[2021] 6 S.C.R. 723

LAKSHMAN SINGH A

v.

STATE OF BIHAR (NOW JHARKHAND)

(Criminal Appeal No. 606 of 2021)

JULY 23, 2021 B

[DR. DHANANJAYA Y CHANDRACHUD AND M. R. SHAH, JJ.]

Penal Code, 1860: ss. 327 and 147 – Prosecution case was that on the day of general election PW-8 was issuing slips to the voters 200 yards away from pooling booth – Accused persons who belonged to another village came there armed with lathis, sticks and country made pistols and asked PW-8 to stop issuing voter slips and hand over voter list and on refusal by PW-8 started beating him with hands, fists, lathis and sticks – When PW-10, the brother of PW-8 came to rescue him, accused-'D' fired gun shot at PW-10 due to which he received pellet injuries – Accused-'A' fired at PW-12 – Thereafter villagers rushed there and accused persons ran from the spot – Conviction of accused under ss. 327 and 147 – Appeal against conviction – Held: PW-5, PW8, PW10 and PW12 were injured eye-witnesses – Their injuries were established and proved by evidence of doctor who examined them – All the witnesses fully supported the case of prosecution – Even some of the accused sustained injuries and they failed to explain their injuries in their s. 313 statements – Presence of independent witnesses and the injured eye-witnesses at the place of incident was natural – All the witnesses were consistent in their statements and fully supported the case of prosecution – No error in order of conviction – Interference not called for.. C D E F

Penal Code, 1860: s. 323 – Injury report – Absence of – Effect on prosecution case – Held: Production of an injury report for offence under s.323 is not a sine qua non *for establishing the case for offence under s.323 – s.323 is punishable section for voluntarily cause hurt – Even causing bodily pain can be said to be causing 'hurt'.* G

Penal Code, 1860: s.147 – Presence of all the accused persons at the time of incident was established and proved by prosecution H

witnesses – They formed unlawful assembly in prosecution of common object i.e. to snatch the voters list and to cast bogus voting – Appellants were rightly convicted under s.147.

Sentence/sentencing – Booth capturing and bogus voting – Essence of the electoral system should be to ensure freedom of voters to exercise their free choice – Therefore, any attempt of booth capturing and/or bogus voting should be dealt with iron hands because it ultimately affects the rule of law and democracy – Nobody can be permitted to dilute the right to free and fair election – However, in the instant case State did not prefer any appeal against imposing of only six months simple imprisonment, no interference with sentence order made – Electoral system.

Dismissing the appeals, the Court

HELD: 1. In the instant case, while convicting the accused, the trial Court heavily relied upon the deposition of PW1, PW3 and PW4, who were the independent witnesses and PW5, PW8 & PW10, who were the injured witnesses. The presence of the independent witnesses and even the injured witnesses at the place of the incident was natural. PW1, PW3 & PW4, all of whom were the residents of the village and they came there to cast their votes and witnessed the incident. All the witnesses, PW1, PW3 & PW4 identified all the accused persons and supported the case of the prosecution fully. Injuries on PW5, PW10 & PW12 were established and proved by the prosecution by evidence of the doctor (PW7), who examined the injured witnesses. Their injury reports were placed on record. All the accused persons were named right from the very beginning of lodging the FIR and all the accused persons were specifically named by all the witnesses and/or fully supported the case of the prosecution. Even some of the accused sustained injuries and they have failed to explain their injuries in their 313 statements. Thus, their presence at the time and place of incident was established and proved even otherwise. PW5, PW8 and PW10 were the injured witnesses. Even after they were fully cross-examined, they fully supported the case of the prosecution, even after thorough cross-examination on behalf of the accused. There is no reason to doubt the credibility and/or trustworthiness of PW1, PW3 & PW4 and more

particularly PW5, PW8 & PW10, who are the injured witnesses. All the witnesses are consistent in their statements and they have fully supported the case of the prosecution. Under the circumstances, the courts below have not committed any error in convicting the accused, relying upon the depositions of PW1, PW3, PW4, PW5, PW8 & PW10. [Paras 5, 7][736-E-G; 737-B-D; 738-C]

Ramvilas v. State of Madhya Pradesh **(2016) 16 SCC 316 : [2015] 9 SCR 205 – relied on.**

