



2025:AHC:167178-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2792 of 1985

Prem Singh And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Ardhendu Shekhar Sharma, Ram Babu Sharma, S.P.S. Singh Raghav, Vikash Chandra Tiwari
Counsel for Respondent(s)	: D.G.A.

Court No. - 44

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE TEJ PRATAP TIWARI, J.

1. Heard Sri Ram Babu Sharma, learned counsel for the appellants and learned AGA for the State.

2. Present criminal appeal arises from the judgement and order dated 14.10.1984 passed by Sri R.S. Pandey, learned 4th Additional Sessions Judge, Meerut, in Sessions Trial No.63 of 1981 (State vs. Prem Singh, Madan, Vijay, Ratanu, Rajendra Ved, Gopal and Mangte), whereby the learned court below has convicted all the accused persons under Section 147 I.P.C. and sentenced them to six months rigorous imprisonment. Further, they have been held guilty under Section 302 I.P.C. for the murder of Shambhu, and awarded life sentence with rigorous imprisonment, together with fine Rs.1,000/- each with default sentence of three months. Further, they have been held guilty of causing injuries to Mukesh and Ramesh and accordingly convicted for offence under Section 323 I.P.C. and awarded sentence six months rigorous imprisonment. All sentences are to run concurrently.

3. During pendency of the appeal, all accused appellants were granted bail vide order dated 16.10.1985. The appeal filed on behalf of the appellant nos. 1, 3, 5, 6 and 8 has already been declared abated, while it has also been reported that the appellant nos. 2 and 4, namely, Madan and Ratanu are dead. Accordingly their appeal is also declared abated.

4. In such circumstances, we have heard learned counsel for the parties on the appeal filed by Gopal only.

5. The prosecution story emerged on the Written Report dated 09.11.1979 submitted by Mukesh (P.W.-1), son of the deceased Shambhu. In that, it was narrated that on 09.11.1979 at about 8:00 p.m. his father, Shambhu (deceased) had gone out of his house to attend to the call of nature. There, near an electric poll, under street light, he saw all the accused persons sitting at the house of Kaila Danu. For reason of the

deceased having secured bail for his son Kallu and being aggrieved by that, the accused confronted the deceased and assaulted him with wooden-staff / *lathis*. On hearing his father's cry for help, Mukesh (P.W.-1) ran out of his house followed by his mother Smt. Chandro (P.W.-3) and younger brother Haridas (P.W.-2) and also one Chhote Khan (P.W.-4), Ramesh (not examined as he died during trial) and Mam Chand (not examined). In that, he further claimed that the first informant was also injured.

6. The deceased fell to the ground. Mukesh (P.W.-1) carried his father, the injured Shambhu to the police '*Chowki*'. On way, he met up with SHO Anoop Singh. He returned to the place of occurrence, with him. While carrying the injured to the hospital, he died. The Written Report is Ex.Ka-1 at the trial. On such Written Report, the first information report was registered on 09.11.1979, at 9:15 p.m. at Police Station Kotwali, Ghaziabad. It is Ex. Ka-3 at the trial. On the date of the occurrence itself, samples of blood stained was recovered. It is Ex. Ka-11. Also sample of blood stained pillow was recovered. The same is Ex. Ka-10.

7. On 09.11.1979 itself, at about 11:25 p.m., autopsy examination was conducted by Dr. Ratnesh Kumar (P.W.-10) at M.M.G. Hospital, Ghaziabad. In that the following injuries were noted :

"(1) Lacerated wound 5 cm x 0.5 cm x scalp deep on middle of head 11 cm above the bridge of nose.

(2) Abrasion 2 cm x 1 cm at the back of left elbow. Complains of pain in back of right hand but there is no external mark of injury."

The Injury Report is Ex.Ka-15 at the trial.

8. Also, on 10.11.1979, the Ramesh (not examined) was medically examined by Dr. A.S. Sudan (P.W.-8) at M.M.G. Hospital, Ghaziabad at 10:10 a.m. In that following injuries were noted :

"Lacerated wound 1.5 cm x .5 cm on the left side of head 8 cm alone the left ear. Blunt margins irregular directing vertically (upward direction)."

