

HIGH COURT OF MADHYA PRADESH BENCH : INDORE

Division Bench: P.K. Jaiswal & I.S.Shrivastava, JJ.)

Criminal Appeal No. 741/2001

Daloo (since dead), Radheshyam,
Bherusingh & Kabara

V/s

State of Madhya Pradesh

Shri P. Newalkar, Advocate for the appellants 2 & 3.
Ms. Sonali Gupta, Advocate for the appellant No. 4.
Shri C.R. Karnik, Govt. Advocate for the respondent/State.

J U D G M E N T

(30.9.2011)

Per P.K. Jaiswal, J.

The present appeal arises out of judgment & order dated 18.6.2001, passed by Additional Sessions Judge, Biaora, district Rajgarh in Sessions Trial No.39/93, whereby each of the accused-appellants has been convicted and sentenced as under:-

Conviction under Sections

Sentence

148 of IPC	1 years R.I.
452 of IPC	3 years RI with fine Rs.500/-
302/149 of IPC	Life imprisonment with fine Rs.500/-
323/149 of IPC (thrice)	6 months RI on each count

2. Facts giving rise to the present appeal may be stated first so as to enable us to appreciate the arguments raised by the parties more effectively. On 17.10.1992 at about 8.30 PM in the night, at village Katariyakhedi accused Daloo came to the house of injured Devchand (PW1) and asked for 'Bidi'. At that point of time Naurangbai (PW3) wife of Devchand (PW1) was alone in the house, but when accused Daloo knocked the door Devchand reached the house. Hearing the knock Devchand (PW1) came there and asked Daloo why he was knocking the door. Accused Daloo started abusing him. At that point of time accused Kabra, Radheshyam, Bherusingh and Dulichand formed an unlawful assembly and in furtherance of that common object they started

breaking the roof tiles and damaged the light of the tractor and, thereafter, they trespassed the boundary wall of the house of Devchand (PW1) and started causing injuries to him by lathi, farsi and Axe. Accused Dulichnd was armed with farsi and caused farsi injury to Devchand (PW1) on his head. Accused Kabra, who was armed with Axe had caused Axe injury to Smt Gendibai (mother of Devchand) on her head. Accused Dalloo was armed with lathi and had caused lathi injury to Smt Gendibai. Accused Radheshyama was armed with Axe and had caused Axe injury to Smt Gendibai on her left hand thumb. Accused Bherusingh also caused her injury by lathi. On hearing the shriek Motilal (PW4), Badambai (PW7) and Kesarbai (PW2) came at the place of occurrence. Hearing the noise of injured Ramsingh (PW12), Sarpanch Devisingh (PW11) and Laxminarain (PW13) also came at the scene of occurrence. Later on the matter was reported by Devchand (PW1) and other injured at Police Station Biaora vide Crime No.551/92. FIR was registered under Sections 147, 148, 149, 452, 307 & 323 of IPC.

3. During investigation injured were medically examined at Civil Hospital, Biaora & dying declaration (Ex.P/32) of Smt Gendibai was recorded. Spot map (Ex.P/31) was prepared. Blood stained clothes of Gendibai and Devchand were seized. Injured Smt Gendibai was referred to Hamidiya Hospital, Bhopal for further treatment and during her treatment at Hamidiya Hospital, Bhopal she died on 20.10.92. After her death *murg* No. 0/218/92 was registered at Police Chowki Hamidiya Hospital. Inquest memo of the dead body was prepared. After her death Section 302 of IPC was also added. Police statements of injured and other eyewitnesses were recorded, accused persons were arrested and their arrest memo were prepared. During interrogation accused persons gave information regarding weapons, their memos were recorded and on the basis of their respective memos Axe was seized from the possession of accused Radheshyam and Kabra, lathis were seized from the

possession of Bherusingh and Dalloo and farsi was seized from the possession of accused Dulichand. Seizure memos were prepared and accused Dulichand and Dalloo were also medically examined. On completion of the investigation the police submitted charge sheet against the present accused/appellants namely Radheshyam, Bherusingh and Kabra and two other accused persons namely Dulichand and Dalloo, who have died during the pendency of trial and appeal respectively.

