2025:CGHC:14550-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 354 of 2024

Sunher Pudo S/o Late Shri Ramsingh Pudo Aged About 45 Years R/o Village Konde, District- North Bastar, Kanker, Chhattisgarh.

--- **Appellant**

Versus

State of Chhattisgarh Through District North Bastar, Kanker, District- North Bastar, Kanker, Chhattisgarh.

--- **Respondent**

CRA No. 425 of 2024

Jagduram Korram S/o Halalkhor Aged About 38 Years R/o Vill. Konde, Uttar Bastar Kanker, District : Kanker, Chhattisgarh

--- **Appellant**

Versus

State of Chhattisgarh Through The District Magistrate, District : Kanker, Chhattisgarh

--- **Respondent**

CRA No. 309 of 2024

1 - Jailal Markam S/o Jethuram Aged About 43 Years R/o Village Konde, Distt. North Bastar, Kanker, C.G.

2 - Dalsu Ram Pudo S/o Late Chaituram Aged About 55 Years R/o Village Konde, Distt. North Bastar, Kanker, C.G.

--- **Appellants**

Versus

State of Chhattisgarh Through Station House Officer, Police of Police Station Durgukondal, Distt. North Bastar Kanker, C.G.

--- **Respondent**

CRA No. 1333 of 2024

Sukal @ Mansingh Yadav S/o. Late Amar Singh Aged About 37 Years R/o. Village- Subhani Khedegaon, P.S.- Badgaon, Distt- North Bastar Kanker, Chhattisgarh

--- **Appellant**

Versus

State of Chhattisgarh Through, The Station House Officer- P.S.- Durgukondal, Distt- North Bastar, Kanker, Chhattisgarh

--- **Respondent**

(Cause-title taken from Case Information System)

CRA No.354/2024

For Appellant	:	Mr. Rajat Agrawal, Advocate
For State/Respondent	:	Mr. Shaleen Singh Baghel, Deputy Government Advocate

CRA No.309/2024

For Appellants	:	Ms. Savita Tiwari, Advocate
For State/Respondent	:	Mr. Shaleen Singh Baghel, Deputy Government Advocate

CRA No.425/2024

For Appellant	:	Mr. M.P.S. Bhatia, Advocate
For State/Respondent	:	Mr. Shaleen Singh Baghel, Deputy Government Advocate

CRA No.1333/2024

For Appellant	:	Mr. Sanjay Pathak, Advocate
For State/Respondent	:	Mr. Shaleen Singh Baghel, Deputy Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

26.03.2025

1. Heard Mr. Rajat Agrawal, learned counsel for the appellant in CRA No.354/2024, Ms. Savita Tiwari, learned counsel for the appellant in CRA No.309/2024, Mr. M.P.S. Bhatia, learned counsel for the appellant in CRA No.425/2024 and Mr. Sanjay Pathak, learned counsel for the appellant in CRA No.1333/2024. Also heard Mr. Shaleen Singh Baghel, learned Deputy Government Advocate, appearing for the State.

2. Regard being had to the similitude of the questions of facts and law involved being arising out of a common crime vide impugned judgment dated 16.01.2024 passed by the Special Judge under NIA Act and First Additional Sessions Judge, North Bastar, Kanker, Chhattisgarh in Special Case No.22/2021, these appeals have been clubbed together, heard together and are being decided by this common judgment.

3. Appellant-Sunher Pando (A-1) has preferred CRA No.354/2024, appellants-Jailal Pudo (A-2) and Dalsu Ram Pudo (A-4) have preferred

CRA No.309/2024, appellant-Jadguram Korram (A-3) has preferred CRA No.425/2024 and appellant-Sukal @ Mansingh Yadav (A-5) has preferred CRA No.1333/2024 under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") questioning the impugned judgment dated 16.01.2024 passed by the Special Judge under NIA Act and First Additional Sessions Judge, North Bastar, Kanker, Chhattisgarh in Special Case No.22/2021, by which, all the appellants/accused, namely Sunher Pando (A-1), Jailal Pudo (A-2), Jadguram Korram (A-3), Dalsu Ram Pudo (A-4) and appellant-Sukal @ Mansingh Yadav (A-5) have been convicted and sentenced as under :-

Appellant – Sunher Pando

Conviction		**Sentence**
Under Section 148 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 3 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 2 months.
Under Section 120B of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
Under Section 302/149 of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
All the sentences were directed to run concurrently		

Appellant – Jailal Markam

Conviction		**Sentence**
Under Section 148 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 3 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 2 months.
Under Section 120B of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
Under Section 302/149 of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
All the sentences were directed to run concurrently		

Appellant – Jagduram Korram

Conviction		**Sentence**
Under Section 148 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 3 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 2 months.
Under Section 120B of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
Under Section 302/149 of	:	Life imprisonment and fine of

the Indian Penal Code, 1860		Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
All the sentences were directed to run concurrently		

Appellant – Dalsu Ram Pudo

Conviction		**Sentence**
Under Section 148 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 3 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 2 months.
Under Section 120B of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
Under Section 302/149 of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
All the sentences were directed to run concurrently		

Appellant – Sukalu @ Mansingh Yadav

Conviction		**Sentence**
Under Section 148 of the Indian Penal Code, 1860	:	Rigorous imprisonment for 3 years and fine of Rs.1,000/-, in default of payment of fine,

		additional rigorous imprisonment for 2 months.
Under Section 120B of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
Under Section 302/149 of the Indian Penal Code, 1860	:	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 3 months.
All the sentences were directed to run concurrently		

4. The brief description of the prosecution story is as follows : On 27.08.2019 at 07.30 pm, at the house of Dadusingh Koratia in Badi village Konde, all the accused along with other absconding accused conspired to cause the murder of Dadusingh Koratia and formed unlawful assembly with other absconding accused, who are five or more in number, whose common object was to murder the deceased Dadusingh Koratia. In furtherance of the said common object, the members of the unlawful assembly, armed with deadly weapons, used force and violence and after sunset and before sunrise, attacked the house of Dadusingh Koratia, which was a human habitation, entered into his house and attempted to cause voluntary death/grievous hurt to Dadusingh Koratia and committed hidden house trespass/house breaking and on the said date of offence, in connivance with other accused along with absconding accused, in fulfillment of the common object of the group, attacked with a sharp-edged weapon, killed

Dadusingh Koratia and kept lethal weapons in his possession illegally and used them and being a member of banned terrorist organisation, namely CPI (Maoist), tried to threaten the unity, integrity, security or welfare with the intent to threaten the sovereignty of India or with the intent to create terror amongst any section of the people, caused the murder of Chaduram Kotriya by using lethal weapons and being a member of the said organisation CPI (Maoist), opened fire to cause harm to Dadusingh Koratia, committed the offence and performed an act in furtherance of/encouraging the activities of the banned terrorist organisation CPI (Maoist).

