

ANUP LAL YADAV & ANR.

v.

STATE OF BIHAR

(Criminal Appeal No. 775 of 2007)

SEPTEMBER 26, 2014.

[**RANJANA PRAKASH DESAI AND N.V. RAMANA, JJ.**]

Penal Code, 1860: ss.302/149 – Previous enmity between two factions – Mob of about 300-400 persons led by appellant no.1 and other accused attacked ruthlessly persons of other faction killing 14 persons, burning 47 houses and injuring large number of persons – Conviction u/ss.302/149 – Held: Evidence of eye witnesses was trustworthy and inspired confidence – There was no denial on part of accused as to their participation in the atrocities – Appellants were part of the unlawful assembly sharing the common object of the offence committed – Once it is established that unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act rather they can be convicted u/s.149 – No interference with the conviction order.

Dismissing the appeals, the Court

Held: 1. The facts and circumstances of the case showed that the huge mob was led and instigated by the appellant and other accused who had actively participated in the carnage and slaughtered innocent villagers with deadly weapons. There was no denial on the part of the accused as to their participation in the atrocities. In such circumstances, the Court cannot ignore the overwhelming evidence of the prosecution witnesses who categorically described the role played by the accused. The plea of the accused/appellants cannot be accepted that the accused were merely passive

- A onlookers who joined the mob out of curiosity and they had no common intention and did not share the common object of the unlawful assembly. The appellants were part of the unlawful assembly sharing the common object of killing, rioting and looting the villagers. Each one of the
- B accused played an active role in furtherance of the common object of the assembly and the Courts below were perfectly right in convicting the accused/appellants under Section 149, IPC. Once it is established that the unlawful assembly had a common object, it is not
- C necessary that all persons forming the unlawful assembly must be shown to have committed some overt act, rather they can be convicted under Section 149, IPC. [Paras 15, 20, 21] [699-E-G; 702-D-H; 703-A]

- D *Yunis v. State of M.P.* (2003) 1 SCC 425; *State of Rajasthan v. Shiv Charan* (2013) 12 SCC 76: 2013 (8) SCR 336; *Lalji v. State of U.P.* (1989) 1 SCC 437: 1989 (1) SCR 130; *Subal Ghorai v. State of W.B.* (2013) 4 SCC 607 – relied on.

- E *Bhudeo Mandal & Ors. v. State of Bihar* (1981) 2 SCC 755: 1981 (3) SCR 291; *Santosh v. State of Madhya Pradesh* (1975) 3 SCC 727: 1975 (3) SCR 463; *Kuldip Yadav v. State of Bihar* (2011) 5 SCC 324: 2011 (5) SCR 186; *Shaji v. State of Kerala* (2011) 5 SCC 423: 2011
- F (6) SCR 210; *Badal Murmu v. State of W.B.* (2014) 3 SCC 366: 2014 (2) SCR 323; *State of A.P. v. Thakkidiram Reddy* (1998) 6 SCC 554: 1998 (3) SCR 1088 – referred to.

Case Law Reference:

- | | | | |
|---|------------------|-------------|---------|
| G | 1981 (3) SCR 291 | referred to | Para 10 |
| | 1975 (3) SCR 463 | referred to | Para 10 |
| | 2011 (5) SCR 186 | referred to | Para 10 |
| | 2011 (6) SCR 210 | referred to | Para 10 |
| H | 2014 (2) SCR 323 | referred to | Para 10 |

1998 (3) SCR 1088	referred to	Para 13	A
(2003) 1 SCC 425	relied on	Para 13	
2013 (8) SCR 336	relied on	Para 13, 19	
1989 (1) SCR 130	relied on	Para 16	B
(2003) 1 SCC 425	relied on	Para 17	
(2013) 4 SCC 607	relied on	Para 18	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 775 of 2007.

C

From the Judgment & Order dated 23.11.2006 of the High Court of Judicature at Patna in Criminal Appeal No. 566 of 1993(DB).

WITH

D

Crl. A. No. 1163 of 2007.

T. Mahipal, Prem Sunder Jha for the Appellants.

Gopal Singh, Purna Singh for the Respondent.

