2025:CGHC:14245-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQUITTAL APPEAL No. 407 of 2010

State of Chhattisgarh, Through the District Magistrate, District Kanker (C.G.)

... Appellant

versus

1 – Surajram, S/o Mangal, aged about 56 years, R/o Village Pewari, P.S. Antagarh, District – North Bastar, Kanker

2- Nohar Singh, S/o , aged about 56 years, R/o Village Pewari, P.S. Antagarh, District – North Bastar, Kanker

3- Dhaniram, S/o Udysingh, aged about 56 years, R/o Village Pewari, P.S. Antagarh, District – North Bastar, Kanker

4- Durjan, S/o Mura, aged about 39 years, R/o Village Pewari, P.S. Antagarh, District – North Bastar, Kanker

5 – Chaitram, S/o Fagadu, aged about 39 years, R/o Village Pewari, P.S. Antagarh, District – North Bastar, Kanker

6- Rameshwar, S/o Raisingh, aged about 35 years, R/o Village Pewari, P.S. Antagarh, District – North Bastar, Kanker

7 – Santosh, S/o Banshi, aged about 29 years, R/o Village Pewari, P.S. Antagarh, District – North Bastar, Kanker

... Respondent(s)

For Appellant/State : Mr. Hariom Rai, Panel Lawyer
For respondent Nos. 6 & 7 : Mr. S.P. Sahu, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per **Ramesh Sinha, Chief Justice**

25.03.2025

1. As per the office report dated 21.08.2023, notices have been served upon respondent Nos.1 to 5 by ordinary mode, whereas notices by ordinary mode have been served upon neighbour of respondent Nos. 6 & 7.

2. Today, when the matter is taken up for hearing, none appeared nor any representation is made on behalf respondent Nos. 1 to 5, Surjuram, Nohar Singh, Dhaniram, Durjan and Chaitram though notices have been served upon them to contest the matter. So far as respondent Nos. 6 & 7, namely, Rameshwar and Santosh are concerned, they are represented by Mr. S.P. Sahu, learned counsel, who is present.

3. Since the matter is of 2010, we proceed to hear the matter finally.

4. Heard Mr. Hariom Rai, learned Panel Lawyer, appearing for the State/appellant as well as Mr. S.P. Sahu, learned counsel, appearing for respondent Nos. 6 & 7.

5. By this appeal under Section 378(1) of the Cr.P.C. the appellant/State has challenged the legality and propriety of the judgment of acquittal dated 10.02.2010 passed by the Additional Sessions Judge, North Bastar, Kanker (C.G.) in Sessions Trial No. 119/2008, whereby the trial Court has acquitted the respondents

of the charges of offence punishable under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code, (for short 'IPC') on the ground that the prosecution has failed to prove the guilt of the respondents beyond shadow of doubt.

6. Case of the prosecution, in brief, is that on 18.03.2005 complainant Lachhuram lodged a report in Police Station, Antagarh to the effect that in the intervening night of 17-18.03.2005, the father of the complainant Lachhuram, Raghunath and mother were sleeping outside the house and the complainant was sleeping inside the house. At about 2.30 in the night, Noharsingh, Dhaniram, Durjan, Surjuram and 15-20 other Naxalite accused came to his house with guns and told his father Raghunath that he pretends to be a big leader and takes money, saying this, they caught Raghunath and Lachchhuram and took them to the river bank, tied Lachchhuram's hands behind with a rope and beat him. Noharsingh, Dhaniram, Durjan, Surjuram and 15-20 Naxalite accused with the intention of killing Raghunath assaulted him with fists, bamboo sticks and killed him. Lachchhuram told the people of the village about the incident. On the basis of said information, First Information Report (Ex.P-1) was registered against accused Noharsingh, Dhaniram, Durjan and Surjuram for the offence punishable under Sections 147, 148, 149, 302/307 of IPC and Section 25/27 of the Arms Act under Crime No. 18/2025 and the inquest report (Ex.P-2) was registered in Police Station Antagarh.

7. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P-3, inquest over the dead body of deceased was prepared vide Ex.P-15, thereafter the dead body of the deceased was sent to Community Health Centre, Antagarh for conducting postmortem, wherein Dr. Bheshaj Kumar Ramkete (PW-10) conducted postmortem over the dead body of deceased Raghunath and PM report has been given vide Ex.P-17 and found following injuries :-

(i) Bleeding present from left ear and bloodstains present on the whole face;

(ii) A stab wound present on the right side of chest just beside sternum of size 2 cm x 2 cm x 7”

(iii) Both the legs are extended.

