

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.628 OF 2007

RAMESH **... APPELLANT**

VERSUS

STATE OF HARYANA **... RESPONDENT**
WITH

CRIMINAL APPEAL No.1272 OF 2007

AJIT SINGH **... APPELLANT**

VERSUS

CHANDER BHAN & ORS. **... RESPONDENTS**

WITH

CRIMINAL APPEAL No.1273 OF 2007

RAJESH & ORS. **... APPELLANTS**

VERSUS

STATE OF HARYANA **... RESPONDENT**

WITH**CRIMINAL APPEAL No.1274 OF 2007****RAJ BIR****... APPELLANT****VERSUS****CHANDER BHAN & ORS.****... RESPONDENTS****J U D G M E N T****CHANDRAMAULI KR. PRASAD, J.**

1. All these appeals by grant of leave arise from the judgment dated 25th May, 2006 passed by the Punjab and Haryana High Court in Criminal Appeal No. 918-DB of 2003 and as such they were heard together and are being disposed of by this common judgment.

2. Criminal Appeal No. 628 of 2007, Criminal Appeal No. 1273 of 2007 and Criminal Appeal No.1274 of 2007 have been filed by the appellants against the judgment of conviction and sentence whereas Criminal

Appeal No.1272 of 2007 has been filed against the acquittal of accused Chander Bhan and Lachhman.

3. The prosecution started on the basis of the report given by PW.1, Randhir before the Assistant Sub-Inspector of Police in Civil Hospital, Jind on 21.4.1997 at 1.30 P.M. According to the First Information Report, there was litigation between Baba Krishangir and Baba Joragir in respect of 105 Killas of land in village Pokhri Kheri which travelled upto the Supreme Court and decided in favour of Baba Krishangir, who was in possession thereof. It has been alleged that in August last year, followers of Joragir fired at Krishangir at Jind Court as Joragir wanted to take possession of the land. Informant claims to be the supporter of Krishangir and according to him on 21.4.1997 at 7 A.M. he along with other persons including PW.3, Vedpal were at the Dera and at that point of time appellant Rajbir (appellant in Criminal Appeal No.1274 of 2007), appellants Rajesh, Dharamvir son of Rajmal, Hoshiara, Jage, Dharamvir son of Maha Singh, Ram Mehar alias Babru

Dass and Prem Singh (appellants in Criminal Appeal No.1273 of 2007) and Ramesh (appellant in Criminal Appeal No.628 of 2007) besides the accused persons acquitted by the trial court and those acquitted by the appellate court variously armed came to the place of occurrence from the house of Joragir situated nearby. It has been alleged by the prosecution that Chander Bhan, since acquitted by the High Court, gave exhortation to other accused persons to teach a lesson to the followers of Krishangir present there for not allowing them to enter the land, whereupon all the accused persons attacked them. This was protested by Krishan a supporter of the Dera, who came to the place of occurrence on hearing the noise and asked the accused persons as to why they were assaulting the followers of Krishangir. At this, appellant Dharambir son of Rajmal fired from his pistol which caused injury on the face of Krishan and he fell down there. Prem Singh fired from his pistol at PW.3 Vedpal on his right shoulder. Appellant Jage as also appellant Teka gave lathi blows on the head and right arm respectively of the informant's brother, namely,

Ramesh. Appellants Ramesh and Ram Mehar besides another accused assaulted Raj Kumar causing injuries on the left arm, left hand and head. Appellant Dharambir son of Maha Singh gave two lathi blows on the head of the informant, namely, Randhir. Appellant Rajbir gave gandas blow on the shoulder of Phool Singh, whereas appellant Hoshiara gave lathi blows on the right hip of the informant. Appellant Rajesh is alleged to have shot at the informant from his pistol causing injury on his left hand. During the fight, according to the prosecution, Darbara son of Chhotu Ram and Rajpal son of Nafe Singh came to the spot and witnessed the occurrence and the accused persons on their arrival ran away from the place of occurrence. Bhim Singh son of Nafe Singh took the injured Krishan to the Civil Hospital, Jind in a tractor but he succumbed to the injury in the way.

4. On the basis of the aforesaid information, a case under Sections 302, 307, 448, 449, 323, 324, 148 read with Section 149 of the Indian Penal Code and Sections 25 and

54/59 of the Arms Act was registered against the appellants and other accused persons since acquitted by the trial court as also the appellate court. Police after usual investigation submitted the charge-sheet and the accused persons were committed to the Court of Sessions to face the trial. Charges were framed and they pleaded not guilty and claimed to be tried. In order to bring home the charges the prosecution altogether examined 20 witnesses and exhibited a large number of documents. Out of the witnesses examined by the prosecution PW.1 Randhir, PW.2 Ajit, PW.3 Vedpal and PW.4 Rajpal, claim to be eye-witnesses to the occurrence and had sustained injuries. All of them in their evidence had supported the case of the prosecution.

5. The trial court relying on the evidence of the eye-witnesses and doctors who examined them and who conducted the postmortem report came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt so far as the appellants herein and the respondents Chander Bhan and Lachhman are concerned.