5. Further, case of the prosecution, is that on 27.08.2019, 8.00 PM, an information was given to the police station Durgukondal through mobile that Dadusingh Koratia, husband of Smt. Devli Koratia, has been shot dead by unknown armed Maoists, upon which, Sub-Inspector Ramnarayan Dhruv of Police Station Durgukondal (PW-34) immediately went to the scene of occurrence, i.e. the house of Dadusingh Koratia, where, on the information of Smt. Devli Koratia (PW-1) that armed Maoists had shot dead to Dadusingh Koratia and she registered the report of sudden and untimely death of Dadusingh Koratia on the spot vide Ex.P/1 bearing Crime No.0/2019. The complainant Smt. Devli Koratia (PW-1) lodged a report stating that on 27.08.2019, she and her daughter as well as husband were at home, when two persons along with a 12 years aged boy who fallen off from a bicycle (injured) came and needs to be bandaged in a hospital, upon which, they told him to go to the hospital, meanwhile on her saying that

they do not seem to be villager of Ghamare, on hearing, her husband came out of the kitchen, at that relevant time, both the persons took out the weapon from their waist and started attacking her husband to kill him and their dog started barking, upon which, they shot the dog, then her husband climbed the temple, then those people shot her husband, due to which her husband fell down outside on the road where ten-twelve people were standing, out of which Sundar Pudo, Jailal, Jagdu etc., who went from there saying that “Lal Salaam Zindabad” and the “RSS goons should die like this” Dehati-nalishi was registered vide Ex.P/4, based upon which, a map of the spot was prepared vide Ex.P/2, in which the spot has been marked in red colour by ‘A’ and the place where the dead body of deceased Dadusingh Koratia was lying is marked as ‘B’ and where the dog was shot has been shown marked as ‘C’, Serial No. B, B-1, D, E has been shown and F shows the place on the road where ten to twelve Maoists like Sunher Pudo etc. were raising slogans of Lal Salaam Zindabad, BCP Zindabad.

6. During the course of investigation, notice Notice (Ex.P/10) was given to the witnesses for body panchanama proceedings and panchnama of the dead body of deceased Dadusingh Koratia was prepared vide Ex.P/11. A written application (Ex.P/38A) was submitted to CHC Durgukandal for conducting postmortem of the deceased and submitting the report. Duty certificate Ex.P/34 was issued to constable No.883 Komeshwar Kosaria for conducting postmortem of the deceased. Four Maoist banners written in silver paint on red banner cloth were seized in front of witnesses from the scene of incident, 19

copies of computer printed pamphlets with black ink on white paper and other Naxalite pamphlets; 9 copies, 26 copies, 27 copies of computer printed pamphlets with black ink on white paper, one Naxalite pamphlet written in red ink by hand on a white paper "Dadu Singh is the enemy of the people", "Dadu Singh is an active propagator of RSS", U.B. Divisional Committee CPI, two copies; computer printed pamphlet with black ink on white paper with heading "Commissioner Rashtriya Janata Maoist Central Committee CPI", 2 copies of pamphlets, 7 sets were seized vide seizure memo Ex.P/15. Blood stained soil near the body of deceased Dadusingh in a plastic box and plain soil in a plastic box, blood flowing from the body of deceased Dadusingh soaked in cotton and plain cotton sealed and seized vide seizure memo Ex.P/16. One black colour slipper was seized from the spot itself vide Ex.P/17, an empty cartridge case was seized from the spot, on which 7.62 KF 04 A7 was written near the place where the pet dog was shot, one fired round, on whose base 9 MM 2Z 02 OK was written and one empty shell, on whose base 9 MM 2Z 02 OK was written, 2 copper bullets were seized from near the dead body of Dadusingh Koratia was seized vide seizure memo Ex.P/18. After returning to the police station, on the basis of the case intimation registered on Zero, the Crime No.16/2019 was registered vide Ex.P/55. On the basis of rural complaint, First Information Report bearing Crime No.23/2019 at Durgukandal police station for the offence punishable under Sections 302, 147, 148, 149, 120 (B), 460 IPC as well as Section 25, 27 Arms Act was registered against the accused Sunder Pudo, Jailal Markam, Jagduram Korram

and other armed Maoists of UP Divisional Committee CPI(M) vide Ex.P/56. On 28.08.2019, statement of Mrs. Devli Kortiya and Ms. Satya were recorded as per their statements, on 29.08.2019 Sunher Pudo, Jagduram Korram and Jailal Markam were taken into custody and their memorandum statements were recorded under Section 25 of Evidence Act, including confession of Sunher Pudo (Ex.P/19), confession of Jagduram Korram (Ex.P/20) and confession of Jailal Markam (Ex.P/21) were recorded, in which they had stated that Maoist Naxalite Darshan Padda, Hiralal and other 15-20 Naxalites had come to village Konde with arms and guns to kill Dadusingh and had shown them to Dadusingh's house and stood near Dadusingh's tractor and watched the incident and left from there shouting the slogan “Lal Salaam Zindabad”. They were arrested vide Ex.P/57 fo Ex.P/59 and their family members were informed about the arrest vide Ex.P/57A to Ex.P/59A. Referral letter (Ex.P/37A) was sent to veterinary hospital Durgukandal for giving report after examining the injuries of the pet dog injured in the incident. All the animals seized on the spot were also sent to the veterinary hospital.

