

RAMACHANDRAN & ORS. ETC.
v.
STATE OF KERALA
(Criminal Appeal No. 162 of 2006)

SEPTEMBER 02, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Penal Code, 1860 – s.302/149 and s.307/149 – Unlawful assembly armed with various weapons causing murder of one person and serious injuries to two others – Applicability of s.149 – Held: Once it is established that the 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 – Even mere presence in the unlawful assembly, but with an active mind, to achieve the common object makes a person vicariously liable for the acts of the unlawful assembly – It is obligatory on the part of the court to examine that if the offence committed is not in direct prosecution of the common object, it yet may fall under second part of s.149 IPC, if the offence was such as the members knew was likely to be committed – “Common object” may also be developed at the time of incident – In the instant case, there was enough evidence on record to establish that the accused-appellants were present, armed with sword stick, choppers, knife and iron rods – All these weapons were used by the appellants for committing the offences and causing injuries to their victims – If all the circumstances are taken into consideration, it cannot be held that the appellants had not participated to prosecute a ‘common object’ – Even if it was not so, it had developed at the time of incident – Trial court as well as the High Court proceeded in correct perspective and rightly applied the provisions of s.149 IPC – All the accused were very well known to the witnesses – So their identification etc. was not in issue – As their participation

A was governed by second part of s.149 IPC, overt act of an individual lost significance – Conviction of accused-appellants, as recorded by courts below, accordingly upheld.

B Evidence – Witnesses – Murder trial – Seventeen accused – Incident was over within a very short time – Held: In such a case even if minor contradictions appeared in the evidence of witnesses, it is to be ignored for the reason that it is natural that exact version of the incident revealing any minute detail i.e. meticulous exactitude of individual acts cannot be expected from the eye-witnesses.

C According to the prosecution, on account of past enmity, the accused persons formed an unlawful assembly for the purpose of committing the murder of PW2; that they waited in the house of A-1 and when PW.2 D came along the pathway on the side of the house, A.1 repeatedly shouted “catch him” and then the accused persons chased PW2 and on seeing this, PW.2 ran towards the house of PW.3; however, A.1 inflicted cut injury on his hand; that thereafter though PW.2 E succeeded in entering the said house and in closing the door from inside, the accused-appellants broke open the door and inflicted injuries on PW.2 with their respective weapons and also dragged and beat him; that on hearing the hue and cry, ‘K’, the father of PW.2 and PW.1 reached F there, but the accused-appellants rushed towards him shouting “Kill them” and thereafter, A.1 inflicted a cut injury on his head with a sword stick in his hand and other accused inflicted injuries on him with their respective weapons, namely, choppers, knives and iron rods and that when PW.1 and PW.4 made an attempt to G intervene, they were also attacked by the appellants and were rendered injured. ‘K’ succumbed to the injuries caused by the accused at the spot.

H The trial court convicted A1 to A11, 14 and 15 under Sections 143, 147, 148, 307, 323, 324, 449, 427 and 302 of

the IPC read with Section 149 IPC and sentenced them to undergo imprisonment for life. The other accused, namely, A12, A13, A16 and A17 were convicted under Sections 143, 147, 148, 307, 323, 449, 427 read with Section 149 IPC. They were sentenced to undergo rigorous imprisonment for 10 years each. On appeal, the High Court modified the order of the trial court to the extent that conviction of A7, A10 and A11 under Section 302 IPC was set aside. However, their conviction and sentence for other offences were confirmed.

In the instant appeal, the appellants *inter alia* argued on application of the provisions of Section 149 IPC, contending that the appellant did not have common object to cause death of 'K' and as seventeen persons had been involved, it was not possible for the alleged eye-witnesses to give minute detail about their respective overt act; more so, PW.2 had become unconscious after being beaten and regained conscious after two days, thus, it was not possible for him to see the incident regarding the death of his father 'K'. The appellants contended that the courts below erred in making the case of some of the appellants distinguishable from others as one set of appellants stood convicted under Sections 302/149 IPC etc. while another set of appellants were convicted under Sections 307/149 IPC etc., though, under the facts and circumstances of the case, no distinction was permissible; that the appellants had not proceeded with common object to kill any person, thus, provisions of Section 149 IPC were not attracted; that though from the facts available on record, inference can be drawn that some of the appellants had an object to catch hold of PW.2, however, there was no intention to kill him; that no independent witness was examined and all the injured witnesses had been very close to the deceased; that in a case, where a very large number of assailants are there and the incident is over in a short span of time, it is not

A possible for the eye-witnesses to identify all the accused and give detailed description of participation of each of them and thus evidence of the eye-witnesses cannot be relied upon.