(iv) Both hands are half flexed.

The Doctor opined that the all the injures are antemortem in nature and cause of death was injuries to the vital organ of body and excessive internal & external hemorrhage, ultimately leading into shock and death and it was homicidal in nature. Dead body of the deceased was handed over to his son on supurdnama vide Ex.P-7.

8. Injured Lachhuram was examined by Dr. Bheshaj Kumar Ramkete (PW-10) and MLC report was given vide Ex.P-19 and found following injuries :-

(i) Bruise of 2 ½” x 1 ½” over right scapular region back caused by hard and blunt object;

(ii) Bruise of 3 ½” x 2” on the right inside scapular region back caused by hard and blunt object;

(iii) Bruise of 3” x 1 ½” over mid scapular region caused by hard and blunt object;

(iv) Bruise of 2” x 1” on right thigh over above upper half of femur caused by hard and blunt object.

9. During the course of investigation, crime details form was prepared vide Ex.P-22, a site map of the crime scene was prepared vide Ex.P-5 by the concerned Patwari. Statement of Sukkuram was recorded vide Ex.P-6. On presenting by complainant Lacchuram, rope tied on his hand at the time of incident was seized vide Ex.P-5. From the place of incident, plain soil, blood-soaked soil, one blood-soaked stick and one bamboo stick were seized vide Ex.P-7. Accused Surjuram, Noharsingh, Dhaniram and Durjan were arrested vide Exs. P-11 to P-14 respectively. At the instance of accused Surjuram, one iron gupti was seized vide Ex.P-8, at the instance of accused Dhaniram, one bamboo stick was seized vide Ex.P-9 and at the instance of accused Noharsingh, on shagon stick was seized vide Ex.P-10. Query report of seized articles were obtained vide Ex.P-20. Seized articles were sent for chemical examination to Forensic

Science Laboratory, Raipur through concerned Superintendent of Police vide Ex.P-20.

10. After completion of investigation, charge sheet was presented against the accused/respondents and one Vijay S/o Kamju Gond and Darbari S/o Manguram Gond under Sections 147, 148, 149, 302/307of IPC and Section 25/27 of the Arms Act in the Court of Judicial Magistrate First Class, Bhanupratappur, which was received on transfer to the Court of Additional Sessions Judge, North Bastar, Kanker for trial as per the order of Sessions Judge, North Bastar Kanker after committal proceedings.

11. In the case only eight accused including accused Vijay (deceased) were present and the remaining accused are shown absconding. Hence when the charges were levelled against the present accused, they denied the crime and sought trial.

12. In order to prove the guilt of the accused/respondents, the prosecution has examined as many as 11 witnesses and exhibited 22 documents. Accused were examined under Section 313 of the Cr.P.C., in which they denied the circumstances appearing against them and claimed innocence and false implication in crime in question.

13. After providing opportunity of hearing to the parties, the Additional Sessions Judge, North Bastar, Kanker has acquitted the respondents of the aforesaid charges vide impugned order dated 10.02.2010.

14. Learned counsel for the appellant/State vehemently argued that although in case of appeal against the judgment of acquittal the Court is not required to disturb the finding of the trial Court only on the ground that another view may be possible or view taken by the trial Court is not correct unless glaring mistake and manifest illegality is shown, but in the present case, evidence of Lacchuram (PW-1), who is an injured eye-witness has been corroborated by the evidence of her mother Picho Bai (PW-11), who has specifically stated that she has seen that the accused persons taking the deceased and injured Lacchuram with them and though there are some contradictions in their statement, but the same was sufficient for drawing definite conclusion that the respondents have committed the aforesaid crime, but the trial Court has illegally acquitted the respondents of the charges. Learned counsel further argued that evidence adduced on behalf of the prosecution was sufficient for drawing inference that the respondents have assaulted the deceased with the intention of killing him with fists, bamboo sticks due to which, he succumbed to said injuries, but the trial Court has not considered the aforesaid evidence.

15. On the other hand, learned counsel for the respondents opposed the appeal and argued that evidence adduced on behalf of the prosecution is sufficient to create suspicion that the respondents may have committed some offence, but is not sufficient for drawing definite inference that the respondents have committed

death of the deceased. The prosecution was under obligation to prove its case beyond shadow of doubt. The prosecution cannot take the benefits of weakness of the defence. He furrther submitted that the trial Court has rightly acquitted the respondents of the charges.

16. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

17. This is appeal against the judgment of acquittal filed by the State under Section 378(1) of the Cr.P.C. In exercising the appellate jurisdiction under Section 378(1) or under Section 378 of the Cr.P.C., the appellate Courts are required to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box and also required to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonably person would honestly and conscientiously entertain as to the guilt of the accused.

18. As held by the Supreme Court in **C.Antony v. Raghavan Nair**[1]**,** unless the High Court arrives at definite conclusion that the findings recorded by trial Court are perverse, it would not substitute its own view on a totally different perspective and also as held by the Supreme Court in **Ramanand Yadav v. Prabhunath Jha**[2], the appellate Court in considering the appeal against judgment of acquittal is to interfere only when there are

[1] AIR 2003 SC 182

[2] AIR 2004 SC 1053

compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

19. The scope of interference in appeals against acquittal is well settled. In **Tota Singh and another v. State of Punjab**[3]**,** the Supreme Court has held in para 6 as under:-

> "…….the mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one,

[3] AIR 1987 SC 1083

> the Appellate Court cannot legally interfere within an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

20. While exercising the appellate jurisdiction against judgment of acquittal, the High Courts or the appellate Courts are fully empowered to appreciate and reappreciate the evidence adduced on behalf of the parties while reversing the judgment of the trial Court. The appellate Court is required to discuss the grounds given by the trial Court to acquit the accused and then to dispel those reasons.

21. In the light of aforesaid dictum and proposition of law, we have examined the evidence adduced on behalf of the prosecution.

22. The first question for consideration would be, whether the death of deceased were homicidal in nature ?

23. The learned trial Court relying upon the statement of Dr. Bheshaj Kumar Ramkete (PW-10), who has conducted postmortem over the dead body of deceased Raghunath and given his report vide Ex.P-17 found bleeding from left ear and bloodstains on the whole face; a stab wound on the right side of chest just beside sternum of size 2 cm x 2 cm x 7", both the legs were extended and both hands were half flexed and he opined that opined that all the injures were antemortem in nature and cause of death was injuries to the vital organ of body and excessive internal &

external hemorrhage, ultimately leading into shock and death and it was homicidal in nature, came to the conclusion that the death of deceased Raghunath was homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellant. We hereby affirm the said finding.

24. Now the question arises whether Raghunath was murdered by the accused ?

25. Lacchuram (PW-1), who is also an injured eye-witness, in his main examination has stated that in the intervening night of 17-18 March 2005, at about 2-2.30 am, his father Raghunath was sleeping in the courtyard, his mother was sleeping in the room and this witness was sleeping inside the room. At that time, about 25 Naxalites came with guns, knives, sticks in their hands. Along with these Naxalites, accused Surju, Noharsingh, Rameshwar, Santosh, Durjan, Vijay, Chaitram, Dhaniram were also there. The accused were holding sticks and knives in their hands. Accused Rameshwar was holding a gun, he said that his father try to become a big leader, taking money, and becoming ward member, they took him to make him understand and this witness too was taken to the river bank after tying his hands behind with a rope and Santosh, Noharsingh, Rameshwar were trying to make his father understand by beating him with sticks and then they killed

his father by beating him with sticks, other accused were standing in a circle at the time of this incident. He told the people of the village about the incident and in the morning he took them to the spot of incident and showed it to the villagers.

26. The said witness also stated that at Police Station Antagarh, First Information Report of the incident was lodged by him vide Ex.P-1 and the death information of his father was given vide Ex.P-2. This witness has admitted in para-11 of cross-examination that when the Naxalites came, he was sleeping inside the room with the door closed. When the Naxalites took his father from the house, his mother woke him up. His mother called him out, then this witness has stated that the Naxalites caught him and took him out of the house saying that let's go and tell them the problems of the village.

27. Though this witness has admitted in para-14 of his cross-examination that he had not mentioned the names of the accused Rameshwar and Santosh in the First Information Report Ex.P-1, he is telling this for the first time in the Court, but in the statement recorded under Section 161 Cr.P.C., which was recorded on the same date when the FIR was lodged, he has also mentioned the names of accused Rameshwar and Santosh.

