A SANTOSH KUMARI

v.

STATE OF J & K & OTHERS

(Criminal Appeal Nos. 1660-1662 of 2011)

B SEPTEMBER 13, 2011

[J.M. PANCHAL AND H.L. GOKHALE, JJ.]

CODE OF CRIMINAL PROCEDURE, 1989 (1933 A.D.) (as applicable in the State of Jammu and Kashmir):

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ss.267 to 269 – Framing of charge – Held: Every charge framed under the Code should state the offence with which the accused is charged and if the law which creates the offence gives it any specific name, the offence should also be D *described in the charge by that name only – Code of Criminal Procedure, 1973.*

Bail – Interim bail – Accused charged for committing offence u/ss.302, 109, 147, 148, 149 of the Ranbir Penal code – Trial court framed the charge which contained E *particulars as to the time, place, date of the offence of rioting and the place where the deceased succumbed to his injuries – High Court set aside the order of the trial court framing the charges against the accused observing that mere mention of the sections of the law in the charge was likely to prejudice* F *the accused in his trial and that he would be disabled to know the exact charge he had to face and remanded the case to the trial court to consider it in terms of ss.267 to 269 and also directed release of all the accused except accused 'S' – On appeal, held: The order of the High Court was erroneous –* G *The nature of charge was clearly understood by each accused – The cross-examination of eye witnesses on behalf of the accused indicated that none of the accused was in fact misled by so-called error pointed out by High Court – The remand of case to trial court for fresh consideration on the*

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point of charge was not warranted at all, as there was nothing to suggest even remotely that the accused had or would have been misled by any error or omission in the charge – The order admitting the accused except accused 'S' to interim bail of Rs.25,000/- each to the satisfaction of the trial court pending consideration of the prosecution case afresh on question of charge, was not warranted nor justified at all – The fact that accused were involved in commission of murder which entails death or life imprisonment should have been taken into consideration before releasing them on interim bail – Trial court after having considered the gravity of the offence and the apprehension on the part of the prosecution that the accused would tamper with the evidence in the event of their release on bail had rightly refused to enlarge the accused on bail – High Court while granting the relief of bail to the accused completely ignored and overlooked the relevant factors which weighed heavily against the accused – Moreover, the fact that complainant and one of the witnesses were physically assaulted and threatened in the Court premises has to be given its due weight – The FIR was pending necessary investigation wherein the statement of the son of the appellant was recorded u/s.164 – The contents of the FIR would indicate that the accused either themselves or through their relatives would try to tamper the evidence which is going to be led by the prosecution in the case – Under the circumstances, release of the accused on interim bail is set aside – Ranbir Penal code – ss.302, 109, 147, 148, 149.

Code of Criminal Procedure, 1973:

Object of – Held: Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities – It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby.

A *Framing of charge – Object of – Held: The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction – If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not* B *invalidated – The object of the statement of particulars to be mentioned in the charge is to enable the accused person to know the substantive charge, he will have to meet and to be ready for it before the evidence is given – The extent of the particulars necessary to be given in the charge depends upon* C *the facts and the circumstances of each case – In drawing up a charge, all verbiage should be avoided – However, a charge should be precise in its scope and particular in its details – The charge has to contain such particulars as to the time and place of the alleged offence and the person against whom it* D *was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged – Code of Criminal Procedure, 1989 (1933 A.D.) (as applicable in the State of Jammu and Kashmir).*

The prosecution case was that the husband of the E **appellant-complainant was assaulted by respondent nos.3 to 8. The victim was rushed to hospital where he died after 2-3 days. On March 24, 2008, the trial court framed charges against each accused for offences punishable under Sections 302, 109, 147, 148, 149 of the** F **Ranbir Penal Code. Respondent nos.3 to 7 filed revision petition before the High Court. The High Court called for the records of the case. Respondent no.8 filed a petition under Section 561-A, Cr.P.C. for quashing the order passed by the trial court framing charges. During** G **pendency of the petitions, the High Court sent back the records of the case and granted liberty to respondent nos. 3 to 8 to seek bail from the trial court. Meanwhile, the prosecution had examined three witnesses to the occurrence.**

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Pursuant to the liberty granted by the High Court, respondent nos. 3 to 8 applied for bail before the trial court. The trial court rejected the bail applications. Respondent nos.3 to 7 moved bail applications before the High Court. On 10.8.2010, the High Court directed production of evidence of witnesses. On 13.8.2010, the brother of respondent no.3 physically assaulted and threatened the son of the appellant as well as other witnesses to refrain them from deposing against the accused.

