

Charan Singh and ors. Vs. State

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Court : Allahabad

Decided On : Jul-02-1958

Reported in : AIR1959All255; 1959CriLJ419

Judge : B.R. James and ;A.P. Srivastava, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149 and 300

Appeal No. : Criminal Appeal Nos. 687 and 714 of 1958 and Referred No. 52 of 1958

Appellant : Charan Singh and ors.

Respondent : State

Advocate for Def. : D.P. Uniyal, Dy. Govt. Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Judgement :

B.R. James, J.

1. The appellants in these two appeals are Charan Singh, Bachchu Singh, Ram Singh alias Ramlo, Sheo Nath Singh and Chhotey Singh, of whom Sheo Nath Singh and Chhotey Singh are the sons of Ramlo, while the other two are stated to be collaterals of the latter. They are Thakurs of village Udaipur, which is four miles

from police-station Kant in the District of Shahjahanpur. Charan Singh has been found guilty under Section 302 I. P. C. and sentenced to death, and the Sessions Judge has made the usual reference for confirmation of his death sentence.

The other four appellants have been convicted under Section 302 read with Section 149 I.P.C. and awarded life imprisonment each. The appellants have also been found guilty under Section 324 read with Section 149 I.P.C. and sentenced to three years' rigorous imprisonment each. In addition, Charan Singh, Bachchu Singh, Ramlo and Sheo Nath Singh have been awarded two years' rigorous imprisonment each under Section 148 I.P.C. while Chhotey Singh has been sentenced to one year's rigorous imprisonment under Section 147 I.P.C., the imprisonment in each case having been ordered to run concurrently.

2. Now, in the same village there resided a Dhanuk -- (a low caste people who inter alia keep pigs) -- family consisting of three brothers, Gopal, Gulzari and Sanwal, out of whom Gopal and Gulzari lived in the same house while Sanwal occupied an adjoining house. Laraiti is the wife, of Sanwal and Munshi their twenty-year old son. Gopal's wife is Chameli. It is indeniabJe that in the afternoon of the 30th September 1957 these persons (excepting Munshi) were the victims of violence. Medical evidence has proved their injuries to have been as follows:--

Gulzari: A spear wound deep into the abdominal cavity penetrating the peritoneum and lacerating the large intestine and the bladder; due to the shock and haemorrhage resulting from this injury he died almost instantaneously.

Gopal: A punctured wound on the front of the left shoulder, and an abraded bruise on the left arm.

Sanwal:- A two inch deep punctured wound on the back and a small incised wound on the back of a finger of the left hand.

Sm. Chameli: A 2 1/4 inch superficial incised wound on the right side of the abdomen.

Sm. Laraiti: A scalp-deep contused wound, 1 1/2-inch long, on the head.

The injuries of the last four persons were simple, the punctured or incised wounds being caused by spears, and the rest by a blunt weapon like a lathi.

3. The case against the appellants may be outlined as follows. There was no previous enmity between the parties. On the day of the occurrence earlier in the afternoon Sanwal's son Munshi was grazing his pigs at a pond situate outside the village abadi. The appellant Chhotey Singh, who is of the same age as Munshi, came up and taxed Munshi with causing damage to his sweet-potato field with his pigs. Munshi protested that his pigs had not caused any damage and that if any loss had been suffered it must be due to some other person's animals.

Chhotey Singh thereupon abused him, and after an exchange of abuse the two young men grappled and gave each other a few blows with their hands. Munshi extricated himself from the fray, ran home and told his father and uncles about the incident. His father rebuked him and asked him to go back to his grazing and make sure that his pigs did not stray into Chhotey Singh's field. At the same time Chhotey Singh returned to his own home and apparently reported to his relatives the indignity of having been given blows by a Dhanuk.

Half an hour later the three Dhanuk brothers were sitting at the entrance to their compound when the five appellants arrived in a body. Chhotey Singh carried a lathi while the other four were armed with spears. They demanded to know where Munshi was, to which Gulzari replied that Munshi was not at home but had gone out. The appellants insisted that Munshi was inside the house, and flung abuse. Gulzari objected to their use of abusive language. Incensed by this the five appellants made an onslaught on the three Dhanuk brothers.

Charan Singh gave a spear thrust to Gulzari in the abdomen, as a result of which he fell down and died almost at once. The remaining appellants struck the other two Dhanuks. Their wives Chameli and Laraiti rushed out of the house to save their husbands, but they too were not spared, and were given the injuries which have already been described. The hue and cry attracted a number of villagers, on whose approach and rebukes the appellants ran away,

4. Gopal proceeded to the police station of Kant, reached there at 5 P.M., and dictated a report of the occurrence Ex.Ka-1. In this report the story narrated above is found clearly described and the five appellants unequivocally named as the assailants. The report also mentions Ram Bux Jetav, Ujagar Kachhi, pitam Dhanuk, Ramie, Kahar, Kal-yan Dhanuk and 'many other men of the village' as the eye-witnesses,

5. Briefly therefore the prosecution case is that with the object of avenging the assault on Chhotey Singh (a high-caste Thakur) by Munshi (a low-caste Dhanuk) the appellants, who are Chhotey Singh himself and his relatives, went armed with to the house of the Dhanuks and committed a riot in the course of which they murdered Gulzari and caused simple injuries to his two brothers and their wives.

6. The appellants deny all knowledge of the occurrence and disclaim responsibility for the killing of Gulzari or the injuries sustained by the other Dhanuks. Chhotey Singh even denies his earlier quarrel with Munshi. The appellants attribute their prosecution to the enmity of one Gur Bux Singh of the village. They have not put forward any alternative version of how Gulzari met his death or how his relatives received their injuries. They have not produced any evidence in respect of the occurrence itself, but have examined one Rameshwar Singh in connection with some other matters.