9. Also, arising out from the death of Shambhu, Inquest Report was prepared on 09.11.1979 at M.M.G. Hospital, Ghaziabad between 10:00 - 11:00 p.m. It is Ex.Ka-6 at the trial.

10. On 10.11.1979, Dr. P.N. Khannna (P.W.-6) conducted the autopsy examination of the dead body of the deceased at 12:14 p.m. In that he noted the following 19 injuries :

"(1) Punctured wound 3 1/2 cm. x 1 cm. x bone deep on the centre of forehead.

(2) Lacerated wound 3 cm. x 1 cm. x bone deep on the left eye-brow.

- (3) Two lacerated wounds 3 cm. x 1 cm.x bone deep on the upper parts of nose.
- (4) Lacerated wound 2 cm.x 1 cm. x bone deep on the left side of chin close to nose.
- (5) Traumatic swelling 11 cm.x 8 cm.on the left side of face.
- (6) Traumatic swelling 9 cm. x 8 cm. on the left side of head close to the ear (upper end).
- (7) Lacerated wound 6 cm. x 1 cm. x bone deep on the left side of head 10 cm. above left ear.
- (8) Traumatic swelling 6 cm. x 7 cm. on the back of head.
- (9) Contusion 6 cm. x 4 cm. on the top of left shoulder.
- (10) Contusion 29 cm.x 2.5 cm. on the lower part of chest both sides.
- (11) Contusion 17 cm. x 2.5 cm. x 5.5 cm. below injury no.10.
- (12) Contusion 9 cm. x 2 cm, on the left side of abdomen just close to umbilicus.
- (13) Contusion 27 cm. x 14 cm. on the inner side of middle of left leg with fracture of both bones of left leg.
- (14) Contusion 12 cm. x 8 cm. on the front of right leg with fracture of both bones of right leg.
- (15) Contusion 28 cm. x 5 cm. on the lower part of front of right thigh.
- (16) Incised wound 4 cm. x 2 cm. x muscle deep on the outer side of upper part of right thigh.
- (17) Traumatic swelling on the whole right hand and encircling the whole right forearm.
- (18) Contusion 11 cm. x 3.5 cm. on the outer side of right side of chest 5 cm. from right nipple.
- (19) Contusion 13 cm. x 2 cm. on the upper part of front of right side of chest 5 cm. above right nipple."

11. In his opinion, death was caused by shock and hemorrhage as a result of ante-mortem injuries. The Autopsy Examination report is Ex.Ka.-2.

12. Upon conclusion of the investigation, the Investigation Officer Beer Sen Yadav (P.W.-7) submitted the charge sheet. On the case being committed for trial to the court of Session, the following charges came to be framed against the present appellants for offence under Section 147 I.P.C.; 302 read with Section 149 I.P.C.; 323 I.P.C. read with Section 149 I.P.C. (with respect to injury caused to Ramesh) and; under Section 320 I.P.C. read with Section 149 I.P.C. (with respect to injury caused to Mukesh)

"Firstly that on 9.11.1979 at about 8 P.M. on the road in front of the house of Fakir Chand situated in mohalla Kaila, P.S. Kotwali District Ghaziabad you were members of any unlawful-assembly and in prosecution of common object of the said assembly namely to commit the murder of Shyambhoo, committed an offence of rioting punishable U/s 147 I.P.C. and within the cognizance of the Court of Session.

Secondly that on the aforesaid date, time and place in prosecution of the common object of the said unlawful assembly you committed the murder of said Shyambhoo by intentionally or knowingly causing his death and, thereby committed an offence punishable U/s 302 I.P.C. read with section

149 I.P.C. and within the cognizance of the Court of Session.

Thirdly that on the aforesaid date, time and place in prosecution of the common object of the said unlawful assembly you voluntarily caused hurt to Ramesh and you thereby committed an offence punishable U/s 323 I.P.C. read with section 149 I.P.C. and within the cognizance of the Court of Session.

