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REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.231-233 OF 2009
MUTHURAMALINGAM & ORS. ..... Appellant(s)
:Versus:
STATE REPRESENTED BY INSPECTOR OF Respondent(s)
POLICE â¬ ¦..
WITH
Criminal Appeal No.225 of 2009
Criminal Appeal Nos.226-227 of 2009
Criminal Appeal No.895 of 2009
Criminal Appeal No.429 of 2015

JUDGMENT
Pinaki Chandra Ghose, J.
1. Brief facts giving rise to the initiation of criminal proceedings in these cases are as follows: A gruesome incident occurred in Taluk Ramanathapuram, District Tamil Nadu in which the appellants, the deceased and few witnesses were related to each other. As per prosecution case, on 10.02.1994, accused persons assembled unlawfully with deadly weapons and with the common intention to

2
commit murder, they chased the family members of deceased Rajendran when they got down from the bus in the village near Karisalkulam Branch Road. They were coming back to their village after attending the cremation of Rajendran, who died in another case on 09.02.1994, and the appellants herein and few others were accused in that case. The accused persons, in a gruesome attack on the family members, murdered 8 persons, including one who succumbed to the injuries later in the Hospital. PW-1 immediately after the occurrence proceeded to Kovilankulam Police Station and lodged the complaint, Ex.P1. PW-22 who was the Sub-Inspector of Police at Kovilankulam Police Station registered the case as Crime No.6 of 1994 under Sections 147, 148, 324, 307, 302 of the Indian Penal Code (â¬ SIPCâ¬ \235) and under Section 25(1) of Indian Arms Act. After completing the investigation, PW-23 filed the charge-sheet against the accused persons under Sections 147, 148, 324, 307, 506(ii), 307 & 302 read with Section 34 IPC.
2. Originally there were 21 accused persons. Accused Chandran died during the investigation. Hence, 20 accused persons (A1 to A20) were tried by the Court of Additional

3
Sessions Judge, Fast Track Court, Ramanathapuram. However, accused No.7 â¬ Murugan @ Kodarai died during the trial. The learned Additional Sessions Judge, Fast Track Court, Ramanathapuram, convicted A1 to A6 and A8 to A20 each and sentenced them to undergo rigorous imprisonment for various offences. A18 â¬ Malaiyandi died during the pendency of the appeal before the High Court. The learned Additional Sessions Judge found the occurrence to be a brutal and gruesome attack by the accused persons forming unlawful assembly and causing death of eight persons, including a 1Â½ years child, with a common objective of eliminating everyone in the deceasedâ¬ "!s family.
3. Learned Additional Sessions Judge delivered his judgment on 30.05.2006, holding all the accused persons guilty and sentenced them as follows:

ACCUSED	CONVICTION	SENTENCE
A-1 to A-6 & A8 to A20	U/s 148 IPC	RI for one year
A-1 to A-6, A-9 to A13, & A-15	U/s 302 r/w S.34 IPC	Imprisonment for life
A-8 and A-17	U/s 302 r/w S.34 IPC	

(2 counts) Imprisonment for life
for each count
A-1 to A-6, A-9 to A-13
A-15, A-16, A-18 to
A-20 U/s 302 r/w S.149
(7 counts) Imprisonment for life
for each count

4
A-14 U/s 302 r/w S.149 IPC
(8 counts) Imprisonment for life
for each count
A-8 and A-17 U/s 302 r/w S.149 IPC
(6 counts) Imprisonment for life
for each count
A-14 and A15 U/s 307 IPC RI for 10 years
A1 to A6, A8 to A13
and A16 to A20 U/s 307 r/w S.149 IPC RI for 10 years

