Dani Singh And Ors vs State Of Bihar on 12 March, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4570, 2004 (13) SCC 203, 2004 AIR SCW 3719, 2004 AIR - JHAR. H. C. R. 2200, 2005 SCC(CRI) 127, (2004) 3 JT 367 (SC), 2004 (3) ACE 217, 2004 (3) SCALE 245, 2004 ALL MR(CRI) 2573, 2004 (1) BLJR 816, 2004 (2) SLT 804, (2004) 17 ALLINDCAS 387 (SC), 2004 (3) JT 367, 2004 BLJR 1 816, (2004) 2 EASTCRIC 54, (2004) 2 EASTCRIC 78, (2004) 2 KER LJ 680, (2004) 2 CURCRIR 80, (2004) 2 SUPREME 398, (2004) 3 SCALE 245, (2004) 2 UC 773, (2004) 3 JLJR 252, (2004) 2 BLJ 594, (2004) 3 CHANDCRIC 100, (2004) 3 ALLCRILR 20, (2004) 1 CRIMES 402, (2004) 28 OCR 1, (2004) 2 RECCRIR 538, (2004) 49 ALLCRIC 112, (2004) 3 JCR 393 (JHA), (2004) SC CR R 1010, (2004) 4 PAT LJR 1, (2004) 2 ALLCRIR 1093, (2004) 19 INDLD 199, 2004 (1) ANDHLT(CRI) 269 SC, (2004) 1 ANDHLT(CRI) 269

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  284-286 of 2003

PETITIONER:
Dani Singh and Ors.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 12/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT,J.

A Division Bench of the Patna High Court found the appellants guilty of offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). In addition, appellants Lakhan Singh, Janardan Singh, Ram Janam Singh, Dani Singh, Raghu Singh, Ram Charitar Singh and Chandar Singh were found guilty of offence punishable under Section 201 IPC and sentenced each to undergo five rigorous imprisonment with a fine of Rs.3,000/- with default stipulation. It directed that the fine on realisation was to be paid to the informant by way of

compensation. Appellant Lakhan Singh was additionally convicted for offence punishable under Section 436 IPC to undergo life imprisonment.

The present appeals have been filed by 21 persons. Twenty seven persons were named in the FIR and charge sheet was filed initially against 24 persons. In terms of Section 319 of the Code of Criminal Procedure, 1973 (in short the 'Code'), three more persons were added. Twenty seven persons were convicted by the trial Court and all of them filed appeals before the High Court. It has to be noted, as stated by learned counsel for the appellants, that one of them Lakhan Singh has served out the sentence, and two others namely Balinder Singh and Gaya Singh were absconding. Three of the accused persons died during pendency of the appeal before the High Court.

Prosecution version which led to the trial in a nutshell is as follows:

> On 6.7.1983, informant Ramu Yadav (PW-11), after easing was returning to his house at about 8 a.m. and his uncle Kishun Yadav (hereinafter described as 'deceased D-1') at that time was also returning to his house from the northern direction and he was ten yards ahead of the informant. When the informant and the deceased Kishun reached a lane near the house of Sadhu Kahar, the informant saw a number of persons variously armed with Saif, Garasa, Bhala, guns etc. coming out from the Dalan of Bhuneshwar Singh who all challenged deceased Kishun and attacked him. Appellant Lakhan Singh, who was carrying a bag, took out a bomb from his bag and hurled it on deceased Kishun, who after receiving injury, managed to enter the house of his cousin Phekju Yadav (PW-6). Following him, all the appellants alongwith Biro Singh, Pragash Singh and Ram Singh (all the three since dead) along with 15 to 20 others, variously armed entered the house of Pheku Yadav. The informant also, following the appellants and their companions, entered the house of his uncle Pheku Yadav (PW-6). In the meantime, Gopi Yadav, father of informant (hereinafter referred to as 'deceased D-2') also reached there and, thereafter both deceased, Gopi and Kishun climbed on the Matkmotha (box room) in order to save their lives. Appellants Lakhan Singh, Ram Charitar Singh, Ram Janam Singh, Chhotan Singh, Raghu Singh, Balindra Singh, Manoj Singh, Bhola Singh, Baban Singh, Nandu Singh, Yado Singh and ten to fifteen unknown persons also, along with weapons, climbed from outside to the roof of house and other appellants remained in the courtyard and verandah of the house. The appellants, who had climbed went to Matkotha, started assaulting both the deceased with guns, Bhala, Saif etc. The appellants, who had gone on the roof of the house, uprooted the tiles and bamboo sticks of Matkotha and appellant Lakhan Singh, after sprinkling kerosene oil on the roof, set fire and, thereafter the appellants, who had climbed on Matkotha, dragged deceased Kishun and Gopi to the verandah where they, after piercing Garasa, Bhala, Saif, killed them. Thereafter, appellant Raghu Singh, Janardhan Singh, Ram Charitar Singh, Ram Janam Singh, Dani Singh, Chander Singh, Lakhan Singh along with co-accused Biro Singh carried the dead bodies on a cot towards eastern side of village and other appellants, after scrapping the blood which had fallen on the ground with straw, put it in a nearby well and they also washed the blood drops from the walls of the house

