

not find any legal infirmity in the appreciation of the evidence by the learned Sessions Judge which we have independently reconsidered and re-appreciated.

46. After perusal of the entire evidence, it is found that a prompt F.I.R. was registered under Section 307 of IPC, injury report was prepared, the doctor recorded the dying declaration by giving certificate that the deceased was in a fit state of mind. The injured died, therefore, the F.I.R. was converted into Section 302 of IPC. The prosecution proved the F.I.R., dying declaration, injury report, postmortem report by ocular and documentary evidence.

47. We, therefore, are of the opinion that the present appeal lacks merit and is, accordingly, **dismissed**. The conviction of surviving appellant- Ashraf is confirmed.

48. Since, the accused-appellant is absconding, his bail bonds are cancelled and the sureties are discharged. He shall be taken into custody forthwith to serve the sentence. The Chief Judicial Magistrate and Senior Superintendent of Police/Superintendent of Police concerned shall ensure the arrest of the accused-appellant, Ashraf.

49. Trial court record be sent to the concerned Court forthwith.

50. Let a copy of this order be communicated by the Registrar (Compliance) to the Court concerned for compliance.

51. The Chief Judicial Magistrate shall submit a compliance report after two

months to be placed before the appropriate Court.

(2025) 4 ILRA 874

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 11.04.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ANISH KUMAR GUPTA, J.

Criminal Appeal No. 4854 of 2016
Connected with
Crl. Appeal Nos. 4607 of 2016, 5209 of 2016 &
5734 of 2016

Rakesh Singh & Anr. ... Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

Ashok Kumar Tripathi, Govind Saran Hajela,
Radhey Shyam Shukla, Rajesh Kumar

Counsel for the Respondent:

Arvind Agrawal, G.A.

(A) Criminal Law - Unlawful Assembly - Common Object - Indiscriminate firing by armed accused causing death and injuries - Indian Penal Code, 1860 - Sections 147, 148, 149, 302 & 307 - Arms Act, 1959 - Section 27 - Any lawful assembly may become unlawful at any point of time - Common object may be formed at any stage and liability arises even without overt act if member shares object - Moment indiscriminate firing began in response to objection, assembly became unlawful and common object was formed.(Para -29 to 33,36)

Accused persons consuming liquor and abusing each other were objected to by the informant - Accused retaliated with firearms causing death of two and injuries to five including informant - FIR lodged after delay of six and a half hours due to urgent medical needs - Prosecution justified delay based on circumstances - Trial

Court convicted all accused - Appeals filed against conviction. **(Para -27)**

HELD: -The moment the accused persons had started the indiscriminate firing at the injured persons they had formed a common object and the assembly of the accused persons became an unlawful assembly. Prosecution succeeded in proving the case. No interference was required in the trial court's judgment., **(Para -36,37)**

Criminal appeal's dismissed. (E-7)

LIST OF CASES CITED: -

1. Subal Ghorai Vs St. of W.B., (2013) 4 SCC 607
2. Charan Singh Vs St. of U.P., (2004) 4 SCC 205
3. Haramant Laxmappa Kukadi Vs St. of Karn., (1994) 1 SCC 736
4. Roy Fernandes Vs St. of Goa, (2012) 3 SCC 221
5. Gajanand & ors. Vs St. of U.P. : AIR 1954 SC 695
6. Kuna Vs St. of Odisha, (2018) 1 SCC 296
7. Rajeevan Vs St. of Kerala, (2003) 3 SCC 355
8. Sekaran Vs St. of T.N., (2024) 2 SCC 17
9. Sattey & ors. Vs St. of U.P. : (2019) 106 ACC 469
10. Chikkarange Gowda Vs St. of Mysore, 1956 SCC OnLine SC 65
11. Mizaji Vs St. of U.P., 1958 SCC OnLine SC 95
12. Shambhu Nath Singh Vs St. of Bihar, 1959 SCC OnLine SC 27

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Ashok Kumar Tripathi and Sri Shashank Singh, learned counsel

for the appellants, Sri Shubham Kumar holding brief of Sri Ashish Goyal, learned counsel for the informant and the learned A.G.A. for the State.