4. Against the judgment and order dated 30.05.2006 passed by the learned Additional Sessions Judge , criminal appeals were preferred before Madurai Bench of the Madras High Court. The High Court while disposing of Criminal Appeal Nos.313, 323, 328, 406, 451 and 539 of 2006, found that there was no evidence to warrant conviction of A5, A13, A19 and A20 in the instant case. However, the High Court found all other accused guilty of eight barbaric murders and attempt to murder while forming unlawful assembly. The High Court, in paragraph 66 of its judgment, modified the conviction and sentence imposed by the lower Court as follows:

i. â¬ S A1 to A4, A6, A8 to A12 and A14 to A17 are convicted under section 148 IPC and sentenced to undergo rigorous imprisonment for one year;

ii. A1 to A4, A6, A8 to A12, A14 to A17 are convicted under section 302 read with Section 149 IPC(8Counts) instead of 302 read with 34 IPC and sentenced to undergo imprisonment for life for each count;

5
iii. We confirm the conviction of A1 to A4, A6, A8 to A12 and A14 to A17 under Section 307 read with Section 34 IPC and sentence them to undergo rigorous imprisonment for ten years;

iv. We set aside the conviction and sentence imposed on A5, A13, A19 and A20.â¬ \235

The High Court in paragraph 73 of the impugned judgment, confirmed the direction given by the Trial Court that the sentences of life imprisonment imposed for each count and sentence of imprisonment for 10 years, shall run consecutively. Aggrieved by the judgment and order dated 14.12.2007, passed by the High Court, the appellants have approached this Court invoking the jurisdiction under Article 136 of the Constitution of India. All the connected appeals were clubbed together for common adjudication since they are arising out of same impugned judgment.

5. Since legitimacy of the consecutive life sentences in the light of Section 31 of the Code of Criminal Procedure (in short â¬ ÜCr.P.C.) was challenged in these appeals, before arriving at the conclusive findings, a three-Judge Bench of this Court referred the matter to larger Bench and the said larger Bench â¬ Constitution Bench, vide its judgment dated

6
19.07.2016, upheld the legitimacy of consecutive sentences of life imprisonment and held that â¬ S while multiple sentences of imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run

consecutively .â¬ \235 The Constitution Bench further held as follows:
â¬ S The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoners shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence.â¬ \235
6. Therefore, the only substantial question which remains for our consideration in the present case is whether the High Court in the facts and circumstances of the case, was justified in modifying the conviction from that under Section 302 read with Section 34 IPC to that of Section 302 read with Section 149 IPC.

7
7. Mr. ATM Ranga Ramanujam, learned senior counsel appearing for the appellants submitted that in view of the deposition of PW12, all the eye-witnesses (PW1-PW4) cannot be believed as it casts suspicion on the prosecution version as it is admitted by PW12 in his cross-examination that he saw only three bodies strewed and no injured person at the place of occurrence. He further submitted that the investigation has not been done properly in the present case, and therefore, the accused persons deserve to be acquitted. It was further submitted that there is substantive difference between Section 34 and Section 149 of IPC and substitution of Section 34 for Section 149 would result in prejudice to the accused and therefore the same may not be permitted. Further, no satisfactory explanation to such substitution was given. He further submitted that there was delay in the lodging of FIR which creates doubts.
8. Per contra , Mr. M. Yogesh Kanna, learned counsel for respondent submitted that the volunteered statement of A5 was reduced into writing, being Exh.29, whereby 7 aruvals, 10 velsticks, a toy gun and 3 knives were recovered and it was clearly spoken to by the prosecution witnesses that A1

8
stabbed deceased (in short â¬ ÜDâ¬ "!) D1 with velkambu on his stomach; A2, A3, A4, A6, A10, A14, A18 attacked D4, D5, D6 with velstick and aruval; A7 attempted to attack PW3 with velstick; A8 stabbed D7 with velstick on his left arm; A9 attacked D1 repeatedly with aruval; A11 stabbed D2 on his stomach with velstick; A12 stabbed D3 with velstick on his stomach and chest, left thigh and other parts of body; A15 attacked D2 with aruval on his left hand; A16 attacked D3 with aruval on his right hand; A17 attacked D7 with aruval on his left hand. It was further submitted that all the accused were armed with sharp and deadly weapons and were hiding in the bushes. When the deceased came near the place of occurrence, appellants attacked them shouting slogans that â¬ S kill themâ¬ \235, â¬ Shack them â¬ \235 and thus their act itself substantiates the commission of crime within the meaning of Section 302 read with 149 of IPC.
9. Learned counsel for the respondent further submitted that the averments made by the appellants in the present case are not sustainable as eye-witnesses have vividly spoken about the presence and modus-operandi of the offence committed showing their motive, which are also