2. PW8 in his examination-in-chief/deposition specifically stated that after he sustained injuries, treatment was provided at Government Hospital. He further stated in the cross-examination on behalf of all the accused persons except accused-D that he sustained 2-3 blows of truncheons. He also stated that he does not exactly remember that how many blows he suffered. According to him, he first went to Police Station along with the SHO of Police Station where his statement was recorded and thereafter the SHO sent him to Paatan Hospital for treatment. Thus, he was attacked by the accused persons by lathis/sticks and he sustained injuries and was treated at Government Hospital, Paatan was established and proved. It may be that there might not be any serious injuries and/or visible injuries, the hospital might not have issued the injury report. However, production of an injury report for the offence under Section 323 IPC is not a *sine qua non* for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily pain can be said to be causing "hurt". Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the accused under Section 323 IPC. [Para 8][738-D-H; 739-A

3. Now so far as the conviction of the accused under Section 147 IPC is concerned, the presence of all the accused persons at the time of incident and their active participation has been established and proved by the prosecution by examining the

aforesaid witnesses who are the independent witnesses and injured witnesses also. The accused persons belong to another village. They formed an unlawful assembly in prosecution of common object, i.e., "to snatch the voters list and to cast bogus voting". It has been established and proved that they used the force and, in the incident, PW5, PW8, PW10 & PW12 sustained injuries. All the accused persons-appellants were having lathis. Section 147 IPC is a punishable section for "rioting". "Force" is defined under Section 349 IPC. As per Section 349 IPC, "force" means "A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other……." [Paras 9, 9.1][739-A-G]

4.1 All the accused persons were the members of the unlawful assembly and the common intention was "to snatch the voters slips and to cast bogus voting". They used force and violence also. It is the case on behalf of the accused that there is no specific role attributed to them for the offence of rioting under Section 147 IPC. However, where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him. In the present case, the incident too concluded within few minutes and therefore it is natural that exact version of incident revealing every minute detail, i.e., meticulous exactitude of individual acts cannot be given by eyewitnesses. Even otherwise, every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. [Para 9.1][739-H; 740-A-C]

Abdul Sayeed v. State of MP **(2010) 10 SCC 259 : [2010] 13 SCR 311;** *Mahadev Sharma v. State of Bihar* **[1966] 1 SCR 18 : AIR 1966 SC 302 – relied on.**

4.2 Thus, once the unlawful assembly is established in prosecution of the common object, i.e., in the present case, "to snatch the voters list and to cast bogus voting", each member of the unlawful assembly is guilty of the offence of rioting. The use of the force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting. It is not necessary that force or violence must

be by all but the liability accrues to all the members of the unlawful assembly. Some may encourage by words, others by signs while others may actually cause hurt and yet all the members of the unlawful assembly would be equally guilty of rioting. In the instant case, all the accused are found to be the members of the unlawful assembly in prosecution of the common object, i.e., "to snatch the voters list and to cast bogus voting" and PW5, PW8, PW10 & PW12 sustained injuries caused by members of the unlawful assembly, the appellants-accused are rightly convicted under Section 147 IPC for the offence of rioting. [Para 9.1][740-E-H]

5. Though in the instant case, it was established and proved that all the accused were the members of the unlawful assembly in prosecution of the common object, namely, "to snatch the voters list and to cast bogus voting" and were convicted for the offence under Section 147 IPC, the trial Court had imposed the sentence of only six months simple imprisonment. In the case of *People's Union for Civil Liberties,* it was observed by this Court that freedom of voting is a part of the freedom of expression. It was further observed that secrecy of casting vote is necessary for strengthening democracy. The essence of the electoral system should be to ensure freedom of voters to exercise their free choice. Therefore, any attempt of booth capturing and/or bogus voting should be dealt with iron hands because it ultimately affects the rule of law and democracy. Nobody can be permitted to dilute the right to free and fair election. However, as the State has not preferred any appeal against imposing of only six months simple imprisonment, we rest the matter there. [Para 10][741-B-F]

People's Union for Civil Liberties v. Union of India **(2013) 10 SCC 1 : [2013] 12 SCR 283 – relied on.**

Kutumbaka Krishna Mohan Rao v. Public Prosecutor, High Court of A.P. **1991 Supp. 2 SCC 509;** *Inder Singh v. State of Rajasthan* **(2015) 2 SCC 734 : [2015] 1 SCR 563;** *State of MP v. Mansingh* **(2003) 10 SCC 414 : [2003] 2 Suppl. SCR 460;** *State of Uttar Pradesh v. Naresh* **(2011) 4 SCC 324 : [2011] 4 SCR 1176;** *Kalabhai Hamirbhai Kachhot v. State of Gujarat* **(2021) SCC Online SC 347 – referred to.**

