

SUPREME COURT OF INDIA

Mohinder Singh and others

Vs

State of Punjab

Criminal Appeal No. 830 of 2005

(S. B. Sinha and P. P. Naolekar, JJ)

24.03.2006

JUDGMENT

P.P. NAOLEKAR, J.

The accused-appellants belong to Sakkanwali Village, Police Station Sadar Muktsar, District Muktsar, Punjab. The deceased Harbans Singh was the neighbour of the appellants. There was a dispute on the demarcation of the Shamlat land. Some portion of this land is claimed by the accused-appellants and some of the land was being claimed by Harbans Singh, the deceased. The Shamlat land has not been demarcated nor a particular portion of the land was in exclusive possession of either the appellants or the complainant party. As per the First Information Report lodged by Harvinder Kaur at 10.30 P.M. on 23rd February, 1996, the prosecution story unfolded is, that on 23rd February 1996 at about 5.30 P.M., the complainant Harvinder Kaur (PW-1) along with Jasvinder Kaur (PW-2), wife of Jaspal Singh, were making cow-dung cakes in the Shalmat land. Harbans Singh after providing fodder to the cattle was talking to Jaspal Singh. In the meantime, Mohinder Singh (A-1) and Nasib Singh (A-3), armed with licensed 12 bore double barrel guns, Naginder Singh (A-6) armed with dang, Sukhdev Singh (A-5) armed with kassia, Beant Singh (A-2) armed with kirpan and Nirbhai Singh (A-4) armed with kassruli came to the spot. Mohinder Singh (A-1) raised lalkara that the complainant party be taught a lesson for grabbing and making addition of the land of the accused with that of the land of the complainant party.

2. Then Mohinder Singh fired shot from his licensed gun at Harbans Singh, which hit him on the left side of the chest. When the complainant (PW-1) ran towards her husband to save him, Nasib Singh (A-3) fired a shot from his double barrel 12 bore gun, which hit her on the ankle of left foot. At that time Mohinder Singh fired another shot, which hit on the interior side of the right thigh of Harbans Singh, the deceased. At the same time Naginder Singh (A-6) gave dang blows to Jaspal Singh and Nasib Singh again fired shot on the right leg of Jasvinder Kaur. An alarm was raised which attracted Gurbans Singh and Mander Singh sons of Gurdev Singh, Pritam Singh and Gurmit Singh sons of Bhag Singh, Madan Singh son of Avtar Singh and Mukhtiar Singh son of Mehar Singh, residents of Sakkanwali Village. When they tried to intervene and rescue the members of the complainant party, Mohinder Singh and Nasib Singh fired shots at them hitting the right flank of Madan Singh and left leg of Pritam Singh. Similarly, Sukhdev Singh, Beant Singh and Nirbhai Singh caused injuries to Mander Singh, Gurbans Singh, Mukhtiar Singh and Gurmit Singh. After causing the aforesaid injuries, all the accused ran away with their respective weapons. Thereafter, Gurmit Singh arranged for the vehicle and took the injured to the Civil Hospital, Muktsar. However, Harbans Singh succumbed to his injuries on his way to the hospital. The remaining injured were got admitted to the Civil Hospital at Muktsar.

3. The inquest report of the dead body of Harbans Singh was prepared in the presence of Jaspal Singh and Mander Singh. The special report reached the Illaqa Magistrate at 5.00 A.M. on 24th February, 1996. After the investigation the accused persons were arrested and prosecuted.

4. Appellants Mohinder Singh, Sukhdev Singh and Naginder Singh had taken the plea of alibi stating that on the date of occurrence they along with Bachittar Singh and Harmanjit Singh had gone to the village Jharriwala to see a match for the grand daughter of Naginder Singh and had returned late in the night. As such they were not present on the date at the place of occurrence and had been falsely implicated by the complainant side. The other appellants while admitting the incident asserted that Harvinder Kaur had given wrong version of the facts, in fact, Nasib Singh was present at his house. Nirbhai Singh and Beant Singh came to know that Harbans Singh (deceased), Jaspal Singh (PW-9), Gurdev Singh, Mander Singh armed with gandasas along with some other persons were placing cow-dung cakes in their plot/land to take forceful possession of the land and when Nirbhai Singh and Beant Singh went to the spot to make enquiries, the aforesaid persons attacked them and caused injuries. Nasib Singh, Gurmail Singh and Angrez Singh intervened to save Nirbhai Singh and Beant Singh. Gurmail Singh and Angrez Singh caused injuries to the complainant's side. It was further asserted that in the meanwhile, some other persons collected there and Nasib Singh in self-defence of his property and person fired shots which hit the complainant's side.