B Disposing of the appeal, the Court

C HELD:1.1. Section 149 IPC has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting five or more members and (ii) such offence must be committed in prosecution of the common object (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object. [Para 10] [940-E]

D 1.2. For “common object”, it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on spur of the moment; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part E the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. [Para 11] [940-F-G]

F 1.3. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression ‘know’ does not mean a mere possibility, such as might or might not G happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood

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and would be guilty under the second part of Section 149 A
IPC. [Para 12] [940-H; 941-A-B]

1.4. There may be cases which would come within B
the second part, but not within the first. The distinction
between the two parts of Section 149 IPC cannot be
ignored or obliterated. [Para 13] [941-C]

1.5. However, once it is established that the unlawful C
assembly had common object, it is not necessary that all
persons forming the unlawful assembly must be shown
to have committed some overt act. For the purpose of
incurring the vicarious liability under the provision, the
liability of other members of the unlawful assembly for the
offence committed during the continuance of the
occurrence, rests upon the fact whether the other D
members knew beforehand that the offence actually
committed was likely to be committed in prosecution of
the common object. [Para 14] [941-D-F]

1.6. The crucial question for determination in such a E
case is whether the assembly consisted of five or more
persons and whether the said persons entertained one
or more of the common objects specified by Section 141.
While determining this question, it becomes relevant to
consider whether the assembly consisted of some
persons who were merely passive witnesses and had F
joined the assembly as a matter of idle curiosity without
intending to entertain the common object of the
assembly. [Para 15] [941-G-H; 942-A]

1.7. The law of vicarious liability under Section 149 G
IPC is crystal clear that even the mere 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. [Para 18]
[942-F-G]

A 1.8. This court has been very cautious in the catena
of judgments that where general allegations are made
against a large number of persons the court would
categorically scrutinise the evidence and hesitate to
convict the large number of persons if the evidence
B available on record is vague. It is obligatory on the part
of the court to examine that if the offence committed is
not in direct prosecution of the common object, it yet may
fall under second part of Section 149 IPC, if the offence
was such as the members knew was likely to be
C committed. Further inference has to be drawn as what
was the number of persons; how many of them were
merely passive witnesses; what were their arms and
weapons. Number and nature of injuries is also relevant
to be considered. "Common object" may also be
D developed at the time of incident. [Para 21] [943-H; 944-
A-C]

Bhanwar Singh & Ors. v. State of M.P. (2008) 16 SCC
657: 2008 (9) SCR 1; *Mizaji & Anr. v. State of U.P.* AIR 1959
SC 572: 1959 Suppl. SCR 940; *Gangadhar Behera & Ors.*
E *v. State of Orissa* AIR 2002 SC 3633; *Daya Kishan v. State*
of Haryana (2010) 5 SCC 81: 2010 (4) SCR 854; *Sikandar*
Singh v. State of Bihar (2010) 7 SCC 477: 2010 (8) SCR 373;
Debashis Daw v. State of W.B. (2010) 9 SCC 111: 2010 (9)
SCR 654; *Masalti v. State of Uttar Pradesh* AIR 1965 SC
F 202:1964 SCR 133; *K.M. Ravi & Ors. v. State of Karnataka*
(2009) 16 SC 337; *State of U.P. v. Krishanpal & Ors.* (2008)
16 SCC 73: 2008 (11) SCR 1048; *Amerika Rai & Ors. v.*
State of Bihar (2011) 4 SCC 677 and *Charan Singh v. State*
of U.P.(2004) 4 SCC 205: 2004 (2) SCR 925 – relied on.

G 2. In the instant case, it is evident that the trial court
as well as the High Court proceeded in correct
perspective and applied the provisions of Section 149 IPC
correctly. The facts have properly been analysed and
appreciated. There is enough evidence on record to
H establish that the accused-appellants were present,

armed with sword stick, choppers, knife and iron rods. A
The seventeen accused gathered at the residence of A.1
and waited for the appropriate time knowing it well that
PW.2 would return from the temple. Immediately, after
seeing him, A.1 shouted "chase him, chase him". In order
to save his life, he ran away and entered into the house of
PW3. However, before he could enter the house, he was
inflicted injury by A.1 with the sword stick. PW.2
succeeded in entering the house and closing the door
from inside. The accused/appellants broke open the door
and caused injuries of very serious nature to PW.2 and
left him under the impression that he had died. The
accused were having one sword stick, two choppers,
one knife and twelve iron rods. All these weapons were
used by the appellants for committing the offences and
causing injuries to their victims. 'K' (deceased) received
as many as 34 injuries. In view thereof, if all the
circumstances are taken into consideration, it cannot be
held that the appellants had not participated to prosecute
a 'common object'. Even if it was not so, it had developed
at the time of incident. In view thereof, submission made
by the appellants in respect of applicability of Section 149
IPC is not worth consideration. [Paras 6, 24] [935-G; 946-
G-H; 947-A-D] C D E