Case Law Reference

[1991] Supp. 2 SCC 509	**referred to**	**Para 3.10**
[2015] 1 SCR 563	**referred to**	**Para 3.10**
[1966] 1 SCR 18	**relied on**	**Para 4.3**
[2003] 2 Suppl. SCR 460	**referred to**	**Para 4.5**
[2010] 13 SCR 311	**relied on**	**Para 4.5**
[2015] 9 SCR 205	**relied on**	**Para 4.5**
[2011] 4 SCR 1176	**referred to**	**Para 4.5**
[2013] 12 SCR 283	**relied on**	**Para 4.8**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 606 of 2021

From the Judgment and Order dated 31.10.2018 of the High Court of Jharkhand at Ranchi in Cr. Appeal (S.J) No.232 of 1999(R).

With

Criminal Appeal Nos. 630-631 of 2021

Manoj Swarup, Sr. Adv., Dharmendra Kumar Sinha, Rajiv Kumar Jha, Onkar Prasad, Advs. for the appellant.

Arunabh Chowdhury, AAG, Ms. Pallavi Langar, Tapesh Kumar Singh, Aditya Pratap Singh, Ms. Bhaswati Singh, Advs. for the respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 31.10.2018 passed by the High Court of Jharkhand at Ranchi in Criminal Appeal Nos. 232/1999 and 242/1999, by which the High Court has dismissed the said appeals preferred by the appellants herein and has confirmed the judgment and order of conviction and sentence passed by the learned trial Court convicting the appellants for the offences under Sections 323 and 147 IPC and sentencing them to undergo six months simple imprisonment under both sections, original accused nos. 9, 8, 12, 11, 10, 14, 2 and 13 – Lakshman Singh, Shiv Kumar Singh, Upendra Singh, Vijay Singh, Sanjay Prasad Singh, Rajmani

Singh, Ayodhya Prasad Singh and Ramadhar Singh have preferred the present appeals.

2. As per the case of the prosecution, an FIR was lodged at Paatan Police Station by the first informant – Rajeev Ranjan Tiwari on 26.11.1989 alleging inter alia that on the eve of general election, he was working as a worker of Bhartiya Janta Party at village Golhana Booth No. 132 under Paatan Police Station and was issuing slips to the voters towards two hundred yards north away from the polling booth; at that time, at around 10:40 a.m., the accused persons who belong to another village Naudiha came armed with lathis, sticks, country made pistols and asked him to stop issuing voter slips and handover the voters list which he was possessing and on his refusal the accused persons started physically beating him (PW8 – Rajiv Ranjan Tiwari) with hands, fists, lathis and sticks; the brother of the first informant-PW8, Priya Ranjan Tiwari (PW10) upon knowing about the incident came to rescue him and at that time accused Dinanath Singh @ Dina Singh fired gun shot at PW10 with his country made pistol, due to which he received pellet injuries. Accused Ajay Singh fired at Dinesh Tiwari (PW12), due to which he was injured. It was further alleged that due to scuffle, accused Hira Singh snatched wrist watches of PW8 & PW10; the villagers rushed there and then all the accused persons ran away towards village Naudhia. Based on the statement of PW8 – Rajiv Ranjan Tiwari, which was recorded at 12:30 p.m. on 26.11.1989, an FIR was registered at about 2:00 p.m. on the very day, i.e., 26.11.1989 against 16 accused named persons for the offences under Sections 147, 148, 149, 307, 326, 324, 323 IPC and Section 27 of the Arms Act. At this stage, it is required to be noted that even some of the accused – Lakshman Singh, Shiv Kumar Singh and Ayodhya Prasad Singh also sustained injuries. After conclusion of the investigation, the investigating officer filed chargesheet against 15 accused including the appellants herein.

2.1 The learned trial Court framed the charge against the accused persons for the offences under Sections 323, 307, 147, 149 and 379 IPC. Accused Dinanath Singh and Ajay Singh were further charged under Sections 148 IPC and accused Hira Singh was also charged under Section 379 IPC. As the case was exclusively triable by the Court of Sessions, the case was committed to the learned Sessions Court, which was numbered as Sessions Trial No. 36 of 1991.

