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CrI.A.No. 213-214 OF 2001

ITEM NO.101

COURT NO.11

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NOS.213-214 OF 2001@@  
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KILEDAR SINGH & ORS. ... APPELLANT(S)

VERSUS

STATE OF M.P. ... RESPONDENT(S)

(With appln.(s) for exemption from filing O.T. and office report)

With CrI.A. No.217/2001 (With office report), CrI. A.  
Nos.215-216/2001 (With appln.(s) for exemption from filing O.T. and  
permission to place addl. documents on record and office report),  
CrI.A. Nos.444-446/2002 (With appln.(s) for exemption from filing  
O.T. and office report)

Date: 21/11/2002. This/These matter(s) were called on for hearing today.@@  
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CORAM:

HON'BLE MR. JUSTICE S.N. VARIAVA  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s)  
in CrI.A. Nos.213-214 of 2001 Mr. M.P. Verma, Sr.Adv.  
Mr. Niraj Sharma, adv.  
Mr. Krishnanand Pandey, Adv.  
Mr. A.N. Choudhary, Adv.

In CrI.A.No.217/2001 444-446/2002 Mr.R.P. Gupta, Sr.Adv.  
Ms. Gitanjali Mohan, Adv.  
Ms. Bharti Tyagi, Adv.  
Mr. Dhan Singh Nagar, Adv.  
Ms. Vibha Datta Makhija, Adv.

In CrI.A. Nos.215-216 of 2001 Mr. H.L. Aggarwal, Sr.Adv.  
Mr. Lakhan Singh Chauhan, Adv.  
C.M. Patel, Adv.  
Mr. Bishesha Nand Jha, Adv.  
Mr. Anil Shrivastav, Adv.

For Respondent(s) 0 Mr.R.P. Gupta, Sr.Adv.  
Ms. Gitanjali Mohan, Adv.  
Ms. Bharti Tyagi, Adv.  
Mr. Dhan Singh Nagar, Adv.  
Ms. Vibha Datta Makhija, Adv.

Mr. H.L. Aggarwal, Sr.Adv.  
Mr. Lakhan Singh Chauhan, Adv.  
C.M. Patel, Adv.  
Mr. Bishesha Nand Jha, Adv.  
Mr. Anil Shrivastav, Adv.

Mr. Amrendra Sharan, Sr. Adv.  
Mr. Niraj Sharma, adv.  
Mr. Krishnanand Pandey, Adv.  
Mr. A.N. Choudhary, Adv.

Dr. Krishan Singh Chauhan, Adv.

UPON hearing counsel the Court made the following  
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Mr. A. Sharan, learned senior counsel appearing for the respondents addressed the Court for five minutes. Thereafter, Mr. M.P. Verma, learned senior counsel appearing for the appellants in Criminal Appeal Nos.213-214 of 2001 addressed the Court for half an hour.

CrI.A.Nos. 444-446/2002 filed by the State are allowed and it is directed that the 8 persons namely Janak Singh, Bahadur Singh, Bharat Singh, Mahesh Singh, Badan Singh, Jabar Singh, Suresh Singh and Surendra Singh will immediately be taken into custody to serve out their remaining sentence; CrI.A.Nos. 213-214/2001 and CrI.A.Nos. 215-216/2001 filed by the accused persons against their convictions are dismissed; and CrI.A.No. 217/2001 is dismissed, in terms of the signed order.

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Madhu (Jasbir Singh)  
Court Master

(Signed Order is placed on the file)

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CrI.A.Nos.213-214/2001@@  
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Kiledar Singh & Ors.

Appellant (s)

Vs.

State of M.P.

Respondent (s)

With Crl. A.Nos. 215-216/2001, Crl. No. 217/2001 and  
Crl. A.Nos. 444-446/2002

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All these appeals can be disposed of by this common judgment.

Between the group of persons, comprising 13 accused, and the complainant group, there was a dispute regarding some land. That dispute was pending in a Civil Court. An interim order was passed by the Civil Court restraining the accused group from interfering with the possession of the complainant's party. In the appeal the High Court did not interfere but merely passed an order that the parties shall maintain status quo.