3. There is no force in the submission made by the
appellants that as the number of accused had been
seventeen and the incident was over within a very short
time, it was not possible for witnesses to give as detailed
description as has been given in this case, and there had
been several contradiction therein, therefore, their
evidence is not reliable. In such a case even if minor
contradictions appeared in the evidence of witnesses, it
is to be ignored for the reason that it is natural that exact
version of the incident revealing any minute detail i.e.
meticulous exactitude of individual acts cannot be
expected from the eye-witnesses. In this case all the H

A accused were very well known to the witnesses. So their identification etc. has not been in issue. As their participation being governed by second part of Section 149 IPC, overt act of an individual lost significance. [Para 25] [947-E-H]

B *Abdul Sayeed v. State of Madhya Pradesh* (2010) 10 SCC 259: 2010 (13) SCR 311 – relied on .

4. However, the courts below have made distinction in two sets of the accused/appellants and that attained finality as the State did not prefer any appeal against the same. All appellants in the second set have been convicted for the offence punishable under Sections 307/149 IPC etc. and awarded sentence of 10 years rigorous imprisonment. These appellants have submitted the certificates of service of sentence rendered by them. According to the said certificate, these appellants have served 4-1/2 years to 8 years. All of them have been already granted bail by this Court. In the facts and circumstances of the case, their conviction is upheld, however, the sentence is reduced as undergone. Appeal of the other appellants stands dismissed. [Para 26] [948-A-C]

Case Law Reference:

F	2008 (9) SCR 1	relied on	Para 11
	1959 Suppl. SCR 940	relied on	Para 13
	AIR 2002 SC 3633	relied on	Para 13
G	2010 (4) SCR 854	relied on	Para 14
	2010 (8) SCR 373	relied on	Para 14
	2010 (9) SCR 654	relied on	Para 14
	1964 SCR 133	relied on	Para 15

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(2009) 16 SC 337	relied on	Para 16	A
2008 (11) SCR 1048	relied on	Para 17	
(2011) 4 SCC 677	relied on	Para 18	
2004 (2) SCR 925	relied on	Para 19	B
2010 (13) SCR 311	relied on	Para 25	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 162 of 2006.

From the Judgment & Order dated 7.4.2005 of the High Court of Kerala at Ernakulam in Crl. A.Nos. 1675 and 1955 of 2003. C

C.N. Sree Kumar, Resmitha R. Chandran for the Appellants. D

M.T. George, Ramesh Babu M.R., for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the judgment and order dated 7.4.2005 passed by the High Court of Kerala at Ernakulam in Criminal Appeal Nos. 1675 and 1955 of 2003 by which the High Court, while affirming the findings of fact, modified the judgment and order of the trial court dated 29.8.2003 in Sessions Case No. 58 of 2001 i.e. Criminal Appeal No. 1675 of 2003 stood dismissed, while Criminal Appeal No. 1955 of 2003 was partly allowed. E F

2. Facts and circumstance giving rise to this appeal are that: G

A. Babu (PW.1); Sobhanan (PW.2); and Parvathy (PW.4) all relatives were having inimical terms with the appellants. Several criminal cases were pending between them. In order to take revenge, the appellants formed an unlawful assembly for the purpose of committing murder of Sobhanan (PW.2). They H

A waited in the house of Sudhakaran (A.1) on 12.4.2000, which was the last day of Mahotsavam conducted in the Shanmughaviiiasam temple at Kulasekharamangalam, at about 10.00 p.m.

B B. Sobhanan (PW.2) came alongwith his 8 years old son along the pathway on the eastern side of the house of Sudhakaran (A.1) from the temple. Sudhakaran (A.1) repeatedly shouted "catch him". The accused chased him and on seeing this, Sobhanan (PW.2) ran from the place leaving his son there towards the house of Sobhana (PW.3) i.e. C "Sophia Bhawan". However, before Sobhanan (PW.2) could enter "Sophia Bhawan", Sudhakaran (A.1) inflicted cut injury on his hand. Sobhanan (PW.2) entered the said house and succeeded in closing the door from inside. All the accused except Shaji (A.18) broke open the door and inflicted injuries D on Sobhanan (PW.2) with their respective weapons and he was dragged to the western courtyard and again beaten. In this process, a large number of articles of the use of "Sophia Bhawan" got destroyed.