2. All these appeals have been filed by the appellants being aggrieved by the judgement and order dated 11.08.2016 passed by the Additional Sessions Judge, Court No. 5, Shahjahanpur in Sessions Trial No. 548 of 1997 & Sessions Trial No. 222 of 1998, whereby all the appellants herein have been convicted for the offences under Sections 147, 148, 149/307 and 149/302 I.P.C. For the offence under Section 147 I.P.C. they were sentenced for two years of imprisonment with a fine of Rs. 5,000/- each, for the offence under Section 148 I.P.C., three years imprisonment with fine of Rs. 5,000/- each, for the offence under Sections 149/307 I.P.C., all the appellants were sentenced for life imprisonment with a fine of Rs. 25,000/- each and for the offence under Sections 149/302 I.P.C. all the appellants were sentenced for life imprisonment with a fine of Rs. 30,000/- each. In case of non payment of fine for the offence under Sections 147 and 148 I.P.C., they were directed to undergo six months' additional imprisonment in addition to the sentence already awarded.

3. The brief facts of the prosecution case are that the informant- Narendra Pal Singh s/o Fakire Singh, had submitted a written report on 18.05.1997 at around 1:00 A.M. at P.S.- Nigohi, District-Shahjahanpur, stating therein that on 17.05.1997 at around 6:30 P.M., the accused Jangbahadur Singh, Rajkumar Singh, Devendra Singh who were equipped with guns, accused Jaipal Singh who was armed with a single barrel gun, Anil Kumar Singh who was armed with a double barrel

gun, Vijay Kumar Singh who was armed with a countrymade pistol, Omprakash Singh, Nanku Singh, Rajkumar Singh, Rakesh Singh, Rajendra @ Gajendra Singh, Dangal Singh who were all armed with single barrel gun and Veer Singh was again having a gun, were drinking liquor and abusing each other while passing through the informant's chaupal. When the informant and his family members objected to their behaviour, the aforesaid persons opened fire because of which Fakire Singh, Smt. Hira Kunwari Devi, Jhinak Singh, Nepal Singh, Rajkumar Singh, Prem Pal Singh sustained fire arm injuries. The informant- Nagendra Pal Singh had stated in the written report that he brought the injured persons in a tractor trolley to the police station and requested for lodging the report and taking appropriate legal action.

4. On the aforesaid written report submitted by the informant- Nagendra Pal Singh s/o deceased- Fakire Singh, an F.I.R. was registered under Sections 147, 148, 149, 307, 504 I.P.C. and also under Section 27 of the Arms Act against the accused appellants, namely Devendra Singh s/o Jangbahadur Singh, Omprakash Singh s/o Jagdish Singh, Rajendra @ Gajendra Singh s/o Kanhai Singh, Rakesh Singh s/o Rameshwar Singh, Rajkumar s/o Nanku Singh, Rajkumar s/o Jangbahadur Singh, Anil Kumar Singh s/o Jaipal Singh, Vijay Kumar Singh s/o Jagdish Singh, Nanku Singh s/o Mangoo Singh, Kanhai Singh s/o Pulander Singh, Dangal Singh s/o Visni Singh, Jaipal, Veer Singh and Jangbahadur s/o Zoravar Singh. On the basis of the letter of reference of the police station, medical examination of the injured persons was conducted at Government Hospital, Nigohi, District- Shahjahanpur.

5. As per the medical examination report dated 19.05.1997 at 10:30 A.M. the following injuries were found on the body of Smt. Heera Kumari:

1. A lacerated wound measuring 0.5 CM $\times$ 0.5 CM depth of which could not be measured and 8 CM on the right side of the head above the right eyebrow with folded edges.

2. Torn wound measuring 0.5 CM $\times$ 0.2 CM depth of which could not be measured and 12 CM on left side of head, edges folded over left ear.

3. Torn wound measuring 1.5 CM $\times$ 0.5 CM, 0.4 CM $\times$ 0.2 CM depth could not be measured. On left side of head 8 CM above left eyebrow.