5. The prosecution has mainly based its case on the eye witnesses' account of the incident deposed by Harvinder Kaur (PW-1), Jasvinder Kaur (PW-2), Jaspal Singh (PW-9) and Pritam Singh (PW-10), the injured witnesses. The post-mortem of the deceased Harbans Singh was conducted by Dr. Kirandeep (PW-4) and she had found fire-arm injuries on the person of the deceased. In her opinion, the cause of death was shock and haemorrhage as a result of injury to pericardium and heart, which was sufficient to cause death in the ordinary course of nature. Dr. M.G. Sharma (PW-3) had examined Mukhtiar Singh and Jaspal Singh. On 23rd February, 1996, Dr. Tarlochan Singh (PW-15) examined Harvinder Kaur (PW-1), Gurmit Singh, Pritam Singh, Jasvinder Kaur (PW-2) and Mander

Singh. The doctors found the injuries on the person of the persons examined by them. Nirbhai Singh (A-4) and Beant Singh (A-2) were also examined by Dr. APS Kochar (DW-1) who had found some injuries on the person of A-4 and A-2. At the instance of the accused Mohinder Singh and Nasib Singh, licensed guns were recovered from their possession. After appreciation of the evidence on record, the trial court convicted all the accused persons as under:

(i) Mohinder Singh Beant Singh Nasib Singh Nirbhai Singh Sukhdev Singh Naginder Singh U/s 148 of the I.P.C. To undergo rigorous imprisonment for a period of one year, each.

(ii) Mohinder Singh U/s 302 of the I.P.C. To undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one year for committing the murder of Harbans Singh.

(iii) Beant Singh Nasib Singh Nirbhai Singh Sukhdev Singh Naginder Singh U/s 302 r/w S. 149 I.P.C. To undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one year each for committing the murder of Harbans Singh.

(iv) Nasib Singh Mohinder Singh U/s 307 I.P.C. To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 2000/- each, and in default of payment of fine to further undergo rigorous imprisonment for six months each, for attempting to murder Harvinder Kaur, Jasvinder Kaur, Modan Singh & Pritam Singh by causing gun shot injuries.

(v) Beant Singh Nirbhai Singh Sukhdev Singh Naginder Singh U/s 307 r/w S. 149 I.P.C. To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 2000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months, each for attempting to murder Harvinder Kaur, Jasvinder Singh, Modan Singh and Pritam Singh by causing fire arm injuries.

(vi) Beant Singh Sukhdev Singh U/s 326 I.P.C. To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1500/- each and in default of payment of fine to further undergo rigorous imprisonment for 3 months each, for causing grievous hurt to Gurbans Singh & Mukhtiar Singh.

(vii) Mohinder Singh Nasib Singh Nirbhai Singh Naginder Singh U/s 326 r/w S. 149 I.P.C. To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1500/- each and in default of payment of fine to further undergo rigorous imprisonment for three months, each for causing grievous hurt to Gurbans Singh and Mukhtiar Singh.

(viii) Naginder Singh Sukhdev Singh U/s 325 I.P.C. To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1000/- each and in default of payment of fine to further undergo rigorous imprisonment for 3 months, each for causing grievous hurt with blunt weapon to

Jaspal Singh and Mukhtiar Singh.

(ix) Mohinder Singh Nasib Singh Nirbhai Singh Beant Singh U/s 325 r/w S. 149 I.P.C. To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1000/- each and in default of payment of fine to further undergo rigorous imprisonment for 3 months, each for causing grievous hurt with blunt weapon to Jaspal Singh and Mukhtiar Singh.

(x) Beant Singh Sukhdev Singh U/s 324 I.P.C. To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo rigorous imprisonment for two months each for causing simple hurt to Mander Singh & Mukhtiar Singh.

(xi) Mohinder Singh Nasib Singh Nirbhai Singh Naginder Singh U/s 324 r/w S. 149 I.P.C. To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo rigorous imprisonment for 2 months, each for causing simple hurt to Mander Singh & Mukhtiar Singh.