E C. While hearing the hue and cry, Kuttappan (deceased) father of Sobhanan (PW.2) and Babu (PW.1) reached there. The appellants rushed towards Kuttappan (deceased) shouting "Kill them" and thereafter, Sudhakaran (A.1) inflicted a cut injury on the head of the deceased with a sword stick in his hand and other accused inflicted injuries on him with their respective F weapons, namely, choppers, knives and iron rods. When Babu (PW.1) and Parvathy (PW.4) made an attempt to intervene, they were also attacked by the appellants and injured. Kuttappan succumbed to the injuries caused by the accused at the spot and the accused persons ran away from the spot.

G D. An FIR in respect of the incident was lodged and thus, investigation commenced. The recovery of the weapons was made at the instance of the accused and after completing the formalities, 18 accused were put on trial. The prosecution to H prove its case examined a large number of witnesses including

five eye-witnesses. Out of them, four had been injured witnesses. A

E. On conclusion of the trial, the court acquitted Shaji (A.18) and convicted A1 to A11, 14 and 15 under Sections 143, 147, 148, 307, 323, 324, 449, 427 and 302 of the Indian Penal Code, 1860 (hereinafter called 'the IPC') read with Section 149 IPC and sentenced to undergo imprisonment for life and also for payment of fine of Rs.25,000/- each, in default to undergo rigorous imprisonment for five years under Section 302 IPC and they are further sentenced to undergo rigorous imprisonment for ten years each and also to pay a fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for three years each under Section 307 IPC and further sentenced to undergo rigorous imprisonment for one year each and also to pay a fine of Rs.3000/- each, in default to undergo rigorous imprisonment for two months each under Section 324 IPC and they are also liable to be sentenced to undergo rigorous imprisonment for six months each and also to pay a fine of Rs.1000/- each. In default to undergo rigorous Imprisonment for two months each under Section 323 IPC and further sentenced to undergo rigorous imprisonment for six months each and also to pay a fine of Rs.1000/- each, in default to undergo rigorous imprisonment for two months each under Section 427 IPC and they are further sentenced to undergo rigorous imprisonment for seven years each and also to pay a fine of Rs.5000/- each, in default to undergo rigorous imprisonment for two years each under Section 449 IPC and they are also sentenced to undergo rigorous imprisonment for six months each under Section 143 IPC and further sentenced to undergo rigorous imprisonment for one year each under Section 148 IPC and the sentences are directed to run concurrently. B
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Other accused, namely, A12, A13, A16 and A17 were convicted under Sections 143, 147, 148, 307, 323, 449, 427 read with Section 149 IPC. They were sentenced to undergo rigorous imprisonment for 10 years each and also to pay a fine H

A of Rs.,10,000/- each, in default to undergo rigorous imprisonment for 3 years each under Section 307 IPC and further sentenced to undergo rigorous imprisonment for six months each and also to pay a fine of Rs.1000/- each, in default to undergo rigorous imprisonment for two months each under
 B Section 323 IPC and further sentenced to undergo rigorous imprisonment for six months each and also to pay a fine of Rs.1000/- each, in default to undergo rigorous imprisonment for two months each under Section 427 IPC and further
 C sentenced to undergo rigorous imprisonment for seven years each, and also to pay a fine of Rs.5000/- each, in default to undergo rigorous imprisonment for two years each under Section 449 IPC and further sentenced to undergo rigorous imprisonment for one year each under Section 148 IPC and also further sentenced to undergo rigorous imprisonment or six
 D months each under Section 143 IPC.

F. Being aggrieved, the appellants preferred the appeals which have been disposed of by common judgment and order dated 7.4.2005 by which the High Court modified the order of the trial court to the extent that conviction of A7, A10 and A11
 E under Section 302 IPC was set aside. However, their conviction and sentence for other offences have been confirmed.

Hence, this appeal.

F 3. Shri C.N. Sree Kumar, learned counsel appearing for the appellants, has submitted that courts below erred in making the case of some of the appellants distinguishable from others as one set of appellants stood convicted under Sections 302/149 IPC etc. and another set of appellants has been convicted under Sections 307/149 IPC etc., though, under the facts and
 G circumstances of the case, no distinction is permissible. Even, if the case of some of the appellants has to be separated from others, the set of appellants who have been convicted under Section 302/149 IPC would have been convicted under Section
 H 304 - Part I IPC. This was necessary in view of the evidence

of the doctors, who conducted the postmortem examination of Kuttappan (deceased) and examined other persons. The appellants had not proceeded with common object to kill any person in as much as to kill Kuttappan, thus, provisions of Section 149 IPC are not attracted. From the facts available on record, inference can be drawn that some of the appellants had an object to catch hold of Sobhanan (PW.2), however, there was no intention to kill him. No independent witness has been examined and all the injured witnesses had been very close to the deceased. In a case, where a very large number of assailants are there and the incident is over in a short span of time, it is not possible for the eye-witnesses to identify all the accused and give detailed description of participation of each of them. Thus, evidence of the eye-witnesses cannot be relied upon. The appeal deserves to be allowed.

