of Indian Evidence Act to him. He also added section 109 Indian Penal Code in the present case and subsequently submitted an application for permission under section 195 Cr.P.C. before SDM, Narela.

66. After the completion of investigation, the charge sheet came to be filed on 22.09.2016. PW-26 stated that he had collected the permission under section 195 Cr.P.C. and filed the same in the court.

67. PW-26 identified the accused persons, except accused Bhim Sen, before the court. The identity of accused Bhim Sen was not disputed by the Counsel for the accused.

Examination under section 313 Cr. PC

68. The incriminating evidence was projected to the accused persons under section 313 Cr.P.C. wherein they refuted the allegations and maintained their innocence.

69. The respective defence projected by the six accused persons when they were granted liberty through the said examination under section 313 Cr. PC is briefly noted below.

70. Accused Neel Daman Khatri and Joginder Dahiya similarly claimed that both of them had been asked by the police authorities and local representatives to intervene for withdrawal of the demonstration at the site and to ensure that the public persons vacated the railway track near Gautam Colony. They stated that upon their request, the public gathered moved away.

71. A similar defence was projected by accused Raj Kumar, Praveen and Bhim Sen wherein they stated that they had visited the site of the protest out of curiosity during an evening walk on the date of incident whereupon the police officials present at the spot noted their names and they were later summoned by the court. They claimed that they had been falsely implicated in the present FIR.

72. Accused Surender rather stated that he was visiting his agricultural land near Gautam Colony, Narela on the date of incident in evening hours at around 03:30 p.m. when some police officials visited his farm and made enquiries from him about his presence in the area. He expressed his ignorance about the protest and later received summons from the court. He too maintained that he had been falsely implicated in the present case.

Arguments on behalf of the State

73. The Ld. Prosecutor sought a finding of guilt against all accused persons under the various articles of charge on the projected strength of the eye witness accounts and injuries upon three police officials.

74. It was agitated that all police witnesses cited as eye witnesses had described the incident from inception to the end in corroborative detail by stating that the revenue team and the police team had come under attack from public persons led by accused Neel Daman Khatri and Joginder Dahiya. The Ld. prosecutor referred to the eye witness accounts of each of the police witnesses to submit that the arrival of a multitude public persons and instigation of this crowd by its two leaders qualified as an unlawful assembly within the meaning of section 141 IPC and punishable under section 143 IPC. It was asserted that the only apparent motive of this assembly was to prevent the successful completion of the demolition drive against unauthorised construction at the site in Narela. Since the revenue and police teams were public servants, the Ld. Prosecutor submitted that the offence under section 353 stood established apart from the offence of rioting punishable under section 147 IPC.

75. The aid of section 149 IPC was sought for a verdict of conviction of all accused persons on the submission that they had the common object of preventing the demolition activity. The injuries on the person of the three injured police persons were highlighted by the prosecutor from their respective MLCs to canvass the finding against four accused persons namely Raj Kumar, Surender, Praveen and Bhim Sen under sections 332 and 333 IPC.

76. It was submitted on the question of identification of the accused that while accused Neel Daman Khatri and Joginder Dahiya had been identified by all public witnesses except PW-3 (Tehsildar Raj Kumar), the remaining four accused had also been identified by PW-1 and PW-2.

77. In sum, the submission of the Ld. Prosecutor was that the accused persons had been thoroughly established as being guilty of commission of the offences under consideration.

Arguments on behalf of the accused

78. In defence, it was argued by the Ld. Counsel for the accused persons that the evidence flowing from the prosecution witnesses was riddled with inconsistencies in the account of the incident. The Ld. Counsel submitted that the witnesses differed regarding the number of police men at the spot and their mode of transport to the spot. It was further submitted that no specific evidence regarding the instigation of the crowd by accused Neel Daman Khatri and Joginder Dahiya had emerged from the statements of the witnesses and that these two accused were infact playing the role of peace makers to pacify the crowd on the spot.

79. The innocence of these two accused persons was also sought to be drawn from the statement of the second investigating officer (PW-26) to the effect that they had been joined to the investigation only on 16.08.2016 (which was about one year and nine months from the date of incident viz 14.11.2014).

80. The Ld. Counsel for the accused also stated that while the intimation from the Tehsildar regarding the requirement for a police force was stated to have been sent to the ACP, Narela, the first investigating namely SI Amit (PW-23) rather claimed that the information was given to SHO PS Narela. The legality of the demolition exercise was sought to be questioned on this claimed infirmity so as to argue that there was no lawful discharge of public duty in existence which could have then been obstructed by the accused persons to their peril under section 353 IPC.