4. The trial Court framed charges against all the accused persons for the offence under Sections 148, 452, 302/149, 324/149 on two counts and 323/149 on three counts. Accused persons pleaded not guilty and claimed to be tried. The trial against the appellants and two other accused persons was conducted, during the course of which Devchand (PW1), Kesarbai (PW2), Naurangbai (PW3), Motilal (PW4) and Badambai (PW7) were examined as injured eyewitnesses on behalf of the prosecution. Kishanlal (PW5) and Mangilal (PW6) were examined as eyewitnesses of the case. They were turned hostile. Devising (PW11), Ramsingh (PW10) and Laxminarain (PW13) were also turned hostile. Balram (DW1) was examined as defence witness.

5. After completion of the trial, the trial Court passed the impugned judgment and order of conviction and sentenced the accused persons as mentioned herein above.

6. The appellants herein, being aggrieved by the aforesaid order of conviction and sentence filed the present appeal on which we have heard the learned counsel appearing for the appellants and also the learned counsel appearing for the State.

7. Shri P. Newalkar and Ms Sonali Gupta, learned counsel appearing for the appellants very forcefully submitted that the trial Court was not justified in convicting the appellants. They submitted that there is conflict between the ocular evidence and medical evidence, therefore, the prosecution case ought to have

been disbelieved by the learned trial Court. It is also submitted that the learned trial Court has erred in relying upon the evidence of interested eyewitnesses and in absence of any independent evidence the appellants could not have been convicted. They also submitted that the injuries sustained by the co-accused Dalloo & Dulichand were not explained. Their submission was that the prosecution has not brought the true picture of the story before the trial Court for the just & proper decision of the case and this infirmity is fatal to the prosecution's case. They also submitted that there is no connecting evidence for the appellants for assaulting the accused persons. They lastly submitted that there are material contradictions, discrepancies and omissions occurred in the statements of the witnesses, which have caused grave prejudice to the appellants and prayed that the impugned judgment be set aside and the appellants be acquitted of the aforesaid charges.

8. On the other hand, Shri C.R. Karnik, learned Government Advocate has submitted that there is no material contradiction in the statements of injured eyewitnesses and the learned trial Court has rightly given due weightage to their testimonies. It is also submitted that the doctor, who examined the deceased and conducted autopsy has narrated/explained the injuries of the injured and deceased and in view of the dying declaration of deceased Smt Gendibai (Ex.P/31) the appellants are rightly convicted by the learned trial Court. Learned Government Advocate has drawn our attention to the findings recorded by the trial Court and the evidence of injured eyewitnesses namely Devchand (PW1), Kesarbai (PW2), Naurangbai (PW3), Motilal (PW4) and Badambai (PW7) and submitted that their evidence is convincing, reliable and clearly proved the role of the appellants herein in causing injuries to the deceased and other injured eyewitnesses and, therefore, it is a clear case of conviction under Sections 148, 452, 302/149 and 323/149 of IPC on three counts.

9. In the light of the aforesaid submissions of the counsel appearing for the parties, we have given our in-depth consideration to the facts of the present case.

10. The starting point of the incident in question as indicated from the evidence on record is the house of Devchand (PW1) situated at Village Katariakhedi where apparently a dispute started between Devchand (PW1) and Dalloo, who was in intoxication. He started abusing Devchand (PW1) and when he resisted he gave lathi blow on his leg. Thereafter, he had gone to the house of Sarpanch and reported the incident and from there he telephoned the Police Station Biaora and returned to their house. At that relevant point of time Kabra, Dalloo, Radheyshyam, Bherusingh and Dulichand formed an unlawful assembly and started damaging the light of the tractor and thereafter, they trespassed the boundary wall of the house of the Devchand (PW1) and started causing injuries to his mother Smt. Gendibai.

11. As per statement of injured eye witness Devchand (PW1), Kabra was armed with lathi and had caused lathi injury to his mother Smt. Gendibai. Appellant No.2 Radheyshyam was armed with Axe and had caused Axe injury to Smt. Gendibai on her left hand. Accused Dalloo (since dead) had broken the hand of Smt. Gendibai. Accused Dulichand armed with Farsi and had caused Farsi injury on the head of Devchand (PW1). Appellant No.3 Bherusingh, who was armed with lathi had caused lathi injuries to his mother Smt. Gendibai, Kesharbai (PW2), Badambai (PW7) and Norangbai (PW3).