Fourthly that on the aforesaid dates, time and place in prosecution of the common object of the said unlawful assembly you voluntarily caused hurt to Mukesh and you thereby committed an offence punishable U/s 323 I.P.C. read with section 149 I.P.C. and within the cognizance of the Court of Session."

13. At the trial, besides relying on the above documentary evidence, the prosecution led oral evidence through ten witnesses. In that, the first informant who is son of the deceased Shambhu and also an injured witness aged about 22 years, was examined as P.W.-1. He proved - at the time of the occurrence, he alongwith the deceased Shambhu, his mother Chandro (P.W.-3) and his brother Haridas (P.W.-2) were present at their house. His father (the deceased Shambhu) went out of the house to attend the call of nature. Thereafter, he heard cries for help of his father. When they went outside and saw, all the accused assaulting the deceased. When the witness tried to intervene to save his father, he too received an injury on his head. He could not assign any particular weapon to the accused, however, he stated that they were armed with a Bhala (spear), Farsa (heavy cutting weapon) and wooden-staff / *lathi*.

14. He next proved that the occurrence was seen by Ramesh (also injured but not examined), Chhote Khan (P.W.-4) and Mam Chand (not examined), he established the source of light through street-lights / tube-lights. On being questioned by the Court, he narrated, when he left the place of occurrence, the accused were still assaulting his father. On way, the Police Station Chowki, he met S.H.O., Bazariya Chawki with whom he returned to the place of occurrence and tried to carry the injured Shambhu to the hospital on way, Shambhu died. At the hospital, he prepared the Written Report through Mam Chand (not examined).

15. Thereafter, Haridas (P.W.-2), the younger son of the deceased Shambhu, who was not injured in the occurrence was examined as P.W.-2. Besides the origin of the occurrence as narrated by his brother the injured Mukesh (P.W.-1), this witness assigned weapons to the accused. In that he narrated Prem Singh was armed with a Spear while Madan was armed with a Farsa (sharp edged weapon) and the others including the present surviving appellant Gopal were armed with wooden-staff / *lathi*. They uttered words to the effect that they would teach the deceased a lesson for securing the bail of his son Kallu, 3 - 4 days earlier, in a case wherein the said Kallu got involved in a quarrel with Bhagmal Singh an uncle (by relation) of accused Prem Singh.

16. For that motive / animosity with the accused persons, they killed Shanbhu. He also claimed that the F.I.R. was lodged by his brother Mukesh (P.W.-1) who had suffered

head injury in the occurrence. Thereafter, the wife of the deceased Shambhu i.e. Chandro (P.W.-3) was examined as P.W.-3. Besides proving the origin of the occurrence as proved by her son the injured Mukesh (P.W.-1), she further proved that Ved had assaulted her with a wooden-staff / *lathi*, while Madan was armed with a Farsa / sharp edged weapon and Prem Singh was armed with a Spear / *bhala*. All other accused including the present surviving appellant Gopal were armed with wooden-staff / *lathi*. He specifically claimed that the deceased was assaulted by Prem and Madan with a Farsa and a Spear, while the others assaulted him with lathies. However, she did not assign any specific role to any of the accused with respect to any particular injury caused. Further, she narrated that his son Mukesh got injured while trying to save Shambhu and that he ran away after being thus assaulted. On her raising alarm, the others Ramesh (injured but not examined), Chhote Khan (P.W.-4) and Mam Chand (not examined) arrived at the scene. Her son called the police that arrived within 2-4 minutes. Her husband died on the spot. He had suffered a lot of blood loss in the occurrence.

17. Last, she proved that 2–3 days earlier, a quarrel had occurred between her elder son Kallu and Bhagmal who is the uncle of the accused Prem Singh. She claimed that the other accused, namely, Mangte, Gopal and Ved belong to the family of Prem Singh and were relatives.