4. Scratch measuring 0.5 CM $\times$ 0.2 CM in front of right ear.

5. Torn wound measuring 0.5 CM $\times$ 0.2 CM in the inner side of the front of the right ear.

6. Bullet wound behind the right ear measuring 0.5 CM $\times$ 0.2 CM"

[As per the opinion of the Doctor injury nos. 1, 2 and 3 were kept in observance and X-Ray was advised. Injury nos. 4, 5 and 6 were simple injuries.]

6. As per the medical examination report of the injured- Rajkumar Singh conducted on 19.05.1997 at 10:00 A.M., the following injuries were found on his body:

"1. Torn wound measuring 0.5 CM $\times$ 0.4 CM depth of which could not be measured. Left side of face 2 CM above the mouth.

2. Multiple lacerated wounds on right side of chest measuring 0.4 CM $\times$ 0.3 CM to 0.6 CM $\times$ 0.3 CM, depth of which could not be measured, with curled edges."

[As per the opinion of the Doctor, the injuries were kept in observance. Injuries were one and a half days old.]

7. As per the report of the medical examination of injured, Jhinak Singh @ Jhumak Singh, which was conducted on 20.05.1997 at 10:30 A.M., the following injuries were found on his body:

“1. Bullet entry wound measuring 0.3 CM X 0.2 CM on right side of Head just above the right ear, depth of which could not be measured.

2. Scratch scab red in colour measuring 0.7 CM X 0.3 CM over one third of the right ear.

3. Bruise measuring 3.5 CM × 0.4 CM in length, 9.5 CM above the right hip on right arm, brown in colour.”

[As per the opinion of the Doctor injury no.1 was kept in observance and X-Ray was advised. Injury nos.1, 2 and 3 were of simple in nature. Injury no. 1 was a firearm injury and injury nos. 2 and 3 were due to bruise marks. Injuries were two and a half days old.]

8. As per the injury report of injured-Munna Singh, the following injuries were found during the medical examination of the injured on 18.05.1997 at 3:20 A.M:

1. There were multiple firearm injuries on the head of the injured and three injuries were there on the head. One injury was there in the palm of both the hands, three injuries were there on the left face, one injury was there on the left hand. All the injuries were of similar type measurement of which were 0.4 CM to 0.3 CM. All injuries were soft and blood clotting was present. Signs of injuries were towards inside. Redness was present around the injuries. The whole blackishness or burning was not present around the injuries. There were two

injuries on the right chest, right stomach and right side. On the left chest there two injuries and one injury was there in front of the stomach and one entry wound was found on the left shoulder bone. As per the opinion of the Doctor the condition of the injured was very serious and he was in coma.

[As per the opinion of the Doctor, all the injuries were caused by the firearm. Both the eyes were damaged. Injuries were fresh. For the final opinion, X-Ray was advised.]

9. As per the medical examination report of injured- Fakire Singh, which was conducted on 18.05.1997 at 3:50 A.M., the following injuries were found on his body:

“Multiple bullet entry wounds on face. One wound in the middle of the forehead. One wound on the right cheek and four on the chin. One wound on the front of the head which was 6 CM above the forehead injury. One entry wound on the right forearm. One entry wound on the upper side of the right forearm. Blackness was present on the left side. All the wounds are similar and similar in appearance, measuring 0.3 CM to 0.4 CM. The skin is sunken. The edges of the wounds are soft and blood is present. There is infiltration cell in the wound. There was redness around the wound. Injured was in critical condition and in coma. The injuries were inflicted by a firearm and were fresh. The injuries were kept under observation and X-Ray was advised.”

10. As per the medical examination report dated 18.05.1997 at 3:10 A.M., the following injuries were found on the body of the injured Satyapal Singh:

“1. Bullet entry wound 0.2 cm on the lower eyelid of the right eye on which avulsion cell was present. The wound was soft on top and blood stain is present.

2. This wound was similar to injury no. 1 which was on the right ear across the ear. There was blood accumulation. There was an exit wound behind the ear with the edges bent outwards. Patient was complaining of dizziness, nausea and weakness.”

[As per the opinion of the Doctor, injury no. 1 was the entry wound and injury no.2 was also the entry wound and exit wounds were also present. These injuries were one fourth day to one and a half day old. X-Ray was advised and consultation with Eye Specialist was also recommended.]

