

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 170 of 2000

Joydeb Halder & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Ramshis Mukherjee
Mr. Rajtilak Ghoshal

For the State : Mr. Partha Pratim Das
Ms. Manasi Roy

Heard on : 21.05.2024, 01.10.2024

Judgment on : 13.12.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 29.04.2000 passed by the Learned Additional Sessions Judge, Second Court, Alipore in S.T. No. 2(2)99 under Sections 148/506(II)/149/307 of the Indian Penal Code, in connection with Mathurapur P.S. Case No. 39/95 dated 30th May, 1995 convicting the appellants under Sections 148/307/149 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for six months each to pay fine of Rs.100/- each, in default, further rigorous imprisonment for ten days and also to suffer rigorous imprisonment for five years each and to pay fine of Rs.1,000/- each, in default, to suffer rigorous imprisonment for three months. Both the sentences shall run concurrently.

2. The prosecution case precisely stated on 30th May, 1995 at about 4.30 p.m. one Jharupada Halder (PW-2) went to his land which was situated towards east of his house. The appellants out of previous grudge were hiding behind the “*Jhau*” trees, armed with “Vojali”, “bomb”, “Dao” and entered into the land. Out of them appellant Joydeb Halder and others assaulted the victim Jharupada Halder with “dao” causing bleeding injuries on his head, two hands and mouth. PW-2/ the victim lost consciousness. PW-1/Balaram Halder, son of the victim first noticed the incident and raised a clamour. On the arrival of the local people, the appellants fled. Thereafter, PW-1 and other inmates of his house proceeded towards Mathurapur Police Station with the injured victim. One Badal Mondal restrained them from proceeding but due to intervention of the local people he allowed them to go. He came to Mathurapur Police Station thereafter. Subsequently, the Officer-in-Charge of the Mathurapur Police Station sent the injured victim to Mathurapur Hospital and doctors of that hospital referred the injured victim to Diamond Harbour Hospital for better treatment.
3. Alleging such fact, PW-1/Balaram Halder lodged a written complaint to Mathurapur Police Station against the appellants. Based on such complaint Mathurapur Police Station Case No. 39/1995 dated 30th May, 1995 was initiated against the appellants under Sections 149/148/326/307/506 of the Indian Penal Code.
4. Charges were framed against the appellants under Sections 148/506/307 read with Section 149 of the Indian Penal Code, to which the appellants pleaded not guilty and claimed to be tried.

5. In order to establish its case, the prosecution cited 9 witnesses and exhibited certain documents.
6. The Learned Advocate for the appellants submitted as follows:-
 - i. The Medical Officer of Mathurapur Rural Hospital who examined the victim and issued the injury report was not examined by the prosecution and the injury report was not marked as exhibit.
 - ii. Two of the appellants namely Keshab (since deceased) and Renupada (since deceased) were aged 80 and 90 years respectively and as such it was not possible for them to assault anyone and to cause injury.
 - iii. There was nothing on record that the accused/appellants Keshab, Sukumar, Lakshman @ Laxman and Renupada committed any offence punishable under Section 307 of the Indian Penal Code.
7. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses supported by the medical evidence and the appeal shall be dismissed.
8. A circumspection of the evidence of the prosecution witnesses revealed as follows:-
 - i. PW-1 deposed on 30.05.1995 at about 4.00 to 4.30 p.m. the incident occurred. PW-1 was in his house at Nataberia. While his wife was going to tend their cow, she saw Joydeb and five appellants striking his father with “dao” in their land which was at a distance of 4/5 rashis (sic) from their house. His wife called him

