REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELALTE JURISDICTION

CRIMINAL APPEAL NO. 494 OF 2001

Maranadu and Anr. ....Appellants

Versus

State by Inspector of Police, Tamil Nadu ....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. In this appeal challenge is to the judgment of a Division Bench of the Madras High Court dismissing the appeal filed by

the appellants who were appellant nos. 5 and 6 before it and before the trial Court they were accused Nos. 5 and 6. Before the trial Court there were six accused persons. After finding them guilty of various offences the trial Court recorded the conviction and imposed sentences in the following manner:

> "A-1 is found guilty of charges under Section 147 IPC and sentenced to 2 years rigorous imprisonment. A-2 to A-6 are found guilty of charge under Section 148 IPC and each one of them is sentenced to 2 years RI. A1, A-2 and A-4 are found guilty of the charge under Section 302 IPC read with Section 34 and each one of them is sentenced to life imprisonment. A3, A5 and A6 are found guilty of the charge under Section 302 IPC read with Section 149 and each one of them is sentenced to life imprisonment. A3 is found guilty of the charge under Section 307 IPC and sentenced to 5 years RI. A5 is found guilty of the charge under Section 307 IPC and sentenced to 5 years RI. A6 is found guilty of the charge under Section 307 IPC and sentenced to 5 years RI. A3, A5 and A6 are found guilty of the charge under Section 9(b)(1(b) of the Indian Explosives Act and each one of them is sentenced to 2 years RI. The above sentences shall run concurrently."

2. Background facts as highlighted by the prosecution are as follows:

The Inspector of Police, Usilampatti filed the charge sheet against the accused stating that due to previous enmity A1 to A6 with common motive to commit murder of Sundaram (hereinafter referred to as 'deceased') and the witnesses Annakodi (PW-1), Ayyar (PW-2) and Mokkai, assembled unlawfully at about 10.45 a.m. on 11.10.89 in front of the tea shop of Raju @ Raja opposite to Malayandi Theatre Usilampatti on Madurai-Usilampatti main road. A2 to A6 were in possession of the dangerous weapon Aruval and A3, A5 and A6 were in possession of country made bombs and committed commotion along with A1. Charges were framed against A1 under Section 147 IPC and against A2 to A6 under Section 148 IPC and that in continuance of the commission of the said offence, A1 caught hold of the right hand of Sundaram and said "cut and kill him" and A4 inflicted cut on the right hand of Sundaram with the aruval and further A2 to A4 inflicted cuts on neck of Sundaram indiscriminately and hence Sundaram died and charges were framed against A1, A2 and A4 under Section 302 IPC and against A3, A5 and A6 under Section 302 IPC read with Section 149 IPC. When the

witnesses Annakodi (PW-1), Ayyar (PW-2) and Mokkai who saw the falling down of Sundaram, A3, A5 and A6 ran away and with the motive of committing the murder, threw the country bombs on them and hence the witnesses Annakodi and Ayyar sustained injuries and charges were framed against A3, A5 and A6 under Section 307 IPC and against A1, A2 and A4 under Section 307 IPC read with Section 149 and during investigation it came to light that A3, A5 and A6 were in possession of country bombs without any valid license and hence charges were framed against A3, A5 and A6 under Section 9(b)1(b) of the Indian Explosives Act,1884 (in short the 'Explosives Act').

On perusal of the records and documents in the case and upon hearing the arguments of the Public Prosecutor and defence counsel, trial court came to hold that there was sufficient evidence to hold that the accused had committed the offences and the charges were framed.

3. The accused denied the accusations and were put on trial.

4. The trial Court recorded the conviction and imposed sentences primarily placing reliance on the evidence of PW-1, son of the deceased and PW-2 the brother-in-law of PW-1. The conviction and the consequential sentences were challenged before the High Court which as noted above dismissed the appeal.

5. In support of the appeal, learned counsel for the appellants submitted that the evidence of PWs 1 and 2 should not have been relied on because they are interested witnesses being related to the deceased. In any event, Section 149 has no application. It is further submitted that even if the evidence of PWs 1 and 2 is accepted they cannot be related to the fatal injuries and the injuries were not caused to the deceased. In fact it is stated that A-5 i.e. appellant No.1 in the present case had only thrown a bomb at PW-2 who sustained injuries on

his cheek and left chest and A-6 i.e. appellant No.2 in the present appeal threw a bomb which did not explode.

6. Learned counsel for the respondent-State on the other hand supported the judgments of the trial Court and the High Court.

7. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false

implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

8. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under:-

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

9. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.

10. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – 'Rameshwar v. State of Rajasthan' (AIR 1952 SC 54 at p.59). We find, however, that it

> unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

11. Again in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) this Court observed: (p. 209-210 para 14):

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

12. To the same effect is the decisions in State of Punjab v. Jagir Singh (AIR 1973 SC 2407), Lehna v. State of Haryana (2002 (3) SCC 76) and Gangadhar Behera and Ors. v. State of Orissa (2002 (8) SCC 381).

13. The above position was also highlighted in Babulal Bhagwan Khandare and Anr. v. State of Maharashtra [2005 (10) SCC 404] and in Salim Saheb v. State of M.P. (2007(1) SCC 699).

14. The over insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not

those who have not seen it though the neighborhood may be replete with other residents also. [See: State of Rajasthan v. Teja Ram and Ors. (AIR 1999 SC 1776)].

15. We shall next deal with the applicability of Section149 IPC.

16. A plea which was emphasized by the appellants relates to the question whether Section 149, IPC has any application for fastening the constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. 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. It cannot be laid down as a

general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of 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 have 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. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly.

17. 'Common object' is different from 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a

consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly

which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot co instanti.

18. Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members

is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word 'knew' used in the second part of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there

may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part, but offences committed in prosecution of the common object would be generally, if not always, be within the second part, namely, offences which the parties knew likely to be committed in the prosecution of the common object. (See Chikkarange Gowda and others v. State of Mysore : AIR 1956 SC 731.)

19. In State of U.P. v. Dan Singh and Ors. (1997 (3) SCC 747) it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful

assembly did which or what act. Reference was made to Lalji v. State of U.P. (1989 (1) SCC 437) where it was observed that:

> "while overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149".

20. This position has been elaborately stated by this Court in Gangadhar Behera and Ors. v. State of Orissa (2002 (8) SCC 381).

21. When the factual scenario is considered in the background of the principles set out above the inevitable is that Section 149 is clearly applicable as has been rightly held by the trial Court and the High Court. The appeal is without merit, deserves dismissal which we direct.

.....J.

(Dr. ARIJIT PASAYAT)

.....J.
(P. SATHASIVAM)

.....J.
(AFTAB ALAM)

New Delhi,
September 15, 2008