(xii) Naginder Singh Beant Singh Nirbhai Singh Sukhdev Singh U/s 323 of I.P.C. To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 200/- each and in default of payment of fine to further undergo rigorous imprisonment for 15 days, each for causing simple hurt to Jaspal Singh, Mander Singh, Jasvinder Kaur, Gurmit Singh & Mukhtiar Singh.

(xiii) Mohinder Singh Nasib Singh U/s 323 r/w S. 149 I.P.C. To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 200/- each and in default of payment of fine to further undergo rigorous imprisonment for 15 days, each for causing simple hurt to Jaspal Singh, Mander Singh, Jasvinder Kaur, Gurmit Singh & Mukhtiar Singh.

6. The entire sentence was directed to run concurrently. However, the period of detention already undergone by the accused convicts during investigation or trial was directed to be deducted from the period of their substantive sentences. Aggrieved by the order of conviction and sentence an appeal was preferred in the High Court of Punjab and Haryana. It was urged before the High Court that there was a delay in lodging the FIR, which was lodged at 10.30 P.M. whereas the alleged incident took place at 5.30 P.M. on 23rd February, 1996 and the report to the Illaqa Magistrate had reached at 5.00 A.M. on 24th February, 1996, which goes to show that the complainant party had consumed time in coining up a story of their choice in connivance with the police. That non-explanation of the injuries on the person of Beant Singh and Nirbhai Singh, dented the prosecution case and because of non-explanation of the injuries by the witnesses on the person of the accused, it can be inferred that the complainant's side was suppressing the genesis of fight. That there was a discrepancy between the eye-witnesses' version and medical evidence. That the plea of alibi taken by Sukhdev Singh, Naginder Singh and Mohinder Singh was proved by the defence and as such they could not have been convicted. It was lastly submitted that their presence at the spot was not unnatural as the houses of the appellants were adjoining to the place of occurrence and unlawful assembly with a

common object to commit the murder of Harbans Singh and cause injuries to other persons, cannot be inferred. The High Court recorded the findings that in the circumstances of the case, merely because there was some delay in lodging the FIR, it cannot be said that the prosecution had manufactured a story to falsely implicate the appellants, particularly so when the occurrence was admitted by the appellants, maybe with the denial of the presence of Mohinder Singh, Sukhdev Singh and Naginder Singh at the spot. The so called delay would at best call for more care and caution while scanning the entire evidence so that there would not be chances of false implication. The element of delay in registering the complaint or sending the same to the jurisdictional Magistrate by itself would not be fatal to the prosecution, if the evidence adduced by the prosecution was worthy of credence. The High Court found the eye-witnesses' version credible and trustworthy. As for non-explanation of the injuries on the appellants Beant Singh and Nirbhai Singh, the High Court has found that there were no injuries on their person by gandasa, which was claimed in defence.

7. According to the High Court, the injuries were superficial in nature except one on the person of Beant Singh which was in the shape of diffused swelling and the doctor had opined that there was no visible injury mark seen, which showed that no injury was caused by the blunt side of the gandasa otherwise it would have left some mark of violence. The effect of the non-explanation of the injuries on the person of the accused had to be judged from the entire factual position, and having done so, in view of the High Court, the prosecution had not suppressed the genesis of fight. The High Court opined that the appellants in the shape of aggressors formed an unlawful assembly causing the murder of Harbans Singh and caused injuries to nine persons. As per the High Court, there was no discrepancy in the medical evidence and the eye-witnesses' account for the injuries caused by the use of firearm. The distance between the assailants and the injured, as per the prosecution witnesses was 7-8 karams, whereas according to the medical evidence the shots fired were not from more than a distance of 4 ft. from the muzzle end of the gun. This is on account of blackening around the wound. The High Court has held that the witnesses are rustic villagers from whom accuracy about the exact distance cannot be expected. All the four injured witnesses examined have categorically stated in one voice that Mohinder Singh along with Nasib Singh armed with licensed guns came and fired at Harbans Singh, the deceased. On perusal of the site plan, it is clear that the place of occurrence is of very small in dimension. Five persons from the complainant's side including the deceased were present on the plot, whereas the other five persons, who had received injuries, had also reached the spot after hearing the commotion. From the appellants' side, six persons entered the said plot. Thus, in all 16 persons were present at the time of incident and in such a situation it would not be possible for the witnesses to make the correct assessment of the distance, from where the shots were fired and in these circumstances the gun fires and the resultant injuries thereof, witnessed by the witnesses present and injured, cannot be disbelieved. Coupled with the fact that the licensed guns of the accused persons were recovered at the instance of the accused and the user of the same being confirmed by Forensic Science Lab, the witnesses' version cannot be disbelieved. It was obvious that two guns had been used in the occurrence.