18. Thereafter, Chhote Khan (P.W.-4) an independent witness was examined. He denied having seen the occurrence, during his examination-in-chief itself. He was declared hostile. During his cross-examination by the defence, he narrated that he had accompanied Mukesh (P.W.-1) to the police station alongwith Ramesh (the other injured who was not examined) and Mam Chand (not examined). At that time, the FIR was written on the dictation of Ramesh, wherein he named the accused and the witnesses.

19. Thereafter, the brother of the deceased Shambhu was examined as P.W.-5. He is not an eye-witness of the occurrence. Rather, he is a witness of recovery etc.

20. Dr. P.N. Khanna was examined as P.W.-6. He proved the autopsy examination of the deceased Shambhu. In that, he proved, nineteen ante-mortem injuries were suffered by the deceased. Also, he proved, cause of death to be shock and hemorrhage as a result of ante mortem injuries.

21. The Investigation Officer, Beer Sen Yadav, was examined as P.W.-7. He proved that the FIR was registered in his presence. He also proved the recoveries, preparation of the Inquest Report and other various steps in the investigation.

22. Dr. A.S. Sudan was examined as P.W.-8. He proved the Injury Report of Ramesh (not examined) with respect to the lacerated wound 1.5 cm x .5 cm. on the skull region, he proved that the same was a simple injury caused by hard and blunt object. Also, he proved that he had examined the said injured at 10.10 am on 10.11.1979, i.e.

more than 12 hours after the occurrence.

23. Constable Sehdeo was examined as PW-9. He proved the movement of the dead body of the deceased. Ratnesh Kumar was examined as P.W-10. He proved the injuries received by Mukesh (P.W-1), i.e. the first informant.

24. Thereafter the statement of accused persons were recorded under Section 313 Cr.P.C. Next, one J.N. Dhal and A.K. Bhatt were produced as defence witness No. 1 and defence witness No.2 on behalf of the appellant to establish the plea of alibi.

25. In such evidence, the learned Court below has convicted all the appellants and sentenced them, as noted above.

26. Submission of learned counsel for the appellant is that the present appellant Gopal is not a family member of the main accused Prem Singh with whom a quarrel had erupted with Kallu, the son of the deceased Shambhu. In fact, Ramesh (not examined at the trial), had a quarrel with the present appellant Gopal, arising from a property dispute. That fact is admitted through Mukesh (P.W-1).

27. Second, Ramesh had not received any injury in the occurrence. Intrinsic evidence exists that he was not injured in the occurrence, inasmuch as though Mukesh (P.W-1), had also not received any grievous injury. Yet, he was medically examined at 10.25 p.m., on 09.11.1979 itself, Ramesh was not examined at that time. In fact, he was examined more than 12 hours later, at 10.10 am, on 10.11.1979. Referring to his injuries described as lacerated wound 1.5 cm x 0.5 cm, it has been stressed not only Ramesh had ample time to manufacture that injury, but that it is a wholly manufactured injury.

28. Third, Ramesh had motive to falsely implicate the present appellant Gopal for reason of pre-existing disputes. He promised to support the prosecution story on the condition, it would include Gopal as an assailant. Mukesh being a young person aged about 20 years, he relied on the said Ramesh to find support, that he may have felt was necessary. Presence of Ramesh at the police station, is wholly admitted. Though hostile, Chhote Khan (P.W-4) did state that the FIR was lodged at the dictation of Ramesh. That corroborates the defence suggestion thrown at Mukesh (P.W-1), during his cross-examination that the FIR was registered on the dictation offered by Ramesh, to the scribe Mam Chand.

29. Fourth, by withholding Mam Chand, the prosecution has concealed and in any case, effectively obstructed the defence from bringing out the truth that the FIR was dictated to Mam Chand, by Ramesh.

30. Fifth, it has been submitted, no specific role has been assigned to any of the accused, less so to the present appellant Gopal. The role of assault with wooden-staff / "lathi" has been assigned to all the accused persons, except Tej Pratap and Prem Singh.