Respondent Nos. 3 to 8 argued before the High Court that the charge was invalid because there was no mention in the order of the trial court indicating the specific offence found to have been prima facie committed by one or the other accused individually or jointly nor there was any indication regarding the specific names of the offences sufficient for description in the order of framing charge, but only sections of the law against which the offences were found to have been committed were mentioned. On 20.10.2010, the High Court set aside the order of the trial court framing the charges against respondent nos.3 to 8 and remanded the case to the trial court to consider it in terms of Sections 267 to 269, Cr.P.C. By the said order, the High Court directed release of all the accused persons except respondent no.3. The instant appeals were filed challenging the order of the High Court.

Disposing of the appeals, the Court

HELD: 1. The provisions relating to framing of charge against the accused before the trial commences, are contained in the Code of Criminal Procedure 1989 (1933 A.D.) which is applicable to the State of Jammu and Kashmir. The statute requires that every charge framed under the said code should state the offence with which

A the accused is charged and if the law which creates the offence gives it any specific name, the offence should also be described in the charge by that name only. The statute further requires that the law and section of the law against which the offence is said to have been committed B has to be mentioned in the charge. It is a fundamental principle of criminal law that the accused should be informed with certainty and accuracy the exact nature of the charge brought against him. The object of the statement of particulars to be mentioned in the charge is C to enable the accused person to know the substantive charge, he will have to meet and to be ready for it before the evidence is given. The extent of the particulars necessary to be given in the charge depends upon the facts and the circumstances of each case. It is well settled law that in drawing up a charge, all verbiage D should be avoided. However, a charge should be precise in its scope and particular in its details. The charge has to contain such particulars as to the time and place of the alleged offence and the person against whom it was committed as are reasonably sufficient to give the E accused notice of the matter with which he is charged. One of the requirements of law is that when the nature of the case is such that the particulars mentioned in the charge do not give the accused sufficient notice of the matter with which he is charged, the charge should F contain such particulars of the manner in which alleged offence was committed as would be sufficient for that purpose. If 'A' is accused of the murder of 'B' at a given time and place, the charge need not state the manner in which 'A' murdered 'B'. [Para 6] [1067-G-H; 1068-A-E]

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2. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a

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breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 of the IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention. [Para 7] [1068-F-H; 1069-A-C]

Willie Slavey v. The State of M.P. 1955 (2) SCR 140 – followed.

3. A fair and reasonable reading of the order dated March 24, 2008 made it abundantly clear that accused 'RS' on June 28, 2007 at Sanoora about 9.30 pm with criminal intention along with other accused, having common object armed with lathies (sticks) committed rioting. Thus, the charge contained particulars as to the time, place and date of the offence of rioting. The law which creates the offence gives it specific name, i.e., "rioting" and, therefore, the offence is described in the charge by that name, namely, "rioting". The charge further proceeded to state that while committing rioting accused 'RS' and other assaulted deceased 'SS' with an intention to murder him and injured him seriously. Thus the name of person with reference to whom common criminal object was formed by the members of the unlawful assembly was stated. It was also stated in the Charge that during the treatment injured 'SS' had