8. The plea of alibi was disbelieved by the High Court on the grounds that the onus to prove the same heavily rests on the accused which they failed to discharge. On these findings, the High Court has reached an irresistible and unequivocal conclusion that the appellants' conviction as recorded by the learned trial court on different counts deserves to be upheld and accordingly the appeal was dismissed.

9. Aggrieved by the same, the present appeal by special leave is preferred before us. It may be mentioned that the accused appellant Mohinder Singh has been released by the State considering his age and his appeal is not being pressed by the counsel for the appellant. The other accused-appellant Nasib Singh has been informed to have died, by the counsel for the appellant and as such his appeal stands abated. Thus, we are considering the appeal as regards Beant Singh, Nirbhai Singh, Sukhdev Singh and Naginder Singh.

10. It is contended by the learned counsel for the appellants that the prosecution has failed to explain the injuries caused to Nirbhai Singh (A-4) and Beant Singh (A-2) and, therefore, the prosecution has failed to establish the genesis of offence. The failure of the prosecution to offer any explanation regarding the injuries found on the accused would mean that the evidence led by the prosecution relating to the incident is not true or at any rate is not wholly true and thus reliance could not have been placed on that evidence to convict the accused persons. To prove the fact that Beant Singh and Nirbhai Singh have received injuries, the defence has examined Dr. APS. Kochar, District T.B. Officer, Civil Surgeon Office, Faridkot. The doctor stated that he had examined Beant Singh at 10.30 P.M. on 23rd February, 1996 at Faridkot and found four injuries on his person. The injuries were caused by a blunt weapon.

11. Injury No.4 was declared as simple. On X-Ray examination report, injury Nos. 1 and 2 were also found as simple in nature and injury No.3 was grievous in nature. On the same day at 11.00 P.M., he examined Nirbhai Singh and found three injuries on his person. Injury No.1 was caused by a sharp weapon and rest of the injuries were caused by a blunt weapon. Injury Nos. 1 and 2 were simple and after getting X-Ray examination report injury No.3 was found to be grievous in nature. On cross-examination, it was admitted by him that he attached no X-Ray report on his record. Similarly X-Ray report and skiagraph report were not on the judicial file. Injury on the person of Beant Singh could possibly be caused as a result of falling on the hard surface. Injury No.1 on the person of Nirbhai Singh could be caused with the blade of a razor. Injury No.2 could be caused if the nail struck at a hard surface. Injury No.3 on the person of Nirbhai Singh could be caused by falling on the hard surface. From the evidence of (DW-1), it is apparent that the injuries were simple in nature and the grievous nature of injury could not be proved by the doctor by producing the X-Rays and skiagraph, on the basis of which he had formed the opinion of the grievous nature of the injury on Beant Singh as well as on Nirbhai Singh.

12. In the case of Lakshmi Singh and Ors. vs. State of Bihar , it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such non-explanation may assume greater importance where the evidence consisted of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and credit-worthy and where the Court can distinguish the truth from the falsehood, the mere fact that the injuries are not explained by the prosecution, cannot itself be a sole basis to reject such evidence and consequently the whole case. In Rizan and Anr. vs. State of Chhattisgarh this Court has held that non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to a case where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and

disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. This principle was discussed in *Sekar alias Raja Sekharan vs. State* represented by Inspector of Police, T.N. 6 and was reiterated in *Anil Kumar vs. State of U.P.*, 2004 (13) SCC 257.

13. All the three aforesaid judgments have approved the statement of law enunciated in *Lakshmi Singh's Case* (supra).

14. In the present case, there is a creditworthy evidence of PW-1, PW-2, PW-9 and PW-10 viz., Harvinder Kaur, Jasvinder Kaur, Jaspal Singh and Pritam Singh, who have vividly described the incident and the part played by each of the accused-appellants. All the four witnesses are injured witnesses and their presence at the spot cannot be doubted. The evidence led by the defence at best shows minor injuries suffered by Beant Singh and Nirbhai Singh which would not dislodge the prosecution case, which is established by the evidence of creditworthy witnesses and non-explanation of the injuries by the prosecution, if any, sustained by the accused-appellants would not result in disbelieving the prosecution version.