7. During the course of investigation, the properties were brought to the police station and handed over to head constable Someshwar Singh Kunwar for safekeeping in the storehouse and acknowledgment (Ex.P/60) was received. Upon receiving information at the police station, the accompanying staff ASI Dewan, constable Nos.883, 591, 1170 from village Konde on 29.08.2019, the return was registered in the police station's Sanha No.756, a true copy of which was attached vide

Ex.P/61. Further investigation of the case was conducted by SDOP Bhanu Pratappur Amolak Singh Dhillo (PW-33) and while proceeding with the investigation, he went to the house of deceased Dadusingh Koratia on 11.09.2019 and prepared the site map of incident vide Ex.P/3. On 11.09.2019, supplementary statement of witness Ms. Satya Pudo, Smt. Devli Kotraiya and statements of witnesses Raju Nayak, Smt. Shanti Bai Sahu, Nehru Ram Pudo, Sanjay, Harendra, Smt. Champa, Gaidlal Sahu were recorded. Before taking the evidence of the said witnesses, notices (Ex.P/39 to Ex.P/41) were issued to them by the Sub-Divisional Officer regarding their presence in Police Station Bhanu Pratappur. On 12.09.2019, accused Dalsuram Pudo, Sukal Yadav @ Mansingh, Manoj Baghel, Harischandra Gawade were taken into custody and after questioning them, their memorandum statements were recorded vide Ex.P/22 and Ex.P/23, respectively. On the said date, accused Sukal and Dalsu were arrested vide arrest memo Ex.P/42 and Ex.P/43 and information was given to their family members vide Ex.P/42A and Ex.P/43A. Accused Dalsuram Pudo and Sukal in their memorandum statements stated that they killed Dadusingh Koratia in connivance with the Maoists and fled with the Maoists raising slogans. On 25.09.2019, Head Constable No.195 of Badgaon Police Station brought two copies of the pamphlets containing the North Bastar Designal Committee CPI(M) press release that reads "Beware of RSS, BJP leaders and workers", "RSS and BJP goon Dadusingh will be sentenced to death in the public court". The seizure memo was prepared vide Ex.P/27. On the same day, the statements of

Head Constable No.263, Sub-Inspector Pradeep Kumar Sidar and Head Constable No. 195 were recorded and as per their statements, on 25.10.2019 when constable No.630 brought the same to Durgukandal police station and presented the same, 6 packets of clothes and samples preserved by the doctor from the hospital were seized vide seizure memo Ex.P/14. On 16.02.2020, when Champulal Khurshyam head constable presented the photocopy of First Information Report (Ex.P/32A) and photocopy of criminal record (Ex.P/32B) registered against accused Sunher Pudo, Jailal Markam, Jagduram Korram, Sukal alias Mansingh, Dalsu Pudo in connection with Crime Nos.60/2004, 10/2008, 44/2008, 63/2008, 26/2010, 26/2010, 26/2016 of Durgukandal police station has been seized vide Ex.P/32. On 17.02.2020, statements of Sushant Bhadau, Shankar Lal Potai and on 18.02.2020, statements of Chaman Kange, Aganu Ram Dugga, Jagdev Bade, Chukaram Netam were recorded and as per their statements, notice (Ex.P/44 and Ex.P/45) were issued on 12.09.20219 to summon them for interrogation and notice (Ex.P/46) was issued on 17.02.2020 and notices (Ex.P/47 and Ex.P/48) were issued on 18.02.2020 and thereafter, written complaint (Ex.P/49) was sent to Tehsildar Durgukondal on 23.09.2019 to get the site map prepared by the Patwari. Written complaint (Ex.P/30) was sent to Superintendent of Police Kanker on 30.11.2019 to get prosecution sanction from District Magistrate under Section 25, 27 Arms Act registered along with other sections vide Crime No.23/2019 of Police Station Durgukondal. The written application (Ex.P/35A) along with case diary was sent, on which

letter (Ex.P/35) issued from the office of Superintendent of Police to Collector and District Magistrate and order No./DM/LC/Prosecution Sanction/F-23/2019 Kanker dated 03.12.2019 (Ex.P/36) from the office of Collector and District Magistrate was prepared. On 30.11.2019 itself, a written application along with written complaint Ex.P/50 was given to the Superintendent of Police, Office of Kanker for obtaining prosecution sanction from the Secretary, Home, CG Government, Home Department, Ministry, under the sections of the Unlawful Activities (Prevention) Act registered against the accused, on which letter No./P.A./Kanker/Re-1/M/9369/2019 dated 02.12.2019 was issued from the office of Superintendent of Police to Home, CG Government vide Ex.P/50A. Prosecution Sanction Order No.F-4-239/Home-C-2019 dated 28.12.2019 issued by Chhattisgarh Government Home Department, C-Section Ministry, Ex.P/50B was attached and the property seized in the case are Articles- A to D, blood stained soil seized on the spot, plain soil, cotton soaked in blood flowing from the body of the deceased and plain cotton, for testing whether it is human blood, if yes, then what is its group, for this purpose, the same were sent to Regional Forensic Science Laboratory, Jagdalpur for FSL through Constable No.1044 Likheshwar Sahu along with Draft Ex.P/51 vide No./ S/Kanker/Reader-1/2019 of the office of Superintendent of Police, from where receipt Ex.P/31 was received, Articles- A to H, in which clothes of the deceased, empty cartridge shell, one misfired round and two copper bullets were sent for FSL investigation to State Forensic Science Laboratory, Raipur through constable No.1044 Likheshwar Sahu along

with Draft (Ex.P/52) of office of Superintendent of Police, bearing No./S/Kanker/Reader-1/310/2019 dated 19.11.2019 was sent and it is mentioned that Article- C was found uncertain in the group classification. The test report given by Joint Director G.S. Sahu of Draft No.310 Articles- A to H from the Office of State Forensic Science Laboratory Raipur is Ex.P/55, in which it is stated that Articles- EC-1, EC-2 are empty fired shells of 7.62x39 ml caliber cartridge manufactured by Indian Ordnance Factory, Article EC-3 is empty fired shell of 9 mi caliber cartridge manufactured by Indian Ordnance Factory, Article- EB-1 is a fired bullet of 38 inch caliber cartridge, Article EB-2 is a fired bullet of 9 ml caliber cartridge, there is no hole due to impact of bullet on the clothes of Article A-1, Article A-2 and Article B, there is no firing discharge, residue is mentioned on the cotton swab of Articles C, D and E, all these reports were attached.

8. Thereafter, statements of witnesses were recorded under Section 161 of Cr.P.C. and, after due investigation, the police filed charge-sheet in the concerned jurisdictional Court and, thereafter, the case was committed to the Court of Sessions for trial in accordance with law, from where the learned Special Court under NIA Act and First Additional Sessions Judge, North Bastar Kanker (C.G.) received the case on transfer for trial and for hearing and disposal in accordance with law. The trial Court has framed charges against the appellants for the offence punishable under Sections 148, 120B and 302/149 of the Indian Penal Code, 1860 (for short, “IPC”) and proceeded on trial. The appellants abjured their guilt and entered into defence stating that they

have not committed any offence and they have been falsely implicated in the crime in question as they have no connection with the Naxals and they are ordinary villagers.

