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BHUDEO MANDAL & OTHERS

v.

STATE OF BIHAR

B

March 24, 1981

[S. MURTAZA FAZAL ALI, BAHARUL ISLAM, AND
A. VARADARAJAN, JJ.]

C

Indian Penal Code 1860—S. 149—Conviction under clear finding regarding common object of assembly—Necessity of.

When the appellants wanted to irrigate the land they were prevented from doing so by the deceased as a result of which the 1st appellant who is now dead gave a bhala blow to the deceased. The other appellants were supposed to have been armed with lathis but they did not cause any injuries either to the witnesses or to the deceased.

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The Sessions Judge convicted the 1st appellant under section 304 Part I of the Indian Penal Code and sentenced him to undergo imprisonment for life and the other appellants under section 326/149 of the Indian Penal Code and sentenced them to undergo 3 years' rigorous imprisonment but affirmed the acquittal of the individual charges under sections 323 and 325 I.P.C. The High Court while convicting the appellant under sections 325/149 of the I.P.C. has given no finding regarding the common object of the unlawful assembly.

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Accepting the appeal, the Court

HELD : In the instant case, there is neither any evidence nor any finding that any of the ingredients of section 149 have been established by the prosecution. Even on the prosecution case itself the occurrence took place as a result of an irrigation dispute and the appellants were merely acting under a *bona fide* claim or belief that they had the right to irrigate the land. There is no overt act attributed to any of the appellants in regard to the deceased and the mere fact that the appellants were armed with lathis by itself would not prove that they shared the common object with which the deceased was inspired. [292 G-H]

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2. Before the High Court upheld the conviction of the appellants under sections 326/149 I.P.C. it should have recorded a clear finding as to what was the object of the unlawful assembly and if so whether the object was to commit murder, grievous hurt or simple hurt. [293 A]

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3. Whenever the High Court convicts any person or persons of an offence with the aid of section 149 a clear finding regarding the common object of the assembly must be given and the evidence discussed must

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- A** show not only the nature of the common object but also that the object was unlawful. Before recording a conviction under section 149 of the I.P.C. the essential ingredients of section 141 of the I.P.C. must be established. [293 D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 365 of 1974.

- B** Appeal by Special Leave from the Judgment and Order dated 24.1.1974 of the Patna High Court at Patna in Criminal Appeal No. 306/1969.

U. P. Singh for the Appellants.

- C** *K. G. Bhagat* and *U. N. Prasad* for the Respondent.

The Judgment of the Court was delivered by

- D** FAZAL ALI, J. This appeal by special leave is directed against the judgment of the Patna High Court dated 24.1.1974 and has been preferred by appellants Dayanand Mandal, Bhubneshwar Mandal, Kuldip Mandal, Bhagwat Mandal, Nemo Mandal, and Udin Yadav. The occurrence seems to have arisen out of an irrigation dispute. According to the prosecution case the appellants wanted to irrigate the land and when they were prevented from doing so, Mainu Mandal resisted as a result of which Bhudeo Mandal who is now dead gave a bhala blow to the deceased Mainu Mandal. So far as the other appellants are concerned, they are supposed to have been armed with lathis but they did not cause any injuries either to the witnesses or to the deceased. The Sessions Judge had convicted the accused Bhudeo Mandal under section 304 Part I of the Indian Penal Code and sentenced him to undergo imprisonment for life and the other appellants under section 326/149 of the Indian Penal Code and sentenced them to 3 years rigorous imprisonment but affirmed the acquittal of the accused of the individual charges under sections 323 and 325 of the Indian Penal Code by the Sessions Judge. We have gone through the judgment of the High Court which while convicting the appellant under section 326/149 of the Indian Penal Code has given no finding regarding the common object of the unlawful assembly. Even on the prosecution case itself the occurrence took place as a result of an irrigation dispute and the appellants were merely acting under a *bona fide* claim or belief that they had the right to irrigate the land. There is no overt act attributed to any of the appellants on the deceased and the mere fact that the appellants were armed with lathis by itself would not prove that they shared the common
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object with which Bhudeo Mandal was inspired. Before the High Court could have upheld the conviction of the appellants under section 326/149 of the Indian Penal Code, it should have recorded a clear finding as to what was the object of the unlawful assembly and if so whether the object was to commit murder, grievous hurt or simple hurt. In these circumstances we find ourselves in complete agreement with the argument of Mr. U.P. Singh, learned counsel for the appellants that there is no material to support the conviction of the appellants under section 326/149 of the Indian Penal Code. Mr. Bhagat appearing for the State fairly conceded that in the circumstances of this case it would not be possible for him to support the conviction mainly on the ground that since the main accused was convicted under section 304, Part I the other appellants should also have been convicted under section 304/149 and not under section 326 of the Indian Penal Code. We should like to point out that whenever the High Court convicts any person or persons of an offence with the aid of section 149 a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also that the object was unlawful. Before recording a conviction under section 149 of the Indian Penal Code, the essential ingredient of section 141 of the Indian Penal Code must be established. Section 149 creates a specific offence and deals with the punishment of that offence. There is an assembly of five or more persons having a common object and the doing of acts by members is in prosecution of that object. The emphasis is on common object. In the instant case there is neither any evidence nor any finding that any of the ingredients of section 149 have been established by the prosecution.

In the result the appeal is allowed and the conviction and sentence of the appellants are set aside and the appellants are acquitted of the charge framed against them. The appellants are hereby discharged from their bail bonds and need not surrender.

N.K.A.

Appeal allowed.