and told that appellant/Joydeb and other five persons were striking his father with “dao”. PW-1 went outside their house and found Joydeb to strike his father with “dao” and Ajoy was armed with “vojali” and Sukumar was standing, Laxman @ Lakshman Halder, Renupada, Keshab were assaulting his father by catching hold of him by his hair and some other also asked to assault his father. PW-1 went to his father and cried out. All the six accused/appellants went to the house of Keshab Mondal (since deceased). Tayed (sic) Mondal, Jaru Mondal and others came to the spot hearing his cry. PW-1 saw that his father was lying on land in a pool of blood. The villagers took his father to his house. PW-1 went to police station with his father by a van. Thereafter, PW-1 took his father to Mathurapur Hospital. His father was wearing “dhuti” and underwear at the time of occurrence. PW-1 lodged a written complaint at the police station which was marked as Ext.- 1. PW-1 further deposed police seized the wearing apparels of his father, marked as Mat Ext. – I and Mat Ext. – II. PW-1 disclosed that his father was transferred to Diamond Harbour Hospital from Mathurapur Hospital after primary treatment at Mathurapur Hospital. His father was admitted in Diamond Harbour Hospital for 1 ½ months.

- ii. PW-1 in his cross-examination deposed that he was interrogated by police after lodging the written complaint. PW-1 deposed there was a legal case between him and appellant Joydeb over barga

right. PW-1 further deposed there was another case filed between him and appellant Joydeb before occurrence of the incident.

- iii. PW-2 deposed PW-1 was his eldest son. On 15th Jaistha (Thursday) 1402 B.S. at 4-4.30 p.m. the incident took place on his land adjacent to his house. PW-2 was weeding out his land. Appellant Joydeb came to PW-2 and struck him on his head and hands with “dao” causing bleeding injuries. Accused/appellants Ajoy, Keshab, Sukumar, Renupada, Lakshman @ Laxman came and assaulted PW-2 with fists and blows and “lathi”. PW-2 became unconscious. PW-2 regained his conscious at the Diamond Harbour Hospital. PW-2 disclosed he was admitted into hospital for one month 22 days. PW-2 identified his wearing apparels which he wore at the time of incident, Mat Exhibit -I and Mat Exhibit-II. PW-2 further disclosed due to assault he had become physically handicapped. He could not use his right hand and became disabled.
- iv. PW-2 in his cross-examination deposed he was examined by police 2/4 days after the occurrence. Accused/appellant Keshab Mondal (since deceased) was his wife’s brother-in-law. Accused/appellants Sukumar Mondal and Ajoy Mondal (since deceased) were the sons of appellant Keshab Mondal. Appellant Lakshman @ Laxman was the uncle of Joydeb/appellant. Renupada Halder (since deceased) was the father of appellant Joydeb. PW-2 disclosed he was not in visiting term with Keshab for 3-4 years before the occurrence. PW-2’s son was a bargadar in the land of Keshab so there was trouble

between Keshab and his son. To the east of his land there was his bastu (house). To the east of his house there were houses of Satya Halder, Bhakta Balai and others. To the south of land of his there was land of Sumati Mandal, Sachindra Halder. His son was bargadar in the land of Sumati. To the west of his land there was land of Madhu Mandal. To the south of Sachindra Halder there was land of aunt of Joydeb. Joydeb cultivated said land. There were palm trees in his land. The branches of palm tree had sharp edges. PW-2 was weeding out his land with his hands. PW-2 had a family consisting of 15 persons. They lived separately in the same bastu (house). PW-2 told the Investigating Officer that the occurrence took place in his land and he was weeding out his land and appellant Joydeb struck PW-2 on his hands with “dao” and other accused/appellants assaulted him with “lathi” and fists and blows. PW-2 narrated the incident to police and he told the Investigating Officer that he became unconscious and he regained his consciousness at Diamond Harbour Hospital. PW-2 did not see accused/appellants before occurrence. On being assaulted, PW-2 cried out. PW-2 became unconscious so he could not state how many persons came to the place of occurrence on hearing his cry. PW-2 tried to resist by his hands and the accused/appellants struck him on his hands. PW-2 could not state whether appellant/Joydeb filed a case against him over the occurrence on

the self-same date. PW-2 further stated appellant/Joydeb's wife filed a case against him over the occurrence of self-same date.