Accordingly, all of them have been held guilty under Sections 148, 302/149, 307/149, 325/149, 324/149 and 323/149, 307/149, 325/149, 324/149 and 323/149 and 449 of the Indian Penal Code and sentenced to undergo various terms of imprisonment, including imprisonment for life under Section 302/149 of the Indian Penal Code. Appellant Nos. 1, 2 and 7, namely, Rajesh, Dharambir and Prem Singh in Criminal Appeal No. 1273 of 2007 have also been held guilty under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs.500/-. However, while convicting them the trial court has acquitted altogether nine accused persons. It is relevant here to state that besides the appellants herein, the trial court had also convicted accused Teka, Lachhman, Chander Bhan and Ramphal and all of them have been acquitted by the High Court in appeal. It is further relevant here to state that against acquittal of Chander Bhan and Lachhman, appeal has been filed but the acquittal of Teka and Ramphal has not been assailed.

6. Accused persons held guilty by the trial court preferred appeal and the High court on appreciation of the evidence came to the conclusion that the appellants herein assembled in the house of Joragir variously armed with pistol, gun, lathis, gandasa and bricks and the appellants were the members of the unlawful assembly and in furtherance of their common object caused the death of Krishan. Accordingly the High Court maintained the conviction of the appellants, excepting Teka, Lachhman, Chander Bhan and Ramphal. While acquitting respondents Chander Bhan and Lachhman and other two convicts, the High Court on appraisal of the materials came to the conclusion that they have been falsely roped in the case.

7. We have heard the Counsel representing the parties.

8. It has been contended that the conviction of the appellants with the aid of Section 149 of the Indian Penal Code is illegal as the appellants cannot be said to be the

members of unlawful assembly and committed the offence in prosecution of their common object. They submit that all the appellants have to be held guilty for their individual acts and it cannot be said that when they assembled their common object was to cause the death of deceased Krishan or cause injuries to the injured persons. Mr. D.P. Singh, learned counsel particularly emphasized that there being no overt act alleged against appellant Ramesh of causing injury to the deceased, he cannot be roped with the aid of Section 149 of the Indian Penal Code.

9. We do not find any substance in the submission of the learned counsel. In our opinion the common object of an unlawful assembly has to be gathered from the nature of the assembly, arms possessed by them and the behaviour of the assembly at or before the occurrence. It is an inference which has to be deduced from the facts and circumstances of each case. To attract the mischief of Section 149 of the Indian Penal Code, it is not necessary that each of the accused must commit some illegal overt act. When the

assembly is found to be unlawful and if offence is committed by any member of the unlawful assembly in prosecution of the common object, every member of the unlawful assembly shall be guilty of the offence committed by another member of the assembly. It has to be borne in mind that an assembly which is not unlawful when assembled may subsequently become an unlawful assembly. In the present case there is overwhelming material to show that the appellants variously armed, including the fire arms assembled at one place and thereafter came to the place of occurrence and started assault together and when protested by the deceased, one of the members of the unlawful assembly shot him dead and some of them caused injury by fire arm, gandasa, lathi, etc. to others. All of them have come and left the place of occurrence together. From what has been found above, there is no escape from the conclusion that appellants were the members of the unlawful assembly and offences have been committed in pursuance of the common object and hence, each of them shall be liable for the offence

committed by any other member of the assembly. In our opinion, the trial court correctly held them guilty with the aid of Section 149 of the Indian Penal Code, which has rightly been affirmed in appeal by the High Court.

10. The view which we have taken finds support from the decision of **Chandra Bihari Gautam and others vs. State of Bihar, SCC 2002 (9) SCC 208**, in which it has been held as follows :

“8. Section 149 has two parts. First part deals with the commission of an offence by a member of an unlawful assembly in prosecution of the common object of that assembly and the second part deals with the liability of the members of the unlawful assembly who knew that an offence was likely to be committed in prosecution of the object for which they had assembled. Even if the common object of the unlawful assembly is stated to be apprehending Nawlesh Singh only, the fact that the accused persons had attacked the house of the complainant at the dead of night and were armed with deadly weapons including the guns, and used petrol bombs, proves beyond doubt that they knew that in prosecution of the alleged initial common object, murders were likely to be committed. The knowledge of the consequential action in furtherance of the initial common object is sufficient to attract the applicability of Section 149 for holding the members of the unlawful assembly guilty for the commission of the offence by any member of

such assembly. In this case the appellants, along with others, have been proved to have formed an unlawful assembly, the common object of which was to commit murder and arson and in prosecution of the said common object they raided the house of the informant armed with guns and committed offence. The courts below have, therefore, rightly held that the accused persons formed an unlawful assembly, the common object of which was to commit the murder of the informant and his family members and in prosecution of the said common object six persons were killed. The appellants were also proved to have hired the services of some extremists for the purposes of eliminating the family of the complainant.”

11. So far as the acquittal of respondents Chander Bhan and Lachhman is concerned the High Court on appraisal of the material came to the conclusion that they have falsely been roped. The aforesaid conclusion has been arrived at on appraisal of the evidence. The view taken by the High Court, in our opinion, is one of the possible views and that being so, order of acquittal needs no interference by this Court.

12. In the result, we do not find any merit in all these appeals and same are dismissed accordingly.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

**New Delhi,
October 21, 2010.**

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Dear

Draft Judgment in the above matter is sent herewith for perusal and kind consideration.

With regards,

(Chandramauli Kr. Prasad)

18.10.2010

Hon'ble Mr. Justice Harjit Singh Bedi

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J U D G M E N T

TO BE PRONOUNCED BY

HON'BLE MR. JUSTICE

CHANDRAMAULI KR. PRASAD

ON

21.10.2010 (THURSDAY)