

CASE NO.:
Appeal (crl.) 822-825 of 2001

PETITIONER:
State of Punjab

RESPONDENT:
Sanjiv Kumar @ Sanju and Ors

DATE OF JUDGMENT: 14/06/2007

BENCH:
Dr. ARIJIT PASAYAT & B.P. SINGH

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. The State of Punjab is in appeal against the judgment of Punjab and Haryana High Court. While upholding the conviction of two accused persons, namely, Vishal and Anil Kumar, High Court directed acquittal of the respondents. In case of co-accused Gangadhar, conviction was altered to Section 324 of the Indian Penal Code, 1860 (in short the \021IPC\022). In all, 9 persons faced trial and the Trial Court had found each to be guilty of offences punishable under Sections 302, 323 read with Section 149 IPC.

2. Seven appeals were filed by eight of accused persons. As noted above, the High Court directed acquittal of the respondents while disposing of the appeal of Vishal and Anil and altered the conviction of Gangadhar.

3. The background facts in a nutshell are as follows:

The accused persons had gone for a pleasure trip to Manali in the year 1994. They had some joint photographs. These photographs were in possession of accused Anil Kumar alias Babba. There was some dispute regarding the delivery of these photographs. The complainant side wanted to have the photographs while Babba did not want to part with those photographs. However, on 16.6.1995, around 9/8.00 P.M. the accused persons, namely, Sanjiv Kumar alias Sanju, Satnam Singh alias Satta, Parminder Singh alias Khalsa, Ganga Dhar, Vishal Sharma, Gurpreet Singh Bedi, Sanjiv Kumar and Anil Kumar alias Babba and Amit Kumar assembled near the S.T.D. booth of Satnam Singh alias Satta in the area of Krishna Nagar, Hoshiarpur, Harbans Lal questioned as to what was the problem in returning the photographs. Due to that an altercation took place in Gali No. 14, Kamlapur and as a result of that Sanjiv Kumar alias Sanju and Satnam Singh alias Satta raised a lalkara that Harbans Lal and his companions should be caught hold of and the matter should be finished once for all. Anil Kumar alias Babba gave a Kirpan blow on the flank of Harbans Lal and Vishal Sharma gave a Kirpan blow on the chest of Rakesh Kumar alias Gori. Both of them fell down on the ground. Rajinder Kumar PW.5 and Raj Kumar alias Raju PW.6 raised an alarm. Still Ganga Dhar gave two Kirpan blows on the left side of the forehead and right thigh of Rajinder Kumar; Gurpreet Singh Bedi gave a hockey blow on the left side of the ear of Rajinder Kumar. Parminder Singh alias Khalsa and the owner of Judge S.T.D. and others

boys surrounded them and then Raju and Rajinder Kumar raised alarm again. Upon this Anil Kumar alias Babba and his companions ran away from the scene of occurrence. Injured Harbans Lal succumbed to the injuries at the spot and Rakesh Kumar in the hospital, the same day. On the basis of information lodged, investigation was undertaken and on completion thereof charge-sheet was filed. The trial Court found the accused persons guilty, convicted and sentenced them as aforesaid.

4. The High Court found that no definite role was ascribed to the respondents, and there was no evidence on record with regard to the sharing of common object by the respondents.

5. Learned counsel for the appellant-State submitted that presence of acquitted respondents has been accepted both by the Trial Court and the High Court. That being so, their conviction under Section 149 was clearly in order and the High Court should not have interfered with the same.

6. There is no appearance on behalf of the respondents in spite of service of notice.

7. As noted above, the High Court noted that the prosecution has not even remotely established applicability of Section 149 IPC.

8. The pivotal question is applicability of Section 149 IPC. Said provision has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine 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 in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to

be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly.

9. \021Common object\022 is different from a \021common intention\022 as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The \021common object\022 of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instante.

10. Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected as noted above from the nature of the assembly, arms carried and behaviour at or before or after the scene of occurrence. The word \021knew\022 used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of \021might have been known\022. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would

generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within first part of the offences committed in prosecution of the common object would also be generally, if not always, within the second part, namely, offences which the parties knew to be likely committed in the prosecution of the common object. (See Chikkarange Gowda and others v. State of Mysore AIR 1956 SC 731).

11. A 4-Judge\022s Bench of this Court in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) observed as follows:

\023Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well-founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.\024

12. To similar effect is the observation in Lalji v. State of U.P. (1989 (1) SCC 437). It was observed that:

\023Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be

deduced from the facts and circumstances of each case.\024

13. Above being the position in law on the background facts, the High Court\022s judgment directing acquittal of the respondent does not suffer from infirmity.

14. The appeals are dismissed.

JUDIS