E

The Judgment of the Court was delivered by

N.V. RAMANA, J. 1. These appeals are preferred by the appellants/accused aggrieved by the judgment and order passed by the Division Bench of the High Court of Judicature at Patna in Criminal Appeal No. 566 of 1993 whereby the High Court affirmed the conviction and sentence passed by the 8th Additional Sessions Judge, Purnia, Bihar in Sessions Trial No. 28 of 1978 under Sections 302/149, 436/149, 380/149, 323/149, 145 and 147 of the Indian Penal Code against them.

F

G

2. The prosecution case, in short, is that in the early hours of 25th September, 1974 appellant Surang Lal Yadav (Accused No. 5), a member of Santhala community, riding on a horse and carrying a sword in his hand entered the village Singhimari

H

- A leading a mob of about 300 to 400 persons, all armed with various kinds of deadly weapons such as bows, arrows, *ballams*, *bhalas*, *kulharis*, *dandas* and with burning flames in their hands. The mob led by accused Surang Lal Yadav attacked ruthlessly the Badhyas, a Muslim minority community,
- B most of them were migrants from Bangladesh. The mob went on looting movable properties of the villagers, setting their houses on fire, injuring and killing innocent persons indiscriminately. In the said incident, 14 persons were killed, 47 houses were burnt, several properties were looted and a
- C number of persons were injured. On the basis of a complaint given by one Amzad Ali (PW 2) at about 1 p.m. on 25th September, 1974 to the Assistant Sub-Inspector of Police, an FIR was registered and investigation took place. The genesis of the case is a Government land which was in occupation of
- D the accused persons but allegedly encroached by the Badhyas.

3. After investigation, charge sheet was filed against several persons including the appellants herein. Most of the other accused persons were shown as absconded. The case
- E of 27 accused persons including the appellants was committed for trial. The Trial Court framed charges against 18 accused persons including the appellants. The other accused, who were committed to face trial, had jumped their bail bonds and absconded. Finally, statements under Section 313, Cr.P.C.
- F were recorded in respect of seven accused persons only.

4. To bring home the guilt of the accused, the prosecution
- G has examined in all 38 witnesses. The informant—Amzad Ali was examined as PW 2 who was the eyewitness to the incident. In his examination, he had narrated the whole incident and identified as many as 33 persons in the mob who actively participated in the arson, looting and disclosed their names.

5. PW 1—Dr. V.N. Sinha, the Civil Assistant Surgeon of Sadar Hospital, Purnia who conducted postmortem
- H examination on the dead bodies of six persons found sharp

edged piercing injuries and cutting wounds on the bodies of the deceased and he opined that these persons died on account of the ante mortem injuries sustained by them before 48 to 72 hours of their death. Postmortem of other eight deceased persons was carried out by PW 35—Dr. T.P. Chatterjee, the Deputy Superintendent of Kishanganj Hospital who also found sharp edged piercing and cutting injuries and penetrating wounds on the bodies of the deceased. In his opinion, their death occurred within 72 hours.

6. The Trial Court, after considering the conspectus of the circumstances and materials on record, came to the conclusion that the prosecution has successfully proved the guilt of the accused. Accordingly, the Trial Court convicted and sentenced the accused to undergo rigorous imprisonment for life for the offence punishable under Section 302/149, IPC. They were further convicted and sentenced to undergo R.I. for five years for the offence committed under Section 436/149, R.I. for two years for the offence under Section 380/149 and R.I. for one year for the offence under Section 323/149, IPC. Accused No. 5—Surang Lal Yadav was further sentenced to undergo R.I. for one year for the offence punishable under Section 145, IPC whereas the other accused were convicted and sentenced to undergo R.I. for six months for committing the offence under Section 147, IPC. All the sentences were however directed to run concurrently.

7. All the seven accused assailed the judgment and order of the learned Trial Judge in appeal before the High Court of Judicature at Patna. The High Court allowed the appeal in respect of two accused persons while maintaining conviction and sentence passed by the Trial Court against the other accused. We are now concerned with only three accused who challenged the judgment of the High Court before us in these Criminal Appeals.