81. It was specifically argued with respect to accused Raj Kumar, Surender, Praveen and Bhim Sen that multiple prosecution witnesses (PW-1 and PW-23) had failed to identify them and were infact cross examined by the State as hostile witnesses. Also, that the witnesses had not described any particular act of these four accused which could be construed either as membership of a lawful assembly or as rioting and obstruction of public servants. The Ld. Counsel submitted that none of the police witnesses were able to clarify as to which accused or which member of the public had inflicted injuries upon the three police persons so as to establish the ingredients of sections 332 and 333 IPC.

82. The Ld. Counsel for the accused highlighted the absence of the public witnesses to submit that the allegations were expressed only by police witnesses who cannot be considered independent witnesses and that the offences in question therefore remained not proved.

Discussion and reasons

83. The principal enquiry, upon which the findings qua all penal provisions invoked in the charge are dependent, is to determine whether an unlawful assembly came into existence at the place of incident within the definition of section 141 IPC.

Unlawful assembly

84. Section 141 reads as under:

Unlawful assembly.--An assembly of five or more persons is designated an "unlawful 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 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.

85. It is apparent that two requirements must be fulfilled for an assembly to be termed an 'unlawful assembly' within the meaning of section 141 IPC. Firstly, the group of persons in question must be more than five in number. Secondly, the assembly must possess a common object of the description given in the above reproduced five clauses of section 141. These clauses essentially relate to the use of criminal force to either commit an offence or resist the execution of any legal process. Instances constituting the exercise of criminal force upon public servants or the use of such force to obtain the commission of an act which a person is not bound to do would also lie within the definition of an unlawful assembly.

86. The provision lastly envisages situations where the object of an assembly evolves from the time of assembly to a later stage and assumes intent covered by the above five clauses.

87. Since the first charge against the accused persons relates to section 143 IPC, which provides punishment for membership of an unlawful assembly, the court must first examine the evidence led by the prosecution in support of this charge.

88. As a preface, it is observed that although the charge under section 143 IPC had been invoked with the aid of section 149 IPC, the court finds the said modality to be a surplusage. Section 143 is a stand alone offence which is invited against a person because he is a member of an unlawful

assembly. The prosecution must first establish that a person satisfies the test of section 141 IPC so that section 143 may be employed to convict him. Section 149 IPC would come into play for the exercise of assigning culpability for other substantive offences, apart from section 143 IPC, as for instance the offences applied in the charge against the various accused persons viz sections 147, 332, 333 and 353 IPC.

89. The court is able to decipher separate strands of evidence which must be proved by the prosecution in support of the charge under section 143 IPC in the present allegations. The first aspect is the description of the number of persons who assembled as a crowd with the second element being the description of the behaviour of the crowd in pelting stones. The last component of the evidence is the purported leadership of the crowd by two accused persons (accused Neel Daman Khatri and Joginder Dahiya) who were allegedly inciting the mob.

90. The court would observe that all police witnesses who were members of the team present at the place of incident described the arrival of a crowd of persons in the range of 200 to 250 persons after the demolition activities had commenced. It is also material that all police witnesses maintained that even on the way to the site of demolition, the revenue team and police team were obstructed by a group of women who had to be removed from the path of the JCB machines heading for the site. Seen together, the only prudent assessment of the arrival of such large numbers at the site is that the crowd intended to compel the demolition team to stop the activity. Pertinently, these persons came as a group and were not just lay residents who may have been the residents of the locality which was the subject of demolition. Ordinary standards of deduction dictate the conclusion that the huge gathering of persons came to the spot with the common object of overawing the civil and police team deployed for the demolition.

91. This finding is bolstered by the assertion of all police witnesses that the crowd engaged in stone pelting. All witnesses were explicit in stating that after the crowd arrived at the spot, the public persons started pelting stones at the revenue team as well as the police team.

92. The court is unable to accept the contention of the Ld. Counsel for the accused that police witnesses must be disbelieved only because no public witnesses were cited or examined by the prosecution. There is no presumption against the credibility of a police witness. Infact, every public servant is presumed to be acting in good faith, including by way of deposition in court, unless the credibility of such a witness is impeached during cross examination. With the chaotic environment of a demolition drive amid a hostile gathering of local residents, who were the subject of the drive, it would be imprudent to expect the investigating officer to have secured public witnesses for deposing against other public persons. The law must proceed on reasonable assumptions. The insistence on public witnesses in a mob like environment would be an unreasonable assumption. It is then the content and consistency of the testimony of the witnesses, even if they are police officials, which must govern the faith of the court in their account. In the present trial, the court is unable to detect any particular infirmity or mala fides in the statements of the seventeen police witnesses and the Tehsildar.