It is the prosecution case that on 22nd of February, 1996 information was given by one Babu Singh (PW-9) at police station Pawai, that firing was going on.  
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This information was recorded as Sanha No. 549. On receipt of the Information, ASI Saligram Sharma alongwith Head Constable, Bankey Singh, and others proceeded to the scene of occurrence. On reaching the scene of occurrence, Ramprakash Singh (PW-2) gave information to the ASI. This has been registered as Dehati Nalish, (Exhibit P-5). As per this information, the uncles of the informant, namely, Vakil Singh and Vishambhar Singh were sitting in their field, when Preetam Singh (Accused No.7) started cutting mustard crop which had been grown by the complainant party. The complainant's uncle Vishambhar Singh and Vakil Singh objected to Preetam Singh cutting the crop. On this Shriram Singh (Accused No.11) and Sewa Ram (Accused No.12) started firing from their guns. At the same time Kiluwa @ Kiledar Singh (Accused No.8), who was also armed with a gun, came to the spot alongwith other accused persons, who were armed with Barchha, Farsa and lathis. All the persons surrounded PW-2, Vakil Singh and Vishambhar Singh and further firing took place. Vishambhar Singh and Vakil Singh were killed. PW-2 Ramprakash Singh was injured. One Harveer Singh (PW-3) was also injured.

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All the 13 accused persons, were charged with offences punishable under Section 302 IPC read with Section 149 IPC as well as under Section 307 read with Section 149 and under Section 201 of the Indian Penal Code. They pleaded not guilty and claimed to be tried. All of them raised the plea of alibi and led evidence of defence witnesses to prove alibi.

The trial court, by its judgement dated 14 December, 1999, disbelieved the defence and accepted the

prosecution case. The trial court accepted the evidence of PWS-2, 3 & 4, who were eye witnesses to the incident. The trial court convicted all the accused persons. The trial court awarded death sentence to Shriram Singh and Sewa Ram and life sentence to the other accused persons.

All the accused filed appeals before the High Court. By the impugned judgement, the High Court has disposed of all the appeals and maintained the sentence and conviction of Shriram Singh, Sewa Ram, Kiledar Singh, Preetam Singh and BareLal. Whilst maintaining conviction under Section 302/149 IPC the High Court has converted the death sentence, awarded to accused Shriram Singh & ...4/-

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Sewa Ram into life sentence. The High Court has acquitted all the other accused. The reasons given the High Court for acquitting the other accused are as follows:

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"So far as the submission of the learned counsel for the appellants that the complainant side had changed its stands in relation to number of the accused persons, would certainly have an important bearing in the matter. From the first information report and the other statements, it would clearly appear that the prosecution witnesses firstly asserted that all the accused persons came on the spot and opened the attack on the deceased and the prosecution witnesses. There are as many as 13 accused persons. During the course of the trial the prosecution witnesses started asserting that accused Shriram Singh, Sewaram Singh, Barelal Singh, Kiledar Singh and Pritam Singh had caused injuries to the deceased and the witnesses. None of the prosecution witnesses have said that apart from these five persons any other accused even touched the deceased or the witnesses. In the statements of PW-2 Ramprakash Singh, PW-3 Harveer Singh and PW-4 Kalyan Singh, it has clearly come that these five persons had taken active part in the incident and the others did not do anything. The witnesses did not say these persons exhorted or did anything on the spot. True it is that each of the witness asserted that all the 13 accused persons went to the fields and in their presence the accused armed with the guns opened fire. On this evidence, it cannot be assumed that each of the accused who initially associated the other five had a common object to cause injuries or to

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cause death of the witnesses and the deceased. From the statements, it would clearly appear that the other eight persons were simply present on the spot. The possibility that these eight persons realising the gravity of the situation disassociated themselves from the other five cannot be absolutely ruled out. The witnesses do not say that these eight persons had surrounded them very closely. According to the witnesses, these persons were standing at a distance. From the statements of the witnesses, it does not appear that these eight persons shared any common object of causing any injury to the witnesses or cause death of the deceased. Simple presence of certain persons on the spot who have disassociated themselves would not make them liable with the help and assistance of Section 149 IPC. The evidence available on the record does not positively prove that accused Janak Singh, Bahadur Singh, Bharat Singh, Mahesh Singh, Badan Singh, Jabar Singh, Suresh Singh and Surendra Singh shared any common object or in furtherance of the common object came on the spot, formed an unlawful assembly the common object of which was to cause injuries to Ram Prakash Singh and Harveer Singh or causes death of Vakil Singh and Vishembher Singh. In absence of precise, positive and perfect allegations against these three, we are unable to hold that the court below was justified in convicting these persons. Even if the matter is taken from another angle as to what was the common object of the unlawful assembly, it would only appear that these eight persons had joined the other five to see that the possession of the property could be taken and the complainant party was disassociated from the other five after seeing the situation and the surcharge atmosphere and the gravity of the situation, it cannot be held that they were members of the

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unlawful assembly, the common object of which was to commit murder of two and cause injuries to some. A member of unlawful assembly can only be convicted if an offence is committed by the unlawful assembly of which such a person was a member or such a member of the unlawful assembly knew that an offence as committed would be committed or was likely to be committed by the unlawful assembly. The conviction of above referred eight persons deserves to and is accordingly set aside."