8. Learned senior counsel appearing for the accused/

- A appellants mainly contended that the identification of the appellants as accused by the prosecution witnesses is highly doubtful. He submitted that there was enmity and rivalry between the accused group and the group of prosecution witnesses. On the fateful day, an open fight broke up between
- B the two factions, several persons died and several others were injured. The brother of Anup Lal Yadav (accused—Appellant No. 1) was also killed on the same day and the brother of Surang Lal Yadav was also murdered a day earlier to the incident, in which Amzad Ali (P.W. 2) was an accused. Moreover, Amzad
- C Ali (PW 2) once contested an election against accused Surang Lal Yadav and lost the election. Thus there was enmity prevailing between the two groups. All the prosecution witnesses are interested witnesses and they wanted to retaliate by implicating the accused in the present case. It is evident from
- D their depositions that they had made bald and vague allegations against the accused and no specific overt act has been attributed to any of the accused by any of the witnesses. Therefore, implication of accused for the offences charged against them is not justified by the Courts below and they erred
- E in convicting the accused on a wrong assumption of facts without taking into consideration the intrinsic worth of the evidence of prosecution witnesses.

9. Learned counsel submitted that mere presence of the accused at the place of incident would not amount to their
- F unlawful assembly. From the depositions of prosecution witnesses, it can be discerned that there was no common object among the accused and they did not commit any overt act in pursuit of common object. Mere presence of accused with arms at the place of incident would not be sufficient to
- G establish their involvement in the crime. A majority of witnesses did not identify the accused and there was no clinching evidence to show that the appellants-accused shared the common object by forming unlawful assembly. The Courts below have totally failed to appreciate the fact that the witnesses
- H

deposed that after noticing the crowd from a far off distance, they hid in the paddy field which was chest high, thus their identifying the accused persons from that distance cannot be believed. The Trial Court did not pay any heed to the submissions of the accused and went on convicting the accused unjustifiably under Section 149, IPC also and the High Court committed a grave error in affirming the same. More particularly, in view of the admitted enmity between the parties, the informant (PW 2) being an accused in the murder case of the brother of Appellant No. 1 and in view of depositions of witnesses not attributing any specific overt act to the accused, the conviction of the accused under Section 149, IPC is unsustainable.

A

B

C

10. Relying on *Bhudeo Mandal & Ors. Vs. State of Bihar* (1981) 2 SCC 755, learned counsel argued that in order to convict an accused with the aid of Section 149, IPC the Court, after discussing the entire evidence, must give a clear finding as to the 'common object' of the unlawful assembly, whereas in the case on hand the Trial Court has not given any observation with regard to common object of unlawful assembly. Also placing reliance on *Santosh Vs. State of Madhya Pradesh* (1975) 3 SCC 727, learned counsel submitted that each member of a mob need not necessarily be held liable for the actions of every other member of that mob. In support of the contention that the accused could not have been convicted with the aid of Section 149, IPC in the absence of clear finding on common object of the unlawful assembly, learned counsel has further relied on this Court's judgments in *Kuldip Yadav Vs. State of Bihar* (2011) 5 SCC 324; *Shaji Vs. State of Kerala* (2011) 5 SCC 423 and *Badal Murmu Vs. State of W.B.* (2014) 3 SCC 366.

D

E

F

G

11. Learned senior counsel finally submitted that the accused appellants have already undergone sentence of about seven years and the incident had taken place about forty years

H

A back and there is no reason to continue the accused to suffer in jail.

12. On the other hand, Ms. Prerna Singh, learned counsel appearing for the State, vehemently opposed the submissions made by the counsel for the accused-appellants. She contended that a strong mob of around 400 assailants entered the village Singhimari armed with bows, arrows, *ballams*, *bhalas*, *kulharis* and other deadly weapons and mercilessly attacked the villagers, looted their properties and burnt several houses. The ghastly attack was led by the accused Surang Lal Yadav riding on a horse back wielding a sword in his hand and the other accused had actively participated in the heinous crime which resulted in killing of 14 innocent persons and injuring several others. The prosecution has examined as many as 38 witnesses including PW 2 (Amjad Ali)—the informant who was the eyewitness. He deposed in clear and categorical manner that the accused Surang Lal Yadav was leading the mob which went on a killing spree in the village on the date of occurrence. PW 4—Abdul Mokim, another eyewitness deposed that he had carried the dead bodies to Kishanganj Hospital in a cart on the instruction of police. PW 11—Sk. Samayul deposed that when he tried to run away from the mob, accused Sahdeo—appellant herein, gave a *lathi* blow. Nonetheless, 26 witnesses have in clear terms explained the role played by Surang Lal Yadav. Accused-appellant Anup Lal Yadav was identified by not a few but 14 prosecution witnesses, whereas accused/appellant Sahdeo was identified by 11 witnesses. They deposed in unequivocal terms that from the paddy field, they had clearly seen the occurrence of brutal killing of their kith and kin and devastation of properties at the hands of accused/appellants led by Surang Lal Yadav.