by water and mud and, thereafter, they also went following the dead bodies.

After some time, the informant saw smoke and flames of fire rising from the side of eastern boundary of his village where the appellants had burnt the dead bodies. They remained at the place of burning for about two hours, and thereafter they again came back to the houses of informant (PW-11) and Pheku Yadav (PW-6) and took away rice, wheat, gram, clothes, ornaments, pots etc. The occurrence was witnessed by female members of the family of informant including his mother, aunt, sister, wife of brother of Pheku Yadav (PW-6) and number of other villagers. Old enmity, giving rise to number of cases between the prosecution party and appellants, was stated to be the motive of the occurrence. The fardbayan of informant was recorded on the day of occurrence at 8.30 p.m. by Sub Inspectort Uzair Alam (PW-13). The informant, in his fardbayan stated that because appellants did not allow him to leave the house, he could not go to the Police Station earlier. On the basis of fardbayan of informant, a case under Sections 147, 148, 149, 302, 201, 436, 380, Indian Penal Code, Section 27 of Arms Act, 1959 (in short 'Arms Act') and Sections 3, 4, 5 of Explosives Substances Act, 1908 (in short 'Explosives Act') against all the twenty four appellants alongwith Biro @ Birendra Singh, Pragash Singh and Ram Singh and fifteen to twenty unknown was registered and police, after investigation, submitted charge sheet against the appellants and Biro @ Birendra, Pragash Singh and Ram Singh. Charges under Sections 302/149, 201 and 380, Indian Penal Code were framed against the appellants and Biro @ Birendra, Pragash Singh and Ram Singh and after trial, the appellants were found guilty and were convicted and sentenced, as indicated above. Biro @ Birendra, Pragash Singh and Ram Singh were also convicted and sentenced to undergo rigorous imprisonment for life under Section 302 read with Section 34, Indian Penal Code. Biro Singh @ Birendra was further convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.3000/-. All the aforesaid three persons died during the pendency of the appeal before the High Court. The accused persons pleaded that on the date of occurrence appellants Nawal Singh and Indu Singh were not present in the village. Prior to the alleged occurrence two persons namely Saudhi Singh and Arjun were murdered and after their murder, both the deceased had left their village with the family members and were living somewhere else. Therefore, they were not living in the village where they claimed to have been murdered. The accused persons have been implicated on the account of previous enmity. Four witnesses were examined to further this version. In order to prove its accusations, prosecution examined 15 witnesses out of whom Ramu Yadav (PW-11) is the informant and deceased Kishun Yadav and Gopi Yadav (hereinafter referred to as D-1 and D-

2) were his uncle and father respectively. It was claimed that apart from PW-11, Kishun Rajwar (PW-1), Lalo Mahto (PW-

2), China Devi (PW-3) and Kamli Devi (PW-10) were eyewitnesses. During investigation, blood stained soil, burnt tiles and remnants of exploded bombs were seized from a lane near to the house of Shiv Nandan Kumar and a house of Pheku Mahto (PW-6). Police also recovered straws from the well of PW-6 and seized burnt wood, tender bamboo and pieces of woods and bones from the place known as Hadsai pyne, and scattered grains from the house of Pheku Mahto (PW-6). The trial Court found the evidence of the witnesses to be credible and cogent. It noticed that though China Devi (PW-

3) and Kamli Devi (PW-10) were related to the deceased, Kishun Rajwar (PW-1) and Lalo Mahto (PW-2) were independent witnesses who were in no way related to the deceased persons. They had proved their presence. Placing reliance on their evidence the accused persons as noted above were found guilty.

