Charan Singh And Ors vs State Of Uttar Pradesh on 10 March, 2004

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  1115-1116 of 2003

PETITIONER:
CHARAN SINGH AND ORS.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT: 10/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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JUDGMENT 2004(2) SCR 925 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. The six appellants faced trial along with 18 others for alleged commission of offences punishable under Sections 147,148, 302 read with Section 149 and 307 read with Section 149 of the Indian Penal Code, 1860 (in Short "the IPC"). They were convicted by the Trial Court. For the offence relatable to Section 302 read with Section 149 IPC, life imprisonment was awarded; whereas for the offence relatable to Section 307 read with Section 149 1PC imprisonment of 7 years was awarded. According to the prosecution, one Devi Charan (hereinafter referred to as the 'deceated D-l') lost his life on account of murderous assaults of the accused persons. Two other persons namely, Buddha and Shanti Devi (described hereinafter as deceased D-2 and D-3 respectively) lost their lives in the

incident. All the 24 accused persons preferred appeal before the High Court. The High Court found that one accused named Shyamu was a juvenile and with reference to Section 2(4) of the U.P. Children Act, 1951 his conviction was maintained, but he was extended the benefit of the said Act. Though one Ram Pal was named in the first information report, no charge sheet was submitted so far as he is concerned. One Narena died during the pendency of the appeal before the High Court and the appeal abated so far as he is concerned. Dealing with the case of other 22 accused persons, the High Court found that the appellants 10 to 23 were stated to be armed with lathies only. There was no sufficient material to bring home the accusations so far as they are concerned. Though one Raj Pal was also similarly placed, the High Court made a distinction holding that he being the son of Harkesh, the prime mover of the entire episode, it can be presumed that he may have had a motive to join the unlawful assembly with his father, brother and others. Though one Mahesh Chand was also stated to be holding a spear, he was also found to be not. guilty on the logic of the other accused persons who were holding lathies. He was also given the benefit of doubt.

The prosecution version as unfolded during trial is as follows;

On the fateful day at about 11.30 a.m. the accused Harkesh started constructing a passage adjacent to the wall of Satya Prakash, who resisted and raised objection to the construction of the passage adjacent to his wall. He complained of the matter to Tejveer (PW-2) who thought it proper to resolve the dispute and called persons from both the sides. Jai Prakash (PW-1) the informat, Satya Prakash (PW-5) and others collected in front of the Gher of accused Harkesh for Panchayat. From the other side, accused Harish Chandra and other accused persons assembled for Panchayat over the issue. They were allegedly armed with various weapons. Harish Chandra started exchanging hot words with Satya Prakash (PW-5) and he asked his companions (other accused) to kill the persons on the prosecution side. Resultantly, all the accused persons attacked the members of the other side, who had assembled to join the Panchayat and injured Indra Pal, Satya Prakash (PW-5), Sant Singh, Faqir Chand, Mukut Lal, Chandra Pal, Ram Jas and Tejveer (PW-2) on the side of the prosecution. Instantaneously, all the accused reached the Baithak of deceased nearby the Gher of Harkesh. There Harish Chandra told the deceased that he would be taught a lesson for the litigation started by him two years back. Accused Harish Chandra and Har Prasad Opened fire on Devi Charan. Harkesh wielded spear and Raj Pal gave a lathi blow to Devi Charan. It, however, appears that Devi Charan did not receive any injury from such weapons, as he received gunshot wounds only according to post mortem report. Devi Charan died on the spot.

The accused then reached the Gher of Jai Prakash (PW-1) son of deceased D-2, Buddha, There, spear blow was struck in the abdomen of Buddha, Jai Prakash's mother Smt. Shanti Devi rushed up to save her husband, but she was also given spear blow. Harish Chandra also opened fire on Buddha. According to the prosecution, 15-20 shots had been fired by the accused persons, who ran away after committing the crime. Buddha staggered a little and died in the field of Sri Ram. Shanti Devi (deceased D-3) died the next day and before that, her dying declaration was recorded.

As regards the injuries sustained by the four persons on the accused side, the explanation that came forth from the side of the prosecution is that the persons from the prosecution side had resorted to brickbatting in self defence as per the version of PW-2 Tejveer Singh-Pradhan.

After investigation, charge sheet was laid and trial was held which resulted in the impugned judgment. At the trial persecution examined 13 witnesses out of whom Jai Prakash (PW-1), Tejveer (PW-2) and Satya Prakash (PW-5) were stated to be eye-witnesses. PW-2 and PW-5 were injured also. The rest were doctors, investigating officer and other formal witnesses, Mention should be made with regard to Dr. S.K. Agrawal (PW-9) in whose presence dying declaration of Smt. Shanti Devi (D-3) was recorded. Shashi Shekhar Singh (PW-11) was the Executive Magistrate who recorded her dying declaration.