The role of the other weapons such as Farsa, Bhala has been assigned to other accused. The present appellant had no quarrel with the deceased Shambhu and he had no direct relationship with Bhagmal.

31. Sixth, in that context, it has been submitted that no common intent would arrive and no occasion existed for Gopal to become a member of the unlawful assembly and / or to cause such offence. He has relied in the case of **Kuldeep Yadav and Others Vs. State of Bihar in Criminal Appeal No. 531 of 2005**, decided on 7.4.2011.

32. On the other hand, learned AGA would submit that the FIR is wholly prompt having been lodged almost within an hour of the occurrence. All the accused persons are named therein. The nineteen ante-mortem injuries report duly proven, clearly establish that the assault had been caused by an unlawful assembly and not by an individual. To the extent, Gopal is unrelated to the other accused, that issue of relationship may not carry any weight. His presence has been established by the injured witness Mukesh (P.W.-1). Therefore, the same cannot be discarded. As to the role played by Ramesh, he was murdered during trial. For that reason, no adverse inference may be drawn, therefore, he could not be examined. In a case such as this, where presence of all the appellants as members of the unlawful assembly was fully established by the prosecution and they were assigned active role of causing the assault with various weapons, which narration finds due corroboration from medical evidence, no further burden may be placed on the prosecution to establish any other fact. He has relied on **Om Prakash Vs. State of Haryana (2014) 5 SCC 753**.

33. Having heard learned counsel for the parties and having perused the record, in the first place, it is noted-the occurrence is of 8.00 p.m., just outside the house of deceased Shambhu. There is no reason to doubt that the FIR was lodged at 09.15 p.m., i.e. within an hour and fifteen minutes. The prosecution evidence wholly supports that the F.I.R. was lodged promptly inasmuch as Mukesh (P.W-1) and Chandro (P.W-3) proved as the occurrence was unfolding, Mukesh received a *lathi* blow causing an injury. He ran to the police *Chowki* and came back with police personnel. By that time the assailants had fled, leaving Shambhu grievously injured. Then, the injured was carried to M.M.G. Hospital, Ghaziabad where the Inquest Report was prepared between 10:00 p.m. and 11:00 p.m. Perusal of that report reveals, the details of the F.I.R. were recorded on that document.

34. The Investigation Officer, Beer Sen Yadav, (P.W-7) has also confirmed that the F.I.R. was lodged in time, in the manner proven by the prosecution witness Mukesh (P.W-1). Further corroboration exists that the F.I.R. was lodged, promptly. The Medico Legal Report of the injured Mukesh (P.W-1), discloses that the said injured was examined at 11.25 pm on 09.07.1979, by Dr. Ratnesh Kumar (P.W.-10), before whom the injured was produced by Constable Rishi Pal. In view of the above, it does appear that the F.I.R. was lodged as narrated by the prosecution i.e., at 09:15 pm.

35. Second, coming to the allegation against the sole surviving appellant Gopal, it cannot be ignored that he was named in such F.I.R. by Mukcsh (P.W-1). At the same time, in the F.I.R., he assigned a general role to all the accused of assaulting with wooden-staff / 'lathi'. During his examination before the Court, he offered a medical improvement by introducing Bhala / Spear and Farsa. At the same time, he did not assign any weapon to any particular assailant. In fact, it is doubtful if the said witness had seen the occurrence, in entirety. He stated because the mother of Mukesh and the wife of the deceased Shambhu namely Chandro (examined as P.W-3), narrated - as the occurrence was being caused, Mukesh received a blow on his head and ran to call the police. By the time he returned with the police, the occurrence was over and Shambhu was lying grievously injured. Therefore, to the extent Mukesh may have seen the occurrence, he did not assign any specific role to Gopal. He only established his presence. In so far as the wife of the deceased, namely Chandro (PW-3) is concerned, she assigned Farsa to Madan, Bhala to Prem Singh and *lathies* to the others. Here she did not state anything further, as may indicate to the Court any participation by Gopal in that occurrence. Further, during her cross-examination, she narrated, when the occurrence began, she was inside her house. On hearing the commotion, Mukesh (P.W.-1) came out first followed by her and thereafter Haridas (P.W.-2). Though, she claimed that she had also received injuries in the occurrence, it is undisputed to the prosecution that she was never medically examined and no injury suffered by her Could be proven.