12. Devchand (PW1) in paragraph 11 of his cross examination has deposed that after 30 to 40 minutes of causing injury to him by Dalloo, five accused persons came to his house namely Kabra, Dalloo, Radheyshyam, Bherusingh and Dulichand. This witness in paragraph 12 of his cross examination has deposed that when he met the Sarpanch Devisingh, he narrated the earlier

incident of Dalloo. In paragraph 13 of his cross examination he deposed that when he was near to wall of his house at that relevant point of time accused person started causing injuries by pelting stones on them. He, Motilal, Gendibai, Badambai, Kesharbai and Norangbai were going to lodge the report against them. They all were seated in the tractor and when his tractor covered the distance of 20 fts. from his house, the accused persons started pelting stones and then he along with other injured persons and deceased immediately returned to his house. Pharsi injury was caused by Dulichand on the head of Devchand (PW1). Thereafter, appellant No.4 Kabra, who was armed with Axe had caused Axe injury to his mother Smt. Gendibai. Accused Radheyshyam, who was armed with Axe had caused Axe injury to his mother due to which thumb of left leg of her mother was chopped. Accused Dalloo, who was armed with lathi had caused lathi injury to Smt. Gendibai on her hand by which her hand was broken. Appellant No.3 Bherusingh caused lathi injury to Kesharbai, Norangbai and Badambai on their head and chest. (PW1) Devchand further in paragraph 23 of his cross examination has deposed that appellant No.3 Bherusingh had caused lathi injury to all the four injured. This witness in paragraphs 29 and 30 in his cross examination has denied that he had caused any injury to co-accused Dalloo and Dulichand by pelting stones on them.

13. Kesharbai (PW2) in her statement has deposed that Dulichand had caused Pharsi injury to Devchand (PW1). Thereafter, Kabra, who was armed with Axe had caused Axe injury to her mother Smt. Gendibai. The impact of injury was such that she become unconscious and fell down on the ground. Thereafter, Dalloo, who was armed with lathi had caused lathi injury on her head and Radheyshyam, who was armed with Axe had caused Axe injury from the other side of the Axe to her mother. Bherusingh caused lathi injury to injured Badambai (PW2). PW2 in paragraph 7 of her cross examination has deposed that first injury was inflicted by Dulesingh, who was

armed with Farsi and, thereafter, second injury was inflicted by Kabra, who was armed with Axe and caused injury to her mother.

14. Naurangbai (PW3) in her statement has deposed that all the accused persons trespassed the house by removing bricks from the roof of the house. Dulichand, who was armed with Farsi had caused Pharsi injury to her husband (PW1) Devchand. Appellant No.4 Kabra and appellant No.2 Radheshyam, who were armed with Axe had caused Axe injury to Smt. Gendibai. Thereafter, Bherusingh who was armed with lathi had caused lathi injury to all the injured. She in her cross examination has further deposed that all the accused persons were pelting stone on them. In paragraph 8 she has deposed that Radheyshyam was armed with Axe and had caused Axe injury to her mother Smt. Gendibai. Bherusingh had caused 3 to 4 injuries to injured Badambai, Kesarbai and Motilal.

15. Motilal (PW4) in para 3 of his statement has deposed that appellant No.4 Kabra was armed with Axe and had caused Axe injury to her mother Gendibai. Appellant No.2 Radheyshyam was armed with Axe and had caused Axe injury to her mother Gendibai. Dalloo had caused lathi injury to smt. Gendibai. Bherusingh appellant No.3 had caused lathi injury to Kesarbai on her head, Badambai on her chest and Norangbai on her head. He also caused lathi injury to injured Motilal (PW4) on his back. He in para 13 of her cross examination has deposed that appellant No.4 Kabra who was armed with Axe had caused Axe injury to Smt. Gendibai due to which she fell down and when she again got up at that time Radheyshyam gave second blow due to which she again fell down. Thereafter, appellant No.1 Dalloo had caused injury to her. Bherusingh, who was armed with lathi had caused injury to Badambai, Kesarbai and Naurangbai and Motilal. She in paragraph 20 of her statement has deposed that appellant No.4. Kabra had caused Axe injury to Smt. Gendibai.