11. As per the injury report of injured Prempal Singh dated 18.05.1997 at 5:00 A.M., the following injuries were found on his body:

“1. Multiple entry wounds, one on the left cheek, below the neck, between the two collarbones.

2. A wound on the right side of the chest, 4 CM below the middle of the collarbone.

3. A wound on the left chest, 8 CM above the nipple at the 12 o'clock position

4. A wound on the shoulder.

5. A wound in front of the abdomen.

6. Two wounds on the right arm at a distance of 10 cm from each other.

7. Two wounds on the right forearm.”

All the injuries were similar in nature. Also swellings were present.

12. Out of the aforesaid injured persons, the injuries of Munna and Fakire Singh were serious in nature and they were admitted to Balrampur Hospital, Lucknow, where the injured Munna Singh had died on

19.05.1997 at 1:20 P.M. and injured Fakire Singh died on 22.05.1997 at 3:25 P.M. Intimation of death was received at District- Lucknow and thereupon the inquest report of deceased Munna Singh was prepared on 20.05.1997 at 2:45 P.M. and similarly inquest report of deceased Fakire Singh was prepared on 23.05.1997 at 12:30 P.M. at District- Lucknow. Postmortem of deceased Munna Singh was conducted 21.05.1997 at 1:30 P.M. and postmortem of deceased Fakire Singh was conducted on 23.05.1997 at 3:45 P.M.

13. On the receipt of the report of death of Munna Singh and Fakire Singh, Section 302 I.P.C was added for the purpose of investigation against the accused persons. Investigation was carried out and from the place of incident blood stained and plain soil was taken from the crime scene. Empty cartridges were also recovered from the spot and the accused persons were subsequently arrested. After completion of the investigation, a charge-sheet under Sections 147, 148, 149, 302 and 307 I.P.C. and Section 27 of the Arms Act was filed against all the persons. Supplementary charge-sheet was also filed against Jangbahadur Singh s/o Zoravar Singh for the same offence. The Chief Judicial Magistrate had taken cognizance on both the charge-sheets and committed the case on 06.09.1997 and 06.03.1998 respectively to the Sessions Court. The Sessions Court vide order dated 21.06.2002 had framed charges against the accused persons for the offences under Sections 147, 148, 149, 302 and 307 I.P.C. The accused persons however had denied the charges and had claimed trial.

14. During the trial Anil Kumar Singh, Vijay Kumar Singh, Jaipal Singh, Nanku Singh, Kanhai Singh, Veer Singh

and Dangal Singh had died. Therefore, the case was abated against them.

15. The accused Jangbahadur Singh s/o Zoravar Singh was absconding from the trial, therefore, the proceedings under Sections 82 and 83 I.P.C. were initiated against him and subsequently after the execution of the bond against the sureties, proceedings under Section 299 I.P.C. were initiated against Jangbahadur Singh while the case proceeded against the rest of the accused persons.

16. In support of its case, the prosecution had examined PW-1/informant-Narendra Pal Singh, PW-2, Prempal Singh, PW-3 Satyapal Singh, PW-4 S.I. Harendra Pal Singh (Investigating Officer), PW-5 Dr. D.K. Gupta, PW-6 Dr. Yogesh Kaul, PW-7 Dr. Devendra Singh Negi, PW-8 Dr. Muniruddin, PW-9 Rajkumar Singh, PW-10 Vinod Kumar Singh, PW-11 S.I. Ramgopal Diwakar, PW-12 Rajendra Singh and various documents were filed. After conclusion of the prosecution evidence the statements of the accused Rajkumar Singh s/o Chandra Bahadur, Raj Kumar s/o Nanku Singh, Devendra Singh, Om Prakash Singh, Rajesh Singh, Rajendra Singh @ Gajendra Singh were recorded under Section 313 Cr.P.C.

17. Kunendra Pal Singh was examined as Defence Witness (DW) by the accused persons. After conclusion of the trial, the trial court had convicted the aforesaid accused persons, namely Rajkumar Singh s/o Jangbahadur Singh, Raj Kumar s/o Nanku Singh, Devendra Singh, Rajendra Singh and Rajendra Singh @ Gajendra Singh, Omprakash Singh for the offences under Sections 147, 148, 149/307, 149/302 I.P.C. and they were sentenced as aforementioned.