36. The occurrence itself is described to have taken place over a short period of time. The third witness of fact, namely, Haridas (P.W.-2) is not injured. He came in last, following Chandro (P.W.-3), the mother of Haridas. He too did not offer any other or better narration of the occurrence than Mukesh. The other independent witness of fact namely Chhotey Khan (PW-4) was declared hostile as he could not support any part of the prosecution story with respect to the occurrence.

37. Seen in that light, we first look at the injuries received by the deceased. Against fifteen injuries noted in the Inquest Report, the autopsy examination report contains narration of nineteen injuries. Of that, four injuries are lacerated wounds, nine injuries are contusion, three injuries are swelling and one punctured wound. Thus, the assault may have been made with different types of weapons, including sharp edged weapons, pointed weapons and hard blunt objects exists.

38. It is, therefore, necessary to ascertain beyond reasonable doubt, the presence of the appellant Gopal and his involvement as may allow us to infer common object. In **Kuldeep Yadav and Others Vs. State of Bihar (supra)**, the Supreme Court observed as follows:

"Conviction under Section 149 IPC

25) Apart from conviction under Section 302, all the accused were also

convicted under Section 149 IPC. Learned counsel appearing for the appellants demonstrated that, first of all, there was no common object, even if, it is admitted that there was a common object, the same was not known to anybody, in such circumstances, punishment under Section 149 IPC is not warranted. On the other hand, learned counsel appearing for the State submitted that when the charge is under Section 149 IPC, the presence of the accused as part of unlawful assembly is sufficient for conviction, even if, no overt act is imputed to them. In other words, according to him, mere presence of the accused as part of unlawful assembly is sufficient for conviction. In order to understand the rival claim, it is useful to refer Section 149 which reads as follows:-

"149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

26) The above provision makes it clear that before convicting accused with the aid of Section 149 IPC, the Court must give clear finding regarding nature of common object and that the object was unlawful. In the absence of such finding as also any overt act on the part of the accused persons, mere fact that they were armed would not be sufficient to prove common object. Section 149 creates a specific offence and deals with punishment of that offence. Whenever the court convicts any person or persons of an offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also that the object was unlawful. Before recording a conviction under Section 149 IPC, essential ingredients of Section 149 IPC must be established. The above principles have been reiterated in *Bhudeo Mandal and Others vs. State of Bihar* (1981) 2 SCC

755.

27) In *Ranbir Yadav vs. State of Bihar* (1995) 4 SCC 392, this Court highlighted that where there are party factions, there is a tendency to include the innocent with the guilty and it is extremely difficult for the court to guard against such a danger. It was pointed out that the only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on acceptable evidence which in some measure implicates such accused and satisfies the conscience of the court.

28) *In Allauddin Mian and others Sharif Maian and another vs. State of Bihar* (1989) 3 SCC 5, this Court held:-

"...Therefore, in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of any one or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of Section 149 IPC...."

29) It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC.

30) *In Rajendra Shantaram Todankar vs. State of Maharashtra and others* (2003) 2 SCC 257 = 2003 SCC (Crl.) 506, this Court has once again explained

Section 149 and held as under:

"14. [Section 149](#) of the Indian Penal Code provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Section 149 -- either clause -- is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Section 149 IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act...."

The same principles have been reiterated in *State of Punjab vs. Sanjiv Kumar alias Sanju and others* (2007) 9 SCC 791.