- v. PW-3 deposed he knew PW-1 and PW-2. Four years ago, in the land of PW-2, the appellants namely Joydeb Halder, Renupada Halder (since deceased), Keshab Mondal (since deceased), Sukumar Mondal, Ajoy Mondal (since deceased) and Laxman Mondal trespassed on the land of PW-2 and appellant Joydeb Halder struck PW-2 with "dao" causing bleeding injuries on his head and both hands. PW-3 further stated other appellants assaulted him with fists and blows. Ajoy was armed with "bhojali". Except Joydeb, other appellants were ordering for murdering. PW-2 fell down being unconscious.
- vi. PW-3 in his cross-examination deposed he stated the names of other accused/appellants except Joydeb before the police. PW-3 told Investigating Officer that appellant/Ajoy (since deceased) was armed "bhojali". PW-3 further told the Investigating Officer that Sukumar, Keshab, Renupada and Laxman @ Lakshman assaulted PW-2 and PW-2 sustained bleeding injury on his head. PW-3 stated his land was to the north-west corner of the land of PW-2. The land of Balai Halder intervened his land from the land of PW-2. There were lands of other persons beside PW-3's land. The occurrence took in a paddy seedlings sowing season. Appellant/Keshab had land to the north of the house of PW-2 at a distance of half kilometre. PW-

3 did not bring PW-2 to hospital or to his house. The incident claimed 3 or 4 minutes. PW-3 was working for sowing paddy seedlings in his land after weeding out the same at time of incident. PW-3 disclosed he belongs to Forward Block Party. PW-3 did not see any injury on the person of Joydeb.

- vii. PW-4 deposed he knew PW-1 and PW-4. On the day of incident at 4.30 p.m. PW-4 was driving a power tiller (hand tractor) in the land of Jharupada/PW-2. PW-4 saw people to rush towards the house of PW-2 by saying “mere feleche”. PW-4 went towards the spot and found appellant/Joydeb Halder was striking Jharupada/PW-2 on his land with “dao”. Renupada, Laxman, Ajoy, Keshab, Sukumar were with Joydeb. Ajoy was armed with “bhojali”. They ordered to kill Jharupada/PW-2. Jharupada sustained injuries on his person and fell down on the ground being senseless.
- viii. PW-4 in his cross-examination deposed he had no land. PW-2 was weeding out his land at the time of occurrence. PW-4’s house was at a distance of half kilometre from place of occurrence. Six or seven persons assembled in the place of occurrence. On reaching place of occurrence, PW-4 saw PW-2, accused, Tohid, Javed Mondal, Rashid Mondal and Makhan Halder. PW-4 did not find any other person except those persons on reaching place of occurrence. PW-4 stated to the Investigating Officer that he was driving power tiller (hand tractor) in the land of PW-2/victim and appellant Joydeb struck PW-2 with “dao”. PW-4 did not go to

hospital with PW-2. PW-4 did not bring Jharupada to his house. PW-4 could not state the names of the boundary men of the land of PW-2. The land of Jharu was at a distance of 4 rasis from his house. PW-4 disclosed he belonged to Forward Block Party and there was political rivalry between Forward Block and Congress Party. PW-4 stated PW-2's son employed him for driving the power tiller (hand tractor). PW-4 could not state to whom the tractor belonged.

- ix. PW-5 deposed on May-June, 1995, he was Orthopedic Surgeon at Diamond Harbour Sub-Divisional Hospital. PW-5 examined Jharupada Halder on 08.06.1995. Jharupada Halder had a history of assault over head. The patient was referred to him by Dr. R.K. Saha. On examination PW-5 found the following:-

- 1) *"Cut injury over frontal region 1½" x 3" x bone deep.*
- 2) *Cut injury over palmer aspect of right forearm 4" x 1" x bone deep.*
- 3) *Cut injury over back of left forearm 3" x 1" x bone deep compound.*
- 4) *Fracture Ulna left cut injury in right little finger.*
- 5) *Fracture Ulna right side."*

PW-5 further deposed the patient was discharged on 23.01.1995 and the patient was operated by him on 13.07.1995.

- x. PW-5 in his cross-examination deposed the patient did not disclose the name of assailants to him. Therefore, he had not recorded the same in injury report. PW-5 did not mention the description of injury no. 1-3 in his injury report. He did not mention type of

injury. PW-5 further deposed the patient could have discharged temporarily after removal of plaster. However, he needed operation. The fracture injury may be possible by fall. Cut injury may be possible by fall on sharp-cutting substance.