18. Being aggrieved by the judgement and order dated 11.08.2016, five separate appeals had been filed by the accused appellants. Criminal Appeal No. 4854 of 2016 was filed by accused persons- Rakesh Singh s/o Rameshwar Singh and Raj Kumar s/o Nanku Singh, Criminal Appeal No. 4607 of 2016 filed by Rajendra @ Gajendra Singh, Criminal Appeal No. 5209 of 2016 was filed by Omprakash Singh and Criminal Appeal No. 5734 of 2016 was filed by Devendra Singh s/o Jangbahadur Singh. **So far as the accused/appellant Raj Kumar son of Jang Bahadur Singh is concerned, since he has died during the pendency of the appeal, therefore, his appeal no. 6009 of 2016 has already been dismissed as abated vide order dated 30.9.2024.** The appellants- Omprakash Singh s/o Jagdish Singh and Rajendra @ Gajendra Singh s/o Kanhai Singh were released on bail by this Court. The appellants Rakesh Singh, Raj Kumar son of Nanku Singh and Devendra Singh are in Jail. Now, the above four appeals are left with us, which are being decided by the instant common judgement and order, as the same are arising out of the same impugned judgement and order and the same case crime number.

19. Learned counsel for the appellant has submitted that in the instant case out of the so many accused persons, one was absconding and six had died. These appeals now related to only five convicted accused persons.

20. As per the defence, indiscriminate firing was done by all the accused persons from their 312 bore gun without any premeditation. It is submitted by learned counsel for the appellants that there was no common intention/common object to cause death to any of the deceased. Therefore, he

submits that, there was no unlawful assembly. He further submitted that the appellants could not be said to be members of any unlawful assembly. There was a delayed F.I.R. by six and a half hours and the appellants were deliberately implicated who were innocent persons and were going to attend an engagement ceremony of the son of one of the co-accused persons. It is further submitted by learned counsel for the appellants that PW-3, Satyapal Singh, during his examination-in-chief, failed to identify the accused Rajkumar Singh and named him as Devendra Singh. Thus, he was either not present on the spot or had falsely implicated them. Learned counsel for the appellant further submits that there are allegations of indiscriminate firing by all the fourteen persons, however, only two empty cartridges of 312 bore were recovered from the spot and even the indiscriminate firing by the appellants herein was not proved against the appellants beyond reasonable doubt. As per PW-2 and PW-3, the specific role of firing was assigned only against the accused- Anil Kumar Singh upon the deceased Fakire Singh and a general role of indiscriminate firing by others was given. There was no recovery of any weapon nor was there a recovery of any incriminating article whatsoever either from the possession of or at the pointing out of the appellants herein.

21. Learned counsel for the appellants further submits that there is a delay of six and a half hours in reporting the incident, which had led to the lodging of an exaggerated version of the actual incident by implicating innocent persons of the families of the accused, who were not actually present at the place of incident. There is an unexplained delay by the Investigating Officer in recording the statements of the injured eye witnesses who

were brought to the police station by the informant at the time of submitting the written report. It is further submitted by learned counsel for the appellants that the present five appellants had been convicted by concluding that they were there with a common object whereas there is no evidence to establish the common object forming the unlawful assembly as from none of the appellants any recovery of weapon used in the instant case nor any other incriminating material had been recovered from their possession.

22. In support of his submissions learned counsel for the appellants has relied upon the judgements of Apex Court in *Subal Ghorai v. State of W.B.*, (2013) 4 SCC 607 (paragraph 53), *Charan Singh v. State of U.P.*, (2004) 4 SCC 205 (paragraph 13, 14, 15), *Haramant Laxmappa Kukkadi v. State of Karnataka*, (1994) 1 SCC 736, *Roy Fernandes v. State of Goa*, (2012) 3 SCC 221 (paragraph 27 to 33), *Gajanand & Ors. vs. State of U.P. : AIR 1954 SC 695*, *Kuna v. State of Odisha*, (2018) 1 SCC 296 (paragraph 21 to 23), *Rajeevan v. State of Kerala*, (2003) 3 SCC 355 (paragraph 12, 13, 14), *Sekaran vs. State of Tamil Nadu : (2024) 2 SCC 17* (paragraph 14 and 15) and *Sathey and Others vs. State of U.P. : (2019) 106 ACC 469* (paragraph 28).