9
essential ingredients to confirm conviction under Section 149 of IPC. The plea of the appellants that a weapon, like velstick, cannot cause death was rightly rejected by the High Court as it was observed by the High Court that cut injury could have been caused by velstick, depending upon the manner in which the weapon was used. Since PW-12 is not the eye-witness of the occurrence, he cannot state any substantive part of the offence and the manner in which the offence would have been committed. It was lastly submitted by the learned counsel for the respondent that albeit there was agitated atmosphere at the village, complaint was given the same day at 05:30 pm and thus there was no delay in lodging the FIR.

10. Having heard the learned counsel on both sides, the legality of the conviction under Section 302 read with Section 149, has been found disputed. As regards the case in the light of common intention as per Section 34 IPC, this Court in Devi Lal Vs. State of Rajasthan , (1971) 3 SCC 471, in para 13 held that â¬ S the words â¬ Üin furtherance of the common intention of allâ¬ "! are a most essential part of Section 34 of the Indian Penal Code. It is common intention to commit the

10
crime actually committed. The common intention is anterior in time to the commission of the crime. Common intention means a pre-arranged plan.â¬ \235

11. But this case doesnâ¬ "!t appear to fulfill the essentials of common intention. The emphasis of such sort of constructive liability and the legality of conviction by applying Section 34 or Section 149 IPC, have been examined by Courts in several cases. In Willie (William) Stanley Vs. State of M.P. , AIR 1956 SC 116, it was held as follows:

â¬ S Section 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regarding actual participants, accessories and men actuated by a common object or a common intention and â¬ Üthe charge is rolled-up one involving the direct liability and the constructive liabilityâ¬ "! without specifying who are directly liable and who are sought to be made constructively liable. In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for a substantive offence without a charge can be set aside, prejudice will have to be made out. â¬ \235

12. Moreover, a distinction between â¬ Üâ¬ "!common intentionâ¬ "! and â¬ Ücommon objectâ¬ "! was made out by this Court in the case of Chhitarmal Vs. State of Rajasthan , (2003) 2 SCC 266 as under:

â¬ S A clear distinction is made out between common

11
intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre-concert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under section 149 overlaps the ground covered by section 34.â¬ \235

13. In the present case, motive is seen in the collective testimony of eye-witnesses PW1-PW3 when accused came out from the bushes shouting â¬ S kill themâ¬ \235, â¬ Shack themâ¬ \235, â¬ Sfire

themâ¬ \235, as also mentioned in the complaint Exhibit P-1. A child was also mercilessly attacked in the incident with a spear on his chest. Accused No.7-Muthuramalingam snatched away the child from her mother Indira Gandhi and killed her too with velstick.
14. Even PW4 (though not an eyeâ¬ witness of whole occurrence) also hid in the nearby bushes to save his life. In his statement he also corroborated the factum of hearing shooting and also after identifying accused Muthuramlingam stated that â¬ S his wife was also killed by accused Muthuramlingam with knife and accused Dhakshinamoorthi cut his wife with aruval â¬ \235. In a similar case of Umesh Singh