93. There is no particular reason for the court to disbelieve the seventeen police witnesses (PW-1 to PW-2, PW-4 to PW-9, PW-13 to PW-19 as well as PW-23 and PW-25) who similarly testified that the crowd of persons had engaged in stone pelting. This activity constitutes the ingredients of clauses First, Second and Fifth of section 141 IPC in as much as the evident purpose of the crowd was to overawe the public servants inter alia the Tehsildar and his team as well as the police team who were exercising their lawful power to carry out or safeguard the demolition activity. The actions of the mob were clearly designed to resist the demolition and to compel the team of the Tehsildar to cease the exercise, thereby fulfilling the definition under clauses Second and Fifth of section 141 IPC.

94. The court would preface the further discussion regarding the role of each of the accused persons in the said unlawful assembly by expressing that proof of section 141 IPC is distinct from proof of section 143 IPC. Section 141 IPC is generic in visualising an assembly of five or more persons as being an unlawful assembly if the common object of such an assembly is of a description satisfying the five clauses of section 141. Section 143 IPC is, however, more specific to each accused where the prosecution would have to separately establish the membership of each accused in such an unlawful assembly to seek conviction under section 143 IPC. Explained another way, the prosecution must first establish that an unlawful assembly came into existence and then prove as to which accused was a member of the same.

95. The first step of this exercise is not identity specific.

Therefore, it would be enough for the witnesses to state that persons more than five in number had come together with the common object of the description given in the five clauses of section 141 IPC. After all, when a crowd of people assembles in the view of a witness, the witness may not necessarily know their identities. He may, however, still be able to convey that the crowd comprised more than five persons and also offer an account of the conduct of the gathering. This is precisely the scenario which has unfolded in the present trial. All police witnesses maintained that 200-250 persons arrived at the spot after the demolition had started and started pelting stones. This common conduct of a sizable number of persons reflects a common object. After all, the group had reached the location of a demolition activity carried out by government agencies. The circumstances of an incident and the conduct of the members of a group is relevant to determining their common object. The widespread use of violence by the group in question establishes that its members intended to unlawfully stop the demolition activity.

96. The court must highlight that it is immaterial as to what was the pre meditated or original intention of the crowd in coming to the spot. The explanation to section 141 IPC also contemplates an assembly, which was not unlawful when it came into being, becoming an unlawful assembly at a subsequent stage. In the present facts, the crowd which came to the spot engaged in stone pelting on the revenue and police team. At the point of such violence, the assembly became an unlawful assembly.

97. The last aspect relates to leadership of the assembly.

Again, almost all police witnesses similarly maintained that the crowd was led by accused Neel Daman Khatri and Joginder Dahiya. While some witnesses (PW-1, PW-2, PW-13, PW-14, PW-15 and PW-16) stated that these two accused had instigated the crowd, others (PW-4, PW-5, PW-6 and PW-9) stated that these two had come with the crowd which then started pelting stones. The court shall be taking up the individual culpability of these two accused persons in the context of the statements of the above witnesses in the later part of the judgment. Presently, the exercise is limited to determining whether an unlawful assembly came into existence. The above statements are therefore relevant here to the extent that the crowd is established as having ascertainable leaders and must therefore be considered an organised group. If a heralded group of public persons engages in violent activity against public servants, it must be concluded that the assembly which they had formed was indeed an unlawful assembly.

98. The court may record here that the prosecution had also relied upon certain purported video footage of the incident by exhibiting it in evidence through a DVD which was proved by the videographer (PW-11) who recorded the same. PW11 (Ravinder) deposed that being a videographer he had gone to the area of Gautam Colony with police officials in the year 2014 on the instructions of the owner, namely Amardeep, of the shop where he was working. He exhibited the DVD as Ex. P-1.

99. The Ld. prosecutor had submitted that the footage reflected accused Neel Daman Khatri and Joginder Dahiya inciting the crowd to pelt stones and subsequently also blocking the railway track near the place of incident.

100. The court does not find the DVD to be admissible in evidence. For electronic evidence to be proved, a certificate under section 65B of the Indian Evidence Act is required to be filed by the person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities. However, it emerged from the cross-examination of PW11 that the camera deployed for recording the incident by him was using a small cassette which may not have been new and in fact could have been reused. He also admitted that the recording was made in multiple videos and was not continuous. PW11 further stated that the recording had been transferred to the DVD by Amardeep and not him. The recording was not transferred in the presence of PW11.