2.2 To prove the case against the accused, the prosecution examined in all 15 witnesses including PW8, the first informant – Rajiv

A Ranjan Tiwari, Priya Ranjan Tiwari (PW10) the brother of the first informant and PW5 – Dilip Kumar Tiwari, who all were injured eye witnesses. The prosecution also examined Dr. Jawahar Lal (PW7), who examined PW10, PW12 and PW5 on the very day at Sadar Hospital, Daltonganj and who found injuries on the said persons. The prosecution also examined the investigating officer – Shivnandan Mahto (PW13). B Prosecution also examined independent witnesses, i.e., PW1, PW3 & PW4. After closure of the evidence on behalf of the prosecution, statements of the accused persons under Section 313 Cr.P.C. were recorded. They denied to the allegations. The defence also examined DW1 to prove the injuries on accused Ayodhya Prasad Singh, Rama C Singh, Shiv Kumar Singh and Lakshman Singh and brought on record their injury reports.

2.3 Thereafter, on conclusion of the full-fledged trial and on appreciation of the entire evidence on record and relying upon the deposition of PW8, PW10 & PW5, who all were injured eyewitnesses D and other eyewitnesses, the learned trial Court convicted the appellants herein for the offences under Sections 323 and 147 IPC and sentenced them to undergo six months simple imprisonment for both the offences. The learned trial Court also convicted accused Dinanath Singh for the offences under Sections 326 & 148 IPC and sentenced him to undergo seven years and two years RI respectively. The learned trial Court also E convicted accused Ajay Singh for the offences under Sections 324 & 148 IPC and sentenced him to undergo three years & two years RI respectively.

2.4 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence, convicting and sentencing the appellants F herein, original accused nos. 9, 8, 12, 11, 10, 14, 2 preferred appeal along with other accused being Criminal Appeal No.232 of 1999 and accused no. 13 preferred appeal being Criminal Appeal No. 242 of 1999 before the High Court. By the common impugned judgment and order, the High Court has dismissed the said appeals and has confirmed the judgment and order of conviction and sentence passed by the learned trial Court. G

2.5 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, original accused nos. 9, 8, 12, 11, 10, 14, 2 & 13 have preferred the present appeals.

3. Shri Manoj Swarup, learned Senior Advocate has appeared on H behalf of the appellants – accused and Shri Arunabh Chowdhury, learned

Additional Advocate General in Criminal Appeal No. 606/2021 and Shri Tapesh Kumar Singh, learned Advocate in Criminal Appeal Nos. 630-631/2021 have appeared for the State of Jharkhand.

3.1 Learned Senior Advocate appearing on behalf of the appellants – accused has vehemently submitted that in the facts and circumstances of the case both, the learned trial Court as well as the High Court have committed a grave error in convicting the accused for the offences under Sections 323, 147 IPC.

3.2 It is further submitted that both the courts below have materially erred in relying upon the deposition of PW8, PW10 & PW5. It is submitted that the aforesaid witnesses are unreliable and untrustworthy. It is submitted that they are not the independent witnesses. It is submitted that as such PW12 – Dinesh Tiwary turned hostile. It is submitted that the aforesaid witnesses belong to the same village.

3.3 It is further submitted that even both the courts below have materially erred in coming to the conclusion that the appellants were part of the unlawful assembly and thereby have committed a grave error in convicting the accused for the offence under Section 147 IPC.

3.4 It is further submitted that the motive has not been established and proved. It is submitted that the common object was alleged to be to cast bogus votes, which was never cast. It is submitted that even the voter slip was also available with all other parties and therefore the motive as per the prosecution case is questionable.

3.5 It is further submitted that so far as the impugned judgment and order passed by the High Court is concerned, the individual role and/or the merits of the case qua the respective appellants – accused have not at all been considered by the High Court. It is submitted that the High Court has only stated at page 26, para 23 qua the present appellants that so far as the rests of the appellants are concerned, they have been rightly held guilty under Sections 323 & 147 IPC. It is submitted that there is no independent assessment of the evidence qua the appellants herein.

3.6 It is further submitted that both the courts below have not properly appreciated the fact that the presence of the accused at the polling station was natural. It is submitted that because of the bye-election, the accused persons along with the other persons belonging to different political parties were present. It is submitted that it was natural for the people belonging to different parties to call persons from different villages

A or otherwise to be present at booth and that itself would not be sufficient to prove the guilt.