28. Pichobai (PW-11) has stated in her examination-in-chief that she and her husband Raghunath were sleeping outside the door of the house at night, when the accused Surjuram, Dhaniram, Durjan, Noharsingh, Rameshwar and Santosh came there and

caught hold of her husband Raghunath and took him towards the field. Her son Lachhuram also followed these accused, whom the accused tied up. This witness has stated in para-4 of her cross-examination that her son Lachhu told her that Raghunath has been killed. He had told this at night itself, at that time Lachhu's legs, hands, head and waist were tied with ropes. PW-1 Lachhu has not stated that he came to his mother at night itself and told her about in tied condition. In para-5 of her cross-examination, although she has admitted that she is naming the accused Surjuram, Dhaniram, Durjan, Noharsingh, Rameshwar and Santosh who are present because of their old quarrel and has also admitted that she does not have any conversation with the accused and that she already has a quarrel with them regarding worshipping in the temple, but, this witness has denied the defence's suggestion that her husband was taken away not by the accused but by the Naxalites.

29. Subbu Ram (PW2) has stated in his main examination that Raghunath was killed but he does not know who killed him. He had heard that Raghunath was killed by Naxalites, Lachhu had told him in the morning. This witness has been declared hostile by the prosecution. This witness has stated that the part A of the statement recorded by the police, Ex.P-6 in which the name of the accused is mentioned for killing Raghunath by beating him with sticks, was not told to the police. This witness has admitted in cross-examination that Raghunath was his brother by relation. On

his asking, Lachhu told him that his father was killed by Naxalites. Lachhu did not tell the name of any person from the village.

30. Jaipal (PW3) has stated that in the morning Raghunath's family members had told him about the incident. He does not know who killed Raghunath. Lachhu had stated that he did not fully recognize the killer. Then this witness has stated that Lachhu has mentioned the names of Noharsingh and Surju. Then this witness has mentioned the names of four people and has stated that the names of the rest are not mentioned. This witness has stated that Lachhu stated that two people were named among the four. Thus, this witness was repeatedly changing his statements and the witness' statements do not reflect the situation of Lachu being able to identify the accused.

31. Sanau (PW6) has stated in his main examination that Lachhu had come to his house on the night of the incident. At that time Lachhu's hands were tied with a rope at the back. When he woke up after hearing Lachhu's voice, he saw that someone had beaten Lachhu. Lachhu had told the names of Durjan, Dhaniram, Noharsingh, Surju who had beaten him and had also told that in front of him Raghunath had been beaten with sticks. This witness has not stated that Lachhu had clearly told about the above accused beating Raghunath with sticks. This witness has accepted in cross-examination that he has no conversation with the accused Dhaniram, Durjan, Nohar and Surju and his relations with them are not good. The deceased Raghunath was his father-

in-law. He knows only what Lachhu has told. This witness has accepted in para 16 of his statement that due to old enmity, Lachhu has mentioned the names of accused Dhaniram, Durjan, Nohar and Surju out of enmity. This witness has stated that Lachhu came home in a tied condition at night, whereas PW-1 Lachhuram's mother Pichobai has stated that Lachhu came home in a tied condition at night. Thus, there is contradiction in the statements of Lachhu coming to Sanu or Pichobai in the night in a bound state.

32. Laxman (PW4), who is the son of deceased Raghunath, has stated in the examination-in-chief that on the second day of the incident, he came to know that his father was murdered by Naxalites. He was in Antagarh at the time of the incident. Before the murder, Sarjuram, Dhaniram, Durjan, Nohar Singh had threatened to kill his father. They called Naxalites and killed his father. This witness has stated in cross-examination that no FIR was lodged in any police station regarding the death threat. He had gone to the police station with Lachhu to file a report. Whereas PW 4 Laxman had gone with his brother Lachchu to write the report, in such a situation if Lachchu had told the names of the persons who killed Raghunath, then this witness would have clearly stated that Lachchu had told it. This witness has not clearly stated that his brother Lachchu had told him the names of the persons who killed his father Raghunath. PW1 Lachchuram and his mother PW11 Pichhobai have not made any statement

regarding the alleged threat of killing Raghunath by the accused in the past. Even in the First Information Report Ex.P-1, there is no mention about the alleged threat being given in the past.

33. The Supreme Court in ***Balu Sudam Khalde and Anr. v. State of Maharashtra*** reported in ***2023 SCC OnLine SC 355*** held as under:-

> "26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:
>
> (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
>
> (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
>
> (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
>
> (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
>
> (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or

embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

(emphasis supplied)"

34. Though there are some contradictions and omissions in the evidence of aforesaid prosecution witnesses, but as per the evidence of Lacchuram (PW-1), who is also an injured eye-witness of the incident and who has lodged the FIR (Ex.P-1), in which he has specifically mentioned the names of four accused persons, further he has also mentioned the names of rest of the accused in his statement recorded under Section 161 Cr.P.C. which was recorded on the same day, when the FIR was registered, therefore, involvement of the accused/respondents has been duly proved beyond reasonable doubt.