101. The court is of the finding that the certificate under section 65B is invalid as it was not given by the appropriate person, who would have been Amardeep. Since the camera, cassette and DVD essentially remained in the control and management of Amardeep, especially when the contents of the cassette were transferred to a DVD, PW11, being only the videographer, was not competent to provide the certificate regarding the footage. Infact, as admitted by PW11 during cross-examination, he was deputed only to hand over the DVD to the police on the instructions of Amardeep. Since PW11 was not cited as an eye witness but as a witness to the recording of footage of the incident, his deposition, involving as it does electronic evidence, must submit to the modality of Section 65B. His tender of the footage in the form of the DVD fails the test of section 65B of the Indian Evidence Act.

102. Yet, as noted in the preceding discussion on the basis of the other evidence on record, the prosecution has succeeded in the initial exercise of establishing the existence of the ingredients of

section 141 IPC.

Applicability of section 149 IPC

103. Since the court has concluded that the common object of this assembly was to unlawfully restrain the demolition team from carrying out its duties of demolition and to prevent the police team from providing protection to this official act, the prosecution has consequently also justified the invoking of section 149 IPC.

104. Section 149 reads as under:-

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--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 of the committing of that offence, is a member of the same assembly, is guilty of that offence.

105. Section 149 IPC invokes the principle of constructive liability of accused persons even if no overt act is imputed to them in an offence if it can be established that such an offence was committed by any member of an unlawful assembly in prosecution of the common object of such assembly. The provision would be invoked even when the members of such an assembly had knowledge that an offence was likely to be committed in the prosecution of the common object. As a logical corollary, once the ingredients of section 141 IPC are proved by the prosecution, the grounds for invoking section 149 IPC stand established too.

106. It stands established beyond reasonable doubt that an unlawful assembly comprising a large crowd of about 200-250 persons was present at the site of the demolition on the date of the incident with the common object of preventing the demolition activity at the place of incident. It stands to reason that all members of this crowd reasonably knew that a concerted group action of such huge number of persons, led as they were by local leaders, would lead to violence in the nature of rioting or assault upon the public servants who were attempting to carry out or safeguard the demolition process.

Culpability under section 143 IPC

107. The next exercise, as expressed earlier, is to identify, within the ambit of section 143 IPC, from among the six accused persons, the accused who were members of this unlawful assembly as the articles of charge flow from proof of such membership. It would then be determined by the court whether all or any of the six accused persons are liable for a finding of guilty qua the substantive offences invoked against them through the articles of charge for which they have faced trial.

108. The six accused persons can be viewed in two clusters on account of the role ascribed to them in the chargesheet and agitated against them by the Ld. Prosecutor during the course of arguments.

The first identifiable group comprises the purported instigators of the violence viz accused Neel Daman Khatri and Joginder Dahiya. The second group of accused, who are alleged to have been detained at the spot, as members of the unlawful assembly, were Raj Kumar, Surender, Praveen and Bhim Sen. The role of the second group of accused persons is taken up first for discussion.

Accused Raj Kumar, Surender, Praveen and Bhim Sen

109. Of the plethora of police officials examined as eye witnesses, only five witnesses alluded to the role of these four accused in some measure albeit not without contradictions.

110. SI Amit (PW23), who was effectively the first investigating officer, rendered an unsure account regarding these four accused. During his examination-in-chief, he did state that four public persons had been detained at the spot by police officials. However, he also stated that he was unable to remember the names of these four public persons although their names were mentioned in the rukka. PW23 then named these four accused persons after going through the rukka. Yet, he could still not identify them.

111. The court would observe that as an eye witness and also the police official who dispatched the rukka, PW23 was well placed to cite the names and render the identification of these four accused persons. However, he was found wanting on both counts. The naming of these four accused persons only by reference to the rukka does not constitute a weighty incrimination. While passage of time, as stated by PW23, may have been a good reason for failing to recognise the accused persons in court, the fact remains that PW23 did not identify these four accused persons. Moreover, his account did not contain any detail of the physical position of the four accused persons relative to the other members of the crowd when they were purportedly detained at the spot. No details came forth regarding their role in the incident either. The deposition of PW23 is not inspiring enough to find that these four accused persons were a part of the unlawful assembly.

112. The next witness of note with respect to these four accused persons was SI Somveer (PW1). He too was a member of the police team which had come under the onslaught of stone pelting. While he asserted during his examination-in-chief that four persons were apprehended at the spot and subsequently released on the directions of the senior officers, he could not identify them. This witness came to be cross-examined by the state and it was only during the cross-examination by the Ld. Prosecutor that PW1 affirmed the leading question from the prosecutor seeking confirmation of these four accused persons as the same persons who had been apprehended from the spot as members of the stone pelting crowd.