3.7 It is further submitted that even otherwise, the courts below have materially erred in convicting the accused for the offence under Section 323 IPC. It is submitted that so far as PW8 – informant is B concerned, there was no injury sustained by him. It is submitted that no injury certificate of PW8 has been brought on record. It is submitted that the prosecution has brought on record the injury certificates of three persons only, namely, PW10 -Priya Ranjan Tiwari, PW12 – Dinesh Tiwari and PW5 – Dilip Tiwari. It is submitted that all the injuries are by gunshot except two simple injuries caused to Dinesh Tiwari – PW12. It is submitted C that PW12 turned hostile. It is submitted that the appellants are alleged to have used lathis and sticks only against the first informant – PW8 as per the prosecution case. It is submitted that therefore in the absence of any corroborating evidence/material in support of the case of the prosecution that the appellants have beaten PW8 and sustained injuries, D the courts below have materially erred in convicting the accused for the offence under Section 323 IPC.

3.8 It is further submitted that even the conduct on the part of the first informant – PW8 creates doubt about his credibility. It is submitted that he has roped in several persons belonging to the opposite camp. It is E submitted that after the incident he went to the village and the police SHO came to his house and taken him to the government hospital, Patan and thereafter recorded his fardbyan (statement). It is submitted that neither he went to his injured brother nor he has ever gone to see him at the hospital nor any family member went to see the injured in the hospital. It is submitted that in such circumstances, PW8 is not a reliable and F trustworthy witness and therefore the courts below ought not to have relied upon the deposition of PW8.

3.9 It is further submitted that even there is no recovery of lathis and sticks. It is submitted that even the voting slips have also not been recovered from the informant. It is submitted that non-exhibit of voter G slips demolishes the case of the prosecution. It is submitted that FIR, PW1 and informant and consistently all witnesses have stated that Rajiv Ranjan Tiwari refused to give voter slips to the accused, upon which scuffle occurred. It is submitted that the voting slips are not exhibited. It is submitted therefore uncorroborated testimony of asking voter slips is not proved.

H

3.10 Making the above submissions and relying upon the decisions of this Court in the cases of *Kutumbaka Krishna Mohan Rao v. Public Prosecutor, High Court of A.P., reported in 1991 Supp. 2 SCC 509 and Inder Singh v. State of Rajasthan, reported in (2015) 2 SCC 734*, it is prayed to allow the present appeals.

4. The present appeals are opposed by the learned counsel appearing on behalf of the State of Jharkhand.

4.1 It is submitted that as such there are concurrent findings of fact recorded by both, the learned trial Court as well as the High Court, holding the appellants guilty for the offences under Sections 323 & 147 IPC.

4.2 It is submitted that in the present case the prosecution has been successful in proving the case against the accused by examining PW8, PW10 & PW5, who are the injured eyewitnesses. It is submitted that the injured eyewitnesses – PW8, PW10 & PW5 are reliable and trustworthy. It is submitted that all the aforesaid three witnesses were thoroughly cross-examined and from cross-examination, nothing adverse to the case of the prosecution has been brought on record by the accused. It is submitted that even the prosecution examined thee other witnesses, PW1, PW3 & PW4 who are independent witnesses, who supported the case of the prosecution. It is submitted that as such the learned trial Court has discussed the entire evidence on record and analysed the injury reports and thereafter by a detailed judgment has convicted the appellants for the offence of voluntarily causing hurt under Section 323 IPC and for the offence of rioting under Section 147 IPC. It is submitted that all the appellants have been guilty for the offence of rioting punishable under Section 147 IPC. It is submitted that for the offence of rioting, there has to be,

i) an unlawful assembly of 5 or more persons as defined in Section 141 IPC, i.e., an assembly of 5 or more persons and such assembly was unlawful;

ii) the unlawful assembly must use force or violence. Force is defined in Section 349 IPC; and

iii) the force or violence used by an unlawful assembly or by any member thereof must be in prosecution of the common object of such assembly in which case every member of such assembly is guilty of the offence of rioting.

A It is submitted that in the present case, all the ingredients of rioting as defined under Section 146 of the IPC has been established and proved.

4.3 It is submitted that as held by this Court in the case of *Mahadev Sharma v. State of Bihar, (1966) 1 SCR 18 = AIR 1966 SC 302*, 'that every member of the unlawful assembly is guilty of the offence of rioting B even though he may not have himself used force or violence'. It is submitted that as held by this Court, 'offence of rioting under Section 146 IPC is said to be committed when the unlawful assembly or any member thereof in prosecution of the common object of such assembly uses force or violence'. It is submitted that therefore once the unlawful assembly is established in prosecution of the common object, i.e., in the C present case, as held by the courts below, the common object was "to snatch the voter list and to cast bogus voting", each member of the unlawful assembly is guilty for the offence of rioting. It is submitted that the use of force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes D rioting. It is submitted that it is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. It is submitted that some may encourage by words, others by signs while others may actually cause hurt and yet all members of the unlawful assembly would be equally guilty of rioting. It is submitted that in the present case both the courts below have found the appellants as E an active participant in the offence and they cannot be said to be the wayfarers or spectators.