- xi. PW-6 deposed he knew nothing about the occurrence. Then he stated he heard about the occurrence from villagers. PW-6 could not state from where he heard occurrence.
- xii. PW-6 in his cross-examination deposed he knew Sukumar Mondal. PW-6 heard from his son that at the time of occurrence Sukumar was attacked with pox.
- xiii. PW-7 deposed that PW-2 was her father-in-law. On 15th Jaistha, 1402 B.S., Thursday at 4 p.m. occurrence took place in the land of PW-2, which was half mile from their house. The place of occurrence was visible from their main gate. Her father-in-law was weeding out his land for sowing paddy. PW-7 was going to tether her cow in the field. PW-7 saw Renupada Halder, Joydeb, Lakshman @ Laxman, Keshab, Sukumar to struck her father-in-law with “dao” and other weapons. PW-7 called her husband from house. When herself, her mother-in-law and husband went to the spot, they saw that accused/appellants decamped. Her father-in-law was lying with injuries. PW-2 was brought to house. Thereafter, he was taken to police station by her husband. PW-2 was treated at Diamond Harbour Hospital. PW-7 further stated PW-2 was admitted into hospital for one month 22 days.

- xiv. PW-7 in her cross-examination deposed the cowshed was to the west of their house. The same was adjacent to their bastu land. PW-7 saw her father-in-law to go out of their house. He did not take anything with him. At that time, PW-7 was milking a cow. PW-7 told the Investigating Officer that she was going to tether cattle. PW-7 did not tell the Investigating Officer that Renupada Halder, Lakshman @ Laxman, Keshab, Sukumar struck her father-in-law with "dao" and other weapons. PW-7 lived with his husband's brothers in the same house. They were joint in mess. Her husband and others cultivate land. They had no tractor of their own. PW-7 did not go to hospital with her father-in-law on the date of occurrence. Her husband only took her father-in-law by a van. PW-7 did not injury on person of Joydeb.
- xv. PW-8 deposed he knew PW-1 and PW-2. On 15th Jaistha, Thursday 1402 B.S. at 4.30 p.m. the occurrence took place. PW-8 was working in the land of his cousin brother. On hearing hue and cry PW-8 went towards spot and found accused/appellant Joydeb to strike PW-2 with "dao". PW-8 also found Ajoy, Keshab, Sukhen, Renupada, Lakshman, Joydeb to assault PW-2. The incident took place in the cultivable land of PW-2. PW-2 sustained bleeding injuries in his left and right arm. PW-2 fell down on earth. After assault, PW-2 was taken to the house of PW-2 by PW-8 and others.
- xvi. PW-8 in his cross-examination deposed he had no land. PW-8 used to cultivate land. PW-8 belonged to Forward Block Party. PW-8

could not state the plot no., khatian no. of the land which was being cultivated by PW-8. PW-8 was weeding out their land. PW-8's house was at a distance of 4/5 rashis from his land. PW-8 was cultivating the land of Tayed Mondal. PW-8 did not go to the house of Jharupada/PW-2. Balaram and Balaram's wife went to doctor's house by a van. PW-8 could not state who was driving that van. Before assault on PW-2, PW-8 did not hear any shout. The occurrence of assault was continuing for 10-15 minutes. Jharupda was standing when he was struck. PW-2 fell down after being assaulted. PW-8 saw the accused to decamp when he reached the place of occurrence. On reaching place of occurrence, PW-8 did not see inmate of house of PW-2. Subsequently, the inmate of PW-2 came to the place of occurrence. PW-8 disclosed the names of Renupada and Lakshman @ Laxman as assailants before the police. PW-8 disclosed to the Investigating Officer that Ajoy, Sukumar, Keshab, Renupada, Lakshman @ Laxman, Joydeb assaulted PW-2.

xvii. PW-9 deposed he scribed the complaint as per instruction of Balaram Halder.

9. In ***Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel***¹, the Hon'ble Supreme Court held as follows:-

“15. It was held by a three-Judge Bench of this Court in Shambhu Nath Singh v. State of Bihar [Shambhu Nath Singh v. State of Bihar, AIR 1960 SC 725 : 1960 Cri LJ 1144] : (AIR p. 727, para 6)

¹ (2018) 7 SCC 743

“6. Section 149 of the Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object.”