A succumbed to his injuries on July 2, 2007 at Medical College, Jammu. Thus, the date on which the deceased succumbed to this injuries and the place where the deceased succumbed to his injuries were mentioned with precision. Finally in the Charge, it was mentioned that B accused 'RS' had committed offences punishable under Sections 302, 109, 147, 148, 149 of the Ranbir Penal code. After framing Charge immediately the plea of accused 'RS' was recorded. The first question asked to him was whether he had understood the contents of the Charge C which was read and explained to him. In answer to the said question accused 'RS' had answered in affirmative. The record showed that thereafter two questions were put to accused 'RS' in answer to which he had claimed that he was innocent and had wished to be tried. This is D not a case of mere mention of the sections of the law in the charge or the order of framing charge. Therefore, the High Court was not justified in observing that mere mention of the sections of the law in the charge was likely to prejudice the accused in his trial and that he would be disabled to know the exact charge he had to face, nor the E High court was justified in observing that the trial court was not alive to the provisions of Chapter XIX of the Code of Criminal Procedure. It is necessary to reproduce part of the order passed by the trial court which is relied upon by the High Court for the purpose of coming to the F conclusion that mere mention of the sections of the law in the charge or the order framing charge, would not serve the purpose of the law. A glance at the order of the trial court would reveal that at the stage of framing charge the counsel for the accused had pleaded for discharge G of the accused under the relevant provisions of the Code of Criminal Procedure 1989. Not only the counsel for the accused had advanced oral arguments, but he had also submitted written arguments and cited judgments as well as statements of the witnesses recorded by the police H and relied upon other connected documents on the file

to emphasize that the accused should be discharged. The order of the trial court which was quoted by the High Court in the impugned judgment was not the order framing charge at all. It was a short order indicating that no case was made out by the counsel for the accused for discharging the accused at the stage of framing charge and that the accused should be tried for the offences which were mentioned in the order of framing charge separately against each accused. [Paras 9, 10, 11] [1071-E-H; 1072-A-E; 1073-C-F]

4. The facts and in the circumstances of the case showed that a patent error of law apparent on the fact of the record was committed by the High Court in coming to the conclusion that in the order of framing charge there was mere mention of the sections of the law which was likely to prejudice the accused in his trial, as the accused would be disabled to know the exact charge he had to face. The High Court erred in law in holding that it was obligatory for the trial court to have indicated in its order and the charge sheet the description of the offences for which one or the other accused had to be tried because all necessary particulars which should be stated as required by law were already stated by the trial court while framing charge. Further the fact that trial against the accused has/had made considerable progress in as much as material evidence of the eye witnesses to the occurrences was recorded by the trial court could not have been ignored while deciding the question whether proper charge against each accused was framed or not. The nature of charge to be faced was clearly understood by each accused which is evident from the plea recorded by the trial court after framing necessary charge that the nature of charge was very well understood by each accused. The fact was also evident from the averments made in the Revision Petition which was filed by the accused challenging order framing charge. The fact that

A charge was clearly understood by each accused was also evident from the nature of cross-examination of the eye witnesses made on their behalf by their counsel. In view of the fact that all the eye witnesses were examined and cross-examined on behalf of the accused, the High B Court should have resorted to the provisions of Section 225 of the Code of Criminal Procedure, 1989 as applicable to the State of Jammu and Kashmir. The cross-examination of the eye witnesses on behalf of the accused would indicate that none of the accused was in C fact misled by so-called error pointed out by the High Court nor it could be successfully pointed out by any of them that so-called error has occasioned failure of justice to him. The remand of the case to trial court for considering the case afresh on the point of charge was D not warranted at all, as there is nothing to suggest or indicate even remotely that the accused had or would have been misled by any error or omission in the Charge. Therefore, the impugned orders of the High Court are set aside. [Para 12] [1073-G-H; 1074-A-F; 1075-A-C]

E 5. The order admitting the accused except accused 'S' to interim bail of Rs.25,000/- each to the satisfaction of the trial court pending consideration of the prosecution case afresh on question of charge, was not warranted nor justified at all. Before granting interim bail F to the accused the High Court could not have afforded to ignore the testimony of eye witnesses including that of the appellant who is wife of the deceased, merely because deceased had received only one injury nor the accused could have been accorded the benefit of G temporary bail on the spacious plea that they were facing trial over a period of three years. The record of the case nowhere showed that the prosecution was responsible in any manner at all for so called delay in holding trial against the accused. The fact that accused were involved H in commission of a heinous crime like murder which

entails death or life imprisonment as punishment should have been taken into consideration before releasing the accused on interim bail. The trial court after having considered the gravity of the offence and the apprehension on the part of the prosecution that the accused would tamper with the evidence in the event of their release on bail had rightly refused to enlarge the accused on bail. The High Court while granting the relief of bail to the accused has completely ignored and over looked the aforementioned relevant factors which weigh heavily against the accused. Moreover, the complaint that complainant and one of the witnesses were physically assaulted and threatened in the Court premises will have to be given its due weight. The FIR was pending necessary investigation wherein the statement of the son of the appellant was recorded on August 20, 2010 under Section 164 Criminal Procedure Code. The contents of the FIR would indicate that the accused either themselves or through their relatives would try to tamper the evidence which is going to be led by the prosecution in the case. Under the Circumstances, release of the accused except accused 'S' on interim bail deserves to be set aside. [Paras 13 and 14] [1075-D-H; 1076-A-D]

Case Law Reference:

1955 (2) SCR 140	**Followed**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1660-1662 of 2011.