23. Per contra, learned A.G.A. submits that from the evidence of the informant it is apparent that there was election rivalry between the accused persons and informant's family. All the accused persons were passing through the house of the informant while abusing the informant and other members of the injured persons, when they protested and thereafter the indiscriminate firing was done by all the accused persons.

24. The delay in lodging the F.I.R. has been well explained as after the incident the written report got prepared and thereafter all the injured persons were put into a tractor trolley and then they were brought to the police station, which is around 10-12 kilometres away from the place of incident and in reaching there it took around three hours. The incident is of 6:30 P.M. and one hour had taken place in making the arrangements and preparing the written report. Then, three hours had elapsed while reaching the police station. Thereafter, the F.I.R. was registered at 1:00 A.M. on 18.05.1997. So, there was no deliberate delay on the part of the informant, rather, the written report was got prepared promptly within an hour. Thus, there was no occasion for the informant to falsely implicate any person who was not present.

25. From the prosecution side, there was sufficient evidence regarding the role of the accused persons and the arms carried by each of the accused person's description had been categorically given in the written report as well as in the statements recorded during the course of trial. Therefore, all the fourteen persons armed with deadly weapons had formed a common object of causing grievous injuries to the injured persons and in the course of events two persons had died and five persons were injured. Even the independent witnesses had supported the prosecution evidence by naming all the accused persons, who had indiscriminately fired on the injured persons. The moment they had started firing they had formed an unlawful assembly and therefore, they were rightly convicted for the offences under Sections 147, 148, 149/307 and 149/302 I.P.C. Thus, these appeals are liable to be dismissed and no interference is called for in the impugned judgement.

26. Having heard the rival submissions made by learned counsel for the parties this Court has carefully gone through the record of the case.

Delayed F.I.R.

27. As per the prosecution's case, the incident of indiscriminate firing by the fourteen accused persons occurred on 17.05.1997 at 6:30 P.M. when the informant and the other injured persons were sitting outside their house and the accused persons equipped with firearms were passing through the house of the informant, and they while consuming liquor had hurled abuses on them. This when was objected by the injured persons, then they had indiscriminately fired at them and caused serious injuries to seven persons out of which two had died during treatment due to the injuries caused by these accused persons. As per the statement of PW-1, after the occurrence people had gathered, and thereupon, a written report was scribed by one Kunendra Singh, which was kept by the informant and the arrangements were made to carry the injured persons to the police station which was 10-12 Kilometres away from the place of incident. This took around one hour in making the arrangements and the injured persons alongwith informant were carried by the tractor to the police station. This again took around three hours to reach to the police station due to the bad road conditions. Thereafter, police had registered the F.I.R. at 1:00 A.M. on 18.05.1997. Thus, as per the informant the written report was already prepared while proceeding to the police station immediately after the incident, which was submitted to the police officers after reaching there on the basis of which the police has registered the F.I.R. at 1:00

A.M., on 18.05.1997. According to the informant, he reached at the police station around 11-12 O'Clock in the night. Therefore, there was no delay on the part of the informant in lodging the F.I.R. and the delay has been sufficiently explained. Thus, the delay in registering the F.I.R. about six and a half hours, has been well explained thus has no consequence to the prosecution's case.

Unlawful Assembly & Common Object

28. Before proceeding further it would be relevant to take note of Sections 141 and 149 I.P.C., which read as under:

"141. Unlawful assembly.—*An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is:*

1. *To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislatur e of any State, or any public servant in the exercise of the lawful power of such public servant; or*

2. *To resist the execution of any law, or of any legal process; or*

3. *To commit any mischief or criminal trespass, or other offence; or*

4. *By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or*

5. *By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to*

do, or to omit to do what he is legally entitled to do."