4. Per contra, Shri M.T. George, learned counsel appearing for the respondent State, has opposed the appeal, contending that in the facts and circumstances of the case, provisions of Section 149 IPC have rightly been applied. The prosecution succeeded in proving its case by examining five eye-witnesses, out of them four had been injured witnesses. The medical evidence supports the case of the prosecution. Thus, the appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. There is enough evidence on record to establish that appellants were present, armed with sword stick, choppers, knife and iron rods. Dr. Girish (PW.18) conducted the postmortem on the body of Kuttappan (deceased) and prepared report (Ex. P-14). According to which, the following 34 injuries were found on his person:

(1) Incised wound 7x1.5 cm. bone deep sagittally placed on right side of front of head, 3 c.m. outer to midline and 4 c.m. above eye brow. Frontal bone underneath sowed

- A fissured fracture 8.5 c.m. long extending to margin of coronal suture. Subarachnoid bleeding present on both sides of brain. Gyri of brain flattened and sulci narrowed.
- (2) Contused abrasion. 0.5 x 0.5 c.m. on left side of face, 3 cm. in front of ear.
- B (3) Contused abrasion 7.5 x 0.7 c.m. horizontal, on right side of front of chest, just outer to midline and 8.5 c.m. below collar bone.
- C (4) Multiple small abrasions over an area 3.5 x 1 c.m. on back of right elbow.
- (5) Contused abrasion 6 x 0.5 c.m. oblique on outer aspect of right forearm 4 c.m. below elbow.
- D (6) Lacerated wound 0.7, x 0.5 c.m. on the front of right forearm. 10 c.m. below elbow.
- (7) Contused abrasion 16 x 2 c.m. oblique on back of right forearm 1 c.m. above wrist.
- E (8) Multiple small contused abrasions over an area 4x2cm on back of right wrist and hand.
- (9) Contused abrasion 3x1 cm oblique on the outer aspect of right elbow.
- F (?10) Contused abrasion 7x2cm. Oblique on the outer aspect of right hip.
- (11) Multiple contused abrasions over an area 11 x 4 cm. On the outer aspect of right thigh 7cm. Above knee.
- G (12) Contused abrasion 2x1cm on front of right knee.
- (13) Multiple small contused abrasions over an area 10 x 8 cm. On back of right leg 3cm. Below Knee.
- H

(14) Contused abrasion 2.5x1 cm On front of right leg. 16cm. above ankle. A

(15) Contused abrasion 2x1 cm on front of right ankle.

(16) Multiple small contused abrasions over an area 30x7cm. on front of left leg, just below Knee. B

(17) Incised punctured wound 5x2x9 cm. oblique on outer aspect of left leg 2 cm. below Knee. Upper back end showed splitting of tissues and other end sharply cut. The wound was directed downwards. C

(18) Contused abrasion 5.5x1cm. oblique on outer aspect of left Knee.

(19) Multiple small contused abrasions over an area 20x16 cm. on the front of left thigh and Knee. D

(20) Incised punctured wound 3.5 x 1 x 7.5 cm. oblique on outer aspect of left hip. Upper back end was blunt and other end sharply cut. The wound was directed downwards. E

(21) Abrasion 2 x 1 cm. on the outer aspect of left hip, 2 cm. above injury No.20.

(22) Incised punctured wound 3.5x1.5 x 1 cm. oblique over left buttock. The upper inner end was blunt and other end sharp. The wound was directed forwards. F

(23) Incised wound 1.5 x 0.3x0.5 cm. over left buttock, 2 cm. below injury No.2.

(24) Contused abrasion 11x2 cm. oblique on right side of back of trunk 10 cm. below tip of shoulder blade. G

(25) Contused abrasion 2.5x1 cm. oblique on right side of back of trunk, 2 cm. outer to midline and 5 cm. above iliac crest. H

A (26) Multiple contused abrasions over an area 24 x 11 cm. on left side of chest 8 cm. below armpit. 8th and 9th ribs underneath showed fracture at their outer angles.