From the Judgment & Order dated 20.10.2010 of the High Court of Jammu & Kashmir at Jammu in Criminal Revision No. 29 of 2008, 561-A Cr.P.C. No. 54 of 2009 and Bail Application No. 26 of 2010.

Nitin Sangra, Hemantika Wahi for the Appellant.

R.P. Bhatt, Bimal Roy Jad, Vikram Rathore, Sunil

A Fernandes, Suhaas Joshi, Astha Sharma, Yawar Masoodi for the Respondents.

The Judgment of the Court was delivered by

J.M. PANCHAL, J. 1. The appellant is the widow of late
B Mr. Surinder Singh, who was murdered at about 9:00PM on June 28, 2007. Criminal Appeal No. 1660/2011 is directed against judgment dated October 20, 2010 rendered by the learned Single Judge of High Court of Jammu and Kashmir at Jammu in Criminal Revision No.29 of 2008 by which the order
C dated March 24, 2008 passed by the learned Additional Sessions Judge, Kathua framing charges under Sections 302, 109, 147, 148 read with Section 149 of Ranbir Penal Code against respondent Nos. 3 to 7 is set aside and the matter is remanded to the learned Judge, Samba to consider the case
D in terms of Sections 267, 268 and 269 of the Code of Criminal Procedure, 1989 (1933 A.D.) (as applicable in the State of Jammu and Kashmir). Criminal Appeal No. 1661 of 2011 is directed against order dated October 20, 2010 passed by the learned Single Judge of High Court of Jammu and Kashmir at
E Jammu in 561-A Cr.P.C. No.54 of 2009 by which prayer made by the respondent of the present appeal to quash order dated March 24, 2008 passed by the learned Additional Sessions Judge, Kathua in a Criminal Challan being File No. 33 of 2007 titled as State Vs. Subhash Singh and Others framing charge
F against him for commission of offences under Sections 302, 109, 147, 148 read with 149 of Ranbir Penal Code, is allowed. Criminal Appeal No. 1662 of 2011 is directed against judgment dated October 20, 2010 passed by the learned Single Judge of High Court of Jammu and Kashmir at Jammu in Bail
G Application No.26 of 2010 by which the respondent Nos. 3 to 7 have been released on interim bail pending trial against the respondents for above mentioned offences. As the three appeals arise out of common judgment and order dated October 20, 2010 rendered by the learned Single Judge of High Court of Jammu and Kashmir in Criminal Revision No.29
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of 2008, petition filed under Section 561-A Cr.P.C. No.54 of 2009 and Bail Application No.26 of 2010, this Court proposes to dispose of them by this common judgment. A

2. The case of the prosecution is that respondent Nos. 3 to 8 in criminal appeal No. 1660 of 2011 formed an lawful assembly on 29-06-2007, common object of which was to murder Surinder Singh and in prosecution of the common object of the said assembly, respondents Nos. 3 to 8 mounted a murderous assault on Surinder Singh, husband of the appellant, at village Sanoora, District Samba (J & K). The injured was immediately shifted to hospital for treatment. On the basis of the information given by the appellant, FIR No.113/2007 under Section 307 read with 109 of Ranbir Penal Code was registered at police station Hiranagar, in connection with the aforesaid incident on June 29, 2007. On July 2, 2007 injured Surinder Singh succumbed to his injuries in Military Hospital, Satwari, Jammu and, therefore, offence punishable under Section 302 of Ranbir Penal Code was added. On the basis of FIR lodged by the appellant, investigation was undertaken. During the course of investigation statement of the appellant and other witnesses were recorded under Section 164 of the Code of Criminal Procedure 1989. The dead body of the deceased was sent for postmortem examination. After completion of the investigation, the investigating agency had filed charge sheet in the Court of learned Magistrate for offences punishable under Sections 302, 109, 147, 148, 149 of the Ranbir Penal Code. As the offence punishable under Section 302 is triable exclusively by a Court of Sessions, the case was committed to Sessions Court for trial. The learned Additional Sessions Judge, after hearing the prosecution and the accused on the question of framing charge, framed necessary charge on March 24, 2008 against each accused for the offences punishable under Sections 302, 109, 147, 148, 149 of Ranbir Penal Code. B C D E F G