113. The court does not find the prompted identification of these four accused by PW1 during the cross- examination by the Prosecutor to be worthy of belief. Interestingly, PW1, much like PW23, had identified the other two accused persons namely Neel Daman Khatri and Joginder Dahiya. Thus, the failure of PW1 to identify these four accused persons at the first instance (during the examination-in-chief) denies the credibility of such identification during his cross-examination as a witness hostile to the prosecution (on the aspect of identity of these four accused persons).

114. The next witness against these four accused persons was Inspector Subhash (PW2) who was the Inspector, investigation at PS Narela on the date of incident and had led the police team of 61 police officials to the place of incident.

115. He deposed that four persons from the unlawful assembly were detained at the spot and released later upon orders of the senior police officials on account of them being permanent resident of Narela. Though PW2 could not tell their names, he did identify them before the court.

116. Notwithstanding the identification of these four accused persons by PW2, the court is unable to place its conviction in the testimony of PW2. Much like PW23 (the first investigating officer), PW2 was also an eye witness. Yet, similar to the account given by the PW23, PW2 also did not specify the role of these four accused persons in the violence at the spot.

117. Now, the court is indeed conscious that it has reached a finding in the preceding part of the judgment that an unlawful assembly had come into existence at the place of incident. It is also the mandate of section 149 IPC that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as members of the assembly knew to be likely to be committed, every member of such assembly would be guilty of the offence. Yet, this principle of constructive liability comes into play only if membership of the unlawful assembly is established through evidence.

118. Here, the presence of an accused at the spot is to be distinguished from membership of an unlawful assembly. The court has thus far only concluded that the crowd of 250-300 persons emerged as an unlawful assembly from the consistent account of all police eye witnesses inter alia that the crowd pelted stones at the revenue team and police officials in order to stop the demolition exercise. This finding is only one leg of the exercise for the prosecution.

119. The next and more critical endeavor for the prosecution was to prove as to which of the accused persons were members of the unlawful assembly.

120. While the testimony rendered by PW23, PW1 and PW2 attempted to establish presence of these four accused persons at the spot, their presence is not equivalent to membership of the unlawful assembly. Every present person in the vicinity of a place of occurrence involving an unlawful assembly cannot prosecuted with the aid of sections 141, 143 and 149 IPC.

121. The three witnesses (PW23, PW1 and PW2) discussed thus far neither inspire confidence in the presence of these four accused persons at the spot nor do they indicate how these four may have been members of an unlawful assembly.

122. The other two police witnesses who spoke about the role of these four accused persons were SI Rajbir (PW5) and SI Jagbir Singh (PW6). Both of them similarly asserted that the four members of the crowd of public persons detained by the police officials were these four accused persons. Both PW5 and PW6 identified accused Raj Kumar, Surender, Praveen, Bhim Sen by pointing towards them.

123. The reasons recorded by the court for disbelieving the account given by PW2 also apply in equal measure to the appraisal of the evidence given by PW5 and PW6. These witnesses also did not ascribe any particular role of these four accused persons or specify their positioning in the crowd. Their examination-in-chief was devoid of material details for the court to determine whether any role was being played by these four accused persons in the violence which occurred at the spot. The mere assertion that these four accused persons had been detained by the police does not elevate the testimony to the level of proof of membership of an unlawful assembly.

124. Since the prosecution has not succeeded in establishing that these four accused persons were member of an unlawful assembly, none of the articles of charge, which flow from such membership, can be sustained. The ingredients of section 143 IPC remain not proved against these four accused. No specific act of rioting (punishable under section 147 IPC) or assault upon public servants (punishable under section 353 IPC) has been proved against them either. Similarly, no witness has asserted that these four accused persons caused injuries upon any of the three injured police men. Thus, neither by operation of sections 143 or 149 IPC nor through any individual evidence does the finding of guilt attach itself to these four accused persons.

125. Accused Raj Kumar, Surender, Praveen and Bhim Sen are entitled to acquittal under all articles of charge.

Accused Neel Daman Khatri and Joginder Dahiya

126. The evidence against the remaining two accused namely Neel Daman Khatri and Joginder Dahiya is next taken for analysis.

127. As highlighted in the preceding portions of the present judgment, all police witnesses referred to these two accused as having led the crowd of 200-250 persons or having arrived with it. While PW1, PW2, PW13, PW14, PW15 and PW16 maintained that these two accused had incited the crowd and stone pelting followed thereafter, the other police witnesses viz PW4, PW5, PW6, PW7, PW8, PW9, PW17, PW18, PW19, PW23 and PW25 asserted that these two accused had come along with the crowd and the stone pelting started thereafter.