12
& Anr. Vs. State of Bihar , (2000) 6 SCC 89, this Court observed:
â¬ S A report was made by Jugeshwar Singh (PW 7) alleging that the appellants herein along with several other persons numbering about 20 came to the â¬ Skhalihanâ¬ \235 (threshing floor) of Bhola Singh where he and other members of his family were threshing paddy. They tried to take away the paddy. Upendra Singh threatened that any resistance would be met with such action which might even result in death. Thereafter Rajendra Singh hit Bhola Singh with a lathi and Upendra Singh moved backwards and fired at Bhola Singh with a gun as a result of which Bhola Singh was hit and fell down writhing in pain. Saryu Singh was shot at by Rajendra Singh and Bhagwat Dayal Singh, who was also inflicted a bhala-blow by Arvind Singh, appellant in the connected matter, Umesh Singh and Sheonandan Singh fired at Rajdeo Singh as a result of which he fell down. When Dharmshila, wife of Bhola Singh reached the threshing floor with her child aged about one-and-a-half-years old in her arms, named Rinku, Sheonandan Singh snatched the child and threw the child on the ground as a result of which the child died. After investigation, the police submitted a charge-sheet against seven persons named in the FIR as three of them had died during the pendency of the investigation. The trial court convicted Sheonandan Singh and Upendra Singh under Section 302 IPC and sentenced them to death, one of the accused â¬ Satyendra Singh, was acquitted and the rest of the accused persons were convicted under Section 302 IPC read with Section 149 and sentenced to life imprisonment. They were further convicted under Section 324 read with Section 148 IPC and under Section 27 of the Arms Act. On appeal to the High Court, conviction was maintained while the sentence of death on Sheonandan Singh and Upendra Singh was reduced from one of death to life imprisonment

13
thereafter. Appeals have been preferred before this Courtâ¬ \235 .
And later at Para No.3 of the judgment it was held:
â¬ S Therefore, there is ample evidence on record in the shape of the evidence of the eyewitnesses and the witnesses who had sustained injuries, sounding a ring of truth to the prosecution case put forward, with the trial court and the High Court having taken identical views, we do not think there is any good reason to upset those findings. â¬ \235 .
Thus, we are of the considered opinion that prosecution case has been well established by the testimonies of

eye-witnesses PW1-PW3 and corroborated by PW4, wherein factum of unlawful assembly was proved.
15. Before arriving at the conclusion, we wish to supply emphasis in the case of Mohan Singh Vs. State of Punjab , AIR 1963 SC 174 = 192 Supp (3) SCR 848, where the law on common object in an unlawful assembly was explained as under:
â¬ S 8. The true legal position in regard to the essential ingredients of an offence specified by s.149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such 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. It would thus be noticed that one of the essential ingredients of section 149 is that the

14
offence must have been committed by any member of an unlawful assembly, and s. 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course; the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. â¬ \235
16. Moreover, in the case of Mahadeo Singh Vs. State of Bihar , (1970) 3 SCC 46, it was observed by this Court:
â¬ S 10. In the present case the facts and the circumstances show that the assault and the demolition of the stairs of the well took place in the same transaction because the members of the unlawful assembly attacked Ram Prasad and his people and injured some of them simultaneously or in 'quick succession. Sarjug Mahto and Suraj Mahto both said that at the instigation of accused Ram Charan accused Manogi gave a bhala blow near the left elbow of Sarjug Mahto. Sarjug also said that accused Sheo Pujan gave him a bhala blow below the elbow of the left hand and the appellant gave him a bhala blow on the finger of right hand. According to Suraj Mahto the appellant struck Sarjug Mahto on the finger of his right hand. Suraj and Sarjug then raised an alarm. On hearing the alarm Ram Prasad, Bharat and Lakhan came. Ram Prasad protested to the accused against the attack on Sarjug Mahto. At the instigation of accused Ram Charan accused Rajballam struck Ram Prasad With a bhala. Ram Prasad fell down and died there. Ram Lakhan then struck Bharat with a garasa. Ram Charan struck him on the head with a bhala. The assailants then fled away. The evidence proves that the common object of all the members of the assembly was that murder was likely to be committed in prosecution of a common object, namely, to commit murder, assault, mischief and

15
criminal trespass. All the members of the assembly were armed with weapons; they knew that murder was to be committed in prosecution of that object. It cannot, therefore, be said that the appellant is not guilty of the charge under Sections 302/149 of the Indian Penal Code. â¬ \235
17. However, an overt act is not always an inflexible

requirement of rule of law to establish culpability of a member of an unlawful assembly. The crucial question is whether the assembly entertained a common unlawful object and whether the accused was one of the members of such an assembly by intentionally joining it or by continuing in it being aware of the facts which rendered the assembly unlawful. Without unlawful object no assembly becomes an unlawful assembly.