3. Feeling aggrieved by the framing of above mentioned H

A charges by the trial court on March 24, 2008, the respondent Nos. 3 to 7 in Criminal Appeal No.1660 of 2011 preferred Criminal Revision No. 29 of 2008 before the High Court. The High Court by order dated June 6, 2008 issued notice and summoned the record of the case from the trial court. On March B 20, 2009, the respondent No. 8, who is original accused No.6, preferred a petition No. 54 of 2009 under Section 561-A of the Code of Criminal Procedure to quash order dated March 24, 2008 passed by the trial court framing charges against him for commission of offences punishable under Sections 302, 109, C 147, 148 read with 149 of the Ranbir Penal Code. During the pendency of above numbered petitions, the High Court by order dated August 13, 2009 sent back the record to the trial court and granted liberty to the respondent Nos. 3 to 8 to seek bail from the trial court. When the above numbered Revision and D the petition filed under Section 561-A were pending disposal before the High Court, the prosecution examined three eye witnesses to the occurrence viz. (1) Santosh Kumari, i.e., the appellant herein, (2) Surishta Devi and (3) Shakti Devi. It may be stated that the appellant and the Shakti Devi have fully supported the case of the prosecution.

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Pursuant to the liberty granted by the High Court vide order dated August 13, 2009, the respondent Nos. 3 to 8 applied for bail before the trial court. The trial court rejected Bail Application filed by the accused vide order dated February 19, 2010. The F record of the case indicates that except accused Iqram, who is respondent No.8 in Criminal Appeal No. 1660 of 2011, all the other accused filed Bail Application No. 26 of 2010 before the High Court claiming bail. The High Court by order dated August 10, 2010 directed the learned counsel for the accused G to place on record the deposition of the witnesses recorded by the trial court. On August 13, 2010, Raman Singh, brother of accused Subash Singh, who is respondent no.3 in the main appeal, physically assaulted and threatened the son of the appellant as well as one Kuljit Singh who is one of the H witnesses in the case, allegedly in the court premises itself, to

refrain them from deposing against the accused in the case. They were also warned that if they gave depositions against the accused they would be killed. Because of the assault mounted by brother of the accused, son of the appellant has lodged FIR No.183/2010 under Sections 341, 195-A, 504, 506 of Ranbir Penal Code at Police Station Samba. With reference to above mentioned FIR statement of the son of the appellant was recorded under Section 164 Cr.P.C. on August 20, 2010.

On September 8, 2010 and October 7, 2010 the prosecution examined two more eye witnesses, i.e., (1) Raksha Devi and (2) Kamlesh Devi who had supported the prosecution case.

4. The High Court by order dated October 20, 2010 has set aside the order dated March 24, 2008 passed by the trial court framing charge against the respondent Nos. 3 to 8 and has remanded the case to the trial court to consider it in terms of Sections 267, 268 and 269 of the Code of Criminal Procedure 1989. By the said order the High Court has directed release of all the accused persons except accused Subhash, who is respondent No.3 in the main appeal, pending consideration of the prosecution case for framing charge by the trial court. The above mentioned order dated October 20, 2010 of the High Court has given rise to the three instant appeals.

5. This Court has heard the learned counsel for the parties and have considered the documents forming part of the appeals.