In appeal, the conclusions of the trial Court were affirmed. It is to be noted that though a plea of alibi was raised by two of the accused persons, the evidence tendered to prove the alibi was discarded finding it to be unreliable and irrelevant.

Learned counsel for the appellants submitted that the evidence on record does not justify any conviction. The prosecution version was full of contradictions and exaggerations. Though PWs 1 and 2 were held to be not related to the deceased persons, the accepted position was that they were friendly with the deceased and other eye- witnesses. The genesis of the dispute has been suppressed as the first information report regarding the occurrence given by Rajendra Mahto (PW-25), as admitted by the Investigating Officer has not been taken note of. The same has been suppressed and an anti dated manipulated FIR has been brought on record. It has not been explained as to why both the deceased would run to the house of PW-6. If the prosecution version is accepted that a bomb was thrown on deceased Kishun, and he ran towards to his house, there is no reason indicated as to why the deceased Gopi would also run to the house of PW-6. It is strange that the eyewitnesses also went to the house of PW-6. Twenty seven accused persons were stated to be separately armed in a mob out of 40-50. It is a very exaggerated scenario presented by the prosecution that the accused persons killed the deceased after dragging them out from a place where they were hiding, several persons carried them on a cot and burnt the bodies and wiped off the blood with hay and threw them to the well of PW-6. When the accusation of looting, punishable under Section 380 IPC has not been established, the exaggeration is clearly patent. Actual killing has not been attributed to anybody in particular. There was considerable delay in lodging the FIR. When the accused persons have stated to have declared that no other person would be touched, there was no reason for the apprehension as stated by the eye- witnesses for lodging information late. A totally improbable case has been foisted. Some of the witnesses have said about explosion of three or four bombs; but others have said about only one and latter is the prosecution version. The story of common intention or common object as introduced by the prosecution has not been established. Nothing has been shown as to how and when the alleged unlawful assembly was formed. Actual participation has not been attributed. The so-called eye-witnesses have not identified all accused persons, and each has only identified some. The plea of PW-1 that he followed the accused persons when they were carrying the dead bodies does not inspire confidence. No explanation has been offered as to why the witnesses did not go to the police station though the burning of the bodies allegedly took more than one hour. It has come on evidence that a live bomb was found in the house of PW-6. There is no evidence as to who put it there. The evidence of PW-6 and PW-11 do not reconcile with each other. There was no call or exhortation, which is associated with a case of unlawful assembly or common intention or common object. Some of the eyewitnesses said that they came out on hearing the explosion. If that be so, the accused persons who did not do any particular overt act may have also come out on hearing the explosion. It is the prosecution version that the police came on hearing a rumor about some incident. It has not been established as to what was the source and why the police came.