Summarization of the principles attracting S.149

31) *In the earlier part of our order, we have analysed the evidence led in by the prosecution and also pointed out several infirmities therein. In our view, no overt act had been attributed to any other accused persons except Brahmdeo Yadav (A1) towards the murder of Suresh Yadav. Had the other accused persons intended or shared the common object to kill Suresh Yadav, they must have used the weapons allegedly carried by them to facilitate the alleged common object of committing murder. The Sessions Judge, on analysis, held that no case under Section 307/149 against all the 11 accused persons be made out for causing murderous assault and hurt to Naresh Yadav, Munshi Yadav, Bindeshwar Yadav and Ganauri Yadav. The learned Judge further observed that it appears that at least 4 of the accused persons were armed with gun but no gun shot injury was inflicted against any of the aforesaid injured prosecution witnesses.*

Had the accused persons intended to kill the witnesses, they must have used the surest weapon of committing murder i.e. gun against any of the aforesaid witnesses. In view of the fact that common object was not known to anybody and in the light of the principles enunciated over application of Section 149 IPC and with the available material on the side of the prosecution, we hold that it is not safe to convict the accused persons under Section 149 IPC

32) *Summary of all the issues:*

a) *Though both the FIRs (11/97 and 12/97) were investigated by the very same IO, he had not acted in good discipline and not drawn the attention of the trial Judge about the cross cases arising out of the same incident.*

b) *By reading the statement of prosecution witnesses under Section 164 of the Code and their evidence before the Court clearly show their improvements with due deliberation and consultation and in the absence of credible explanation, conviction based on their testimony cannot be sustained.*

c) *The prosecution is not sure, especially about the actual place of occurrence since some witnesses demonstrated that it occurred near diesel engine and some said the occurrence had taken place in the field of Aziz Mian. We have already noted down the contradictions among the prosecution witnesses on material facts and it is not safe to convict all the accused based on the same.*

d) *Even, on description of injuries alleged to have been sustained, the details furnished by the prosecution witnesses and the medical evidence vary on material aspects.*

e) *Non-examination of diesel mechanic-Mohan Yadav is fatal to the prosecution case. Though, his presence at the scene of occurrence was mentioned by the prosecution witnesses under Section 164, it is not clear why*

the prosecution did not examine him.

f) Likewise, though the IO collected blood stained clothes and other objects including earth from the site, there is no information whether the same were examined by the forensic science laboratory and the outcome of the same.

g) There is no material to show that all the accused shared in common object, the object itself not being proved and their participation in it is not made out by credible evidence. Without a clear finding regarding common object and participation therein by each one of the accused members, there can be no conviction with the aid of Section 149 IPC.

h) The place of occurrence has been shifted by informant and the investigating officer has admitted not making any site plan of the place of occurrence and casually acted on the basis of the statement of the informant without carrying its own investigation to ascertain the actual place of occurrence.

i) As it was morning time, at least some villagers in their routine work must have been present in neighbouring field who could have deposed regarding the occurrence and manner in which it did take place, if they were examined.

j) The injuries on the accused, particularly, fire arm injury on Brahmdeo Yadav has not been explained by the prosecution despite the fact that the informant parties were chargesheeted for causing those injuries on the person of Brahmdeo Yadav, Darogi Mahto, Musafir Yadav and Sunil Yadav.

k) The weapons alleged to be used in the offence were not seized and no effort was made to recover them. Hence, there is nothing on record to link the accused persons to the crime.

l) The blood stained clothes, blood stained earth of the place of occurrence were not sent to forensic laboratory for chemical examination.

m) The bullet found by the doctor who conducted the post-

mortem of the deceased was not seized and preserved for court's observation.

n) The version given by eye-witnesses who were also interested witnesses on account of their relationship with the deceased and being inimically deposed against the accused persons is highly exaggerated, contrary to each other and not fully corroborated with medical evidence and there are discrepancies about the number of accused persons, weapons and ammunitions carried by them and they are not in tune with what (PW-9) informant has stated in his deposition. In other words, the prosecution has not presented true version on most of the material parts and therefore the witnesses and material placed on their side does not inspire confidence and cannot be accepted on its face value.

o) The findings of the High Court and ultimate conclusion dismissing the appeals are perverse and resulted in failure of justice."