9. The prosecution in order to prove its case examined as many as 35 witnesses as PW-1 to PW-35 and exhibited 61 documents vide Ex.P/1 to Ex.P/61, whereas the appellants-accused in support of their defence have neither examined any witness nor exhibited any document.

10. The trial Court after completion of trial and after appreciating oral and documentary evidences available on record, by the impugned judgment dated 16.01.2024 convicted and sentenced the appellants in the manner mentioned in the third paragraph of this judgment, against which these appeals under Section 374(2) of the Cr.P.C. have been preferred by them calling in question the impugned judgment.

11. Mr. Rajat Agrawal, learned counsel for the appellant in CRA No.354/2024, Ms. Savita Tiwari, learned counsel for the appellant in CRA No.309/2024, Mr. M.P.S. Bhatia, learned counsel for the appellant in CRA No.425/2024 and Mr. Sanjay Pathak, learned counsel for the appellant in CRA No.1333/2024, have jointly submit that that the learned trial Court is absolutely unjustified in convicting the appellants for offence under Sections 148, 120B and 302/149 of the IPC, as the learned trial Court has not proved the offence beyond reasonable doubt. They have further submitted that the learned trial Court without appreciating the evidence available on record convicted the appellants

for the aforesaid commission of offence though there is no legally admissible evidence as in para-3 of the evidence of Smt. Devli Koratia (PW-1), she herself has deposed that two persons who come in her house and committing murder of her husband by gunshot and run away from the house and the outside of the house, the present appellants namely Sunher Pudo, Jailal Markam, Jagduram Korram, Sukal Yadav, Dalsu Ram Pudo along with other 10-12 persons have present and shouting on the road "Lal Salam CPI Zindabad and goon of RSS have to die" and she has nowhere stated in her deposition that the person who fired the gunshot are the present appellants, as such her statement is not at all sufficient to held the appellants guilty for the aforementioned crime. It has been contended that there is no seizure of any incriminating article from the present appellants and only allegation against the appellants is that they were standing outside of the house of the deceased along with other 10-12 persons, which cannot meant that they were involved in the alleged commission of offence, therefore the conviction of the appellants is not sustainable in eye of law. It has been further contended that the learned trial Court without any evidence, convicted the appellants as there is no direct and indirect evidence available in record to implicate them. It has been submitted that the evidence of prosecution witnesses not at all supported the prosecution case. It has been further submitted that the finding recorded by the learned trial Court is contrary to rule of prudence because neither the evidence of the eyewitness has been proved nor there is any legal evidence which conclusive proof the case of the

prosecution and looking to the material available on record, case of the defense is more probable rather than the case of the prosecution, therefore, conviction of the appellants cannot be sustained. It has been argued that the evidence of the memorandum and seizure witnesses have not been proved beyond reasonable doubt and the finding recorded by the learned trial Court is erroneous and contrary to the settled principle of law and the same cannot be sustained. Therefore, the impugned judgment of conviction is liable to be set aside and appellants be acquitted/discharged from the said offence.

12. *Per-contra*, Mr. Shaleen Singh Baghel, learned Deputy Government Advocate appearing for the State supported the impugned judgment of conviction and order of sentence and submitted that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. He further submits that the prosecution has proved its case beyond reasonable doubt and the learned trial Court after considering all incriminating materials and circumstances available against the accused persons rightly convicted them for the aforesaid offences. Hence, these appeals are liable to be dismissed.

13. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the trial Court with utmost circumspection.

14. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the

prosecution.

15. At the outset, it would be relevant first to notice the questions for determination formulated by the learned trial Court for the trial, which states as under:-

> "01- क्या मृतक दादू सिंह कोरटीया की मृत्य मानव वध स्वरुप की है ?
>
> 02-क्या अभियुक्तगण ने दिनांक 27/8/2019 को 7.30 बजे दादूसिंह कोरटिया के मकान बाडी ग्राम कोण्डे में माओवादी संगठन के साथ मिलकर, दादू सिंह कोरटीया की हत्या कारित करने का षडयंत्र किया ?
>
> 03- क्या अभियुक्तगण ने मओ वादी संगठने के साथ मिलकर बनाये गये हत्या करने की षड्यंत्र मे गठित विधि विरुद्ध जमाव का सदस्य रहकर जिसका सामान्य उद्देश्य मृतक दादूसिंह कोटरिया की हत्या करना था, उक्त उद्देश्य के अग्रसरण में विधि विरुद्ध जमाव का गठन कर बल एवं हिंसा का प्रयोग किया ?
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> 04- क्या अभियुक्तगण ने उक्त दिनांक समय व स्थान पर दादूसिंह कोटरिया की हत्या के उद्देश्य से गठित विधि विरुद्ध जमाव का सदस्य रहकर, जिसके द्वारा, रिवाल्वर, जिसे आक्रामक आयुध के रूप में उपयोग करने से मृत्यु कारित होना संभाव्य जानते हुए सहित था. उक्त विधि विरुद्ध जमाव या उनके किसी सदस्य ने बल या हिंसा का प्रयोग कर बलवा कारित किया ?

05- क्या अभियुक्तगण ने उक्त दिनांक समय पर विधि विरुद्ध जमाव के रुप में संगठित होकर सूर्यास्त के बाद तथा सूर्योदय के पूर्व दादूराम कोटरिया के गृह में, जो मानव निवास के उपयोग में आता है, प्रवेश कर दादूराम कोटरिया की स्वेच्छ्या मृत्यु/योर उपहति कारित करने का प्रयत्न कर प्रच्छन्न गृह अतिचार / गृह भेदन कारित किया ?

06- क्या उक्त दिनांक, समय व स्थान पर अभियुक्तगण ने साथ मिलकर समूह के सामान्य उद्देश्य की पूर्ति में अथवा समूह के किसी सदस्य ने दादूराम कोटरिया के बांये कनपटी में गोली मारकर एवं धारदार हथियार से हमला कर मृत्यु कारित कर हत्या की ?