6. The provisions relating to framing of charge against the accused before the trial commences, are contained in the Code of Criminal Procedure 1989 (1933 A.D.) which is applicable to the State of Jammu and Kashmir. The statute requires that every charge framed under the said code should state the offence with which the accused is charged and if the law which creates the offence gives it any specific name, the offence should also be described in the charge by that name only. The statute further requires that the law and section of the

A law against which the offence is said to have been committed has to be mentioned in the charge. It is a fundamental principle of criminal law that the accused should be informed with certainty and accuracy the exact nature of the charge brought against him. The object of the statement of particulars to be B mentioned in the charge is to enable the accused person to know the substantive charge, he will have to meet and to be ready for it before the evidence is given. The extent of the particulars necessary to be given in the charge depends upon the facts and the circumstances of each case. It is well settled C law that in drawing up a charge, all verbiage should be avoided. However, a charge should be precise in its scope and particular in its details. The charge has to contain such particulars as to the time and place of the alleged offence and the person against whom it was committed as are reasonably sufficient to give the D accused notice of the matter with which he is charged. One of the requirements of law is that when the nature of the case is such that the particulars mentioned in the charge do not give the accused sufficient notice of the matter with which he is charged, the charge should contain such particulars of the manner in which alleged offence was committed as would be E sufficient for that purpose. If 'A' is accused of the murder of 'B' at a given time and place, the charge need not state the manner in which 'A' murdered 'B'.

7. Like all procedural laws, the Code of Criminal F Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a G charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.

The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. H

If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 of the IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by five Judge Constitution Bench of this Court in *Willie Slavey Vs. The State of M.P.* 1955 (2) SCR 1140 at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.

In the light of above principles, the question whether proper charge was framed against the respondent Nos. 3 to 8, will have to be viewed.

8. In the present case, what was argued on behalf of the respondent Nos. 3 to 8 before the High Court was that the charge was invalid because there was no mention in the order of the trial court indicating the specific offence found to have been prima facie committed by one or the other accused individually or jointly nor there was any indication regarding the specific names of the offences sufficient for description in the order of framing charge, but only sections of the law against which the offences were found to have been committed were mentioned.

The High Court has held that mere mention of the sections of the law in the order framing the charge would not, serve the purpose of law, as it was likely to prejudice the accused in his trial, and that, the accused would be disabled to know the exact Charge he had to face. In view of the above mentioned conclusion, the High Court has set aside the order dated March 24, 2008 framing charge against the accused and has remanded the matter to the trial court to consider the case in

A terms of Sections 267, 268 and 269 of the Code of Criminal Procedure 1989 which are pari materia to Sections 226, 227 and 228 of the Code of Criminal Procedure 1973.

9. In order to ascertain whether the Charge framed against
B respondent was proper or not, this Court proposes to reproduce order dated March 24, 2008 framing charge against Rajesh Singh son of Jagdish Singh, resident of Sanoora, tehsil Hiranagar, which reads as under :-

"IN THE COURT OF ADDL. SESSIONS JUDGE
C KATHUA

I, Vinod Chatterji Koul hereby charge you, Rajesh Singh S/o Jagdish Singh R/o Sanoora, tehsil Hiranagar as under :

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1. That on 28.6.07 at Sanoora at about 9.30 pm with criminal intention along with other accused persons, having common criminal object armed with lathies (sticks) committed rioting and in that attacked deceased Surinder Singh with an intention to
E murder him attacked and injured him seriously, who thereafter on 2nd July 2007 during treatment succumbed to his injuries at Medical College Jammu, and you thereby committed offence punishable u/s 302/109/147/148/149 of the Ranbir
F Penal Code and within the cognizance of this Court.

2. And I hereby direct you be tried by this Court on the said charge.

Dated 24.3.08Sd."
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"Statement of accused dated 24th March 2008

Rajesh Singh S/o Jagdish Singh R/o Sanoora, tehsil Hiranagar Caste rajput, employee by
H profession aged...

Question: Whether you have understood the contents of the charge which has been read over and explained to you? A

Answer: Yes

Question: Whether you have committed the offence? B

Answer: No.

Question: Whether you want to say anything more? C

Answer: I am innocent and want trial of the case.

Sd."