4.4 It is submitted that so far as the offence of voluntarily causing hurt as defined under Section 321 IPC and punishable under Section 323 IPC is concerned, it is submitted that the injuries sustained by PW5 to F PW8 and PW12 are simple injuries while PW10 sustained grievous injuries. It is submitted that as such considering the nature of the injuries, the appellants have been let off lightly by the courts below.

It is further submitted that as such the accused Lakshman Singh, Shiv Kumar Singh and Ayodhya Prasad Singh sustained injuries which G establish beyond doubt their presence and participation. It is submitted that in their statement under Section 313 Cr.P.C., they have not explained their injuries at all.

4.5 It is further submitted that as PW5, PW8 & PW10 are injured witnesses, as held by this Court in catena of decisions, evidence of an H injured eye witness has great evidentiary value and unless compelling

reasons exist, their statements are not to be discarded lightly. It is submitted that very cogent and convincing grounds are required to discard the evidence of the injured witness. Reliance is placed on the judgments of this Court in the cases of *State of MP v. Mansingh (2003) 10 SCC 414(para 9); Abdul Sayeed v. State of MP (2010) 10 SCC 259; Ramvilas v. State of Madhya Pradesh, (2016) 16 SCC 316 (para 6); State of Uttar Pradesh v. Naresh, (2011) 4 SCC 324 (para 27); and the recent decision in the case of Kalabhai Hamirbhai Kachhot v. State of Gujarat, (2021) SCC Online SC 347 (paras 20 & 21).*

4.6 It is further submitted that in the present case, right from the very beginning, all the accused were named in the FIR and their role and complicity have been established with trustworthy, reliable and cogent evidence. It is submitted that all the accused persons including the present appellants formed the unlawful assembly in furtherance of the common object "to snatch the voter list and to cast bogus voting" and actually participated in the occurrence and committed the offences. It is submitted that as such there is no ground to disbelieve the evidence of the injured eye witnesses/eye witnesses.

4.7 It is further submitted that as such the learned trial Court took a very lenient view in imposing the sentence of only six months simple imprisonment. It is submitted that once the appellants were found to be the members of the unlawful assembly with a common object and looking to the injuries sustained by PW5, PW10 & PW12 who sustained injuries by fired arm also, as such, all the appellants-accused ought to have been convicted along with other accused for the offences under Sections 307, 326, 324 and 148 IPC also.

4.8 It is further submitted that bogus voting seriously undermines the most basic feature of democracy and interferes with the conduct of free and fair election which has been held by this Court in the case of *People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1,* to include within its ambit the right of an elector to cast his vote without fear or duress. It is submitted that as held by this Court in the aforesaid decision, free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. It is submitted that therefore when the trial Court has shown leniency to the appellants in sentencing them only for six months simple imprisonment, no interference of this Court is called for.

A 4.9. Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeals.

5. We have heard the learned counsel for the respective parties at length. We have meticulously scanned the entire evidence on record and also the findings recorded by the learned trial Court, which are on
B appreciation of the evidence on record. At the outset, it is required to be noted that all the accused herein are convicted for the offences under Section 323 and 147 IPC and are sentenced to undergo six months simple imprisonment for both the offences and the sentences are directed to run concurrently.

C It is true that in the impugned judgment the High Court has not at all dealt with and/or considered the case on behalf of the accused/ appellants herein and has not discussed the evidence qua each accused, which ought to have been done while deciding the first appeal against the judgment and order of conviction. However, as for the reasons stated hereinbelow and ultimately, we agree with the final conclusion of the
D High Court confirming the judgment and order passed by the learned trial Court, instead of remanding the matter to the High Court, we ourselves have re-appreciated the entire evidence on record.