128. The gathering of persons which had reached the spot was undoubtedly an unlawful assembly. Being the former MLA, Neel Daman Khatri was not only identified by all these witnesses as having either led or accompanied the crowd but was also in the nature of a leader per se. A former MLA arriving at the scene of demolition activity by the revenue authorities can only be viewed as leading the group. His peculiar position as a former Member of the Legislative Assembly denies him the benefit of being viewed as a lay by stander or participant. In fact, even the drift of the cross-examination of these seventeen police witnesses by the ld. counsel for accused Neel Daman Khatri and Joginder Dahiya was that as local leaders, both of them were regular visitors to the police station and even participating in the social outreach programme of the police. All police witnesses identified accused Neel Daman Khatri and Joginder Dahiya before the court. In fact, the presence of these two persons at the site of the demolition was not even a subject of dispute by the defence. The defence had rather portrayed them as attempting to pacify rather than aggravate the situation.

129. The court concludes from the deposition of the police witnesses that accused Neel Daman Khatri and Joginder Dahiya were members of the unlawful assembly which formed at the place of incident on 14.11.2014 at about 12:30 p.m.

130. As members of an unlawful assembly, both of them are liable for conviction under Section 143 IPC.

131. The court has previously highlighted in this judgment that the applicability of section 149 along with section 143 IPC is quite superfluous as section 143 is a stand alone offence arising from proof of the ingredients of Section 141 IPC. Each accused shall have to be judged separately qua section 143 IPC on the touchstone of the evidence led against him. Thus, accused Neel Daman Khatri and Joginder Dahiya are liable to be held guilty under section 143 IPC even without the aid of section 149 IPC.

Other articles of charge against accused Neel Daman Khatri and Joginder Dahiya

132. The other two articles of charge invoked against accused Neel Daman Khatri and Joginder Dahiya are section 147 IPC read with section 149 IPC and section 353 read with both - section 109 IPC and section 149 IPC.

133. The court would engage in a more granular analysis of the evidence in the context of the above two articles of charge.

134. It had been the argument of the ld. counsel for the defence that the solitary witness from a department other than the police team had failed to identify accused Neel Daman Khatri or Joginder Dahiya as leading or being members of the unlawful assembly in question.

135. This witness was the Tehsildar namely Raj Kumar (PW3) who was leading the team of revenue officials for the demolition activity on 14.11.2014. PW3 had deposed that "some leader type persons were leading the crowd and upon their arrival, the crowd obstructed us from doing the demolition and started pelting stones on our staff, police officials and machines. The crowd had obstructed us from doing our official duty i.e. demolition work".

136. PW3 lastly stated that "Later on, I was also informed by my staff that the local Ex-MLA of Narela Mr. Neel Daman Khatri was leading the crowd. Accused Neel Daman Khatri is present in the court today". PW3 then identified accused Neel Daman Khatri.

137. It was the submission of the ld. Counsel for the accused that the accused had been falsely identified by the police officials.

138. The court would observe that every eye witness is not cited or expected to identify each of the accused persons. The police officials, as apparent from the consistent cross-examination of all police witnesses, were evidently familiar with Neel Daman Khatri on account of him having previously been the local MLA. The identification of Neel Daman Khatri or his presence at the site was infact

not even the subject of dispute or suggestion by the defence during the cross-examination of the police witnesses. Infact, the assertion by PW3 that the crowd was being led by "some leader type persons" works in conjunction with the deposition of the police witnesses who identified these leaders as accused Neel Daman Khatri and Joginder Dahiya.

139. The other ground urged in defence was that since accused Neel Daman Khatri and Joginder Dahiya were joined to the investigation only as late as 16.08.2016, the delay from the date of incident viz 14.11.2014 till 16.08.2016 dented the authenticity of the deposition of the 17 police witnesses against these two accused.

140. The court would emphasise that time consumed in investigation cannot be equated with delay in joining accused persons to the investigation. Evidently, no arrest was made upon the incident in question and the two leaders viz Neel Daman Khatri and Joginder Dahiya were already known to the police. Hence, there would not have been any reasonably apprehension of the two accused not being traceable so as to compel immediate joining of these persons to the investigation. The eye witness account given by the police witnesses regarding the presence of these two persons at the time of incident cannot be displaced by the circumstance of the investigation having joined them only on 16.08.2016.

141. Addressing itself to the articles of charge at hand, the court would rely on the description of violence by the police witnesses. All these witnesses specifically stated that the crowd of public persons had resorted to stone pelting at the revenue team and police team. Section 147 IPC, which pertains to punishment for rioting, becomes applicable once the ingredients of the defining section i.e. 146 IPC are met.

142. Section 146 IPC reads as under:-

146. Rioting- Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

143. This definition reflects two components, the first being the use of force and violence by an unlawful assembly and the second being prosecution of the common object of such assembly.