CrI. A. Nos. 213-214/2001 have been filed by Kiledar Singh, Sewa Ram and Barelal against their conviction. CrI. A. Nos. 215-216/2001 are filed by Shriram Singh and Preetam Singh against their conviction. CrI. A. No. 217/2001 has been filed by the State for enhancement of the sentence from life imprisonment to death sentence. CrI. A.Nos. 444-446/2002 have been filed by the State against the order acquitting all the other accused.

We have heard learned counsel appearing for all the parties.

On behalf of the accused the order of conviction is being challenged on the following grounds:

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The first ground urged was that there was delay in sending the FIR to the Magistrate. It was pointed out that the first information report was supposed to have been written on 22nd of February, 1996 but it only reached the Magistrate on 26th of February, 1996. It was submitted that no explanation has been given for the delay in sending the FIR to the Magistrate and this circumstance would show that the prosecution has created a false case. We find that there is no real explanation for the delay. However, this by itself would not be sufficient to disbelieve the credible evidence given by the prosecution witnesses. This may have been a relevant circumstance which could have been utilised if there was no other credible evidence.

The second ground urged was that some of the accused persons had also received injuries. It was submitted that the prosecution has not explained the injuries received by the accused persons. We have seen the record. We find that all the injuries received by the accused persons are merely simple injuries. Therefore, there is no necessity at all for the prosecution to explain or deal with those injuries.

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The third ground urged was that in the FIR the names of PWs 3 & 4 have not been mentioned. We find that PW-3 is also a injured witness. The injuries received by him are also fire-arm injuries. PW-3 had, in fact, been sent by the police on 22nd of February, 1996 itself for examination by the Doctor, Dr. Rakesh Sharma, (PW-1). The Doctor had examined the injuries on PW-3 and found that PW-3 had, in fact, received a number of injuries. Thus, even though the name of PW-3 has been mentioned in the FIR, his presence at the place of incident cannot be doubted.

The next ground urged was that the statement of PW-3 was recorded by the police after a delay of 77 days. It was submitted that the explanation given for recording the statement so belatedly could not be believed. Undoubtedly, the statement has been recorded after considerable delay. However, considering the fact that

the presence of PW-3 at the place of incident cannot be doubted, we see no reason to disbelieve the explanation that the statement was recorded belatedly as PW-3 had gone away to some other place.

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The next circumstance which was urged on behalf of the accused was that PWs 3 & 4 have stated in their evidence before the court that Barelal had inflicted ballam injuries on the deceased Vakil Singh. It was pointed out from the evidence of the Doctor (PW-1) and the post mortem report that Vakil Singh did not have ballam injuries on his body. It was pointed that the injuries on his head which injuries were attributable to the farsha blow allegedly given by Preetam Singh. It was submitted, that this showed that the witnesses were giving false evidence. It was submitted that their evidence could not be believed. Undoubtedly, the case that ballam injuries were inflicted on Vakil Singh is not supported by the medical evidence. However, we find that this statement is merely made in Court by these witnesses. Merely because this portion of the testimony cannot be accepted does not mean that the entire testimony has to be discarded. The rest of the testimony of the witnesses is consistent and borne out by the circumstances and the injuries on the deceased persons as well as the injuries on PWs 2 & 3. In this view of the matter, we see no infirmity in the judgement of the trial court so far as the conviction of the accused is concerned.

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We have set out the reasoning on which the High Court has chosen to acquit the other accused. In our view, the reasoning given by the High Court is perverse and cannot be accepted at all. There is no evidence on record, and none could be shown to us by counsel for the accused that these accused disassociated themselves. The evidence is clear. 13 persons armed with deadly weapons had gone to the spot with a common object. At the spot, the firing took place. Two persons were killed and two others were seriously injured. The common object has been established. The charge is under Section 149 IPC. There being no evidence that they had disassociated themselves, the High Court was wrong in acquitting these persons. We, therefore, set aside the order of acquittal passed by the High Court and affirm the sentence and conviction passed by the trial court. Crl. A.Nos. 444-446/2002 filed by the State are accordingly allowed. All these 8 persons, namely, Janak Singh, Bahadur Singh, Bharat Singh, Mahesh Singh, Badan Singh, Jabar Singh, Suresh Singh and Surendra Singh will immediately be taken into custody to serve out their remaining sentence.

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Cr1.A.Nos. 213-214/2001 and Cr1.A.Nos. 215-216/2001 filed by the accused persons against their

convictions are dismissed.

So far as CrI. A. No. 217 of 2001 is concerned, we are in agreement with the reasoning of the High Court that this is not the rarest of rare case where the death sentence could have been awarded. We, therefore, dismiss this appeal.

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.....J  
(S.N. VARIAVA)

.....J  
(B.N. AGRAWAL)

New Delhi,  
November 21, 2002