7. On behalf of the prosecution, Munshi has testified to the initial quarrel and exchange of blows between him and the appellant Chhotey Singh. With regard to the murderous assault itself, the prosecution rely on the statements of Gopal, Sanwal, Sm. Chameli, Sm. Laraiti and Ramie Kahar, the first four of whom received injuries and would therefore be the natural and obvious witnesses of the occurrence, while Ramie Kahar is a person who is found named as an eye-witness in the first information report Ex. Ka-1.

8. The appellants challenge the veracity of these witnesses mainly on the ground that they are Speaking under the influence of their enemy Gur Bux Singh. We have it from the lips of Ramie Kahar that there is bad blood between Gur Bux Singh and the appellant Charan Singh over Panchayat elections because Charan Singh had supported the candidate who was standing against Gur Bux Singh's

son. The defence witness Rameshwar Singh speaks of the same cause of enmity but without mentioning its details.

I am not prepared to take serious notice of the alleged enmity. What is of greater importance is that there is nothing whatsoever to show that the prosecution witnesses aforesaid are in any way beholden to Gur Bux Singh or are testifying under his influence. Those witnesses, it should be emphasised, are the most natural witnesses, of the occurrence, and I have already drawn attention to the fact that there was no prior enmity between them and the appellants.

It would be ridiculous to suggest that the true assailants are being exonerated but innocent persons roped in for nothing. The attack took place in the inhabited area of the village and consequently must have been witnessed by many persons. It therefore becomes a matter of the utmost significance that neither have the appellants put forward any alternative version of their own nor produced any eye-witness of the incident,

9. There are; two other prosecution witnesses Matru Lal and Pitam Dhanuk, who deserve brief notice. Matru Lal declares that he saw the five appellants and a number of other Thakurs go to the house of the Dhanuks armed with spears and lathis and that a free fight between them and fifteen or sixteen Dhanuks took place; he goes on to say that on the side of the Thakurs the appellants Ramie sustained injuries.

This witness's assertion of a free fight or of Ramie receiving injuries is a complete fabrication, for neither does anyone else speak of it nor do the appellants themselves even remotely suggest that any of them sustained injuries. Pritam deposes that he saw four of the appellants go to the house of the Dhanuks with spears and lathis and that later he saw them running away. Without doubt this witness is concealing a large part of the truth,

10. There is another witness, Bahadur by name, who says that he was an eye-witness of the fight which had earlier that day taken place between Chhotey Singh and Munshi Dhanuk. His evidence is in conformity with that of Munshi himself.

11. It has been suggested on behalf of the appellants that there are strained relations between Charan Singh and Baehchu Singh on the one side and Ramie and his sons on the other, and reliance is placed on a statement to this effect by the defence witness Rameshwar Singh and also on the assertion of Ramie Kahar that Charan Singh did not participate in the marriage of Ramie's son. The evidence on the point is no doubt vague, but I am prepared to accept that some friction did occur over that particular marriage.

But we have not been told how long ago that marriage took place, nor is there any reason to suppose that the friction was not of the kind which sometimes occurs between collaterals and is soon forgotten. It should be remembered that the present attack was prompted by only one motive and that was the indignation caused to the Thakurs by a Dhanuk raising his hands against one of them. It was therefore just the kind of motive to induce all the appellants to collaborate with each other in taking revenge.

12. In view of the discussion attempted above I accept the correctness of the prosecution case against the appellants.

13. The next question is: on the accepted facts of the case what offences have been committed and by whom? Controversy centres chiefly round the offence arising out of the homicide of Gulzari, a homicide for which the spear thrust of Charan Singh was exclusively responsible. Two questions call for answer: first, whether Charan Singh is guilty under Section 302 or under Section 304, I.P.C., and second, whether the other four appellants are liable under Section 302 or under Section 304 (as the case may be) by virtue of Section 149, I.P.C.

14. On the first question I am of opinion that Charan Singh's act in killing Gulzari amounts to an offence under Section 302, I.P.C. I base this view on the principles laid down in *Behari v. State* : AIR1953 All203 , *Bansi v. State* : AIR1956 All668 and *Willie Slaney v. State of Madhya Pradesh* : 1956 CriLJ291 and the fact that the spear thrust was given with such force that it went deep into the abdominal cavity, penetrated the peritoneum and lacerated the large intestine and the bladder. I am prepared to concede that Charan Singh had no intention of causing Gulzari's death.

But in Willie 'Slaney's case : 1956 CriLJ291 their Lordships of the Supreme Court have held that where an accused causing the death of another had no intention to kill, then the offence would be murder if (1) the accused knew that the injury inflicted would be likely to cause death, or (2) that it would be sufficient in the ordinary course of nature to cause death, or (3) that he knew that the act must in all probability cause death.

On the other hand, if the case cannot be placed as high as that, and the act is only likely to cause death and there is no special knowledge, the offence, falls within Section 304. In view of the forceful nature of the spear-thrust we would be on safe ground in assuming that Charan Singh knew that the injury inflicted would be likely to cause death or that it would be sufficient in the ordinary course of nature to cause death or that it must in all probability cause death. In my view therefore Charan Singh has been rightly found guilty under Section 302, I.P.C. in respect of Gulzari's death.

15. I turn now to the second and somewhat more difficult question. The other four appellants will be guilty under S, 302, I.P.C. only if Section 149, I.P.C. applied. This section is in these words:-

'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'.

Now, what was the common object of the unlawful assembly of which the five appellants were members? To decide this question it is necessary to be clear as to the facts. I have no doubt that the common object was merely to administer a chastisement to Munshi for having the audacity of using physical violence against a Thakur. Doubtless four of the appellants were armed with spears, and accordingly it is arguable that their object was to cause death.