16. Badambai (PW7) in her examination-in-chief has deposed

that all the accused persons trespassed the house of Devchand. Appellant No.4 Kabra was armed with Axe and had caused Axe injury on the head of the deceased Smt. Gendibai. Radheyshyam had caused Axe injury to deceased Smt. Gendibai. Dallo and Dulichand, who were armed with Farsi and lathi had caused injury to Devchand (PW1) and Smt. Gendibai. Bherusingh, who was armed with lathi had caused injury to Naurangbai, Kesarbai, Badambai and Motilal. This witness in paragraph 11 of his cross examination has deposed that appellant No.4 Kabra and appellant No.2 Radheyshyam were armed with Axe and had caused Axe injury whereas Dulichand were armed with Farsi and had caused Farsi injury. Bherusingh was armed with lathi and had caused lathi injury to Norangbai, Badambai and other injured persons. Immediately after the incident Smt. Gendibai was examined by Dr. D.N. Malviya (PW8). As per her MLC report (Ex.P/17) she received the following injuries:-

“i. L.W. 2 ½" x 1" x Bone deep on the frontal region of scalp just Rt. To the midline # frontal bone. Adv. X-ray skull.

ii. Swelling deformity tenderness and crepitation lower part Rt forearm. Adv X-ray. Rt. Forearm including wrist.

Injury caused by hard and blunt object.

Duration within 12 hrs. Ref. to CHO H.H. Bhopal for admission, X-ray & to note the details of injuries and opinion”

17. Dr. D.N. Malviya (PW8) in paragraph 11 of his statement has deposed that injuries no.1 and 2 of Smt. Gendibai were caused by hard and blunt object. Injured Smt. Gendibai was shifted to Hamidiya Hospital, Bhopal for further treatment and during her treatment at Hamidiya Hospital, Bhopal, she died on 20.10.1992. Dr. D.K. Satpathi (PW9) conducted the autopsy on the body of deceased Smt. Gendibai on 20.10.92 at 4 PM. The deceased was 50 years of old. He found the following antemortem injuries on the deceased:-

“Ecchymoses are present on exterior aspect of Rt. Forearm and doisum of Rt. hand underneath lower end of Radius is # ed through and through

2. *Surgically stitched wound on scalp posterior and situated 12 cm above eyebrows 9 cm. Right to midline, (semi-lunar in shape) and anterior end. 6 cm above eyebrow. 2Cm Rt. to midline, convexity situated medially anterior 5cm of convexity is lacerated while rest of the part is incised wound is stitched with 15 stitches total length of wound is 18 cm.*

3. *Surgically stitched wound on the scalp situated 2 cm posterior to the posterior end of injury No.2. Wound is having a corrugated rubber drainage tube.*

4. *Scalp is Ecchymosed on Right frontal parietal and temporal region. Rt temporalie muscle is ecchymosed and repaired.*

5. *A bone piece is missing from midline of Right fronto parietal region in an area of 9 x 5 cm in sagital plane. A bone piece is present in centre which is 8 x 2 cm in size longitudinal axis in sagital plane easily detached from surrounding having irregular and nibbled margin. Jel foam present and Duramater surgically stitched.*

6. *The layer of subdural hemorrhage present on Right side of cerebral hemisphere. Sub arachnoid hemorrhage present all over but more on right side.”*

18. Doctor noted that the cause of death was due to shock and hemorrhage as a result of head injury. The deceased died of the head injuries inflicted by appellant No.4 Kabra and appellant No.2 Radheyshyam. As per statement of injured eye witnesses (PW1) (PW2) (PW3) (PW4) and (PW7). Appellant No.2 Bherusingh, who was armed with lathi had caused lathi injury to Smt. Gendibai. The said fact is proved by the evidence of (PW1) (PW2) (PW3) (PW4) and (PW7).

19. As per MLC report (Ex.P/13) of Devichand (PW1) the following injuries were found on his body:-

1. *L.W. 2 ½ x ½ “ on the frontal region of scalp 1" left to midline.*

2. *L.W. ¼" X ¼ " skin deep & swelling 1"x1" on the Rt. parietal eminence.*
3. *Incised wound 1" x ½" x skin deep on the base of left thumb at the junction of web.*
4. *Contusion 1" x ½ " on the middle side of left forearm just above the wrist.*
5. *Contusion 2" x 1" on the lateral aspect of Rt. thigh on lower 1/3rd.*
6. *Abrasion 1" x ¾ " in front of left knee.*
7. *Contusion with abrasion 2" x 1" on the middle front of left leg.*

Injuries No.1,2,4,5,6,7 by hard & blunt object. No.3 by sharp object. All injuries are simple. Duration within 12 Hrs.