144. The court has already rendered the finding that the two accused were members of an unlawful assembly of which the common object was to prevent the lawful demolition exercise. Since it has emerged that the crowd pelted stones which amounts to use of force and violence, it stands established that rioting occurred at the date, time and place of incident within the meaning of section 146 IPC and punishable under section 147 IPC. Since no overt act is required to be proved by a member of an unlawful assembly if an offence is committed by any of the members in prosecution of the common object of such assembly, the two accused namely Neel Daman Khatri and Joginder Dahiya are liable to be held guilty under section 147 IPC with the application of section 149 IPC.

145. The last article of charge against these two accused is section 353 IPC read with section 109 IPC and also read with section 149 IPC.

146. Section 353 IPC is noted below:-

353. Assault or criminal force to deter public servant from discharge of his duty.--Whoever 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 to 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.

147. This provision seeks to punish acts of violence against public servants who may be discharging their official duties. The revenue team and police team were present at the site under the color of official duty on account of the planned activity of demolition of unauthorised encroachment or construction at Narela on 14.11.2014. The prosecution had relied upon the letter Ex. PW3/A, proved by Tehsildar Raj Kumar (PW3), of which a copy had been sent to various authorities including the Deputy Commissioner (North), SDM (Narela), BDO (North) and ACP, Narela. The ACP had been directed to provide 150 police personnel for assistance to the revenue officials on 14.11.2014 and 15.11.2014 at 10:00 a.m.

148. The letter Ex. PW3/A reads as under:-

DEMOLITION PROGRAMME F. No. 3483-91 Dated: 12/11/14 A demolition programme has been fixed for 14.11.2014 and 15.11.2014 at 10:00 a.m. for demolition of unauthorized encroachment/ construction at Narela and Bawana (list attached).

All the concerned officials are hereby directed to demolish the above said land on the date and time mentioned above.

(Raj Kumar) TEHSILDAR: NARELA: DELHI

149. The ld. counsel for the accused had sought to fault this intimation on the submission that whereas it purported to have been sent as a copy to ACP Narela, PW23 (SI Amit) rather stated that the intimation in question had been submitted by the office of the SDM to the SHO, Narela for seeking police staff in aid of the demolition drive. The ld. counsel argued that the legality of the presence of the police team was in doubt as the request possibly went to the SHO when it should have been sent to the ACP.

150. The court is inclined to reject the above argument in toto. It is not required in a trial pertaining to section 353 IPC that the legality of the official act in question and all the ministerial acts which accompany any such act be proved in the manner of deciding the validity of state action. What section 353 IPC seeks to punish is the use of force against the public servant who is acting in the

execution of the duty as a public servant and with the intent of preventing such public servant from discharging his duties. The intimation Ex. PW3/A, coupled with the deposition of the Tehsildar (PW3) as well as the seventeen police witnesses, is profuse proof of the revenue team and the police team having been present at the spot in due discharge of their duties. There is absolutely no reason for the court to reach an outlandish conclusion that the civil and police team were marauding and truant public servants on a private adventure targeting a site for demolition.

151. The leaders of the crowd namely Neel Daman Khatri and Joginder Dahiya as well as the crowd itself cannot be considered, under any stretch of imagination, to have been in doubt about the identity and purpose of the revenue and police teams. The crowd of public persons still proceeded to use criminal force against these public servants by pelting stones. As recorded repeatedly in this judgment, the common object of the unlawful assembly was to deter the teams of the Tehsildar and the police from carrying out the demolition drive. Consequently, the ingredients of section 353 IPC stand established. Since accused Neel Daman Khatri and Joginder Dahiya were members of this unlawful assembly, they would be liable for the act of any other member which constitutes an offence in prosecution of the common object of this unlawful assembly. The pelting of stones by public persons being led by these two accused renders them liable for conviction under section 353 IPC with the aid of section 149 IPC.

152. The Ld. Counsel for the accused had placed much reliance on the cross examination of the three injured police witnesses (PW-7, PW-8 and PW-25) to agitate that the causation of the specific injuries on these police officials could not be proved. It was submitted that notwithstanding the accounts given by these police witnesses and others regarding stone pelting, the non recovery of the stones and the non specification of the identity of the particular stone pelters prevented any finding favouring the culpability of the accused. These purported lacunae in the depositions on the question of injuries were represented as weakening the prosecution version of rioting and assault upon police persons.