But it is worthy of note that there is no evidence, direct or circumstantial, on the record to suggest that that was their object: for instance, no one says that they

were uttering threats against Munshi's life or blandishing their spears in such a manner as to suggest that they would use them to the full. It is not without significance] that Chhotey Singh, the person most directly concerned in avenging the insult suffered by him, was armed with a

To my mind the object was for Chhotey to give Munshi a beating with his lathi, while his four companions were to stand by in order to make sure that no one interfered with that beating. But when the appellants reached the Dhanuks' house they found Munshi not in evidence), and suspected that he was hiding inside the house. When they taxed Gulzari and his brother with this and were met with a flat denial they used abusive language. To this Gulzari had the temerity to object.

It was the raising of this objection by Gulzari which served as the immediate 'provocation' -- if I might use that word -- for the attack on him and his brothers. No threat to life preceded the attack, nor does anyone suggest that the appellants incited each other to kill. By what they thought was obstreperousness on the part of Gulzari, the original common object of chastising Munshi was temporarily forgotten, and instead each appellant decided to chastise whichever Dhanuk happened to come in front of him -- that is to say, though there was a similar object to chastise, there was no common object to do so.

In the course of the chastisement Charan Singh, as held above, committed the murder of Gulzari. But admittedly he contented himself with that solitary spear-thrust which led to Gulzari's death, while his confederates used their weapons with greater circumspection and caused merely simple hurt. On these facts I find it difficult to hold that the other four appellants knew that the murder of any of the Dhanuks was likely to be committed. Consequently neither the first nor the second part of Section 149 I.P.C. would apply to them, and Gulzari's murder must be held to be an isolated act of Charan Singh.

It is perhaps necessary for me to lay emphasis on the words 'knew' and 'likely to be committed in the prosecution of' the common object, occurring in the second part of Section 149 I.P.C., the word 'knew' implies something much more than mere conjecture or speculation, and it is highly significant that the legislature refrained from including in the sections some such expression as 'or had reason to

believe'; further, the likelihood of the result must be 'in the prosecution of the common object', and not through some other reason.

16. It has been argued by the learned counsel for the State that although the common object of the unlawful assembly which the appellants constituted was originally to chastise Munshi, on the spot it was altered to one of causing death when the appellants found themselves confronted with the insistence of the Dhanuks that Munshi was not in the house and with Gulzari's objection to their abusive languages. To this argument the simple-answer is that in the absence of any direct or circumstantial evidence on the point it is impossible to uphold any modification in the original common object of mere chastisement of Munshi.

17. Learned counsel for the parties have cited a number of decisions before us in an attempt to derive support for their respective view points. Out of these I find only two which are based on facts similar to those of the instant case. The first is *Raghunandan v Emperor*, AIR 1935 Oudh 52. The facts found were that the common object of the unlawful assembly was only to beat the members of the opposite party; one of the members thrust his spear in the abdomen of one of the members of the opposite party; other members too were armed with spears and lathis; their Lordships of the Oudh Chief Court, holding that the other members were not guilty of murder by virtue of Section 149, I. P. C., observed:

'The stridency of this section however should not be strained so as to make every member of the unlawful assembly liable even for acts, which are not committed necessarily in the prosecution of the common object of the rioters or which are not immediately connected with the common object of the unlawful assembly, of which the accused are members nor must a guilty knowledge of the likelihood of the commission of such an offence in the prosecution of the common object be imputed to all the members of the unlawful assembly in the absence of any clear evidence, direct or circumstantial, adduced on behalf of the-prosecution to show that such knowledge could be so legitimately imputed to the members of the unlawful assembly before they moved to action.'

The second is an unreported case *Ram Rup Singh v. State*, Criminal Appeal No. 957 of 1951 decided by Malik C. J. and B. M. Lall J. on 26-6-1952 (All). The facts

were these. Ram Sakal Singh was getting the disputed plot ploughed by labourers. A. party of twenty-five or thirty persons, including Ram Rup Singh, came up aimed with spears and lathis. The object of the unlawful assembly was to take possession of the plot, to turn out Ram Sakal Singh and to murder him and his helpers and rescuers. The assembly attacked Ram Sakal Singh, while his labourers fled. Anand Singh and other persons of the neighbourhood ran to avert the fight. Ram Rup Singh speared Anand Singh, who died as a result thereof. Their Lordships held as follows:

'The appellants' party formed an unlawful assembly. The object of this unlawful assembly was to obtain forcible possession of the land and to overcome any resistance offered by their victims. Since no blow was given to the victims after they had fallen, we are not prepared to go so far as to hold that the object of the assembly was to kill anyone, although it may be conceded that had the appellants' party caused the death of any one of these who were resisting their attack. Section 149 of the Indian Penal Code would have applied and every member of the party would have been guilty of murder. This section lays down 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 know 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. Had Ram Sakal Singh or any member of his family been killed, it could be held that although the common object of the assembly was not to commit murder, yet the offence of murder was one which the members of the assembly 'knew to be likely to be committed in prosecution of that object'. But a different consideration arises in the matter of Anand Singh's death. He was not aiding Ram Sakal Singh, nor was he fighting on his behalf. He was standing aside and was asking the parties not to fight but to get their differences settled through a panchayat. He was neither a 'helper' nor a 'rescuer' of Ram Sakal Singh. If in this state of affairs Ram Rup Singh appellant (who, as will appear hereafter in the discussion of individual cases, had caused his death) speared Anand Singh, he did not act 'in prosecution of the common object' of the unlawful assembly. This act was the individual act of Ram Rup Singh for which no other member of the unlawful assembly could be held responsible. The result, therefore, is that he alone must be

held responsible for Anand Singh's murder and the remaining members of the unlawful assembly cannot be found guilty of an offence punishable under Section 302. I. P. C.'

I am in respectful agreement with both these decisions. On their authority it is evident that Cha-ran Singh alone would be liable for the death of Gulzari and that so far as the other appellants are concerned Section 149, I. P. C. would not make them constructively liable for that offence. Indeed, the case of these four appellants stands on a higher footing than that of the accused in Ram .Rup Singh's case in A. No. 957 of 1951, D/- 24-6-1953 (All). Accordingly Bachchu Singh, Ram Singh alias Ramie, Sheo Nath Sinuh and Chhotey Singh deserve to be acquitted of the charge under Section 30 read with Section 149, I. P. C.