B (27) Incised punctured wound 2x0.5 cm. on left side of back of trunk. Inner upper blunt end being 4 cm. below tip of shoulder blade.

(28) Contused abrasion 1x0.5 cm. on back of left hand, just above root of middle finger.

C (29) Incised wound 4 x 1 x 0.5 cm. oblique on back of left wrist.

(30) Incised wound 3x1x0.5 cm. oblique on back of left forearm 15 cm. below elbow.

D (31) Multiple small abrasions over an area 13x4 cm. on the front of left forearm just below elbow.

(32) Multiple contused abrasions over an area 25x10 cm. on back of left arm, just above elbow.

E (33) Abrasion 5x3 cm. on top of left shoulder.

(34) Abrasion 5 x 3 cm. on the tip of penis.

F In the opinion of Dr. Girish (PW.18), the injuries were caused with the weapons recovered from the appellants and Kuttappan died of head injury i.e. injury no. 1. as it was sufficient to cause death.

7. Babu (PW.1) was examined by Dr. C.P. Venugopal (PW.20) and following injuries were found on his person:

G (1) Cut injury 10 c.m. x 3 x 1 c.m. on the left thigh – posterior aspect.

H (2) Lacerated injury 6 x 2 x 1.5 c.m. on the back of scalp left side bleeding.

8. Sobhanan (PW.2) son of the deceased was examined by Dr. P.R. Anil Kumar (PW.21) and following injuries were found on his person: A

- (1) A cut injury in the right elbow. B
- (2) Lacerated wound frontal to occipital areas of the scalp approximately 20 cm length. B
- (3) Cut injury on the right thigh and right leg. C
- (4) Lacerated injury in the left ear. C
- (5) Lacerated injury on the left forearm, right palm and right forearm and right elbow. C
- (6) Lacerated injury on the right thigh. D
- (7) Punctured wound in the right thigh and right leg. D
- (8) Abrasions left and right shoulder. E
- (9) Swelling left cheek. E
- (10) Fracture mandible left side. Comminuted fracture left lateral malleolus. E
- (11) Comminuted fracture fibular neck. F
- (12) Fracture lateral condyle left." F

According to the opinion of Dr. P.R. Anil Kumar (PW.21), Sobhanan (PW.2) suffered very serious injuries of grave nature and had a very narrow escape from death.

9. In this factual scenario, Mr. C.N. Sree Kumar has mainly argued on the application of the provisions of Section 149 IPC, contending that all the appellants did not have common object to cause death of Kuttappan (deceased) and as the seventeen persons had been involved, it was not possible for the alleged eye-witnesses to give minute detail about their respective overt H

A act. More so, Sobhanan (PW.2) had become unconscious after being beaten and regained conscious after two days, thus, it was not possible for him to see the incident regarding the death of his father Kuttuppan.

B The issue raised hereinabove alongwith other issues particularly that all the witnesses were partisan and no independent witness was examined; there was no light on the spot, therefore, the witnesses could not see the incident properly, recovery effected was not proved properly; identification of arms was far from satisfaction; there was lack of credibility of the version of the prosecution and minor contradictions in their statements have been properly considered by the courts below and those factual issues do not require any further appreciation.

D **SECTION 149 IPC: Scope and Object**

10. Section 149 IPC has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting five or more members and (ii) such offence must be committed in prosecution of the common object (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

F 11. For "common object", it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, *the common object may form on spur of the moment*; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. [Vide: *Bhanwar Singh & Ors. v. State of M.P.*, (2008) 16 SCC 657]

H 12. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet

fall under second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149 IPC.

13. There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated. [See : *Mizaji & Anr. v. State of U.P.*, AIR 1959 SC 572; and *Gangadhar Behera & Ors. v. State of Orissa*, AIR 2002 SC 3633].

14. However, once it is established that the 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. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. [See : *Daya Kishan v. State of Haryana*, (2010) 5 SCC 81; *Sikandar Singh v. State of Bihar*, (2010) 7 SCC 477, and *Debashis Daw v. State of W.B.*, (2010) 9 SCC 111].

15. The crucial question for determination in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons which were merely passive witnesses and had joined the assembly as a matter

A of idle curiosity without intending to entertain the common
 object of the assembly. (Vide: *Masalti v. State of Uttar Pradesh*,
 AIR 1965 SC 202)

B 16. In *K.M. Ravi & Ors. v. State of Karnataka*, (2009) 16
 SC 337, this Court observed that mere presence or
 association with other members alone does not per se be
 sufficient to hold every one of them criminally liable for the
 offences committed by the others unless there is sufficient
 evidence on record to show that each intended to or knew the
 likelihood of commission of such an offending act.