15. To prove the case, the prosecution has examined four eye-witnesses. Harvinder Kaur (PW-1), w/o Harbans Singh (deceased) has deposed that on the relevant day, her husband and Jaspal Singh were present at the place of incident where they were preparing cow-dung cakes. She saw the accused-appellants proceeding towards the shamlat land. Mohinder Singh and Nasib Singh were armed with licensed 12 bore guns, Naginder Singh with dang, Sukhdev Singh with Kassia, Beant Singh with Kirpan, Nirbhai Singh with Kassruli. Mohinder Singh raised a lalkara that they would teach us a lesson for adding their land with our land. Mohinder Singh accused fired from his 12 bore gun towards her husband Harbans Singh which hit him on the left side of his chest. She ran towards her husband and Nasib Singh fired at her by his gun which hit her on her left ankle. Mohinder Singh fired another shot which hit her husband on his right thigh while lying on the ground.

16. Naginder Singh-accused gave dang blows to Jaspal Singh by hitting him but she could not tell the place of injuries on the person of Jaspal Singh. Nasib Singh then fired from his 12 bore gun hitting Jasvinder Kaur on her right leg above her right ankle on the front side. Nirbhai Singh-accused caused injuries to Jasvinder Kaur with kassruli. They raised alarm. On hearing noise Mander Singh, Gurbans Singh, Gurmit Singh, Pritam Singh, Madan Singh and Mukhtiar Singh came to the spot to rescue them from the accused. At that time Mohinder Singh fired from his gun hitting on the right flank of Madan Singh and left leg of Pritam Singh. Then Naginder Singh, Beant Singh, Sukhdev Singh and Nirbhai Singh with their respective weapons caused injuries to Mander Singh, Gurbans Singh, Gurmit Singh and Mukhtiar Singh. She has further stated in cross-examination that she was present at the spot 25-30 minutes prior to the occurrence and she had seen the accused at a distance of 7- 8 karams. The accused persons came carrying guns with them. The other accused were also with them and they came together. Mohinder Singh accused fired with the gun from a distance of 7-8 karams at Harbans Singh. Nasib Singh was at a distance of 7-8 karams from Jasvinder Kaur when he fired. Nasib Singh and Mohinder Singh had fired from 7-8 karams at Madan Singh and Pritam Singh. Further, Jasvinder Kaur (PW-2), another injured eye- witness, fully supports the version given by PW-1 of the incident. She specifically stated that Nasib Singh fired from his 12 bore gun towards her which hit her on her right leg above the ankle and the pellets hit

her on abdomen and Nirbhai Singh gave kassruli blows on her left foot.

17. Jaspal Singh (PW-9) is another injured eye-witness examined by the prosecution who had described the incident and the participation of the accused persons in the incident as described by PW-1 and PW-2. He had specifically deposed that accused-Naginder Singh gave three dang blows to him, first blow hit on his shoulder and second blow was received by him on the back side at right hand. Pritam Singh (PW-10), another injured eye-witness, had supported the statements of the eye-witnesses in Toto.

18. The cross-examination of these witnesses could not show any contradiction or discrepancy in their version in regard to the participation of the accused-appellants in the crime and the part played by them. The ocular version of the witnesses find support from the medical evidence of Dr. Kirandeep (PW-4) who has conducted the post-mortem on the deceased Harbans Singh. Statement of Dr. M.G. Sharma (PW-3), who examined Mukhtiar Singh and Jaspal Singh and statement of Dr. Tarlochan Singh (PW-15), who examined Harvinder Kaur Gurmit Singh, Pritam Singh, Jasvinder Kaur and Mander Singh, fully corroborated the ocular version of the eye-witnesses. We find that the eye-witnesses were wholly reliable and supported the case of the prosecution to the hilt.