It may be mentioned that similar charge has been framed against each accused by order dated March 24, 2008. D

A fair and reasonable reading of the above quoted order dated March 24, 2008 makes it abundantly clear that accused Rajesh Singh on June 28, 2007 at Sanoora about about 9.30 pm with criminal intention along with other accused, having E common object armed with lathies (sticks) committed rioting. Thus, the charge contains particulars as to the time, place and date of the offence of rioting. The law which creates the offence gives it specific name, i.e., "rioting" and, therefore, the offence is described in the charge by that name, namely, "rioting". The F charge further proceeds to state that while committing rioting accused Rajesh Singh and other assaulted deceased Surinder Singh with an intention to murder him and injured him seriously. Thus the name of person with reference to whom common criminal object was formed by the members of the unlawful G assembly was stated. It was also stated in the Charge that during the treatment injured Surinder Singh had succumbed to his injuries on July 2, 2007 at Medical College, Jammu. Thus the date on which the deceased succumbed to this injuries and the place where the deceased succumbed to his injuries were H

A mentioned with precision. Finally in the Charge, it was mentioned that accused Rajesh Singh had committed offences punishable under Sections 302, 109, 147, 148, 149 of the Ranbir Penal code. After framing Charge immediately the plea of accused Rajesh was recorded. The first question which B asked to him was whether he had understood the contents of the Charge which was read and explained to him. In answer to the said question accused Rajesh Singh had answered in affirmative. The record shows that thereafter two questions were put to accused Rajesh Singh in answer to which he had claimed C that he was innocent and had wished to be tried.

10. This is not a case of mere mention of the sections of the law in the charge or the order of framing charge. Therefore, the High Court was not justified in observing that mere mention of the sections of the law in the charge was likely to prejudice D the accused in his trial and that he would be disabled to know the exact charge he had to face, nor the High court was justified in observing that the trial court was not alive to the provisions of Chapter XIX of the Code of Criminal Procedure. It is necessary to reproduce part of the order passed by the trial E court which is relied upon by the High Court for the purpose of coming to the conclusion that mere mention of the sections of the law in the charge or the order framing charge, would not serve the purpose of the law. The said order reads as under :-

F "Upon consideration of the arguments of the learned Public Prosecutor, the learned counsel for the accused and the written arguments besides the judgments cited and also the statements of the witnesses recorded by the police and other connected documents on the file, I am of the considered opinion that there are reasonable grounds to G presume that accused Subash Singh S/o Krishen Singh, Rajesh Singh S/o Jagdish Singh, Vijay Singh S/o Krishen Singh, Ranjit Singh S/o Baldev Singh, Rakesh Singh S/o Jagdish Singh and Ikram Singh S/o Neter Singh caste Rajput residents of Sonoora Tehsil Hiranagar have prima H facie committed offences punishable under Sections 302/

109/147/148 and 149 RPC. Offence punishable under Section 302 RPC is exclusively triable by the court of sessions. A

Charges under Sections 302/109/147/148 and 149 RPC is framed against accused Subash Singh, Rajesh Singh, Vijay Singh, Ranjit Singh, Rakesh Singh and Ikram Singh. The contents of the charges framed have been read over and explained to the accused persons who have pleaded not guilty to the said chages and have claimed to be tried....." B

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11. A glance at the order quoted above would reveal that at the stage of framing charge the learned counsel for the accused had pleaded for discharge of the accused under the relevant provisions of the Code of Criminal Procedure 1989. Not only the learned counsel for the accused had advanced oral arguments, but he had also submitted written arguments and cited judgments as well as statements of the witnesses recorded by the police and relied upon other connected documents on the file to emphasize that the accused should be discharged. The order of the trial court which is quoted by the High Court in the impugned judgment is not the order framing charge at all. It is a short order indicating that no case was made out by the learned counsel for the accused for discharging the accused at the stage of framing charge and that the accused should be tried for the offences which were mentioned in the order of framing charge separately against each accused. D E F

12. On the facts and in the circumstances of the case, this Court is of the opinion that a patent error of law apparent on the fact of the record was committed by the High Court in coming to the conclusion that in the order of framing charge there was mere mention of the sections of the law which was likely to prejudice the accused in his trial, as the accused would be disabled to know the exact charge he had to face. Having noticed the charge which was separately framed against each accused, the inevitable conclusion to be reached by this Court G H

A is that the High Court erred in law in holding that it was obligatory for the trial court to have indicated in its order and the charge sheet the description of the offences for which one or the other accused had to be tried because all necessary particulars which should be stated as required by law were B already stated by the learned Judge of trial court while framing charge.