20. As per MLC report (Ex.P/14) of Kesarbai (PW2) a contusion of 3" x 1" was found on the lateral side of Rt. thigh middle.

21. As per MLC report (Ex.P/12) of Smt. Naurangbai (PW.3) the following injuries were found on her body:-

1. *L.W. 1/10" x 1/10" x skin deep with swelling 1"x1" on the center of scalp.*
2. *Contusion 4" x ½ on the upper lateral part of left forearm vertically placed.*
3. *Contusion 2" x 1" on inferior angle of left scapulae.*

Caused by hard and blunt object. Simple in nature. Duration within 12 hrs.

22. As per MLC report (Ex.P/15) of Motilal (PW4) the following injuries were found on his body:-

1. *Swelling 1"x1" on the left temporal – frontal region of scalp.*
2. *Contusion with diffuse swelling 2" x 2" just above the left knee.*
3. *Contusion 2"x1" on the epigastic region.*
4. *Abrasion 1 ½ " x ½ " on the left lateral side of chest.*

All injuries caused by hard and blunt object. Simple. Duration within 12 hrs.

23. As per MLC report (Ex.P/16) of Badambai (PW7) the following injuries were found on her body:-

1. *Contusion 2"x1"cm on the front of chest just above and left to the xiphisternum.*
2. *Contusion with abrasion 1 ½" x 1" on the front of chest above the xiphisternum.*

Caused by hard and blunt object. Simple in nature.
Duration within 12 hrs.

24. Dying declaration of deceased Gendibai (Ex.P/31) was recorded on 17.10.92 at 11.30 PM. As per her dying declaration, appellant No.4 Kabra had caused head injury on her and appellant No.2 Radheshyam had caused stone injury on her leg. Appellant Dalloo (since dead), who was armed with Lakadi (wood) and had caused wood injury on her hand and, thereafter, she became unconscious. Dr. D.N. Malviya (PW8), who recorded the dying declaration of the deceased, in paragraph 26 of his cross examination has deposed that he recorded the dying declaration on the basis of statement made by Smt. Gendibai. PW8 in paragraph 11 of his statement has deposed that after the incident he had examined Smt Gendibai and, thereafter, he prepared MLC and as per MLC (Ex.P/17) both the injuries of Smt. Gendibai were caused by hard and blunt object. This witness in paragraph 17 of his cross examination has deposed that if the Axe is not sharp then injury no.1 of Smt Gendibai can be said to be caused by hard and blunt object.

25. Dr. D.N. Malviya (PW8), examined the injured Devchand (PW1), Kesarbai (PW2), Naurangbai (PW3), Motilal (PW4) and Badambai (PW7) vide Ex.P/13, P/14, P/12, P/15 & P/16 respectively. In respect of injuries of Devchand he has deposed that injuries No.1, 2, 4, 5, 6 & 7 are caused by hard and blunt object while injury no.3 is caused by sharp edged weapon. PW8 in paragraph 19 of his cross examination has deposed that injuries No.1, 2 & 6 of Devchand (PW1) can be caused by stone. Similarly, injury no.1 of Naurangibai (PW3), injury No.1 & 4 of

Motilal (PW4) and injury No.1 of deceased Gendibai can be caused by stone.

26. Learned counsel for the appellants placed reliance on the decision of the Apex Court in the case of Hallu v/s State of M.P. (AIR 1974 SC 1936) and submitted that normally when a witness says that an Axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp edged or a piercing instrument was used as a blunt weapon. His contention was that as per dying declaration of Smt Gendibai, appellant No.2 Radheshyam had caused injury by pelting stone on her, whereas as per MLC report and postmortem report the deceased had not received any injury on her leg. As per her MLC report she had received only two injuries. The injury No.1 was on the head and injury No.2 was on the right forearm including wrist the same were caused by hard and blunt object. Smt Gencibai in her dying declaration has deposed that appellant No.4 Kabra was armed with Axe and had caused injury on her head. As per paragraph 19 of the cross examination of Dr. D.N. Malviya (PW8), by whom Smt Gendibai was first examined and her MLC was prepared, her injury no.1 can be caused by stone also.