18. There is also a subsidiary question which, though not argued at the Bar, deserves consideration. Are the appellants guilty of an offence under Section 324 read with Section 149, I.P.C., find are they guilty under Section 148 or 147. I. P. C.? That the appellants constituted an unlawful assembly does not admit of any doubt. In the foregoing I have held that the common object of this unlawful assembly was merely to administer a chastisement to Munshi.

But on the line of reasoning I have adopted in dealing with the homicide charge I am unable to hold that in chastising Gopal, Sanwal, Shrimati Chameli and Shrimati Laraiti the appellants were actuated by any common object; apart from other aspects of the matter, the time factor operated against the conversion of the original common object of chastising Munshi into one of chastising his relatives, nor is there an iota of direct or circumstantial evidence to suggest that a fresh common object was formed on the spot.

It is thus a case of a similar object, in contradistinction to one of a common object. It seems to me that the attitude adopted by Gulzari served as an annoyance to the appellants, each of whom suddenly, but independently, decided to punish whichever Dhanuk happened to come in front of him. Since the injuries to Gopal etc. were not caused in furtherance of a common object, Section 149, I. P. C. will not have any application, and each appellant will be answerable only for the acts he performed individually,

As it happens, there is on the record definite evidence of the individual acts of each appellants. According to this evidence, Charan Singh speared Gulzari to death, and for this I have already found him guilty under Section 302, I. P. C. Bachchu caused a simple spear injury to Gulzari; Ram Singh two simple spear injuries to Sanwal; Sheo Nath a simple spear injury to Shrimati Chameli.

Bachchu Ram Singh and Sheo Nath Singh are therefore guilty under Section 324, I. P. C., simpliciter. Further, according to the evidence Chhotey Singh caused a simple lathi injury to Gopal and another to Shrimati Laraiti; he must be deemed guilty under Section 323, I. P. C. The convictions of the appellants under Section 148 or 147, I. P. C. and under Section 324 read with Section 149, I. P. C. therefore deserve to be set aside. Instead they should be convicted under Section 143, I. P. C. and under Section 324 or Section 323, I. P. C. as just mentioned.

19. There only remains to consider the question of sentence. As regards Charan Singh, he as already pointed out by me, had no prior object of killing anyone, consequently his offence was not a premeditated one. He did not act with unusual cruelty, for he gave Gulzari only one spear thrust, and did not touch him after he had fallen helpless on the ground. He did not strike any of the other Dhanuks. For these reasons the interest of justice would be adequately served by his death sentence being commuted to imprisonment for life.

20. As regards Bachchu Singh. Ram Singh alias Ramie and Sheo Nath Singh a sentence of three years' rigorous imprisonment each under Section 324, I. P. C. would, in my opinion, be appropriate. So would be a sentence of one year's rigorous imprisonment under Section 323, I. P. C. on Chhotey Singh. For the offence under Section 143, I. P. C. I consider a sentence of six months' rigorous imprisonment on each appellant reasonable. The sentences of imprisonment should in each case be concurrent.

21. In the result, I would uphold Charan Singh's conviction under Section 302, I. P. C., but would reduce his sentence to that of life imprisonment. The reference under Section 374, Cr. P. C. in respect of him should be rejected. I would set aside the conviction and sentences of the other four appellants under Section 302 read with Section 149, I. P. C. I would also set aside the conviction and sentences of all

the appellants under Section 324 read with Section 149, I. P. C. and under Section 148 or 147 I. P. C.

Instead I would convict all the appellants under Section 143 I. P. C. and award each a sentence of six months' rigorous imprisonment, and I would further convict Bachchu Singh Ram Singh alias Ramie and Sheo Nath Singh under Section 324, I. P. C. and sentence them each to three years' rigorous imprisonment, and also convict Chhotey Singh under Section 323, I. P. C. and sentence him to one year's rigorous imprisonment. The imprisonment in each case should be concurrent. With these modifications I would dismiss both these appeals.

A.P. Srivastava, J.

22. There does not appear to be much dispute about what actually happened on 30-9-1957 in the afternoon. In the earlier part of the day Munshi son of Sanwal, a Dhanuk, was grazing his pig. The appellant Chhotey Singh, a Thakur, who is about the same age as Munshi complained to him that the latter's pig had damaged the sweet potato crop of the former. Munshi repudiated the suggestion and said that the damage must have been caused by the pigs of some other persons. An altercation then ensued between Munshi and Chhotey Singh.

They grappled with each other and probably exchanged some blows too. Munshi went back to his house and complained to his father, who reprimanded him and told him not to quarrel with the Thakurs. In the afternoon Sanwal, father of Munshi, and the two brothers of Sanwal, Gulzari and Copal were sitting in front of their houses. Gopal and Gulzari lived in the same house while Sanwal lived in the adjoining house. They have a common sehan Shrimati Chameli, wife of Gopal, and Shrimati Laraiti, wife of Sanwal (and mother of Munshi) were inside their respective houses.

The five appellants arrived. Out of them Chhotey Singh had a lathi and the other four were armed with spears. Sheo Nath Singh appellant is own brother of Chhotey Singh. Both these are the sons of Ram Singh alias Ramie Singh appellant. The other two appellants Charan Singh and Bachasingh are collaterals of Ram Singh. The appellants asked Gulzari and his brothers where Munshi was.

Gulzari told them that Munshi was not at home and had gone out. This reply did not apparently satisfy the appellants, who suspected that Munshi was there inside the house. The appellants then started abusing Gulzari and his brothers.