(emphasis supplied)

However, there are Benches of a lesser smaller strength [Sheo Mahadeo Singh v. State of Bihar, (1970) 3 SCC 46, para 9 : 1970 SCC (Cri) 401; Lalji v. State of U.P., (1989) 1 SCC 437, para 9 : 1989 SCC (Cri) 211] which have observed that Section 149 creates a specific and distinct offence. In view of the fact that decision in Shambhu Nath Singh [Shambhu Nath Singh v. State of Bihar, AIR 1960 SC 725 : 1960 Cri LJ 1144] was decided by a larger Bench, the law declared therein must be taken to be declaring the correct legal position. With utmost respect, we may also add that the same is in accord with the settled principles of the interpretation of the statutes having regard to the language of Section 149 and its context.

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22. *When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that “crucial act” — for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. [Ramu Gope v. State of Bihar, AIR 1969 SC 689, p. 692, para 5 : 1969 Cri LJ 1061 “5. ... When a concerted attack is made on the victim by a large number of persons it is often difficult to determine the actual part played by each offender. But on that account for an offence committed by a member of the unlawful assembly in the prosecution of the common object or*

for an offence which was known to be likely to be committed in prosecution of the common object, persons proved to be members cannot escape the consequences arising from the doing of that act which amounts to an offence.”] Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.

23. *The responsibility of the prosecution and/or of the court [in a case like the one at hand where large numbers of people (5 or more) are collectively accused to have committed various offences and subjected to trial]—in examining whether some of the members of such group are vicariously liable for some offence committed by some of the other members of such group—requires an analysis. Such analysis has two components — (i) the amplitude and the vicarious liability created under Section 149; and (ii) the facts which are required to be proved to hold an accused vicariously liable for an offence.*

24. *To understand the true scope and amplitude of Section 149 IPC it is necessary to examine the scheme of Chapter VIII (Sections 141 to 160) IPC which is titled “Of the offences against the public tranquility”. Sections 141 to 158 deal with offences committed collectively by a group of 5 or more individuals.*

25. *Section 141 IPC declares an assembly of five or more persons to be an “unlawful assembly” if the common object of such assembly is to achieve any one of the five objects enumerated in the said section. [See Yeshwant v. State of Maharashtra, (1972) 3 SCC 639 : 1972 SCC (Cri) 684] One of the enumerated objects is to commit any offence. [“**40. “Offence”**.—Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word “offence” denotes a thing made punishable by this Code.”] “The words falling*

under Section 141, clause third “or other offence” cannot be restricted to mean only minor offences of trespass or mischief. These words cover all offences falling under any of the provisions of the Penal Code or any other law.” [Manga v. State of Uttarakhand, (2013) 7 SCC 629 : (2013) 3 SCC (Cri) 621] The mere assembly of 5 or more persons with such legally impermissible object itself constitutes the offence of unlawful assembly punishable under Section 143 IPC. It is not necessary that any overt act is required to be committed by such an assembly to be punished under Section 143. [See Dalip Singh v. State of Punjab, (1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465]

26. *If force or violence is used by an unlawful assembly or any member thereof in prosecution of the common objective of such assembly, every member of such assembly is declared under Section 146 to be guilty of the offence of rioting punishable with two years' imprisonment under Section 147. To constitute the offence of rioting under Section 146, the use of force or violence need not necessarily result in the achievement of the common object. [See Sundar Singh v. State, 1954 SCC OnLine All 30 : AIR 1955 All 232] In other words, the employment of force or violence need not result in the commission of a crime or the achievement of any one of the five enumerated common objects under Section 141.*

27. *Section 148 declares that rioting armed with deadly weapons is a distinct offence punishable with the longer period of imprisonment (three years). There is a distinction between the offences under Sections 146 and 148. To constitute an offence under Section 146, the members of the “unlawful assembly” need not carry weapons. But to constitute an offence under Section 148, a person must be a member of an unlawful assembly, such assembly is also guilty of the offence of rioting under Section 146 and the person charged with an offence under Section 148 must also be armed with a deadly weapon. [See Sabir v. Queen Empress, ILR (1894) 22 Cal*