In response, learned counsel for the State submitted that it is not a case where there was any animosity, individual in character. On the contrary the evidence clearly established and proved, as noticed by the Courts below, in a faction ridden village the assaults were on account of faction fighting. The so-called information given by Rajendra Mahto has been discarded by the trial Court. Even approach to this Court did not bring any relief to the appellants who during trial had tried to press into service such a plea. If he was such a material witness, no reason has been indicated by the appellants as to why he could not be examined as a defence witness. The evidence of IO clearly says that no such person was there. PW-11's evidence is clear and cogent that he was behind the deceased Kishun and when on account of the bomb explosion, the deceased Kishun ran out of anxiety, the other deceased followed him. The IO has found the remnants of explosion. There is no inconsistency in the evidence. The houses of the deceased persons were in close vicinity. Deceased Gopi's house was at a distance of 7/8 yards from the place where the first bomb exploded. It is a natural human conduct that somebody would go out after hearing the sound of explosion. In this case the deceased Gopi was behind him and others PWs came late. There was nothing unusual and unnatural in going to PW-6's house. All the witnesses have identified and stated about the presence of the accused persons in PW-6's house. It is immaterial whether one witness identifies all, or some of them identify some of the accused persons. The evidence is consistent so far as the identification of the accused persons, and the weapons carried by them are concerned. There was positive enmity of the accused persons with the deceased persons. It is the prosecution version that 11 persons climbed to drag out the deceased persons from the place where they were hiding. There has been even no suggestion given that others who did not scale the roof either stopped them from doing it or withdrew. That may have to some extent for argument sake substantiated the plea of appellants that some of them were by-standers. It is on evidence that while some of them scaled the roof, others were waiting on the verandah. The IO had recovered blood stained hay from the well. Eight of the accused persons carried the dead bodies of deceased on a cot for the purpose of burning. There is nothing on record to throw doubt about the objective findings recorded by the IO. It is established that the accused persons who were cleaning the bloodstains also joined the group who had carried the dead bodies for the purpose of burning. The evidence is clear in respect of the three places of occurrence i.e. (i) the place where the bomb was thrown on deceased Kishun, (ii) the house of PW-6 and (iii) the place of burning. It is relevant to note that the place where the dead bodies were burnt was not a normal burial place. The IO had found that a pit was dug and smell of kerosene oil was there. It is a case where PWs were threatened by the accused persons, if they tried to rescue the deceased persons. The evidence of PW-6 that when he requested the accused persons not to assault the deceased, he was told that he should not interfere otherwise he would also be killed. The evidence clearly shows that the targets were the deceased persons. Evidence of PW-10 shows that when she tried to save the accused persons, the accused persons specifically told her that the deceased were the target and others should not interfere. The police station was 32 K.M. away. If the defence version is that the deceased and the eyewitnesses were ill-disposed towards them, there is no reason to falsely implicate so many persons. The village being a faction ridden one, there is no scope for any independent witnesses coming forward.

It is to be noted that definite roles have been attributed to the accused persons. Eleven of them have scaled the roof and dragged out the deceased. Eight of them carried the dead bodies for the purpose of burning. So far as cleaning the blood and throwing dead bodies to the well etc. is concerned the

accusations are general in nature.

Though the evidence of PWs 1 and 2 were attacked on the ground that it was partisan, we find nothing has been brought on record to cast any doubt on the veracity of their statement. Merely because the witnesses are related or friendly with the deceased, that will not be a ground to discard their evidence. The only thing the Court is required to do is to carefully scrutinise the evidence and find out if there is scope for taking a view about false implication. Further since there are some exaggerations or minor discrepancies, that would not be sufficient to cast doubt on the evidence.

In the instant case, the eyewitnesses have categorically stated in detail the manner of assault and the roles played by the accused persons. It is also a common evidence that the targets were the deceased persons. When large number of persons armed with weapons do a series of acts by throwing bombs, dragging out the victims, indiscriminatingly assaulting them, burning the dead bodies, it is but normal and natural that fear psychosis would develop. This is what precisely has happened, if the version of the eyewitnesses is accepted. PWs 6 and 10 apart from other eyewitnesses have categorically stated that when they tried to come to the rescue of the deceased, they were threatened and asked not to interfere lest they would be killed.

Sections 34 and 149 IPC deal with common intention and common object respectively.

The emphasis in Section 149 IPC 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.

'Common object' is different from a 'common intention' 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 'common object' 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 instanti.

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 from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word 'knew' used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. 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 offences committed in prosecution of the common object, but would be generally, if not always, with the second, 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.) The other plea that definite roles have not been ascribed to the accused and, therefore, Section 149 is not applicable, is untenable. A 4-Judge Bench of this Court in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) observed as follows:

> "Then 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."

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

> "Common 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."

In State of U.P. v. Dan Singh and Ors. (1997 (3) SCC

747) it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Reference was made to Lalji's case (supra) where it was observed that "while overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149".

The legality of conviction by applying Section 34 IPC in the absence of such charge was examined in several cases. In Willie (William) Slaney v. State of Madhya Pradesh (AIR 1956 SC 116) it was held as follows:

> "Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is a rolled up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.
>
> In 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 the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant".

The above position was re-iterated in Dhanna etc. vs. State of Madhya Pradesh (AIR 1996 SC 2478).