13. Strongly rebutting the argument of learned senior counsel for the accused/appellants that the Trial Court ought not have charged the accused under Section 149, IPC learned H counsel submitted that the common intention of the accused

appellants was writ large that they wanted to create havoc in the area occupied by the victims and to fill terror in their minds. In pursuance of this common object, the accused used deadly weapons against the victims and killed 14 innocent persons besides injuring several others. She submitted that the law is abundantly clear that if an offence is committed by any member of an unlawful assembly in furtherance of common object of that assembly, every member of that unlawful assembly is guilty of that offence. Specific overt act of each member of unlawful assembly needs not to be proved when the accused are proved to be members of that assembly. In support of her contention, she relied upon the decisions of this Court in *State of A.P. Vs. Thakkidiram Reddy* (1998) 6 SCC 554; *Yunis Vs. State of M.P.* (2003) 1 SCC 425 and *State of Rajasthan Vs. Shiv Charan* (2013) 12 SCC 76.

14. Learned counsel further submitted that after carrying out a thorough investigation and recording the statements of eyewitnesses, police has filed the charge sheet. The Trial Court had undertaken a detailed procedure of trial and examined number of witnesses. Only after conducting a full fledged trial and on a careful analysis of the facts and circumstances of the case, the Trial Court convicted the accused for the offences for which they were charged with. The Trial Court rightly came to a conclusion that it may not be possible to attribute specific act to every member of unlawful assembly of about 400 people. Therefore, the Trial Court observed that "it is established beyond doubt that there was a mob of about 400 persons with a 'common object' to commit murder of *bharia musalmaan* and set their houses on fire and loot their moveable". The High Court also undertook the exercise of reappraisal of entire evidence and then only affirmed the conviction and sentence order passed by the Trial Court. The High Court observed that "the conduct of the accused persons prior and during the course of occurrence, clearly demonstrate that their common object was to commit loot, arson and murder." Hence, learned

A counsel finally submitted that, the judgments of Courts below
do not call for any interference by this Court.

15. We have heard learned counsel on both sides and
perused the depositions of prosecution witnesses in detail and
other material available on record including the opinions of
Doctors who conducted postmortem on the dead bodies. It
appears from the record that on the fateful day, a great turmoil
took place in which several innocent villagers lost their
properties, kith and kin. We notice that some of the accused
are still at large. We have carefully gone through the
contentions raised by the counsel on either side. An
examination of the deposition of PW-2 (Amzad Ali) reveals that
at about 8 a.m. on the day of incident, he had witnessed the
devastation carried on by the mob under the supervision of
accused Surang Lal Yadav who was riding on a horse carrying
a sword in his hand. He categorically stated that he had seen
from the paddy field that the mob, most of them were
undoubtedly Santhals, armed with deadly weapons and burning
wooden pieces done to death about 10-12 persons, caused
damage to the properties of the villagers and set several
houses ablaze. He further stated that he had identified 33
persons in the mob including the appellants herein and
disclosed their names. In the cross examination, he deposed
that he was hiding in the paddy field for an hour from where he
witnessed the activities of the mob led by Surang Lal Yadav.
Another eyewitness PW 3 (Abdul Sattar) also deposed that
Surang Lal Yadav was carrying a sword in his hand and Anup
Lal Yadav (appellant herein) had a 'Bhala' in his hand while they
were committing the offences. PW 3 further deposed that when
he was fleeing with fear, Hopna Santhal (absconded accused)
hit on his head with a *lathi* from behind. PW 13 (Imazuddin) also
in clear terms deposed that Surang Lal, the leader (Mukhiya)
was instigating the mob saying kill these *bhariya* people.
Another witness Kalu @ Kalimuddin (PW 16) identified Sahdev
Chamar (appellant herein) among others. Other prosecution