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—*If an offence is committed by any member of 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, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."*

29. In **Charan Singh (supra)**, the following observations have been made by the Apex Court with regard to the applicability of Sections 141 & 149 I.P.C., common object etc., which reads as under:

"13. Coming to the others who were armed with double-barrelled 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 an 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 has 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 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 IPC may be different on different members of the same assembly."

14. "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.

15. 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 a 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 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 the first part; but offences committed in prosecution of the common object would be generally, if not always, within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. (See Chikkarange Gowda v. State of Mysore [AIR 1956 SC 731 : 1956 Cri LJ 1365] .)”

30. In *Chikkarange Gowda v. State of Mysore*, 1956 SCC OnLine SC 65, the Apex Court has held as under:

“10. It is quite clear to us that on the finding of the High Court with regard to the common object of the unlawful assembly, the conviction of the appellants for an offence under Section 302 read with Section 149 Indian Penal Code cannot be sustained. The first essential element of Section 149 is the commission of an offence by any member of an unlawful assembly; the second essential part is that the offence must be committed in prosecution of the common object. In the case before us, the learned Judges of the High Court held that the common object of the unlawful assembly was merely to administer a chastisement to Putte Gowda. The learned Judges of the High Court did not hold that though the common object was to chastise Putte Gowda, the members of the unlawful assembly knew that Putte Gowda was likely

to be killed in prosecution of that common object. That being the position, the conviction under Section 302 read with Section 149 Indian Penal Code was not justified in law.”

31. In **Mizaji v. State of U.P., 1958 SCC OnLine SC 95**, the Apex Court has held as under:

“6. This section has been the subject-matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression ‘know’ does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible

possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all.[.]”

32. In **Shambhu Nath Singh v. State of Bihar, 1959 SCC OnLine SC 27**, the Apex Court has held as under:

*“6. Section 149 of the 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 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 Penal Code may be different on different members of the same unlawful assembly.”

33. From the aforesaid provisions of Sections 141 and 149 I.P.C. and keeping in mind the pronouncements by the Apex Court in the aforesaid decisions the following legal position emerges. Any lawful assembly may become unlawful at any point of time. The moment its object becomes unlawful and any offence is committed in furtherance of such common object by any member of such unlawful assembly, each and every member of such unlawful assembly will be liable for the same offence. A person, who is held to be liable for such offence is required to have understood that the assembly was unlawful or had become unlawful and it was likely to commit the offence. The word ‘object’ means the purpose or design and in order to make it “common”, it must be shared by all. Thus, “common object” means an object or purpose or design of an assembly, which is shared by all. For forming a “common object” no express agreement after mutual consent is required. It may be formed at any stage by all or a few of the members of the assembly and the other members might just join and adopt it. What common object of an unlawful assembly is there at a particular stage of the incident is essentially a question of fact to be determined by keeping in view the nature of the assembly which arms were carried by the members, and how they behaved at or near the scene of the incident would also have to be taken into consideration. The overt acts committed by any of the members of the assembly would also be a great pointer for the offence. It is not necessary that intention or purpose which is necessary to render assembly unlawful,

comes into existence at the very 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. A lawful assembly can become an unlawful assembly during the course of the incident itself, spontaneously. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be lead. The intention, has generally to be gathered from the acts, which the person commits and the result therefrom. It is a settled position of law that no hard and fast rule can be laid down regarding the circumstances from which the common object can be culled out. It may reasonably be collected from the nature of the assembly, arms that it carries and its behaviour at or before or after the scene of incident. 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 furtherance of the common object.

34. The judgement relied upon by learned counsel for the appellants in ***Subal Ghorai (supra)*** is not applicable in the instant case as there is no evidence that any of the appellants were merely bystanders. Rather, against all the accused persons a common allegation is that they were armed with deadly weapons and had indiscriminately fired at the injured persons and the injuries co-relate with the weapons used by the appellants herein. Therefore, the aforesaid judgement is of no help to the accused persons.

35. In the considered opinion of this Court, the facts of the ***Haramant Laxmappa Kukkadi (supra)*** are entirely

different and are not applicable to the instant case.