19. The counsel then has urged before us that the appellants before us have not caused any injury to Harbans Singh, the deceased, and, therefore, they could not have been convicted under Section 302 read with Section 149 of IPC for causing homicidal death of Harbans Singh. The conviction under Section 302/149 could not be supported on the basis of the evidence led by the prosecution. The scope and ambit of Section 149 of IPC was the subject of discussion in various authorities of this Court. In Sukhbir Singh vs. State of Haryana, 0, it is held by this Court that an accused is vicariously guilty of the offence committed by other accused persons only if he is proved to be a member of an unlawful assembly sharing its common object. Once the existence of common object of unlawful assembly is proved, each member of such an assembly shall be liable for the main offence notwithstanding his actual participation in the commission of the offence. It is not necessary that each of the accused, forming the unlawful assembly, must have committed the offence with his own hands.

20. The members of the unlawful assembly can be held liable under Section 149 IPC, if it is shown that they knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. It is true that the common object does not require prior concert and a common meeting of mind before the attack. It can develop even on spot but the sharing of such an object by all the accused must be shown to be in existence at any time before the actual occurrence.

21. In Rajendra Shantaram Todankar vs. State of Maharashtra and Ors., this Court has held that Section 149 of the Indian Penal Code provides that 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. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have

been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime.

22. Unless the applicability of Section 149 either clause is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Section 149 IPC, merely because a criminal act was committed by a member of the assembly, every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act. In *State of Rajasthan vs. Nathu and Ors.*, this Court has held that if death had been caused in prosecution of the common object of an unlawful assembly, it is not necessary to record a definite and specific finding as to which particular accused out of the members of the unlawful assembly caused the fatal injury. Once an unlawful assembly has come into existence, each member of the assembly becomes vicariously liable for the criminal act of any other member of the assembly committed in prosecution of the common object of the assembly.

23. It is held in *Parsuram Pandey and Ors. vs. State of Bihar*, 2004 (13) SCC 189 that to attract Section 149 IPC the prosecution must prove that the commission of the offence was by any member of an unlawful assembly and such offence must have been committed in prosecution of the common object of the assembly or must be such that the members of the assembly knew that it was likely to be committed. Unless these three elements are satisfied by the prosecution the accused cannot be convicted with the aid of Section 149 IPC.

24. In *Rabindra Mahto & Ors., vs. State of Jharkhand*, 2006 (1) JT 137, this Court has held that under Section 149 IPC, if the accused is a member of an unlawful assembly, the common object of which is to commit a certain crime, and such a crime is committed by one or more of the members of that assembly, every person who happens to be a member of that assembly would be liable for the commission of the crime being a member of it irrespective of the fact whether he has actually committed the criminal act or not. There is a distinction between the common object and common intention. The common object need not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the assembly gathered before the commission of the crime at the spot itself. There need not be prior meeting of the mind. It would be enough that the members of the assembly which constitutes five or more persons, have common object and that they acted as an assembly to achieve that object. In substance, Section 149 makes

every member of the common unlawful assembly responsible as a member for the act of each and all merely because he is a member of the unlawful assembly with common object to be achieved by such an unlawful assembly. At the same time, one has to keep in mind that mere presence in the unlawful assembly cannot render a person liable unless there was a common object and that is shared by that person. The common object has to be found and can be gathered from the facts and circumstances of each case.

25. The prosecution has established that all the accused- appellants came to the spot of incident together. All the accused-appellants were carrying deadly weapons. Two of them had carried 12 bore guns. Immediately on reaching the spot Mohinder Singh one of the accused had opened fire followed by firing by another accused-appellant Nasib Singh and in the same transaction the accused-appellants had caused several injuries to various persons, not only to the persons who were present at the spot but also to the persons who had reached the spot after hearing the commotion. The facts found in the case clearly established the common object of the assembly. The knowledge of assembly that grievous hurt or death would be caused can be safely attributed to the members of the unlawful assembly because of the fact that two of the members of the assembly have carried the licensed guns. An inference can be drawn of the knowledge of common object and formation of common object from the behaviour of the members of the assembly of the accused persons, who came together with deadly weapons and immediately started attacks indiscriminately on the persons present there. As many as nine persons have received 31 injuries, which clearly establishes the common object of the unlawful assembly to do away with Harbans Singh and cause injuries to any person who tried to intervene.

26. We are satisfied with the evidence led by the prosecution that common object of all the accused appellants of causing death of Harbans Singh was established beyond any doubt and, therefore, the accused- appellants were rightly convicted under Section 302 IPC with the aid of Section 149 of IPC apart from other convictions under other Sections of IPC for causing injuries to other persons.

27. For the foregoing reasons, in our view there is no merit in this appeal. The appeal is dismissed.