276; *Choitano Ranto, In re*, 1915 SCC OnLine Mad 541 : AIR 1916 Mad 788]

28. Section 149 propounds a vicarious liability [*Shambhu Nath Singh v. State of Bihar*, AIR 1960 SC 725 : 1960 Cri LJ 1144] in two contingencies by declaring that (i) if a member of an unlawful assembly commits an offence in prosecution of the common object of that assembly, then every member of such unlawful assembly is guilty of the offence committed by the other members of the unlawful assembly, and (ii) even in cases where all the members of the unlawful assembly do not share the same common object to commit a particular offence, if they had the knowledge of the fact that some of the other members of the assembly are likely to commit that particular offence in prosecution of the common object.

29. The scope of Section 149 IPC was enunciated by this Court in *Masalti* [*Masalti v. State of U.P.*, AIR 1965 SC 202 : (1965) 1 Cri LJ 226] : (AIR p. 211, para 17)

“17. ... The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in *Baladin* [*Baladin v. State of U.P.*, AIR 1956 SC 181 : 1956 Cri LJ 345] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear 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; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.”

10. The Hon’ble Supreme Court held the following in **Nitya Nand v. State of U.P.**², :-

“42. *As per Section 148IPC which deals with rioting armed with deadly weapon, whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. “Rioting” is defined in Section 146IPC. As per the said definition, 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.*

43. *This brings us to the pivotal section which is Section 149IPC. Section 149IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302IPC, each member of*

² (2024) 9 SCC 314

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

44. *In Krishnappa v. State of Karnataka [Krishnappa v. State of Karnataka, (2012) 11 SCC 237 : (2013) 1 SCC (Cri) 621] , this Court while examining Section 149IPC held as follows : (SCC p. 243, paras 20-21)*

“20. It is now well-settled law that the provisions of Section 149IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not.”

45. *Thus, this Court in Krishnappa case [Krishnappa v. State of Karnataka, (2012) 11 SCC 237 : (2013) 1 SCC (Cri) 621] held that Section 149IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an*

unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

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47. However, the appellant has been roped in with the aid of Section 149IPC. Therefore, as held by this Court in *Yunis v. State of M.P.* [*Yunis v. State of M.P.*, (2003) 1 SCC 425 : 2003 SCC (Cri) 341], no overt act is required to be imputed to a particular person when the charge is under Section 149IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction. It is clear from the evidence of PW 1 and PW 2 that the appellant was part of the unlawful assembly which committed the murder. Though they were extensively cross-examined, their testimony in this regard could not be shaken.”

11. The Hon’ble Supreme Court held the following in **Sivamani v. State**³

“8. Section 307, IPC reads as under:

9. In *State of Madhya Pradesh v. Saleem*, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that ‘...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.’ The position that because a

³2023 SCC OnLine SC 1581

fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v. State of Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, ‘The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.’”

12. In **S.K. Khaja v. State of Maharashtra**⁴, the following was held by the Hon’ble Supreme Court:-

“8. As rightly submitted by the learned counsel appearing on behalf of the respondent - State, merely because the injuries sustained by the complainant - Mohammad Khan Pathan (PW-2) were very simple in nature, that would not absolve the appellant/accused from being convicted for the offence under Section 307 of the IPC. What is important is an intention coupled with the overt act committed by the appellant/accused....”

13. In **Surinder Singh v. State (UT of Chandigarh)**⁵, the following was observed by the Hon’ble Supreme Court:-

“A. Whether the guilt of the appellant under Section 307IPC has been proved beyond reasonable doubt?