35. The Hon'ble Supreme Court in the matter of ***C. Muniappan and others Vs. State of Tamil Nadu***, reported in ***(2010) 9 SCC 567*** has held as under :-

"85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court

comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. *(vide Sohrab & Anr. v. The State of M.P., AIR 1972 SC 2020; State of U.P. v. M.K. Anthony, AIR 1985 SC 48; Bharwada Bhogini Bhai Hirji Bhai v. State of Gujarat, AIR 1983 SC 753; State of Rajasthan v. Om Prakash AIR 2007 SC 2257; Prithu @ Prithi Chand & Anr. v. State of Himachal Pradesh, (2009) 11 SCC 588; State of U.P. v. Santosh Kumar & Ors., (2009) 9 SCC 626; and State v. Saravanan & Anr., AIR 2009 SC 151*).

36. Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of

committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302 IPC.

37. In ***Krishnappa v. State of Karnataka*** reported in ***(2012) 11 SCC 237,*** the Supreme Court while examining Section 149 IPC held as follows:-

> "20. It is now well-settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.
>
> 21. The factum of causing injury or not causing injury would not be relevant, where the accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful

> assembly and not whether he actually took active part in the crime or not."

38. Thus, this Court held that Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

39. As a matter of fact, the Supreme Court in ***Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel*** reported in ***(2018) 7 SCC 743*** has reiterated the position that Section 149 IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. The Supreme Court has held:

> 20. In cases where a large number of accused constituting an "unlawful assembly" are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section

149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an “unlawful assembly” is sufficient to render him vicariously liable under Section 149 IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.

* * * * *

22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that “crucial act” — for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.

* * * * *

> 34. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed."

40. Therefore, as held by the Supreme Court in ***Yunis alias Kariya v. State of M.P.*** reported in ***(2003) 1 SCC 425***, no overt act is required to be imputed to a particular person when the charge is under Section 149 IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction.

41. It is clear from the evidence of injured eyewitness Lachhuram (PW-1) that the accused/respondents were part of the unlawful assembly which committed the murder of the deceased Raghunath and also caused injury to him. Though he was extensively cross-examined, his testimony in this regard could not be shaken.

42. Thus, we are of the considered opinion that evidence adduced on behalf of the prosecution is sufficient for arriving at a finding that accused/respondents have committed murder of the deceased

Raghunath, but by acquitting accused/respondents of the charge of Section 302 read with 149 and Section 307 read with Section 149 of the IPC, the trial Court has erred in recording the finding of the acquittal in favour of the accused/respondents though there was an overwhelming evidence against the accused/respondents of Lachhuram (PW-1), who is an injured eye-witness and further the PM report (Ex.P-17) of the deceased Raghunath given by Dr.Bheshaj Kumar Ramteke (PW-8) as well as MLC report (Ex.P-19) of the injured given by the said Doctor (PW-8) corroborates the prosecution, therefore, we are of the considered opinion that the finding recorded by the learned trial Court is absolutely perverse and contrary, which resulted into injustice. Therefore, as held by the Supreme Court in **C.Antony, Ramanand Yadav** and **Tota Singh (supra),** interference is called to cause justice.

43. Consequently, the appeal is **allowed**. Impugned judgment of acquittal dated 10.02.2010 passed by the Additional Sessions Judge, North Bastar, Kanker (C.G.) in Sessions Trial No. 119/2008 is hereby set aside. For committing murder of deceased Raghunath, accused/respondents are convicted under Section 302/149 of IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- each, in default of payment of fine, they shall further undergo simple imprisonment for 2 months and for inflicting injuries over the person of injured Lachhuram (PW-1) attempting to commit his murder by tying his hands and legs, they are convicted under Section 307/149 and

sentenced to undergo rigorous imprisonment for 05 years and to pay fine of Rs. 200/- each, in default of payment of fine, they shall further undergo simple imprisonment for 15 days. Both the sentences are directed to be run concurrently.

44. Accused/respondents are directed to surrender before the Additional Sessions Judge, North Bastar, Kanker (C.G.) within a period of one month from today for serving sentence imposed upon them by this Court, failing which, they shall be taken into custody for serving the sentence imposed by this Court and compliance report be submitted to this Court.

45. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Chandra

Head-Note

The evidence of injured witness cannot ordinarily be doubted on account of minor contradictions and conviction can be based upon such evidence subject to corroboration with other incriminating factors.