36. Now, coming back to the facts of the instant case, there are three injured witnesses in the instant case who had categorically supported the prosecution's case and had alleged that all the accused persons while drinking liquor were passing through the houses of injured persons. When it was objected by the injured, then, all of them had indiscriminately fired at the injured persons. Due to the injuries sustained in the said incident, two persons had died. Thus, from the narration of incident as has been supported by the prosecution evidence, it is apparent that all the accused persons had formed a common object and they were armed with lethal weapons. They were passing through the houses of the injured persons and were abusing them, which was objected to by the injured persons. In response to such objections raised by the injured persons all the accused persons had indiscriminately fired at them. The injuries sustained by the injured persons were commensurate to the weapons used by the accused persons. Thus, the moment the accused persons had started the indiscriminate firing at the injured persons they had formed a common object and the assembly of the accused persons became an unlawful assembly. The prosecution witnesses, namely the PW-1, PW-2 and PW-3 had stood firm and there was not an iota of doubt regarding their testimonies. So far as the testimonies of PW-9 (Raj Kumar Singh) and PW-10 (Vinod Kumar Singh), who were declared hostile is concerned, despite the fact that they had been declared hostile they had not denied the incident in its entirety. Rather, they themselves had suffered injuries but it appears that for certain extraneous obvious reasons they could not support the incident

in its totality regarding the involvement of the accused persons. The involvement of the accused persons have categorically been narrated by PW-1, PW-2 and PW3. The medical examination reports also support that prosecution story with regard to indiscriminate firing by the accused/appellants. Therefore, in our considered opinion the prosecution has succeeded in proving the case against the appellants and there is no illegality in the impugned judgement and order passed by the trial court convicting the appellants for the offences under Sections 147, 148, 149/302 and 149/307 I.P.C. Thus, no interference is called for in the impugned judgement of the trial court and the conviction and sentence of the appellants awarded by the trial court is hereby affirmed.

37. In view of the aforesaid, we do not find any merit in the appeals of the appellants. Accordingly, the Criminal Appeal No. 4854 of 2016, Criminal Appeal No. 4607 of 2016, Criminal Appeal No. 5209 of 2016 and Criminal Appeal No. 5734 of 2016 are hereby *dismissed*.

38. The appellants Rakesh Singh, Raj Kumar son of Nanku Singh and Devendra Singh are in jail. They shall be kept there to serve out the sentence awarded by the trial court and affirmed by us. The appellants Rajendra alias Gajendra Singh and Om Prakash are on bail. C.J.M. Shahjahanpur is therefore directed to take them into custody and send to jail to serve out the sentence awarded by the trial court and affirmed by us.

39. Office is directed to send a copy of this order to the court concerned within a week for compliance. The compliance report shall be sent by the court concerned

registered and charge sheet filed under IPC and SC/ST Act - cognizance taken and summons issued. (Para -1,3,13)

HELD: - Material on record showed a prima facie case against the appellant to proceed to trial. Magistrate was justified in taking cognizance and issuing summons. No illegality, infirmity or perversity in the impugned order. Appeal devoid of merit. (Para -13,17)

Criminal appeal dismissed. (E-7)

LIST OF CASES CITED: -

1. R.P. Kapur Vs St. of Punj., A.I.R. 1960 S.C. 866,

2. St. of Har. Vs Bhajan Lal, 1992 SCC (Cr.) 426,

3. St. of Bihar Vs P.P.Sharma, 1992 SCC (Cr.)
192

4. Z.P.W. Ltd. Vs Mohd. Saraful Haq & anr.,
2005 SCC (Cr.) 283)

5. Nirmaljit Singh Vs St. of W.B., (1973) 3 SCC 753

6. St. of Guj. Vs Afroz Mohammed Hasanfatta,
(2019) 20 SCC 539

7. Sarah Mathew Vs I.C.V.D., (2014) 2 SCC 62

8. Jagdish Ram Vs St. of Raj. & anr., AIR 2004 SC 1734

9. Ramesh Chandra Vaishya Vs St. of U.P. & anr., (2023) 17 SCC 615

(Delivered by Hon'ble Nalin Kumar
Srivastava, J.)

1. This criminal appeal under Section 14-A (1) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'the SC/ST Act') has been preferred by the appellant - Kaushal with the prayer to set-aside the cognizance / summoning order dated 2.12.2023 passed by the Special Judge