19. Before we advert to the factual matrix or gauge the trustworthiness of the witnesses, it will be beneficial to brace ourselves of the case law qua the essential conditions, requisite for bringing home a conviction under Section 307IPC. In State of M.P. v. Saleem [State of M.P. v. Saleem, (2005) 5 SCC 554 : 2005

⁴2023 SCC OnLine SC 1093

⁵(2021) 20 SCC 24

SCC (Cri) 1329] , this Court, while re-appreciating the true import of Section 307IPC held as follows : (SCC pp. 559-60, paras 12-13)

“12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

(emphasis supplied)

20. *These very ingredients have been accentuated in some of the later decisions, including in State of M.P. v. Kashiram [State of M.P. v. Kashiram, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40] , Jage Ram v. State of Haryana [Jage Ram v. State of Haryana, (2015) 11 SCC 366 : (2015) 4 SCC (Cri) 425] and State of M.P. v. Kanha [State of M.P. v. Kanha, (2019) 3 SCC 605 : (2019) 2 SCC (Cri) 247] .*

21. *It is by now a lucid dictum that for the purpose of constituting an offence under Section 307IPC, there are two ingredients that a court must consider, first, whether there was any intention or knowledge on the part of the accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307IPC.”*

14. The following was held by the Hon’ble Supreme Court in **Sadakat Kotwar v. State of Jharkhand**⁶.

“7. *It is not the case of the accused that the offence occurred out of a sudden quarrel. It also does not appear that the blow was stuck in the heat of the moment. On the contrary, considering the depositions of PW7 and PW8 the accused persons pushed and took the husband of PW7 out of the house and thereafter the accused caused the injuries on PW7 and PW8 and stabbed dagger. Thus, deadly weapons have been used and the injuries are found to be grievous in nature. As the deadly weapon has been used causing the injury*

⁶2021 SCC OnLine SC 1046

near the chest and stomach which can be said to be on vital part of the body, the appellants have been rightly convicted for the offence under Section 307 read with Section 34 of the IPC. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon - dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.”

15. The following was held by the Hon’ble Supreme Court in **Mohd. Wajid v. State of U.P.**⁷ :-

“30. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.”

16. The following was held by the Hon’ble Supreme Court in **Vikram Johar v. State of U.P.**⁸ :-

“25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of

⁷ 2023 SCC OnLine SC 951

⁸ (2019) 14 SCC 207

Crimes, 27th Edn. with regard to proof of offence states the following:

“... The prosecution must prove:

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.”

(emphasis supplied)

17. The following was held in **VinubhaiRanchhodbhai Patel v. RajivbhaiDudabhai Patel**⁹ :-

“27. But to constitute an offence under Section 148, a person must be a member of an unlawful assembly, such assembly is also guilty of the offence of rioting under Section 146 and the person charged with an offence under Section 148 must also be armed with a deadly weapon. [See Sabir v. Queen Empress, ILR (1894) 22 Cal 276; Choitano Ranto, In re, 1915 SCC OnLine Mad 541 : AIR 1916 Mad 788]”

18. The Hon’ble Supreme Court held the following in **State of U.P. v. Subhash**¹⁰ :-

“25. In the present case, six to seven persons were part of the unlawful assembly and they used force or violence and one of them used a deadly weapon, namely, knife and therefore, being a part of the unlawful assembly, the respondent-accused can be held to be guilty for the offence of rioting and for the use of force/violence as a

⁹(2018) 7 SCC 743

¹⁰(2022) 6 SCC 508

member of such an unlawful assembly. Therefore, the respondent was rightly convicted by the trial court for the offence under Section 148IPC.”

19. PW-1 had deposed that on 30.05.1995, between 4:00 to 4:30 p.m., while he had been inside his house at Nataberia, his wife had seen Joydeb and five others striking his father with a “dao” on their land, located at a distance of 4–5 rashis. Upon being informed, PW-1 had rushed out and had witnessed Joydeb attacking his father. Ajoy had been armed with a “bhojali,” while Sukumar, Laxman @ Lakshman Halder, Renupada, and Keshab had been assaulting the victim by holding him by his hair. After the assailants had fled to Keshab Mondal’s house, villagers, responding to PW-1’s cries, had arrived. His father, found in a pool of blood, had been taken first to the house and then to Mathurapur Hospital before being transferred to Diamond Harbour Hospital for a prolonged admission of one and a half months.
20. In cross-examination, PW-1 had admitted to prior litigation with Joydeb regarding barga rights.
21. PW-2, the victim, had corroborated the incident and stated that he had been assaulted by Joydeb with a “dao,” resulting in severe injuries. The other appellants had joined the assault with fists, blows, and “lathi.” He had remained unconscious and had regained consciousness only at the hospital, where he had stayed for one month and twenty-two days, eventually becoming physically handicapped. He had further admitted familial

relations with some of the appellants and land disputes arising from his son's status as a bargadar.