27. According to the injured eyewitnesses the deceased Smt Gendibai and injured Devchand (PW1), Kesarbai (PW2), Naurangbai (PW3), Motilal (PW4) and Badambai (PW7) were attacked with Farsi, Axe, lathis and stones. Appellants No.2, 3 & 4 were armed with Axe and lathi and as per Dr. D.N. Malviya (PW8) and Dr. D.K. Satpathi (PW9) the injuries found on the person of the deceased Smt Gendibai and injured Devchand (PW1), Kesarbai (PW2), Naurangbai (PW3), Motilal (PW4) and Badambai (PW7) could be caused by blunt side of Axe, lathi and stone and, thus, the contention of the learned counsel for the appellants that

the eyewitnesses were not reliable and the ocular evidence of the eyewitnesses is not medically corroborated, cannot be accepted. The decision cited by the learned counsel for the appellants in the case of Hallu v/s State of M.P. (supra) will not be applicable in the present facts & circumstances of the case.

28. The next contention of the learned counsel for the appellants that out of two injuries inflicted on the body of deceased Smt Gendibai only one was found to be serious one and in absence of intention to cause death coupled with lack of knowledge that death would inevitably result on account of injury would make the offence fall only under Section 304 (Part-II), IPC and not under Section 302 IPC. This argument of the learned counsel for the appellants is supported by the decision of the Apex Court in the case of State of U.P. v/s Indrajeet @ Sukhatha (2000 Cri. L.J. 4663), wherein out of two injuries inflicted on the body of victim only one was found to be serious one, which was considered in the normal course to be sufficient to cause death. The Hon'ble Supreme Court held that absence of intention to cause death coupled with lack of knowledge that death would be inevitably caused on account of the injury would make the offence fall only under Section 304 (Part-II) IPC and not under Section 302 IPC.

29. Here, in this appeal as per the statement of Devchand (PW1) earlier Dalloo had caused lathi injury to him and when he had gone to report the matter to the Sarpanch of the village and to the Police Station and was returning to his house the said accused along with 4 other co-accused armed with Farsi, Axe and lathi formed an unlawful assembly and in furtherance of the same they trespassed his house and started inflicting injuries to the deceased as well as to the injured persons named above and, thus, it cannot be said that there was no motive to cause injuries to the deceased and other injured persons. Therefore, the decision cited by the learned counsel for the appellants in the

case of State of U.P. v/s Indrajeet (supra) would not be applicable in the facts of the present case.

30. We have PWs 1 to 4 and 7 as injured eyewitnesses to the occurrence. These eyewitnesses have stated that the incident had happened at the house of Devchand (PW1). Appellant No.2 Radheshyam, appellant No.3 Bherusingh and appellant No.4 Kabara were armed with Axe, lathi and stone and had inflicted injuries to deceased Smt Gendibai and also caused injuries to the injured persons. The aforesaid eyewitnesses, although, are related witnesses, were natural witnesses. The said eye witnesses are consistent about the principal act of the appellants and inflicting injuries to the deceased and other injured persons. The discrepancies are minor discrepancies without in any manner affecting the substratum of the prosecution case and, therefore, minor discrepancies in the evidence of the injured eyewitnesses are immaterial. Law is fairly well settled that, mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. In law, testimonies of an injured eyewitness are given importance. After careful analysis and scrutiny of the evidence of PW1 to 4 and 7, we are of the view that the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

31. The aforesaid eyewitnesses were cross examined at length, but even after such lengthy cross examination these eyewitnesses' account could not be shaken. Thus, there can be no dispute that the presence of accused persons on the spot was well established by the five eyewitnesses named above. All the five eyewitnesses who supported the prosecution have in one voice deposed to the presence of all these accused persons and the acts performed by them. There can be no dispute about the formation of unlawful assembly and its common object. The law of vicarious liability under Section 149 IPC is crystal clear that even the presence in the unlawful assembly, but with an active mind, to

achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly. There was active participation and the presence of all the accused persons was with all active mind in furtherance of their common object.

32. We, therefore, dismissed the appeal. The appellants are on bail. Their bail bonds are cancelled. They shall be taken into custody immediately for serving out rest of the sentence.

(P.K. Jaiswal)
J U D G E

(I.S. Shrivastava)
J U D G E