Gulzari protested. Charan Singh then gave a spear blow to Gulzari, who fell down, Bachchu Singh gave a spear blow to Gopal. Chhotey Singh struck Gopal with his lathi. Ramie Singh assaulted Sanwal with his spear. Shrimati Chamoli and Shrimati Laraiti then came out of their houses on hearing the cries of the persons who had been injured. Sheo Nath Singh then gave a spear blow to Shrimati Chameili and Chhotey Singh gave a lathi blow to Smt. Laraiti. A number of persons had come to the spot by that time. They reprimanded the appellants, who then went away.

23. The spear blow given by Charan Singh to Gulzari caused an incised punctured wound $3/4'$ x $1/2'$ x abdominal cavity deep on right side of lower abdomen $1/2'$ above and medial of right superior iliac spine. The peritoneum had been punctured and the large intestines and the bladder had been lacerated. Death of Gulzari followed almost immediately and the injury was obviously sufficient in the ordinary course of nature to cause death.

24. Gopal got an incised punctured wound $1/3'$ x $1/4'$ x $1-1/2'$ deep on the front of the right shoulder. This was due to the spear blow which had been given to him by Bachchu Singh. The lathi blow of Chhotey Singh had caused on him an abraded bruise $1-1/2'$ x $1/2'$ on the back of the left arm in the middle.

25. Sanwal had two injuries, both caused by a spear. The first was an incised punctured wound $1/4'$ x $1/8'$ x 2" deep on the left side back in middle. The other was an incised wound $1/2'$ x $1/8'$ x skin deep on the back of terminal digit of left finger. Ramie Singh was responsible for these injuries. The second appears to have been received while Sanwal was attempting to catch hold of the spear in order to save himself

26. Shrimati Chamoli had a superficial incised wound $2-1/4'$ x $1/2'$ x skin deep on the right side of abdomen. It was due to the spear blow of Sheo Nath Singh.

27. Shrimati Laraiti had a contused wound 1-1/2' x 1/6'x scalp deep on the right side of head 4' above the right ear.
28. The question is what offence or offences the various appellants can be held to have committed on the above mentioned facts.
29. So far as Charan Singh is concerned he is undoubtedly responsible for the fatal blow which he gave with his spear to Gultzari. It is however contended on his behalf that he obviously could not have any intention to cause the death of Guizari, nor could he have any intention of causing such an injury to him which could in the ordinary course of nature cause death,
- He had certainly hit Gultzari on the abdomen with his spear but it was only by accident that the blow happened to be so forceful that it proved fatal. For that blow Charan Singh could only be convicted under Section 326, I. P. C. At the worst if he could be imputed with the knowledge that his act was likely to cause death he can be convicted under Section 304, I. P. C. The contention is that his conviction under Section 302, I. P. C., is entirely unjustified.
30. On behalf of the State, however, it is urged that every one is presumed to intend the consequences of his act. The injury which Charan Singh inflicted with his spear on Gulzari was one which was sufficient in the ordinary course of nature to cause death. Even if it be conceded that Charan Singh had no intention of causing the death of Gulzari he must be held to have intended to cause such an injury to Gulzari which was in the ordinary course of nature sufficient to cause death. His case falls clearly under the third clause of Section 300, I. P.C. and he has, therefore, been rightly convicted under Section 302 of the Code).
31. Learned Counsel are agreed that in the circumstances of the present case Charan Singh could not have any intention of causing the death of Gulzari. The first clause of Section 300, I. P. C., is therefore clearly inapplicable. It is also not suggested by the prosecution that the case falls under the second clause of the Section. The contention is that the case is covered clearly by the third clause. It is not necessary to refer to the earlier case law on the subject as in the recently reported case of Virsa Singh v. State of Punjab : 1958 CriLJ818 , the Supreme

Court had occasion to consider the circumstances in which the third clause of Section 300, I. P. C. will apply.

The injury of which the deceased in that case had died was

'an oblique incised wound 2-1/2' on the lower part of the left side of the belly 1-3/4' above the left inguinal ligament. It was through the whole thickness of the abdominal wall and peritonitis and present (sic).'

The Sessions Judge had found that without having any intention of causing death the accused Virsa Singh had by 'a rash and silly act' given 'a rather forceful blow which ultimately caused death.'

As has been urged by the learned Counsel for Charan Singh in that case too it was argued on behalf of the appellant that even if the injury was sufficient in the ordinary course of nature to cause death the conviction under Section 302, I, P. C., was not justified because there was no intention to inflict a bodily injury of that nature. The contention was not accepted and was held to be fallacious. The conviction under Section 302, I. P, C. was upheld. It was pointed out:

'If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature then the intention is to kill and in that event the 'thirdly' would be unnecessary because the act would fall under the first part of the Section namely -- if the act by which death is caused is done with the intention of causing death.'

After specifying the subjective and objective elements of the third clause of Section 300, I. P. C., their Lordships laid down at p. 467 the essentials to be proved before the case could fall under that clause.

They said ;

'To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly;'

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional. Or that some other kind of Injury was intended. Once, these three elements are proved to be present, the enquiry proceeds further and Fourthly it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.'

They observed further that :

'It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind would be likely to cause death.'

32. The only thing required to be proved, according to their Lordships, is that there was intention to inflict the injury that was actually inflicted and if objectively speaking that injury was sufficient in the ordinary course of nature to cause death, a case of murder was made out. The subjective element -- intention is a matter of inference and

'Once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant the opposite conclusion.'

The position according to their Lordships is clear.

'In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude, that he did not intend to inflict the injury that he did.'

They laid down emphatically :

'No one has a licence to run around inflicting injuries that are sufficient in the ordinary course of nature to cause death and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.'

33. The observations made in the case appear to apply with full force to the case of the appellant Charan Singh and provide an effective answer to the contention put forward on his behalf by his learned Counsel, In this case there can be no doubt that a bodily injury was caused to Gulzari by Charan Singh. The medical evidence produced proves the nature of the injury. Charan Singh hit Gulzari deliberately. He struck him with his spear because Gulzari had the temerity to protest against the abuses which were being hurled at him.