The Section really means that if two or more persons intentionally do a common thing jointly, it is just the same as if each of them had done it individually. It is a well recognized canon of criminal jurisprudence that the Courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In combination of this kind a mortal stroke, though given by one of the party, is deemed in the eye of law to have been given by every individual present and abetting. But a party not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act. Leading feature of this Section is the element of participation in action. The essence of liability under this Section is the existence of a common intention animating the offenders and the participation in a criminal act in furtherance of the common intention. The essence is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result (See Ramaswami Ayyanagar and Ors. v. State of Tamil Nadu (AIR 1976 SC 2027). The participation need not in all cases be by physical presence. In offences involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this Section is not one of the conditions of its applicability in every case. Before a man can be held liable for acts done by another, under the provisions of this Section, it must be established that (i) there was common intention in the sense of a pre-arranged plan between the two, and (ii) the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this Section cannot apply.

'Common intention' implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Under this Section a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of offence showing a pre-arranged plan and prior concert. (See Krishna Govind Patil v. State of Maharashtra (AIR 1963 SC 1413). In Amrit Singh and Ors. v. State of Punjab (1972 Crl.L.J. 465 SC) it has been held that common intention pre-supposes prior concert. Care must be taken not to confuse same or similar intention with common intention; the partition which divides their bonds is often very thin, nevertheless the distinction is real and substantial, and if overlooked will result in miscarriage of justice. To constitute common intention, it is necessary that intention of each one of them be known to the rest of them and shared by them. Undoubtedly, it is a difficult thing to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In Magsogdan and Ors. v. State of U.P. (AIR 1988 SC 126) it was observed that prosecution must lead evidence from which the common intention of the accused can be safely gathered. In most cases it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view of the facts involved. Whether an act is in furtherance of the common intention is an incident of fact and not of law. In Bhaba Nanda Barma and Ors. v. The State of Assam (AIR 1977 SC 2252) it was observed that prosecution must prove facts to justify an inference that all participants of the acts had shared a common intention to commit the criminal act which was finally committed by one or more of the participants. Mere presence of a person at the time of commission of an offence by his confederates is not, in itself sufficient to bring his case within the purview of Section 34, unless community of designs is proved against him (See Malkhan and Anr. v. State of Uttar Pradesh (AIR 1975 SC 12). In the Oxford English Dictionary, the word "furtherance" is defined as 'action of helping forward'. Adopting this definition, Russel says that "it indicates some kind of aid or assistance producing an effect in future" and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken, for the purpose of effecting that felony. (Russel on Crime 12th Edn. Vol.I pp.487 and 488). In Shankarlal Kacharabhai and Ors. v. The State of Gujarat (AIR 1965 SC 1260) this Court has interpreted the word "furtherance" as 'advancement or promotion'.

The plea that some of the accused persons did not commit any overt act would really of no consequence. They were not mere sightseers as claimed. There is nothing to show that they had dissuaded the persons from committing the criminal act or withdrew at any point of time during the course of the incident constituting by itself or as a step in furtherance of the ultimate offence. There is nothing unusual in deceased Gopi running after the deceased Kishun and other eyewitnesses. In order to ascertain as to what was the cause of the explosion and to run after the deceased seeing him towards house of PW-6. The eyewitnesses have identified the accused persons and have stated about their presence inside the house of PW-6. There is no discrepancy so far as the identification is

concerned and about the weapons carried by the identified accused persons. It has also come in evidence that the targeted victims were the deceased persons with whom the animosity is admitted. The objective findings recorded by the IO on spot verification also are in line with the evidence of eyewitnesses.

So far as the absence of any independent witness is concerned, the evidence of PW-6 is very relevant. He has stated that the accused persons were surrounding the village after the incident. In the village Malti there are 100 houses out of which 5 to 6 houses are of Yadavs, 15 to 16 are of Bhumihars and people of other castes are also there. Before the present occurrence, Arjun and Saudhi who were Bhumihars by caste were killed. Yadavs of the village were accused of the murder and the deceased Kishun and Gopi were the main accused. Accused Lakhan is the brother of deceased Saudi Singh and Nandu Singh is the son of Arjun Singh. It has to be noted further that though the eyewitnesses were examined at length in the cross-examination nothing material to belie their credibility or discard their evidence was brought out.

Looked at from any angle, the impugned judgment suffers from no infirmity to call for any interference. The appeals are dismissed.