The defence was of denial. The accused Harish Chandra in his statement under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') stated that Harkesh was constructing passage by the side of his wall and Satya Prakash (PW-5) never resisted him from doing so. He also raised the plea of alibi. According to accused Har Prasad he along with Pappoo, Hazari and Kunwar Pal was sitting in the Nohra of Harkesh. Suddenly, 14-15 persons including Satya Prakash, deceased Devi Charan and Buddha, and others came there and asked for providing passage to them. He refused to oblige them. Then they started assaulting them with spears and guns with which they were armed, resulting in injuries to the persons on the accused side. Pappoo took out a gun from his house and in private defence fired from that gun. Hazari repelled the attack with spear and Shanti Devi came in between and received injuries in the scuffle. Later on, the injured left the Gher of Harkesh, but blood from their injuries fell down in the Gher and there was trailing of blood throughout the passage. Accused Chandra Pal also took the plea of alibi saying that he was on his duty. Accused Kunwar Pal, also took similar plea of false implication.

The accused examined constable Ram Bhool Singh (DW-1) to prove a copy of the Chik report on the basis of an application of one of them and the related entry in general diary, Pappoo (DW-2) was also examined in support of defence version as disclosed by Har Prasad in his statement recorded under Section 313 of the Code.

The Trial Court accepted the version of the injured witnesses and recorded conviction as aforesaid. In appeal, appellant Nos. 5 and 10 to 23 were acquitted while the conviction and sentence as imposed was maintained for the others.

In support of the appeals, learned senior counsel submitted that the accusations were against Harkesh who supposedly was armed with double barrel gun, resulting in the death of Devi Chand (D-l). The death of D-l, D-2 and D-3 were attributed the severe injuries inflicted by (Juvenile accused) Shyamu. Though it is stated that Hazari, Kunwar, Dev Dutt and Virender were carrying country made pistols, and Charan Singh was carrying a double barrel gun, it cannot be said that they shared the common object for any unlawful assembly. The incident can be broken into two parts as stated by the prosecution witnesses, i.e. exchanges at the Panchayat and subsequent acts. Therefore, there is no question to any object linking appellants with the killings. Reliance is placed on Roshan Lal and Ors. v. State of Maharashtra, AIR (1977) SC 672 and Mariadasan and Ors. v. State of Tamil Nadu, AIR (1980) SC 573 to contend that Sections 149 cannot be pressed into service in a case of this nature. Additionally it is submitted that so far as accused appellant Raj Pal is concerned, there is no distinctive feature vis-a-vis acquitted accused persons who were similarly placed. On mere surmise that he may have the motive he has. been roped in.

Per contra, learned counsel for the respondent-State supported the judgment of the courts below. We shall first deal with the accused-appellant Raj Pal. As noted by the High Court he stands on the same footing as that of the acquitted accused persons. The Trial Court and the High Court, however, distinguished his case by observing that being the son of accused Harkesh who was prime mover of the crime, he may have a motive. In the absence of any positive material in that regard, there is no scope for distinguishing his case from the other accused persons who have been acquitted. Therefore, his conviction cannot be maintained.

Coming to the others who were armed with double barrel guns and country made pistols, the question is regarding applicability of Section 149, IPC. Section 149, IPC 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 upto 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 co 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 called 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 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 Ors. 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's case (supra) 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".

Above being the position, we find no substance in the plea that evidence of eyewitnesses is not sufficient to fasten guilt by application of Section

149. So far as the observations made in Roshan Lal and Mariadasan cases (supra), it is to be noted that the decision in the said case was rendered in a different factual scenario altogether. There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, on additional or different fact may make a world of difference between conclusions in two cases (See Padamasundara Rao (dead) and Ors. v. State of Tamil Nadu and Ors., JT (2002) 3 SC 1. It is more so in a case where conclusions relate to appreciation of evidence in a criminal trial. When the factual scenario is analysed in the background of legal

position highlighted above, the inevitable conclusion is that accused-appellants Charan Singh, Dev Dutt, Virender. Kunwar Pal and Harkesh have been rightly convicted by application of Section 149 IPC. Their appeals are without merit and are dismissed. In the ultimate result, the appeal of accused- appellant Raj Pal is allowed while those of the other accused-appellants stand dismissed. Appellant Raj Pal Shall be released from custody unless required in any other case.