The blow which Charan Singh, gave was there-fore an intentional blow. Charan Singh denies completely that he hit Gulzari. He does not say that the blow was accidental or unconditional. It is not his ease that he intended to cause injury of any other kind or a less serious injury. It is also obvious from the nature of the injury itself that it was sufficient to cause death in the ordinary course of nature, It actually caused the death of Gulzari almost instantaneously. The tests laid down in the case of Virsa Singh are therefore fulfilled in the present case,

It is immaterial that Charan Singh had no intention of causing an injury sufficient in the ordinary course of nature to cause death. As he intended to cause the injury he actually inflicted and it was sufficient in the ordinary course of nature to cause death, his case must be held to fall within the third clause of Section 300, I.P.C. The conviction o Charan Singh under Section 302, I. P. C. therefore appears to be quite correct and must be upheld.

34. For the reasons given by my learned brother, which I need not repeat, I agree that the lesser penalty would be quite adequate in the case of this appellant.

35. The next question is whether the other four appellants can be held constructively guilty under Section 302, I.P.C. with the help of Section 149 of the Code.

36. It was strenuously argued that on the facts established by the prosecution these appellants could not have been convicted under Section 302 read with Section 149 I. P. C. and their conviction under that provision and the consequent sentence of imprisonment for life should therefore be set aside, The main basis for this argument appears to be that the death of Gulzari cannot be held to have been caused in prosecution of the common object of the unlawful assembly which the appellants may have formed and from whatever point of view the matter was looked at it was obvious that the death of Gulzari was the individual act of Charan Singh alone, for which the other appellants could in no way be held responsible.

37. The validity or otherwise of this contention depends on what exactly was the object of the assembly which the appellants had formed and what is the real scope of Section 149, I.P.C.

38. An analysis of Section 149,1. P, C. shows that it has two portions :-- the first will apply if

(1) there was an unlawful assembly,

(2) the person concerned was a member of that unlawful assembly,

(3) the offence was committed by a member of the assembly and

(4) it was committed in prosecution of the common object of the said assembly.

39. For the application of the second portion of the Section the first three essentials mentioned above must be present but the fourth need not be there. Instead, in addition to the first three essentials, it must be proved.

(a) that the person who is sought to be made liable knew,

(b) that the offence which has actually been committed was likely to be committed,

(c) in prosecution of the common object of the said assembly,

40. The most important requirement necessary for the application of both the portions of the Section therefore is that the act for which each of the members of the assembly can be made liable should be an act which was either actually committed or was in any case likely to be committed in prosecution of the common object of the assembly. The purpose for which the members of the assembly set out or desired to achieve is the object. Each member may have an object in view and may also have his own idea of the means with which that object is to be attained and the extent to which he is prepared to go for attaining it.

If the object desired by all the members is the same, the knowledge that 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, the object becomes the common object of the assembly. Normally a determination to achieve an object includes a resolve to meet with force any resistance that may be offered and to remove any obstruction that may be found to exist in the path leading to the attainment of the object,

41. A common object may be formed by express agreement after mutual consultations 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. 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 it carries and the behaviours of its members at or near the scene of the incident.

42. The expression 'in prosecution of the common object' is not defined in the Code. Prosecution however means following up or pursuit and generally speaking, every thing that is done for the purpose of achieving the desired object can be taken to have been done in prosecution of it. The various members of the assembly however naturally act and behave in different ways. Acting on the impulse of the moment or on his own initiative without caring whether he has the express or implied support of the other members or not any member or the

assembly may act in a particular manner.

The question may then arise whether that act was his own individual act for which he alone is responsible or whether all the members of the assembly can be held liable for it. The decision of this question depends on whether the act was done or was likely to be done in prosecution of the common object of the assembly. If it was actually done in prosecution of the common object no person, who was a member of the assembly at the time, can escape liability for it as it must be deemed to have been done with the implicit concurrence of every one.

Even if the act is an individual act of one member and it is not actually done in prosecution of the common object all the other members will be liable for it, provided they knew and it must be noted here that positive knowledge is necessary, it is not sufficient to show that they ought to have or might have known or that they had reason to believe that it might happen that the act was likely to be committed in prosecution of the common object. The use of the word 'Likely' in the second part of Section 149 I. P. C. implies some thing more than a possibility. A thing is 'likely' to happen only when it will probably happen or may very well happen.

43. It is very often not easy to decide whether a particular act done by an individual member of the assembly was done or was likely to be done in prosecution of the common object. For this purpose some connection between the act and the common object has to be discovered. The connection must be proximate and not too remote. The act must help the attainment of the object or at least smoothen the path towards the goal.

It must be meant either to facilitate the achievement, to remove any obstacle that may be existing or to do away with resistance that may be expected or offered. It should be such in which the other members could be or were equally interested and which any of them could have done if it had struck his mind. In any case the act must be related to the object in such a way that it can be considered to have been done for attaining that object.

44. The question whether the death of Gulzari was caused in prosecution of the common object of the unlawful assembly the appellants and formed, or was one which was likely to be committed in prosecution of that object, must be approached bearing the above principles in mind, and the first thing which has to be found out is what was the common object of the appellants' assembly. In the charges that were framed against them the common object mentioned was the causing of the death of Gulzari.

It is however conceded on behalf of the State that that was obviously incorrect. When the assembly of the appellants was formed and they proceeded to the house of Munshi the causing of the death of Gulzari could not by any stretch of imagination have been present in their minds. It is admitted that there was no previous enmity between the Dhanuks and the appellants. The dispute had arisen only because Chhotey Singh thought that the pig of Munshi had damaged his sweet-potato crop.

He accused Munshi in that connection but Munshi repudiated his liability. An altercation then ensued. The two grappled with each other and probably exchanged blows also. Chhotey Singh being of a higher caste naturally resented this very much and must have complained about the behaviour of Munshi to the other appellants. They decided to chastise Munshi and to give him a lesson for insulting a Thakur. That appears to have been their object when they proceeded together to the house of Munshi and asked Gulzari and his brothers where Munshi was.