39. In that light, where seven other accused who are directly related to Prem Singh were named in the F.I.R., we may look at the other aspect of the defence theory, which has been consistently pressed, namely that the appellant Gopal claimed to be named because of his quarrel with Ramesh. In the first place, animosity between Prem Singh and Shambhu was with respect to an earlier quarrel between the uncle of Prem Singh, namely Bhagmal and the eldest son of the deceased namely, Kallu. In that, Kallu was arrested. Shambhu had secured the bail of Kallu, about two-three days earlier. In that light, the prosecution emerged that Prem Singh and his close relatives i.e. the other six accused persons, (excluding Gopal), wanted to therefore, settle scores with Shambhu.

40. That common object brought them to outside the house of the deceased, to cause the occurrence. The defence has effectively cross-examined Mukesh (PW-1) and Chandro (PW-3) and raised doubts in the prosecution story to that common object including to Gopal inasmuch as, it could not be denied that Gopal is not a member of the family of Prem Singh though he belongs to the same village. The quarrel giving rise to motive being between the uncle of Prem Singh and son of Shambhu, the deceased, it is inherently doubtful if Gopal would develop such common object and become a part of an unlawful assembly to cause the occurrence as narrated. Applying the test laid down by the Supreme Court in **Kuldeep Yadav (supra)**, the Court must ascertain if there exists material evidence to establish a shared common object of Gopal, with the other accused. In absence of such evidence, his mere presence may not lead us to that conclusion. The Court must remain mindful that the offence established with the support of Section 149 is in away of special offence. Unless all ingredients are established beyond reasonable doubt, Courts may not rush to that conclusion as may result in miscarriage of justice. It is not uncommon in our society that where disputes exist, vindictiveness arises. Where lives are lost to an occurrence such as this, other scores are also sought to be settled by weaponizing the occurrence, to achieve that object.

41. Seen in that light, it also cannot be ignored that Ramesh (though not examined) was presented as an injured witness. Looking at his injuries, barely 1.5 cm x .5 cm, which were simple in nature and keeping in mind the fact that he was not medically examined along with Mukcsh (PW-1), but was examined more than twelve hours after the occurrence i.e. the next day, ample opportunity existed with Ramesh to manufacture that injury. The injury report also does not support the prosecution story that it may have been caused in the occurrence described by it.

43. Seen in that light, it also cannot be denied that Ramesh had a grouse with Gopal, both being involved in a land dispute, from before. To that extent, the defence has effectively tested the prosecution story, both to establish the existence of prior dispute between Gopal and Ramesh and also the presence of Ramesh at the time of the F.I.R.

being lodged, at the Police Station.

44. It is settled law that the defence is not required to prove its case beyond reasonable doubts but it may be enough for the defence to create a reasonable doubt with the Court, to succeed and achieve acquittal.

45. In the entirety of the discussion made above, we conclude that reasonable doubt exists in the prosecution story only to the extent it narrates and seeks conviction of the accused Gopal who had no direct relationship with the other accused persons and who may not have developed any common object to cause the occurrence against Shambhu i.e. father of Kallu who had a dispute and had quarrelled with Bhagmal, the uncle of Prem Singh and who was not an immediate family member of the family of Prem Singh. In the absence of such reasonable doubt and the other doubts discussed above, we find that appellant Gopal is entitled to acquittal, on a benefit of doubt.

36. Consequently, this appeal succeeds and is **allowed**. judgement and order dated 14.10.1984 passed by learned 4th Additional Sessions Judge, Meerut, in Sessions Trial No.63 of 1981 (State vs. Prem Singh, Madan, Vijay, Ratanu, Rajendra Ved, Gopal and Mangte) under Sections 147, 302 and 323 I.P.C. against the appellant Gopal is set aside on a benefit of doubt. The sole appellant Gopal in on bail. He need not surrender. His bail bonds are cancelled and sureties discharged. However, the appellant is directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

37. A copy of this judgment alongwith the trial court record be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.

September 16, 2025
Manoj

(Tej Pratap Tiwari,J.) (Saumitra Dayal Singh,J.)