153. The court would observe that the proof of injuries on the three police persons in question is not directly in issue in proof of either article of charge viz sections 147 and 353 IPC framed against accused Neel Daman Khatri and Joginder Dahiya. The offence of rioting, punishable under section 147 IPC, does not call for proof of injuries. The offence punishable under section 353 IPC also relates to use of criminal force and not injury. Both these offences inter alia rioting and use of criminal force against a public servant have been proved from the actions of the crowd which engaged in pelting stones. The offences under section 147 and 353 IPC stood completed in their commission when any or many from the crowd engaged in violence. The infliction of particular injuries upon the three police witnesses is not material to this exercise.

154. The offence under section 143 IPC pertains only to membership of an unlawful assembly and is not dependent either upon causation of injuries to any person.

155. Consequently, the purported import of the cross examination of the three injured police persons or the other police witnesses on the point of causation of injuries does not dilute the finding of guilty against accused Neel Daman Khatri and Joginder Dahiya.

Applicability of section 109 IPC

156. As noticed earlier, the charge under section 353 IPC has been framed with the aid of section 109 IPC as well as section 149 IPC.

157. The court is of the determination that since section 149 has also been invoked for the charge under section 147 IPC, it is the more appropriate provision to test the culpability of these two accused persons on principals of joint liability. Once the accused are established as the members of the unlawful assembly and the assembly is proved to have committed an offence in prosecution of its common object, such accused would be liable for the offence with the application of section 149 IPC. In fact, section 149 IPC was crafted for the precise purpose of ensuring the accountability of accused persons who may not have overtly participated in the commission of the offence but were nevertheless a part of the grand design viz common object of the assembly.

158. The court would relate this understanding of section 149 IPC to the facts of the present trial by observing that accused Neel Daman Khatri and Joginder Dahiya would be culpable under section 353 IPC even if they themselves did not pitch a single stone at the public servants. Since the crowd was an unlawful assembly, stones thrown by any of the members constitute the culpability of all members including the two leaders namely Neel Daman Khatri and Joginder Dahiya.

159. In this view, a finding regarding abetment inter alia section 109 IPC is redundant as the accused are not required to be convicted with the aid of every available tool of inviting constructive liability. Yet, the court may observe that as many as six witnesses (PW1, PW2, PW13, PW14, PW15 and PW16) deposed that accused Neel Daman Khatri and Joginder Dahiya had instigated the crowd which was followed by stone pelting and two witnesses viz PW7 (injured/HC Hem Chander) and PW8 (injured/HC Jyoti) stated that these two had started arguing with the demolition team for stopping the demolition. Thus, there is a multitude of accounts suggesting the active abetment of stone pelting by these two accused persons. The court would reiterate that every witness is not expected to recount the same version in all particulars. Thus, the non-assertion by other police witnesses (PW4, PW5, PW6 and PW9) regarding incitement by these two accused does not deny the import of the deposition of those police witnesses who did allege incitement of the crowd by the two leaders. The court finds it to be the dominant interpretation that upon the arrival of accused Neel Daman Khatri, a former MLA and Joginder Dahiya, a local leader, the crowd became more agitated when these two accused entered into an animated argument with the official team and then instigated the crowd. Since the offence punishable under section 353 IPC did get committed by the act of stone pelting by the crowd, the abettors viz Neel Daman Khatri and Joginder Dahiya are liable for the same punishment as the stone pelters by application of section 109 IPC.

160. However, as recorded earlier, section 149 IPC, which pertains to commission of an offence by any member of an unlawful assembly in prosecution of the common object of the assembly, is the more appropriate provision to be read with the charge under section 353 IPC as the other articles of charge are consistent in invoking section 143 (pertaining to membership of an unlawful assembly) and section 147 (which has been invoked with the aid of section 149 IPC).

161. Accused Neel Daman Khatri and Joginder Dahiya are held guilty under section 353 IPC read with section 149 IPC.

162. As discussed in the initial part of the judgment, the prosecution has failed to prove the articles of charge against the other four accused namely Raj Kumar, Surender, Praveen and Bhim Sen.

ORDER

163. Accused Neel Daman Khatri and Joginder Dahiya are convicted under section 143 IPC, section 147 read with section 149 IPC and section 353 read with section 149 IPC.

164. Accused Raj Kumar, Surender, Praveen and Bhim Sen are acquitted of the articles of charge framed against them under section 353 read with section 149 IPC, section 332 read with section 149 IPC, section 333 read with 149 IPC, section 143 IPC read with section 149 IPC and section 147 read with section 149 IPC.

VISHAL GOGNE Dictated and announced in open Court GOGNE Date:

2024.12.24 17:09:51 +0530 on 24 December, 2024 th (Vishal Gogne) Special Judge
(PC Act) CBI-24 (MP/MLA Cases), RADC New Delhi