07- क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर मृतक दादूराम कोटरिया की हत्या कारित करने की घटना के अग्रसरण करने में सहमत होकर आपराधिक षडयंत्र कारित किया ?

08- क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर सक्षम प्राधिकारी, जिला दंडाधिकारी के अनुज्ञा पत्र के बिना घातक आयुधों को अवैध रुप से अपने आधिपत्य में रखकर उसका प्रयोग किया ?

09- क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर प्रतिबंधित आतंकी संगठन भा०क०पा० (माओवादी) के सदस्य रहकर भारत की एकता, अखंडता, सुरक्षा या संप्रभुता को संतर्जित करने के आशय से घातक आयुधों का प्रयोग कर, दादूराम कोटरिया की हत्या कारित किया ?

10- क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर प्रतिबंधित आतंकी संगठन भा०क०पा० (माओवादी) के सदस्य रहकर दादूराम कोटरिया को क्षति पहुंचाने के लिए गोलीबारी किया ?

11- क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर प्रतिबंधित आतंकी संगठन भा०क०पा० (माओवादी) के सदस्य रहकर अपराध कारित किया ?

12- क्या अभियुक्तगण ने उक्त दिनांक, समय व स्थान पर प्रतिबंधित आतंकी संगठन भा०क०पा० (माओवादी) के क्रियाकलापों को अग्रसर करने / प्रोत्साहित करने संबंधी कृत्य किया ?"

16. Now questions ripped for consideration before us in this batch of appeals would be as under:-

(i) Whether the learned trial Court is justified in holding that the death of deceased- Dadusingh Kotaria is homicidal in nature?

(ii) Whether the learned trial Court has rightly held that the appellants are the author of the crime?

17. The first question for consideration would be, whether the trial Court was justified in holding that death of deceased- Dadusingh Koratia was homicidal in nature ?

18. The learned trial Court, relying upon the statement of Dr. Manoj Kishore (PW-30), who has conducted postmortem on the body of

deceased vide Ex.P/38, has clearly come to the conclusion that the cause of death of the deceased was due to head injury and gunshot injury to chest and both are individually and collectively sufficient to cause death in ordinary course of nature and the head injury caused by bullet force impact and all the injuries were antemortem in nature as well as the death of the deceased was homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellants. We hereby affirm the said finding.

19. The next question for consideration would be, whether the trial Court has rightly held that the appellants are the author of the crime.

20. In the present case, homicidal death due to head injury and gunshot injury to chest and both are individually and collectively sufficient to cause death in ordinary course of nature and the head injury caused by bullet force impact and all the injuries were antemortem in nature has not been substantially disputed on behalf of the appellants.

21. On the other hand, it is also established by the evidence of eyewitness to the incident Smt. Devli Koratia (PW-1), who is the wife of the deceased and lodged the First Information Report mentioning the names of appellants Sunher Pudo, Jailal Markam and Jadguram Koddam and further the postmortem report (Ex.P/38) that the death of deceased was homicidal in nature.

22. The Supreme Court in the matter of ***Balu Sudam Khalde and another v. State of Maharashtra*** reported in ***2023 SCC OnLine SC 355*** held as under:-

> *"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:*
>
> *(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
>
> *(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
>
> *(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
>
> *(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
>
> *(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole*

evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

(emphasis supplied)"

23. Though there are some contradictions and omissions in the evidence of aforesaid prosecution witnesses, but as per the evidence of Smt. Devli Koratia (PW-1), who is also an eyewitness of the incident and who has lodged the First Information Report, in which she has specifically mentioned the names of four accused persons, namely, Sunher Pudo, Jailal Markam and Jadguram Korram and on the basis of their memorandums, other accused persons namely Dalsu Ram Pudo and Sukal @ Mansingh Yadav have been made accused in the present case, therefore, involvement of the accused/respondents has been duly proved beyond reasonable doubt.

24. The Hon'ble Supreme Court in the matter of ***C. Muniappan and others Vs. State of Tamil Nadu*** reported in ***(2010) 9 SCC 567*** has held as under :-

"85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the Court comes to a

conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (vide Sohrab & Anr. v. The State of M.P., AIR 1972 SC 2020; State of U.P. v. M.K. Anthony, AIR 1985 SC 48; Bharwada Bhogini Bhai Hirji Bhai v. State of Gujarat, AIR 1983 SC 753; State of Rajasthan v. Om Prakash AIR 2007 SC 2257; Prithu @ Prithi Chand & Anr. v. State of Himachal Pradesh, (2009) 11 SCC 588; State of U.P. v. Santosh Kumar & Ors., (2009) 9 SCC 626; and State v. Saravanan & Anr., AIR 2009 SC 151).”

25. Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says 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 the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful

assembly would be guilty of committing the offence under Section 302 IPC.

26. In ***Krishnappa v. State of Karnataka*** reported in ***(2012) 11 SCC 237***, the Supreme Court while examining Section 149 IPC held as follows:-

> *"20. It is now well-settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.*
>
> *21. The factum of causing injury or not causing injury would not be relevant, where*

> *the accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not."*

27. Thus, this Court held that Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

28. As a matter of fact, the Supreme Court in ***Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel*** reported in ***(2018) 7 SCC 743*** has reiterated the position that Section 149 IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. The Supreme Court has held:

> *"20. In cases where a large number of accused constituting an "unlawful assembly"*

are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an "unlawful assembly" is sufficient to render him vicariously liable under Section 149 IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.

* * * * *

22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that "crucial act" — for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for

the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.

* * * * *

34. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed."

29. Therefore, as held by the Supreme Court in ***Yunis alias Kariya v. State of M.P.*** reported in ***(2003) 1 SCC 425***, no overt act is required to be imputed to a particular person when the charge is under Section 149 IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction.

30. The main contention of the learned counsel for the appellants is that there is no direct evidence against the appellants herein that they were involved in the offence in question. The appellants are poor rustic villagers doing the agricultural work and they have been falsely implicated in the present case. It is also the case of the appellants that when the case of the prosecution itself is that there were 10-20 peoples, in ordinary course of action, it was not possible for the police personnel or the prosecution witnesses to remember each and every person and hence, the benefit of doubt ought to have been given to the appellants. The appellants have been falsely roped in this case on the basis of mere suspicion. There is no clear cut evidence against the appellants and they have been made accused on the basis of circumstantial evidence which is a weak kind of evidence. The eye-witness has also not named all the accused persons in the FIR and on the basis of memorandum statements of the named accused persons, other accused were implicated in the crime in question, hence, the presence of the appellants at the place of incident is highly doubtful.