witnesses PW 17 (Abul Kabir), PW 18 (Naijiruddin), PW 19 (Abdul Kudus), PW 20 (Ainul Haque), PW 22 (Samul Haque) who all are also eyewitnesses, narrated the roles played by the accused and they all categorically stated that Surang Lal Yadav was leading and instigating the mob to kill the villagers. Besides these individuals, we have also gone through the depositions of PW 24—Devendra Pd. (a shop owner), PW 27—Muzaffar Husain (the author of the written report), PW 28—Dhanik Lal Sah (a witness of inquest report of some dead bodies) and PW 37—Rana Krishna Singh (I.O.). The evidences of these prosecution witnesses are corroborating and consistent. PW 38 (Shivaji Singh), ASI has categorically deposed about the occurrence of the incident and the roles played by the accused. He deposed that at about 10.15 a.m. on 25th September, 1974 he visited the village Singhmari and witnessed the gathering of large number of Santhals (accused persons) while the persons belonging to the victim community were running helter skelter. The evidence of the prosecution is trust worthy and inspires confidence in the mind of the Court and by any stretch of imagination it cannot be believed that the accused were falsely implicated. Thus, from the facts and circumstances of the case, it is evident that the huge mob was led and instigated by Surang Lal Yadav (appellant) and Anup Lal Yadav and Sahdev Chamar (other appellants) who had actively participated in the carnage and slaughtered innocent villagers with deadly weapons. It is worthwhile to note that there is no denial on the part of the accused as to their participation in the atrocities. In such circumstances, the Court cannot ignore the overwhelming evidence of the prosecution witnesses who categorically described the role played by the accused.

16. In *Lalji Vs. State of U.P.* (1989) 1 SCC 437, this Court observed:

“Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and

A distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the

B unlawful assembly extends only to the acts done in pursuance of the common objects of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did

C nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly

D knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must

E do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This

F section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the

G mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge.

H

17. In *Yunis Vs. State of M.P.* (2003) 1 SCC 425, learned counsel appearing for the appellant therein argued that no overt act was imputed to his client and he was being implicated only on the basis of Section 149 IPC. This Court ascribing no merit to the argument, held that *"even if no overt act is imputed to a particular person, when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction"*. Accordingly the Court in that case observed that the appellant was a member of the unlawful assembly which itself is sufficient to hold him guilty when his presence has not been disputed.

18. Relying on *Lalji Vs. State of U.P.* this Court in *Subal Ghorai Vs. State of W.B.* (2013) 4 SCC 607 held;

"If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly"

19. Further, in *State of Rajasthan Vs Shiv Charan*, (2013) 12 SCC 76 it was opined by this Court:

"The pivotal question of applicability of Section 149 IPC has its foundation on constructive liability which is the sine qua non for its application. It contains essentially only two ingredients, namely, (I) offence committed by any member of any unlawful assembly consisting five or more members and; (II) such offence must be committed in prosecution

- A of the common object (Section 141 IPC) of the assembly
or members of that assembly knew to be likely to be
committed in prosecution of the common object. It is not
necessary that for common object there should be a
prior concert as the common object may be formed
on the spur of the moment. Common object would
mean the purpose or design shared by all members
of such assembly and it may be formed at any stage.
Even if the offence committed is not in direct
prosecution of the common object of the unlawful
assembly, it may yet fall under the second part of
Section 149 IPC if it is established that the offence
was such, as the members knew, was likely to be
committed".
- B
- C

20. Thus, by appreciating the entire evidence on record,
we are unable to accept the contention advanced by learned
senior counsel for the accused/appellants that the accused were
merely passive onlookers who joined the mob out of curiosity
and they had no common intention and did not share the
common object of the unlawful assembly. In the light of
aforementioned decisions of this Court, we are also not able
to appreciate the contention of the appellants that no overt act
has been attributed to each of the accused hence application
of Section 149, IPC is not justified. We have no hesitation to
come to a conclusion that the appellants were part of the
unlawful assembly sharing the common object of killing, rioting
and looting the villagers. Each one of the accused played an
active role in furtherance of the common object of the assembly
and the Courts below were perfectly right in convicting the
accused/appellants under Section 149, IPC.
- D
- E
- F

- G 21. Hence, in our considered opinion, the prosecution has
proved its case beyond reasonable doubt. In view of the settled
principles of law, once it is established that the unlawful
assembly had a common object, it is not necessary that all
persons forming the unlawful assembly must be shown to have
- H

ANUP LAL YADAV v. STATE OF BIHAR
[N.V. RAMANA, J.]

703

committed some overt act, rather they can be convicted under Section 149, IPC. We, therefore, find no error in the order of conviction and sentence passed by the Trial Court and affirmed by the High Court calling our interference under Article 136 of the Constitution. A

22. The appeals fail and are hereby dismissed. B

Devika Gujral

Appeals dismissed.