C 17. Similarly in *State of U.P. v. Krishanpal & Ors.*, (2008)
 16 SCC 73, this Court held that once a membership of an
 unlawful assembly is established it is not incumbent on the
 prosecution to establish whether any specific overt act has
 D been assigned to any accused. Mere membership of the
 unlawful assembly is sufficient and every member of an unlawful
 assembly is vicariously liable for the acts done by others either
 in prosecution of common object or members of assembly
 knew were likely to be committed.

E 18. In *Amerika Rai & Ors. v. State of Bihar*, (2011) 4 SCC
 677, this Court opined that for a member of unlawful assembly
 having common object what is liable to be seen is as to whether
 there was any active participation and the presence of all the
 F accused persons was with an active mind in furtherance of their
 common object. The law of vicarious liability under Section 149
 , IPC is crystal clear that even the mere 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.

G 19. Regarding the application of Section 149, the following
 observations from *Charan Singh v. State of U.P.*, (2004) 4
 SCC 205, are very relevant:

H "13. ... The crucial question to determine is whether the

assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. ... The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 has to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter...."

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20. In *Bhanwar Singh v. State of Madhya Pradesh*, (2008) 16 SCC 657, this Court held:

"Hence, the common object of the unlawful assembly in question depends firstly on whether such object can be classified as one of those described in Section 141 IPC. Secondly, such common object need not be the product of prior concert but, as per established law, may form on the spur of the moment (see also *Sukha v. State of Rajasthan* AIR 1956 SC 513). Finally, the nature of this common object is a question of fact to be determined by considering nature of arms, nature of the assembly, behaviour of the members, etc. (see also *Rachamreddi Chenna Reddy v. State of A.P.* (1999) 3 SCC 97)".

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21. Thus, this court has been very cautious in the catena of judgments that where general allegations are made against

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- A a large number of persons the court would categorically scrutinise the evidence and hesitate to convict the large number of persons if the evidence available on record is vague. It is obligatory on the part of the court to examine that if the offence committed is not in direct prosecution of the common object, it
- B yet may fall under second part of Section 149 IPC, if the offence was such as the members knew was likely to be committed. Further inference has to be drawn as what was the number of persons; how many of them were merely passive witnesses; what were their arms and weapons. Number and nature of
- C injuries is also relevant to be considered. "Common object" may also be developed at the time of incident.

22. The trial court after appreciating the entire facts reached the following conclusion:

- D "Further the manner in which the injuries were inflicted on this witness as deposed by PWs. 2, 3 and 5 will go to show that the intention of accused Nos. 1 to 17 who inflicted the injury on PW.2 was with a common object to killing him. Further it was also brought out in the
- E evidence of these witnesses that all the accused persons namely 1 to 17 were holding dangerous weapons in their hands. Further it cannot be said that any of the accused persons have not involved in committing the offence and it cannot also be said that they were not aware of the
- F consequences of their act or result of the act that is likely to be resulted on account of the overt act committed by any one of the member of that assembly. Similarly, the evidence of PW3 will go to show that all these accused persons have criminally trespassed into her house and committed the crime. It is also brought out in evidence that
- G 17th accused Sisupalan had beaten on her chest with hand and also Ext. 3 scene mahazar will go to show that on account of the act of accused Nos. 1, 8, 12 and 5 the western door of the house has been broken open and caused damage to the same. Further some of the vessels
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also damaged in the incident which is spoken to by PW3 and that is also evident from the broken piece of wooden reaper with bold (M.O.10) and also the steel vessel (M.O:16) will go to show that damage has been caused to the building of PW3 and also damage to the vessel. It is also brought out in the evidence of PW3 that the food articles were also damaged in the incident. So it cannot be said that the accused persons who are the members of the assembly do not know about the consequence of their act. So it can be safely concluded that accused Nos. 1 to 17 have formed themselves into an unlawful assembly for the purpose of rioting with deadly weapons and also with the common object of causing murder of PW2 Sobhanan, attacked him with deadly weapons in their hands and also for the purpose of committing the crime, they criminally trespassed into the house of PW3 and also caused simple injury to her and caused damage to her house and also the food articles in the house and thereby all the accused persons name accused Nos. 1 to 17 have committed the offences punishable under Sections 143, 147, 148, 323, 307, 449 and 427 read with Section 149 IPC.”