18. Further, in paragraph 6 of Shambhunath Singh Vs. State of Bihar , AIR 1960 SC 725, it was held by this Court:

â¬ S Section 149 of the Indian 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. If an unlawful assembly is formed with the common object of committing an offence, and if that offence is committed in prosecution of the object by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence. Again, if an offence is

16

committed by a member of an unlawful assembly and that offence is one which the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object, every member who had that knowledge will be guilty of the offence so committed. But "members of an unlawful assembly may have a community of object upto a 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 of the Indian Penal Code may be different on different members of the same unlawful assembly." Jahiruddin v. Queen Empress, ILR 22 Cal 306. â¬ \235

19. Furthermore, in the case of Mizaji Vs. State of UP , AIR 1959 SC 572, this Court observed:

â¬ S From this conduct it appears that members of the unlawful assembly were prepared to take forcible possession at any cost and the murder must be held to be immediately connected with the common object and therefore the case falls under s.149, Indian Penal Code and they are all guilty of murder. This evidence of Hansram and Matadin which relates to a point of time immediately before the firing of the pistol shows that the members of the assembly at least knew that the offence of murder was likely to be committed to accomplish the common object of forcible possession.â¬ \235

20. After careful consideration of the submissions made by the

17

learned counsel on both sides, we are of the considered opinion that the accused-appellants did cause the death of eight persons in a barbaric and brutal manner wherein merciless killing of a child of only 1Â½ years is also involved. Therefore, the accused in the present case do not deserve any sympathy.

21. Hence, all the criminal appeals filed by the appellants are sans merit and are liable to be dismissed. We uphold the judgment passed by the High Court as far as awarding of

sentences is concerned. However, the sentences shall run in conformity with the observations made by the Constitution Bench of this Court in its judgment dated 19.07.2016 passed in these appeals. The impugned judgment passed by the High Court is modified to the above extent and all the appeals are disposed of accordingly.

. . . . . .J
(Pinaki Chandra Ghose)

. . . . . .J
(Amitava Roy)

New Delhi;
December 9, 2016.

18
ITEM NO.1-C COURT NO.7 SECTION IIC
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 231-233/2009
MUTHURAMALINGAM & ORS. Appellant(s)

VERSUS

STATE REP.BY INSP.OF POLICE Respondent(s)

WITH
Crl.A. No. 225/2009
Crl.A. No. 226-227/2009
Crl.A. No. 895/2009
Crl.A. No. 429/2015

Date : 09/12/2016 These appeals were called on for pronouncement of Judgment today.

For Appellant(s)
Mr. K. K. Mani, AOR

Ms. Anu Gupta, AOR
Mr. G. Sivabala Murugan, Adv.
Mr. L. K. Pandey, AOR
Mr. Vinodh Kanna B., AOR

For Respondent(s)
Mr. Franklin C. Thomas, Adv.
Mr. Chand Qureshi, Adv.
Mr. M. Yogesh Kanna, AOR
Ms. Nithya, Adv.

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Honble Mr. Justice Pinaki Chandra Ghose pronounced the Reportable Judgment of the Bench comprising His Lordship and Honble Mr. Justice Amitava Roy.

19
All the criminal appeals filed by the appellants are sans merit and are liable to be dismissed, in terms of the signed reportable Judgment. We uphold the judgment passed by the High Court as far as awarding of sentences is concerned. However, the sentences shall run in conformity with the observations made by the Constitution Bench of this Court in its judgment dated 19.07.2016 passed in these appeals. The impugned judgment passed by the High Court is modified to the above extent and all the appeals are disposed of accordingly.

(VISHAL ANAND) (SNEH LATA SHARMA)
COURT MASTER COURT MASTER
(Signed Reportable Judgment is placed on the file)