31. While dealing the issue with regard to criminal conspiracy, the Hon'ble Supreme Court in the matter of ***Ram Narayan Popli v. Central Bureau of Investigation*** reported in **(2003) 3 SCC 641**, has observed as under:

> *"342. It would be appropriate to deal with the question of conspiracy. Section 120B of IPC is the provision which provides for punishment for criminal conspiracy. Definition*

of criminal conspiracy' given in Section 120A reads as follows:

> *"120A- When two or more persons agree to do or cause to be done.-*
>
> *(1) an illegal act, or*
>
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".*

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement. or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be

done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol. II Sec 23, p. 559). For an offence punishable under section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an

act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

343. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

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346. It was held that the expression "in reference to their common intention" in Section 10 is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he

entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only.

> *"...as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it". ..."In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it, and (5) it can only be used against a co- conspirator and not in his favour." (AIR p. 687, para 8)*

We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in

pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.), [1980] 2 SCC 665 held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the

purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

347. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

348. The provisions of Section 120A and 120B, IPC have brought the law of conspiracy in India in line with the English Law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well settled. Russell on Crime (12 Edn.Vol.I, p.202) may be usefully noted:

> *"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor*

in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

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351. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the

conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in section 120B See: Suresh Chandra Bahri v. State of Bihar, AIR (1994) SC 2420.

352. The conspiracies are not hatched in open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. See: E.K. Chandrasenan v. State of Kerala, AIR (1995) SC 1066.

353. In Kehar Singh v. State (Delhi Administration), AIR (1988) SC 1883 at p. 1954, this Court observed:

> *"275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter*

does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

"Conspiracy can be proved by circumstances and other materials. See: State of Bihar v. Paramhans Yadav, (1986) Pat LJR 688 (HC).

"To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is (known that the collaborator would

put the goods or service to an unlawful use". See: State of Maharashtra v. Som Nath Thapa, JT 1996 4 SC 615.

354. It was noticed that Sections 120-A and 120-B IPC have brought the law of conspiracy in India in line with English law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Indian Penal Code."

32. Further, a circumstance can be proved through a truthful witness with his testimony fully inspiring confidence. Quality and not quantity of

the witness is what matters with overwhelming evidence available on record and in this regard, reliance may be placed on the decision of a three-Judge Bench of the Supreme Court in ***Takhaji Hiraji v. Thakore Kubersing Chamansing and others*** reported in ***(2001) 6 SCC 145***.

33. The Hon'ble Supreme Court, in ***Mohd. Naushad v. State (Govt. of NCT of Delhi)*** reported in ***AIR OnLine 2023 SC 547***, while dealing with the issue of conspiracy in a matter relating to terrorist attack, has observed at paragraphs 35 to 37, which reads as under:-

> *"35. Conspiracy being a major charge, we take note of the legal position on the point of conspiracy between accused persons, we place reliance on the judgment of this Court in Kehar Singh & Ors. v. State (Delhi Administration), (1988) 3 SCC 609 (3- Judge Bench), wherein this Court observed:*
>
> > *"271. Before considering the other matters against Balbir Singh, it will be useful to consider the concept of criminal conspiracy under Sections 120-A and 120-B of IPC. These provisions have brought the Law of Conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. The following passage from Russell on Crime (12th Edn., Vol. I, p. 202) may be usefully noted:*
> >
> > *"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the*

purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

272. Glanville Williams in the Criminal Law (2nd Edn., p. 382) explains the proposition with an illustration:

> *"The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy 90 because there was no agreement for 'concert of action', no agreement to 'co-operate'."*

273. Coleridge, J., while summing up the case to jury in Regina v. Murphy [173 ER 508] (173 Eng. Reports 508) pertinently states:

> *"I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and*

to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'Had they this common design, and did they pursue it by these common means — the design being unlawful?'

274. It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Sections 120-A and 120-B IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.

275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition: [1974 Criminal Law Review 297, 299]

> *"Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement*

take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties 'actually came together and agreed in terms' to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was 'a tacit understanding between conspirators as to what should be done'."

276. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

277. It is suggested that in view of Section 10 of the Evidence Act, the relevancy of evidence in proof of conspiracy in India is wider in scope than that in English law. Section 10 of the Evidence Act introduced the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. Section 10 reads:

"10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or

an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

xxxx

280. The decision of the Privy Council in Mirza Akbar case [AIR 1940 PC 176, 180] has been referred to with approval in Sardul Singh Caveeshar v. State of Bombay [(1958) SCR 161, 193] where Jagannadhadas, J., said: (SCR p. 193)

"The limits of the admissibility of evidence in conspiracy cases under Section 10 of the Evidence Act have been authoritatively laid down by the Privy Council in Mirza Akbar v. King Emperor [AIR 1940 PC 176, 180] . In that case, Their Lordships of the Privy Council held that Section 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under Section 10 of the Evidence

Act of 'anything said, done, or written, by any one of such persons' (i.e., conspirators) must be 'in reference to their common intention'. But Their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well known principle above enunciated."

36. Furthermore, in State through Superintendent of Police, CBI/SIT v. Nalini & Ors. (1999) 5 SCC 253 (3-Judge bench), this Court culled out principles governing the law of conspiracy, though exhaustive in nature, and held:

"581. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (1) the conspirator whose evidence is sought to be admitted against the co-conspirator is not confronted or cross- examined in court by the co-conspirator and (2) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co- conspirator. But then precisely under Section 10 of the Evidence Act, statement of a conspirator is admissible against a co-conspirator on the premise that this relationship exists.

Prosecution, no doubt, has to produce independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The court is, however, to guard itself against readily accepting the statement of a conspirator against a co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator

against a co-conspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done, ultimately it is the appreciation of evidence on which the court has to embark.

582. In Bhagwandas Keshwani v. State of Rajasthan [(1974) 4 SCC 611, 613 : 1974 SCC (Cri) 647] (SCC at p. 613), this Court said that in cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available.

583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the

accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the centre does the enrolling and all the other members are unknown to each other,

though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective,

and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those

who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common

purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

37. Lastly, In Esher Singh v. State of A.P., (2004) 11 SCC 585, (2-Judge Bench), this Court observed:

"The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.

39. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of

conspiracy is to be carried out, all this is necessarily a matter of inference."

34. As regards complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of eyewitness Smt. Devli Koratia (PW-1) as well as the evidence of doctor who conducted the postmortem of the dead body of deceased namely Dr. Manoj Kishore (PW-30).

35. Smt. Devli Koratia (PW-1) has confirmed that the police arrived at the spot after getting the information and that on getting the information about the untimely death of Dadusingh Koratia, death intimation (Ex.P/1) and rural complaint (Ex.P/4) were registered. She further deposed that the incident happened in 2004 in Sambalpur, at that relevant time, Dadusingh Koratia was the Sarpanch of Sambalpur and they lived at village Konde. They had adopted 13 years old Satya, daughter of Dhaniram of Pudo Mich village, as their daughter. On the date of incident, at about 7.30 PM, two people came to the shed of her house with a child calling her sister and stated that they need medicine for the child because he has fallen from the bicycle. Then she asked both of them that they did not seem to be from village Ghamre and meanwhile they asked about her husband, who also came there and then, they told that there is no bandage at home and they would be go to the hospital. As soon as her husband was coming out of the shed, a person who was 25 years old and was standing on the left side of her husband, attacked her upon his waist. He took out his revolver and started to attack when their pet dog started barking. Her husband ran

up to the stairs of the temple to the roof and his 25-year-old son on his left started running behind him and her husband was shouting for help. Meanwhile, said person shot her husband three times and killed him. The other person and the child ran to the right where the accused Sunher Pudo, Jailal Markam, Jagduram Korarm, Sukal Yadav, Dalsu Ram Pudo along with 10-12 other people were standing and shouting slogans like “Lal Salaam Zindabad, Maoist Zindabad and Dadusingh was an RSS goon and he had to die like this”.

36. Smt. Devli Koratia (PW-1) has further deposed in her statement that about ten minutes after the incident, she and Satya went to the back of the temple and saw that her husband was lying on his back covered in blood and he was found to be dead. Thereafter, they came inside their house crying and after some time, neighbours Shanti Sahu, Rukha Ram Netam, Champa, Mahat, Bodhan Sahu, Sanjay, Harendra, Gendu Sahu, Dharam Yadav, Mehtaru Patel etc. came and she informed her niece Rakeshwari Pujari about the incident over the phone. Then, her nieces informed the police station over the phone about the incident. Early in the morning at 6.00-6.30 AM, she and her niece and Satya went to her husband and saw that there was a deep wound mark made by a sharp weapon on the left temple of his head and an injury on the wrist of his left hand and an injury made by a sharp weapon on the left elbow. There was a huge injury and blood was spilled all over her husband's body. She also deposed that there were many Naxalite pamphlets in the temple premises, hand written pamphlets, four Naxalite banners of red cloth, in which it was written

that Dadu is the enemy of the people, he is a propagator of the RSS, who was killed in the Jan Adalat, Lal Salaam Zindabad, Maoist Zindabad were written on the said banners and they were thrown near her husband, in which it was written that Dadusingh is the enemy of the people, he asks the tribal people to adopt the Brahmin religion.

37. Dr. Manoj Kishore (PW-30) has conducted the postmortem of the dead body of deceased Dadusingh Koratia on 28.08.2019 and given the postmortem report (Ex.P/38) and found following injuries :-

> *"External Examination- The deceased was pale and cold, was wearing a grey T-shirt and brownish black underwear of Big Boss company, was wearing deep coloured pants and a red coloured thread was tied around the wrist of the dead body and a garland of wooden beads tied in a red coloured thread was around the neck, the head of the deceased was straight and both eyes were open, mouth was open, tongue was not out, both legs were bent, right arm was bent and wrist of the right hand was bent forward, left arm was also bent forward. The entire body of the deceased was stiff.*
>
> *The following injuries were found on the body of the deceased-*
>
> *1. There was a lacerated wound on the right cheek, measuring 2 cm x 0.3 cm.*
>
> *2. Left temporal laceration measuring 6.3 cm x 1.5 cm x 5. cm, with material from inside the head protruding out and the left temporal*

bone fractured, with signs of bleeding.

3. Cut injury mark on left hand measuring 7 x 4 cm.

4. Abrasion mark on left elbow measuring 4 x 1.6 cm.

5. Torn bruise measuring 1.7 x 1 cm over left chest.

6. Cut injury mark in buttock of sow hip measuring 2.4 x 1.4 cm.

7. Cut injury mark measuring 1.6 x 1.2 cm below right hip.

8. Cut injury on anterior aspect of left thigh measuring 3 x 1.9 cm.

9. Abrasion mark on left knee measuring 4 x 1.5 cm.

10. The cut injury was 4 x 1.8 cm in size, on left wrist.

The body of the deceased had a gunshot entry point wound on the upper lobe of left lung measuring 2.8 x 1.9 x 1.8 cm which extended upward from sternal region passing through overlying skin, subcutaneous tissue, underlying muscle, rib, pleura, pleura attached to lung and rib muscle and exit point measuring 3.2 x 1.8 cm which was at occipital protuberance was 30.4 cm. There were blood marks on the entry and exit injury paths, chest was filled with clotted blood. There was a gunshot entry wound on the back of left thigh measuring

2.5 x 2 cm, the scar was 83.8 cm from the left heel, which had incised marks measuring 0.5 x 0.7 mm, the bullet path was upward and forward, crossing skin, subtitle tissue, muscles along the path and exiting through left iliac, the exit wound measuring 3.8 x 2.4 cm, the exit wound was 93.9 cm from the heel, there was blood stain all along the path.

Internal examination- left temporal bone was fractured, diaphragm, ribs and soft tissue, larynx and trachea was pale and normal. The left side of the heart of the deceased was empty and a small amount of blood was present in the right side. The intestinal membrane, mouth and esophagus of the deceased were pale and normal. There was half-digested food in the small intestine and feces in the large intestine. The liver, cecum, kidney, inner and outer genitals of the deceased were pale and normal.

