REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 472 OF 2009
(Arising out of SLP (C) No.6030 of 2007)

Siyaram and Ors. ...Appellants

Versus

State of M.P. ...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court setting aside the judgment of acquittal recorded by learned Chief Judicial Magistrate, Morena. Appellants had faced trial for alleged commission of offences punishable under Sections

148, 149, 294 read with Sections 149, 326 read with Sections 149 and 336 read with Section 149 Indian Penal Code, 1860 (IPC).

3. Background facts in a nutshell are as follows:

On 28.6.1994 complainant Ramniwas, his brother Om Prakash and Radheshyam were doing work in the land in respect of which stay order had been obtained by Siyaram. At the time of demarcation of the land both the parties were present but due to dispute between both the parties, one panchnama was being prepared. Siyaram refused to sign in the panchnama and a report was lodged by the complainant against them. Appellants came there with deadly weapons like lathi, farsa and sword etc. Accused Ramsewak inflicted injuries by farsa on the complainant. He has caused injuries to his left hand and the accused caused injuries to his brother by sword and also caused injuries to his younger brother which cut his finger. The rest of the accused persons caused injuries by lathi. After beating the complainant and his brother, the accused ran away from the spot. Report was lodged in the police station. Spot map was prepared. Injured Ramniwas, Radheshyam and Om Prakash were sent for medical examination. From the medical report the injuries were found to be dangerous to life. The trial court after conclusion of trial acquitted the appellants.

The trial Court acquitted the present appellants on the ground that there were material contradictions and omissions in the evidence of injured eye witnesses. The High Court noted that there may be minor omissions and contradictions but they were not of such magnitude to warrant rejection of the evidence of the eye witnesses.

The High Court found that the evidence of injured witnesses i.e. PWs 1, 3 and 6 were fully corroborated by medical evidence and the trial Court should not have directed acquittal. Accordingly, allowing the appeal filed by the State the High Court observed that the order of acquittal so far as it relates to offence punishable under Sections 148, 324 read with Section 149 and 326 read with Section 149 IPC was to be set aside. However, the acquittal in respect of offences relatable to Sections 294 and 326 read with Section 149 IPC was to be maintained. Certain custodial sentences were imposed.

4. In support of the appeal, learned counsel for the appellants submitted that the trial Court had indicated sufficient reason for directing acquittal and since the view taken by the trial Court was a possible view there was no scope for interference. It is submitted that Section 149 has no application.

5. Learned counsel for the respondent on the other hand supported the judgment and submitted that the trial Court on abrupt conclusions had discarded the evidence of the eye witnesses which were fully corroborated by medical evidence.

6. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v.

State of M.P, 2003 (3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are substantial reasons for doing so. If the impugned judgment is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a substantial reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225), Jaswant Singh v. State of Haryana (2000 (4) SCC 484), Raj Kishore Jha v. State of Bihar (2003 (11) SCC 519), State of Punjab v. Karnail Singh (2003 (11) SCC 271), State of Punjab v. Phola Singh (2003 (11) SCC 58), Suchand Pal v. Phani Pal (2003 (11) SCC 527) and Sachchey Lal Tiwari v. State of U.P. (2004 (11) SCC 410).

7. A plea which was emphasized by the appellant relates to the question whether Section 149, IPC has any application for fastening the 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.

8. '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. For determination of the common object of the unlawful assembly, the conduct of each of the members of the

unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. 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.

9. 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 part, but offences committed in prosecution of the common object would be generally, if not always, be 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.)

10. 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 v. State of U.P. (1989 (1) SCC 437) 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".

11. This position has been elaborately stated by this Court in Gangadhar Behera and Ors. v. State of Orissa (2002 (8) SCC 381) and Shivjee Singh and Ors. v. State of Bihar (SLP (Crl.) No.1494/2004 disposed of on 30.7.2008).

12. Considering the evidence on record the High Court's judgment cannot be in any event deficient. However, considering the role ascribed to the appellants and the nature of injuries caused while upholding the conviction we reduce the sentence to the period already undergone which is stated to be of substantial part of the sentence imposed.

13. The appeal is disposed of accordingly.

……J.
(Dr. ARIJIT PASAYAT)

……..….J.
(ASOK KUMAR GANGULY)

New Delhi,
March 16, 2009