23. The High Court dealt with this issue and held as under:

“The accused persons armed with weapons were waiting in the house of accused No. 1 for return of PW2 to his house through the usual pathway after attending the temple festival. Even when he tried to escape by entering into the house of PW3, they followed, chased and inflicted serious injuries on him at the house of PW3. It is true that he luckily saved his life. But, when his father and PW1 came hearing the cry, they were also assaulted and father of PW2 was murdered. Yet, the Sessions Court convicted for murder of the deceased only of the persons participated in that act which was proved by evidence. Others, namely, Accused Nos.12, 13, 16 and 17 were convicted only for

A offences under Sections 143, 147, 148, 323, 307, 449 and
 427 IPC read with Section 149 IPC. It was deposed that
 A18 was unarmed and no witness has stated his role.
 Therefore he was acquitted. Considering the evidence in
 this case, the Sessions Court found that accused Nos.1
 B to 17 armed with weapons, formed an unlawful assembly
 with a common object of attacking PW2 and also they
 trespassed into the house of PW3 and brutally attacked
 PW2. Even though he suffered serious injuries, he
 escaped from death by luck. Common object can develop
 C during the course of incident at the spot..... The
 Sessions court found that even though common object of
 the assembly was originally to attack PW2, when hearing
 the cry PW1 and the deceased arrived, they were attacked
 by some of the persons in the group which attacked PW2.
 D All of them may not have shared the common object of
 murdering the deceased. The Sessions Court found that
 since Accused Nos.12, 13 and 16 were not attributed to
 have caused injury on the deceased, they cannot be held
 guilty under Section 302 IPC red with Section 149 IPC as
 it cannot be positively inferred that they shared the
 E common intention with the others to murder the deceased.
 We are of the opinion that A10 and A11 only attacked
 PW1 and their involvement with regard to the deceased
 is equal to accused Nos. 12 and 13. Similarly, A7 also can
 be compared with A12 and 13 as it is not proved beyond
 F doubt that they shared the common object to inflict injuries
 on the deceased.”

24. It is evident from the above that the trial court as well
 as the High Court have proceeded in correct perspective and
 G applied the provisions of Section 149 IPC correctly. The facts
 have properly been analysed and appreciated. In the instant
 case, seventeen accused gathered at the residence of
 Sudhakaran (A.1) and waited for the appropriate time knowing
 it well that Sobhanan (PW.2) would return from the temple.
 H Immediately, after seeing him, Sudhakaran (A.1) shouted

“chase him, chase him”. In order to save his life, he ran away and entered into “Sophia Bhawan”. However, before he could enter the house, he was inflicted injury by Sudhakaran (A.1) with the sword stick. Sobhanan (PW.2) succeeded in entering the house and closing the door from inside. The accused/ appellants broke open the door and caused injuries of very serious nature to Sobhanan (PW.2) and left him under the impression that he had died. The accused were having one sword stick, two choppers, one knife and twelve iron rods. All these weapons were used by the appellants for committing the offences and causing injuries to their victims. Kuttappan (deceased) received as many as 34 injuries. In view thereof, if all the circumstances are taken into consideration, it cannot be held that the appellants had not participated to prosecute a ‘common object’. Even if it was not so, it had developed at the time of incident. In view thereof, submission made by the learned counsel for the appellants in respect of applicability of Section 149 IPC is not worth consideration.

25. We do not find any force in the submission made by the learned counsel for the appellants that as the number of accused had been seventeen and the incident was over within a very short time, it was not possible for witnesses to give as detailed description as has been given in this case, and there had been several contradiction therein, therefore, their evidence is not reliable. In such a case even if minor contradictions appeared in the evidence of witnesses, it is to be ignored for the reason that it is natural that exact version of the incident revealing any minute detail i.e. meticulous exactitude of individual acts cannot be expected from the eye-witnesses. (See: *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259).

In this case all the accused were very well known to the witnesses. So their identification etc. has not been in issue. As their participation being governed by second part of Section 149 IPC, overt act of an individual lost significance.

A 26. However, the courts below have made distinction in two sets of the accused/appellants and that attained finality as the State did not prefer any appeal against the same. All appellants in the second set have been convicted for the offence punishable under Sections 307/149 IPC etc. and awarded
B sentence of 10 years rigorous imprisonment. These appellants have submitted the certificates of service of sentence rendered by them. According to the said certificate, these appellants have served 4-1/2 years to 8 years. All of them have been granted
C bail by this Court vide order dated 9.12.2009. In the facts and circumstances of the case, their conviction is upheld, however, the sentence is reduced as undergone. Their bail bonds are discharged. Appeal of the other appellants stands dismissed.

Subject to the above modification, the appeal stands disposed of.

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B.B.B.

Appeal disposed of.