Further the fact that trial against the accused has / had made considerable progress in as much as material evidence of the eye witnesses to the occurrences was recorded by the C trial court could not have been ignored while deciding the question whether proper charge against each accused was framed or not. The nature of charge to be faced was clearly understood by each accused which is evident from the plea recorded by the trial court after framing necessary charge that D the nature of charge was very well understood by each accused. The fact is also evident from the averments made in the Revision Petition which was filed by the accused challenging order framing charge. The fact that charge was clearly understood by each accused is also evident from the nature of cross-E examination of the eye witnesses made on their behalf by their learned counsel. In view of the fact that all the eye witnesses have been examined and cross-examined on behalf of the accused, the High Court should have resorted to the provisions of Section 225 of the Code of Criminal Procedure, 1989 as F applicable to the State of Jammu and Kashmir which reads as under :-

> "**225**. Effect of errors :- No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall G be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned failure of justice."

The cross-examination of the eye witnesses on behalf of the accused would indicate that none of the accused was in H fact misled by so-called error pointed out by the High Court nor

it could be successfully pointed out by any of them that so-called error has occasioned failure of justice to him. The remand of the case to trial court for considering the case afresh on the point of charge was not warranted at all, as there is nothing to suggest or indicate even remotely that the accused had or would have been misled by any error or omission in the Charge. Therefore, the order dated October 20, 2010 rendered in Criminal Revision No.29 of 2008 deserves to be set aside. For the similar reasons the order dated October 20, 2010 passed by the High Court in petition filed under Section 561-A Cr.P.C. No.54 of 2009 allowing the prayer made by the respondent No. 8 to quash the order dated March 24, 2008 will have to be set aside.

13. It may be mentioned that the order admitting the accused except accused Subhash Singh to interim bail of Rs.25,000/- each to the satisfaction of the trial court pending consideration of the prosecution case afresh on question of charge, was not warranted nor justified at all. Before granting interim bail to the accused the High Court could not have afforded to ignore the testimony of eye witnesses including that of the appellant who is wife of the deceased, merely because deceased had received only one injury nor the accused could have been accorded the benefit of temporary bail on the spacious plea that they were facing trial over a period of three years. The record of the case nowhere shows that the prosecution was responsible in any manner at all for so called delay in holding trial against the accused. The fact that accused are involved in commission of a heinous crime like murder which entails death or life imprisonment as punishment should have been taken into consideration before releasing the accused on interim bail. The trial court after having considered the gravity of the offence and the apprehension on the part of the prosecution that the accused would tamper with the evidence in the event of their release on bail had rightly refused to enlarge the accused on bail. The High Court while granting the relief of bail to the accused has completely ignored and over

looked the aforementioned relevant factors which weigh heavily against the accused. Moreover, the complaint filed by Vijinder Singh that he and Kuljit singh, who is one of the witnesses in the present case, were physically assaulted and threatened in the Court premises will have to be given its due weight. The FIR registered on August 13, 2010 is pending necessary investigation wherein the statement of Vijinder Singh who is son of the appellant was recorded on August 20, 2010 under Section 164 Criminal Procedure Code. The contents of the FIR would indicate that the accused either themselves or through their relatives would try to tamper the evidence which is going to be led by the prosecution in the case.

14. Under the Circumstances, this Court is of the opinion that release of the accused except accused Subhash Singh on interim bail deserves to be set aside. The net result of the above discussion is that all the three appeals will have to be allowed.

For the foregoing reasons the three appeals succeed. Order dated October 20, 2010 rendered by the High Court of Jammu and Kashmir at Jammu in Criminal Revision No.29 of 2008 is hereby set aside. Similarly the order dated October 20, 2010 passed by the High Court in petition filed under Section 561-A Cr.P.C. No.54 of 2009 is also set aside. The order dated October 20, 2010 passed in Bail Application No.26 of 2010 by which the accused except accused Subhash Singh are enlarged on interim bail is also set aside. Accused Subhash Singh is already in custody. Therefore, it is directed that the other accused shall be taken in custody immediately.

Having regard to the facts of the case and more particularly the fact that the trial has already commenced, the trial court is directed to complete the trial as early as possible and preferably within 9 months from the date of receipt of writ from this Court. Subject to above mentioned directions, all the three appeals stand disposed of.

D.G. Appeals disposed of.