All the injuries on the deceased were before death. Amongst the clothes found on the body of the deceased, he found- 1. Green coloured collar T-shirt, which had four dents, which was a 2 cm sized round mark on the right side of the T-shirt and a 2.4 cm mark in the middle on the back side of the T-shirt. There was a round mark on the left side of the front side of the T-shirt which was 3 cm in size and there was a round mark on the left side of the T-shirt which was 1.5 cm in size. he had marked all these marks with

blue coloured ink and had written A.B.C.D. There were four dents in the underwear of the deceased and 6 dent marks in the pants. Apart from this, he had sealed the anto wound sample, exit wound sample and control sample was handed to him with the advice of chemical testing.

Opinion- The deceased died due to head injury and chest injury caused by gunshot, all injuries occurred before death. The nature of death was homicidal.

The time of death of the deceased appeared to be 14 to 22 hours before postmortem."

38. Thus, from the statement of eyewitness Smt. Devli Koratia (PW-1) it is clear that at the time of the incident, her adopted daughter Ms. Satya Pudo aged 13 years, was present with her at the spot, who was examined as PW-2 and stated in her statement she is unable to identify the accused and stated that the incident took place two years before. She turned hostile and did not supported the case of the prosecution stating that she had no knowledge about the incident. In the suggestion given by the prosecution to declare this witness hostile, this witness has accepted that after the death of her father, her mother had remarried and she has been living with Devli Bai in village Konde for the last two years.

39. The attacks by the Naxals are premeditated, highly organized, and politically motivated, making them far more dangerous than

ordinary crimes. Unlike common crimes such as theft, robbery, or even homicide, Naxalite attacks are acts of insurgency aimed at destabilizing the State. These operations involve ambushes, guerrilla warfare tactics, and the use of sophisticated weaponry such as IEDs (Improvised Explosive Devices) and landmines. Security personnel, including the Central Reserve Police Force (CRPF), police, and paramilitary forces, are often the primary targets. These attacks are well-planned and executed with the intent to inflict maximum casualties, weaken the morale of the security forces, and assert control over remote and forested regions. Ordinary crimes are usually driven by personal motives such as financial gain, revenge, or passion. In contrast, Naxalite attacks are politically and ideologically driven. They are not isolated incidents but part of a broader movement against the State. Unlike criminals who may seek personal benefits, Naxalites aim to overthrow the democratic system through violent means. Generally, Naxalites operate in remote, forested areas where collecting forensic or material evidence is difficult. Many of their attacks involve IED blasts, ambushes, and guerrilla warfare tactics, making it challenging to identify individual perpetrators. Local villagers, who often witness Naxalite activities, are reluctant to testify due to fear of violent retaliation. Since Naxalites exercise strong control over certain areas, any person cooperating with law enforcement becomes a target, leading to witness intimidation or complete silence. Unlike conventional criminals, Naxalites do not operate under identifiable names or keep proper records. Many of them use aliases, making it difficult for

authorities to track their real identities. Hence, often the circumstantial evidences play a key role in convicting and sentencing the accused. Absence of direct evidence cannot automatically lead to a conclusion regarding innocence of the accused persons.

40. Upon careful perusal of the aforementioned findings recorded by the trial Court would show that the prosecution has established that :-

> *"(i) Death of deceased Dadusingh Koratia was homicidal in nature.*
>
> *(ii) It is the appellants who, in furtherance of common object, murdered the deceased-Dadusingh Koratia."*

41. Considering the statements of the prosecution witnesses, the finding recorded by the trial Court in its judgment, it is reflected that the though in the First Information Report (Ex.P/32B), only three accused persons namely Sunher Pudo, Jailal Markam and Jadguram Korram have been named, but from their memorandum statements, other accused persons namely Dalsu Ram Pudo and Sukal @ Mansingh Yadav have been made accused to the present case. It is further clear from the above evidence as also the statement and report of the doctor, which proved that the nature of death of the deceased Dadusingh Koratia was homicidal due to injuries caused by shooting and hitting with a sharp weapon before death. The evidence collected by the prosecution and the statement of the complainant, who is an eyewitness to the incident as also the evidence of other witnesses

revealing the circumstances of the spot and the evidence obtained on the circumstance after the murder, the prosecution have succeeded in proving the case beyond reasonable doubt and possibility that the deceased Dadusingh Koratia was murdered by shooting by an unknown Naxalite who came to the house of the deceased with a child and along with two unknown Naxalites, there were 10-12 persons standing at some distance from the spot, which included the accused persons and after the incident of murder, they raised slogans of “Lal Salaam Zindabad, Maoist Zindabad as also stated that RSS goon Dadusingh had to die in this way”, which shows that the appellants/accused had murdered the deceased along with the unknown Naxalites as they together conspired for murder of the deceased Dadusingh and being members of an unlawful assembly equipped with deadly weapons to commit the common crime and they used force and violence and in pursuance of their common object, they committed the murder of Dadusingh, hence, the accused Sunher Pudo, Jailal Markam, Jagduram Korarm, Dalsu Ram Pudo, Sukal @ Mansingh Yadav are found guilty for the offence punishable under Sections 148, 120B and 302/149 of the IPC.

42. For the foregoing reasons, it has been established that the accused persons were part of conspiracy, which was against the Sarpanch of the village as well as the RSS goon and with the common object, they are hatching the conspiracy, which is proved by the circumstantial evidences and also the statement of the eyewitness Smt. Devli Koratia (PW-1), who is the wife of the deceased Dadusingh

Koratia, who identified the appellants/convicts to be part of the offence in question as well as she herself lodged the FIR mentioning the names of accused persons, namely Sunher Pudo, Jailal Markam and Jagduram Korram and upon their memorandum statements, other accused persons, namely Dalsu Ram Pudo and Sukal @ Mansingh Yadav have been implicted in the offence in question, and in light of the ratio laid down by the Hon'ble Supreme Court in ***Mohd. Naushad*** (supra) and ***Ram Narayan Popli*** (supra), and from the above analysis, we are of the considered opinion that the prosecution has been successful in proving its case beyond reasonable doubt and the learned trial Court has not committed any legal or factual error in arriving at the finding with regard to the guilt of the appellants/convicts for the offence punishable under Sections 148, 120B and 302/149 of the IPC.

43. In the result, these criminal appeals (CRA No.354/2024, 309/2024, 425/2024 and 1333/2024) being devoid of merit and are liable to be and are hereby **dismissed**.

44. It is stated at the Bar that the appellants are in jail, they shall serve out the sentence as ordered by the learned trial Court.

45. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with

the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

46. Let a certified copy of this judgment along with the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Anu

Head Note

Common object of the unlawful assembly cam be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.