22. PW-3, an independent witness, had testified to witnessing Joydeb strike PW-2 with a "dao," while others had assaulted him and incited murder. He had not accompanied PW-2 to the hospital and had disclosed his political affiliation.
23. PW-4, who had been operating a power tiller on PW-2's land, had seen Joydeb attacking PW-2 and others urging to kill him. He had also acknowledged political rivalry and employment under PW-2's family.
24. PW-5, the orthopedic surgeon at Diamond Harbour Hospital, had examined PW-2 and had noted multiple cut injuries and fractures. While he had not recorded the assailants' identities, he had affirmed that injuries were consistent with a sharp weapon and had not ruled out injury by accidental fall on sharp objects.
25. PW-6 had claimed ignorance about the incident, only stating he had heard it from villagers. He had also testified that one of the accused, Sukumar, had been suffering from pox at the relevant time.
26. PW-7, the daughter-in-law of PW-2, had seen the attack from her house and had immediately informed her husband. She had corroborated the presence of all six assailants and the sequence of events, although in cross-examination, she had been confronted with certain omissions in her prior statements to the police.
27. PW-8 had witnessed the incident from a nearby field and had testified to having seen Joydeb and others assaulting PW-2 with sharp weapons. He too

had political affiliations and had admitted to not assisting in the hospitalisation process.

28. PW-9 had merely scribed the written complaint based on PW-1's instructions.
29. The evidence of the injured victim being PW-2 to have been physically incapacitated as a result of the assault by the appellant Joydeb Halder corroborated with the evidence of PW-5 the orthopaedic surgeon who stated the cut injury on the frontal part 1 ½ x 3" x bone deep. The wearing apparels of the injured victim had been seized. The Investigating Officer had not been examined. The recovery of the offending weapon could not be established before the Court. However, the evidence of the injured victim coupled with the fact of being assaulted on a vital part of his body being the head by the appellant Joydeb presupposed the fact of a deliberate move to cause such injury to the victim which might result in his death.
30. The head being a sensitive and vital part of the body susceptible and vulnerable to any kind of armed attack was not beyond the knowledge and intent of the appellant. Any person let aside the appellant would be aware of the sensitive and delicate region of the body being the head if attacked would instantaneously result in the death of a person.
31. The other appellants namely Keshab Mondal, Sukumar Mondal, Ajoy Mondal who hit the victim with fists, blows, lathi resulted in sustaining several injuries on the body of the victim depriving him to move his right hand. The rivalry between the parties is well established. The element of animosity and acrimony provoked the appellants to assault the victim over

land dispute. The evidence of PW-2 being the injured victim fortified by the medical evidence proved the intention of the appellants to commit an offence under Section 307 of the Indian Penal Code.

32. The appellants in pursuance of their common object assembled unlawfully to assault the victim for achieving their common objective. Each and every member of the unlawful assembly was aware as to the consequences and repercussion if a person had been assaulted by a deadly weapon on the head. None of them could absolve from impunity and claim to have been falsely implicated.
33. Accordingly, each member of such unlawful assembly was responsible and liable for the incriminating act and in prosecution of their common object. The rivalry over the plot of land being the pivotal issue, the concerted attack on the victim proved their intention and knowledge of committing an offence under Section 307 of the Indian Penal Code.
34. Accordingly, the impugned judgment and order of conviction passed by the Learned Trial Court is not interfered with.
35. In view of the above discussions, the Criminal Appeal being CRA 170 of 2000 is accordingly dismissed. Appellants namely Keshab Mondal, Ajoy Mondal and Renupada Halder had already expired. The other appellants aged 80-90 years are still alive. However, the sentence is modified to the extent of imprisonment already undergone.
36. There is no order as to costs.
37. Trial court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

38. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)