It was urged on behalf of the State that if chastisement of Munshi was the only object, four of the appellants would not have gone armed with spears; so their object was to kill Munshi and any one else who offered, any resistance. It however appears to me that from the mere fact that four of the appellants were armed with spears it is not possible to infer necessarily that their object was to kill Munshi or any one who offered resistance. It cannot be over-looked that Chhotey Singh, the person who had actually been insulted was not carrying a spear but was carrying only a lathi.

It is also not suggested that they expected any resistance armed or unarmed, or that while on their way to the house of Munshi or after reaching there the appellants threatened to kill Munshi or that any of them incited his companions to cause the death of Munshi or any one else. They only went there and enquired as to where Munshi was. They started abusing when they found that Munshi was not available and his whereabouts were not being disclosed.

It is therefore quite probable that the object of the appellants was only to chastise Munshi and four of them carried spears only, so that no one may dare interfere with that chastisement. Up to that stage there does not appear to have been any intention to use the spears. It is therefore clear that the object of the appellants' assembly, when they reached the house of the Dhanuk, was only to chastise Munshi. In that case the death of Gulzari cannot by any stretch of language be said to have been caused in prosecution of that common object. No connection apparently exists between the two.

45. It is said that Gulzari put in an obstacle in the path of the appellants as he refused to disclose where Munshi was and that is why he was speared. It cannot however be overlooked that besides asking of the whereabouts of Munshi from his father and uncles the appellants took no other steps to discover where he was. Though they did not believe Gulzari when he said that Munshi was not there in the house, they did not try to enter the house, and search for him there. It is not the prosecution case that Gulzari did anything positive to thwart the object of the appellants.

There could therefore be no question of his being done away with, as he was proving an obstruction in the appellants' way. It is also clear that if chastisement of Munshi was the only object the appellants other than Charan Singh could not know that Charan Singh would suddenly take it into his head to spear Gulzari to death. Neither of the two portions of Section 149 I. P. C. can therefore be utilised for making the other appellants liable for the death of Gulzari if the common object of their unlawful assembly was only to chastise Munshi.

46. It is however, suggested on behalf of the prosecution that to chastise Munshi may have been the original object with which the appellants proceeded to the

house of Munshi. On arriving there they found that that object of theirs was being frustrated because the father and uncles of Munshi were not prepared to disclose his whereabouts to enable the appellants to carry out that object. The object of the appellants' assembly was therefore changed at that stage and instead of the chastisement of Munshi the object became the chastisement of the members of his family by giving them a beating.

Among the persons to be chastised was Gulzari. The weapons to be used in the chastisement included spears. The appellants, it is urged, must in the circumstances be imputed with the knowledge that the death of Gulzari was likely to be committed in prosecution of the altered object of the assembly which had been formed. With the help of Section 149 I. P. C. therefore, each of them can be held responsible constructively for that death.

47. There appear to be two serious difficulties in the way of accepting the prosecution suggestion about the change of the object of the assembly. In the first place it was not suggested at any stage of the trial that the appellants had one common object at one stage and that that object was altered at a subsequent stage of the incident or that at any stage the object was to chastise all members of the family of Munshi including Gulzari.

No evidence of any kind was led by the prosecution to prove the alteration of the object. The case that the original object was altered and became the chastisement of the members of the family of Munshi is therefore an entirely new case which the appellants were never called upon to meet. It would therefore be very unfair if the liability of the appellants is upheld on the basis of this alteration in their object,

48. Secondly, the materials on the basis of which it can be held that the object of the unlawful assembly was actually altered and became the chastisement of the members of Munshi's family, also appears to be quite insufficient. No direct evidence has been led on the point. The only thing we know is that the appellants asked Gulzari and his brothers where Munshi was and received reply that his whereabouts were not known. They then started abusing Gulzari, who protested. The appellants thereupon began to use the weapons which they were carrying.

The evidence does not show clearly whether the attack was simultaneous and if not in which order the various persons were injured. The only thing that is proved is that Charan Singh gave one blow to Gulzari, who fell down and was not touched thereafter. Bachchu Singh and Chhotey Singh each gave a blow to Gopal while Ramie Singh gave a blow to Sanwal. At that time only these three brothers were there. The ladies were inside their houses. They came out. Sheo Nath Singh gave a blow to Shrimati Chameli and Chhotey Singh hit Shrimati Laraiti.

Can it be said on these facts that all the five appellants had the common object of chastising all the members of the family of Munshi? The facts established appear to be perfectly consistent with the case that no other common object was formed at all, and that events developed in such a way that even the original common object was forgotten and each appellant felt so enraged at the attitude which Gopal and his brothers had adopted that he began to assault the persons whom he found before himself. This could happen without the formation of a common object by the appellants. Even if each had the object of beating the person whom he attacked, it does not show necessarily that each shared the common object which they had jointly formed.

A distinction exists between several persons having similar objects and all of them sharing a common object. It is well settled that if it is possible to put two interpretations on the conduct of an accused person that one should be preferred which is more favourable to the accused. On the materials that are there on the record, therefore, it is in my opinion not possible to record a definite finding that the appellants altered their common object and decided to chastise all the members of the family of Munshi including Gulzari.

49. If the common object of the appellants assembly was the chastisement of Munshi and was never altered into any other, the death of Gulzari cannot be said to have been caused in prosecution of their common object. Nor can it be said that it was an act which the appellants other than Charan Singh knew was likely to be committed by Charan Singh in prosecution of that object.

The death of Gulzari had thus no connection with the common object of the assembly at all. Charan Singh hit him with his spear because he suddenly got

enraged on account of the behaviour of Gulzari when in addition to refusing to disclose the whereabouts of Munshi he objected to the abuses which Charan Singh was hurling at him. It was an individual act of Charan Singh for which he alone could be responsible.