5.1 In the present case, while convicting the accused, the learned trial Court has heavily relied upon the deposition of PW1, PW3 and
E PW4, who are the independent witnesses and PW5, PW8 & PW10, who are the injured witnesses. The presence of the independent witnesses and even the injured witnesses at the place of the incident is natural. PW1, PW3 & PW4, all of whom were the residents of the village and they came there to cast their votes and witnessed the incident. All the
F witnesses, PW1, PW3 & PW4 have identified all the accused persons and supported the case of the prosecution fully. PW5, PW8, PW10 and even PW12 are injured eyewitnesses. Injuries on PW5, PW10 & PW12 have been established and proved by the prosecution by examining Dr. Jawahar Lal (PW7), who examined the above injured witnesses. Their injury reports are placed on record by way of Exhibit 1, 1/1 and ½. All
G the witnesses have unequivocally and in the same voice have stated that at the relevant time when the voting was going on for the Lok Sabha constituency and at that time PW8 - Rajiv Ranjan Tiwari was giving slips to the voters and at that time at about 10:40 a.m. all the accused persons belonging to another village came there and asked him to stop
H giving slips and to handover the voter list and on refusal the accused

persons assaulted him with fists, slaps and lathis and he sustained injuries. Meanwhile, his brother Priya Ranjan Tiwari came for his rescue and at that time one Dinanath Singh took out his country made pistol and fired upon him causing several fire-armed injuries. All the accused persons were named right from the very beginning of lodging the FIR and all the accused persons were specifically named by all the witnesses and/or fully supported the case of the prosecution. At this stage, it is required to be noted that even some of the accused namely, – Lakshman Singh, Shiv Kumar Singh and Ayodhya Prasad Singh sustained injuries and they have failed to explain their injuries in their 313 statements. Thus, their presence at the time and place of incident has been established and proved even otherwise. At the cost of the repetition, it is observed that PW5, PW8 and PW10 are the injured witnesses. Even after they have been fully cross-examined, they have fully supported the case of the prosecution, even after thorough cross-examination on behalf of the accused.

6. In the case of *Mansingh (supra)*, it is observed and held by this Court that "the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly". It is further observed in the said decision that "minor discrepancies do not corrode the credibility of an otherwise acceptable evidence". It is further observed that "mere non-mention of the name of an eyewitness does not render the prosecution version fragile".

6.1 A similar view has been expressed by this Court in the subsequent decision in the case of *Abdul Sayeed (supra)*. It was the case of identification by witnesses in a crowd of assailants. It is held that "in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him". It is further observed that "when incident stood concluded within few minutes, it is natural that exact version of incident revealing every minute detail, i.e., meticulous exactitude of individual acts, cannot be given by eyewitnesses". It is further observed that "where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone". It is further observed that "thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein".

A 6.2 The aforesaid principle of law has been reiterated again by this Court in the case of *Ramvilas (supra)* and it is held that "evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence". It is further observed that "being injured witnesses, their presence at the time and place of occurrence cannot be doubted".

B

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we see no reason to doubt the credibility and/or trustworthiness of PW1, PW3 & PW4 and more particularly PW5, PW8 & PW10, who are the injured witnesses. All the witnesses are consistent in their statements and they have fully supported

C the case of the prosecution. Under the circumstances, the courts below have not committed any error in convicting the accused, relying upon the depositions of PW1, PW3, PW4, PW5, PW8 & PW10.

8. Now so far as the submission on behalf of the appellants – accused that all the appellants were alleged to have armed with lathis

D and so far as PW8 is concerned, no injury report is forthcoming and/or brought on record and therefore they cannot be convicted for the offence under Section 323 IPC is concerned, at the outset, it is required to be noted that PW8 in his examination-in-chief/deposition has specifically stated that after he sustained injuries, treatment was provided at

E Government Hospital, Paatan. He has further stated in the cross-examination on behalf of all the accused persons except accused Dinanath Singh that he sustained 2-3 blows of truncheons. He has also stated that he does not exactly remember that how many blows he suffered. According to him, he first went to Police Station, Paatan along with the SHO of Police Station, Paatan, where his statement was recorded and

F thereafter the SHO sent him to Paatan Hospital for treatment. Thus, he was attacked by the accused persons by lathis/sticks and he sustained injuries and was treated at Government Hospital, Paatan has been established and proved. It may be that there might not be any serious injuries and/or visible injuries, the hospital might not have issued the injury

G report. However, production of an injury report for the offence under Section 323 IPC is not a *sine qua non* for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily

H pain can be said to be causing "hurt". Therefore, in the facts and

circumstances of the case, no error has been committed by the courts below for convicting the accused under Section 323 IPC.