In the circumstances of the case it is not open to the prosecution to take advantage of the principles laid down in Section 149 I. P. C. and with its help to make the other appellants constructively liable for that murder. I therefore agree with my learned brother, that the conviction of the appellants Bachcu Singh, Ram Singh, Sheo Nath Singh and Chhotey Singh under Section 302 read with Section 149 I. P. C. cannot be allowed to stand and must be set aside.

50. Charan Singh, Bachchu Singh, Ram Singh and Sheo Nath Singh have been held guilty under Section 148 I. P. C. and Chhotey Singh has been held guilty under Section 147 I. P. C. These convictions non stand only if these appellants can be shown to have been guilty of rioting, as defined in Section 146 I. P. C. According to that definition two essentials must be present in order to make the members of an unlawful assembly guilty of rioting

- (i) use of force or violence by the assembly itself or by any members thereof and,
- (ii) such force or violence should have been used in prosecution of the common object of such assembly.

51. Conceding that the appellants had formed an unlawful assembly when they proceeded to the house of Munshi in order to give him a beating, the question is whether any force or violence was used by any of the appellants in prosecution of the common object which they had formed, viz, the chastisement of Munshi. It has already been shown that the death of Gulzari was not caused in prosecution of the common object. The injuries which were inflicted on Gopal, Sanwal, Shrimati Chameli and Shrimati Laraiti stand on exactly the same footing as the injury of Gulzari from this point of view.

If the spear blow inflicted on Gulzari was not given in prosecution of any common object which the appellants had formed, the injuries inflicted by the other

appellants on the other four persons must also, for those very identical reasons, be held not to have been inflicted in prosecution of the common object, and must be held to be the individual act of the appellants who inflicted them. No force or violence was, therefore, used in prosecution of the common object of the assembly which the appellants had formed and they cannot therefore be held to have been guilty of rioting. Sections 147 and 148, of the I. P. C. therefore become inapplicable.

They did form an unlawful assembly as defined in Section 141 I. P. C. because their object was to beat Munshi, that is, to commit an offence; and for the forming of that unlawful assembly they can be held guilty only under Section 143 I. P. C. The convictions of the appellants under Sections 147 and 148 I. P. C. must, therefore, be set aside and instead, the five appellants should be convicted for the comparatively minor offence punishable under Section 143 I. P. C. The proper sentence for that offence will, in my opinion, be six months rigorous imprisonment for each of the appellants.

52. The appellants other than Charan Singh have been convicted under Section 324 read with Section 149 I. P. C. for the injuries inflicted with spears on Gopal, Sanwal and Shrimati Chameli. So far as Bachchu Singh, Ram Singh and Sheo Nath Singh are concerned, each of them were armed with spears and caused simple hurts with those spears.

They could therefore be convicted under Section 324 I. P. C. even without any help of Section 149 I. P. C. If the injuries they caused had not been caused in prosecution of any common object which they had formed, but were their individual acts they should have been convicted under Section 324 simpliciter because it was known that each of them had caused simple hurt with a cutting weapon like a spear.

Chhotey Singh had however used only a lathi. If Section 149 I. P. C. was not available so far as he was concerned, he could not be convicted under Section 324 I. P. C. but should have been convicted under Section 323 I. P. C. only. The sentence of three years' rigorous imprisonment imposed on Bachchu Singh, Ram Singh and Sheo Nath Singh under Section 324 I. P. C. appears to be justified and

must in my opinion be maintained. Under Section 323 I. P. C. Chotey Singh should be sentenced to one year's rigorous imprisonment.

53. In the result I would allow the appeal of Charan Singh in part, confirm his conviction under Section 302, I. P. C. but reduce his sentence to imprisonment for life. The reference made by the Sessions Judge under Section 374 Cr. P. C. should, in my opinion, be rejected. His conviction under Section 148 I. P. C. and the sentence of two years' rigorous imprisonment imposed on him for the offence are also set aside. He should instead be convicted of an offence under Section 143 I. P. C. and sentenced to six months rigorous imprisonment. This sentence will run concurrently with his sentence of imprisonment for life.

54. The appeals of the other four appellants should also be allowed in part. Their conviction and sentences under Section 302 read with Section 149 I. P. C. must be set aside. The conviction of Bachchu Singh, Ram Singh and Sheo Nath Singh under Section 324 read with Section 149 I. P. C. is converted into one under Section 324 I. P. C. simpliciter and the sentence of three years' rigorous imprisonment imposed on each of them for that offence should be maintained.

The conviction of Chhotey Singh under Section 324 read with Section 149 I. P. C., should be set aside and instead, he should be convicted under Section 323 I. P. C. and sentenced to one year's rigorous imprisonment. The convictions and sentences of these four appellants under Sections 148 and 147 I. P. C. must be set aside and instead, each of them should be convicted under Section 143 I. P. C. and sentenced to six months' rigorous imprisonment for that offence. The sentences of these four appellants shall run concurrently.

55. With these modifications I would dismiss both the appeals.

BY THE COURT.

56. We uphold the conviction of Charan Singh under Section 302 I. P. C., but reduce his death sentence to one of imprisonment For life. The Sessions Judge's Reference under Section 374 Cr. P. C. in respect of him is rejected. We set aside the conviction and sentences of the other four appellants under Section 302 read

with Section 149 I. P. C. We also set aside the conviction and sentences of all the appellants under Section 324 read with Section 149 I. P. C., and also under Section 148 or 147, I. P. C.

Instead we convict all the appellants under Section 143 I. P. C. and award each of them a sentence of six months' rigorous imprisonment. We further convict Bachchu Singh, Ram Singh alias Ramie and Sheo Nath Singh under Section 324 I. P. C. and sentence them each to three years' rigorous imprisonment, and we convict Chhotey Singh under Section 323 I. P. C. and award him rigorous imprisonment for one year. We direct the imprisonment in each case to be concurrent. With these modifications we dismiss both these appeals.

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