9. Now so far as the conviction of the accused under Section 147 IPC is concerned, the presence of all the accused persons at the time of incident and their active participation has been established and proved by the prosecution by examining the aforesaid witnesses who are the independent witnesses and injured witnesses also. The accused persons belong to another village. They formed an unlawful assembly in prosecution of common object, i.e., "to snatch the voters list and to cast bogus voting". It has been established and proved that they used the force and, in the incident, PW5, PW8, PW10 & PW12 sustained injuries. All the accused persons-appellants were having lathis. Section 147 IPC is a punishable section for "rioting". The offence of "rioting" is defined in Section 146 IPC, which reads as under:

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

On a fair reading of the definition of "rioting" as per Section 146 IPC, for the offence of "rioting", there has to be,

i) an unlawful assembly of 5 or more persons as defined in Section 141 IPC, i.e., an assembly of 5 or more persons and such assembly was unlawful;

ii) the unlawful assembly must use force or violence. Force is defined in Section 349 IPC; and

iii) the force or violence used by an unlawful assembly or by any member thereof must be in prosecution of the common object of such assembly in which case every member of such assembly is guilty of the offence of rioting.

9.1 "Force" is defined under Section 349 IPC. As per Section 349 IPC, "force" means "A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other……."

As observed hereinabove, all the accused persons were the members of the unlawful assembly and the common intention was "to snatch the voters slips and to cast bogus voting". They used force and

violence also, as observed hereinabove. It is the case on behalf of the accused that there is no specific role attributed to them for the offence of rioting under Section 147 IPC. However, as observed hereinabove and as held by this Court in the case of *Abdul Sayeed (supra),* where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him. In the present case, the incident too concluded within few minutes and therefore it is natural that exact version of incident revealing every minute detail, i.e., meticulous exactitude of individual acts cannot be given by eyewitnesses. Even otherwise, as held by this Court in the case of *Mahadev Sharma (supra)*, every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. In paragraph 7, it is observed and held as under:

> "7. Section 146 then defines the offence of rioting. This offence is said to be committed when the unlawful assembly or any member thereof in prosecution of the common object of such assembly uses force or violence. It may be noticed here that every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. There is thus vicarious responsibility when force or violence is used in prosecution of the common object of the unlawful assembly."

Thus, once the unlawful assembly is established in prosecution of the common object, i.e., in the present case, "to snatch the voters list and to cast bogus voting", each member of the unlawful assembly is guilty of the offence of rioting. The use of the force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting. It is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. As rightly submitted by the learned counsel appearing on behalf of the State, some may encourage by words, others by signs while others may actually cause hurt and yet all the members of the unlawful assembly would be equally guilty of rioting. In the present case, all the accused herein are found to be the members of the unlawful assembly in prosecution of the common object, i.e., "to snatch the voters list and to cast bogus voting" and PW5, PW8, PW10 & PW12 sustained injuries caused by members of the unlawful assembly, the appellants-accused are rightly convicted under Section 147 IPC for the offence of rioting.

10. In view of the above, we are of the firm view that the appellants are rightly convicted under Sections 323 and 147 IPC and sentenced to undergo six months simple imprisonment only for the said offences.

Before parting, we may observe that though in the present case it has been established and proved that all the accused were the members of the unlawful assembly in prosecution of the common object, namely, "to snatch the voters list and to cast bogus voting" and have been convicted for the offence under Section 147 IPC, the trial Court has imposed the sentence of only six months simple imprisonment. In the case of *People"s Union for Civil Liberties (supra)*, it is observed by this Court that freedom of voting is a part of the freedom of expression. It is further observed that secrecy of casting vote is necessary for strengthening democracy. It is further observed that in direct elections of Lok Sabha or State Legislature, maintenance of secrecy is a must and is insisted upon all over the world in democracies where direct elections are involved to ensure that a voter casts his vote without any fear or being victimised if his vote is disclosed. It is further observed that democracy and free elections are a part of the basic structure of the Constitution. It is also further observed that the election is a mechanism which ultimately represents the will of the people. The essence of the electoral system should be to ensure freedom of voters to exercise their free choice. Therefore, any attempt of booth capturing and/or bogus voting should be dealt with iron hands because it ultimately affects the rule of law and democracy. Nobody can be permitted to dilute the right to free and fair election. However, as the State has not preferred any appeal against imposing of only six months simple imprisonment, we rest the matter there.

11. In view of the above and for the reasons stated hereinabove, all the appeals fail and deserve to be dismissed and are accordingly dismissed. Since, the applications for exemption from surrendering of the accused- appellants herein were allowed by this Court vide orders dated 15.03.2019 and 08.07.2019 respectively, the accused-appellants are directed to surrender forthwith to serve out their sentence.

Devika Gujral Appeals dismissed.