2025 INSC 1266

REPORTABLE

IN THE SUPREME COURT OF INDIA

(CRIMINAL APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 1755 OF 2011

HARIBHAU @ BHAUSAHEB DINKAR KHARUSE & ANR.

...APPELLANTS

VERSUS

THE STATE OF MAHARASHTRA ...RESPONDENT

WITH

CRIMINAL APPEAL NO(s). 150-151 OF 2013

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. Criminal Appeal No. 1755 of 2011 is an appeal filed under Section 379 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "*the CrPC*") and Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (hereinafter referred to as "*the Supreme Court Act*"), by Haribhau @ Bhausaheb Dinkar Kharuse (accused no. 3/appellant no. 1) and Raju @ Rajendra Bhiwrao Shirwale

(accused no. 4/appellant no. 2), challenging the final judgment dated 02.02.2011 passed by the High Court of Judicature at Bombay in Criminal Appeal No. 626 of 2001, whereby the High Court partly allowed the said appeal and reversed the order of acquittal for the offence punishable under Sections 302 and 307 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as "*the IPC*"), *vide* the judgment dated 18.05.2001 passed by the VIII Additional Sessions Judge, Pune, in Sessions Case No. 72 of 2000.

2. Criminal Appeal No. 150-151 of 2013 is an appeal filed under Section 379 of the CrPC and Section 2(a) of the Supreme Court Act, by Subhash Raghunath Pawar (accused no. 6/appellant), challenging the final judgment dated 02.02.2011 passed by the High Court of Judicature at Bombay in Criminal Appeal No. 517 of 2001, whereby the High Court dismissed the said appeal and confirmed the order of conviction for the offence punishable under Section 307 read with Section 149 of the IPC. The High Court also reversed the order of acquittal for the offence punishable under Sections 302 read with Section 149 of the IPC *vide* the judgment dated 18.05.2001 passed by the VIII Additional Sessions Judge, Pune, in Sessions Case No. 72 of 2000.

FACTUAL MATRIX

3. The brief facts of the present case as per the appellants is that from 25.04.1999 to 27.04.1999, several wedding ceremonies were held in different branches of the Gholap family at village Kari, Pune District. On 26.04.1999, during a wedding procession, Ankush Gholap was assaulted on his head by Vitthal Deoba Gholap, brother of Pandharinath Devba Gholap (accused no. 1). Ankush subsequently registered a police complaint that same night with Bhor Police Station.

4. On 27.04.1999, Ankush, along with Dnyanoba Ravba Gholap, Rajendra Gholap (PW-7) and Shivaji Sanas (PW-9), travelled to Bhor in a jeep driven by Sopan Dagadu Gholap (PW-1). While returning, near Navi Ali, they stopped. At this point, accused no. 1 and Maruti Ramchandra Gholap (accused no. 2) arrived on a motorbike driven by accused no. 3. The accused no. 4 drove another motorbike with two pillion riders, namely, Vitthal Baburao Shinde (accused no. 5) and accused no. 6. The accused no. 3 removed the jeep's keys and punched PW-1. Meanwhile, the other accused persons dragged Ankush, PW-7 and PW-9 from the jeep. The accused no. 1 and 2 attacked Ankush with sharp weapons,

causing his death on the spot while PW-7 and PW-9 sustained serious injuries and PW-1 managed to escape and later reported the incident to police.

5. The postmortem examination of Ankush (deceased) was conducted by Dr. Praveen Chaudhary (PW-16), confirming death due to haemorrhagic shock from multiple injuries caused by sharp weapons. PW-7 and PW-9 were treated for grievous injuries at local hospitals. The accused persons were arrested and the charge sheet was filed.

6. The Sessions Court framed charges against the accused persons for committing offences punishable under Sections 147, 148, 149, 302, 307 of the IPC and alternatively under Sections 302, 307 read with Section 34 of the IPC. During the trial, 27 witnesses were examined. The defence presented one alibi witness, Balasaheb Gholap (DW-1), for accused no. 1 and 2.

7. The trial court, on 18.05.2001, convicted accused No. 1 and 2 for committing offences punishable under Sections 302 and 307 of the IPC, sentencing them to life imprisonment and rigorous imprisonment for a period of seven years, respectively. The accused no. 6 was also convicted for committing an offence punishable under Section 307 of the IPC and sentenced to imprisonment for a period of seven years

and was acquitted for the offence punishable under Section 302 read with Section 149 of IPC. The accused no. 3, 4 and 5 were acquitted due to insufficient evidence.

8. Before the High Court, accused no. 1, 2 and 6 filed appeals challenging their convictions, while the State appealed the acquittal of accused no. 3, 4 and 5. *Vide* the impugned judgment, the High Court partly allowed the State's appeal, reversing the acquittal of accused no. 3 and 4. The High Court dismissed the appeals filed by accused no. 1, 2 and 6, confirming their convictions. The High Court further reversed the acquittal of accused no. 6 under Section 302 read with Section 149 of the IPC.

9. *Vide* the impugned judgment, accused no. 1, 2, 3, 4 and 6 were held guilty for the offences punishable under Sections 147, 148, 149 and Sections 302 and 307 read with Section 149 of the IPC and were sentenced with rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the IPC and with rigorous imprisonment for ten years for the offence punishable under Section 307 read with Section 149 of the IPC.

10. Aggrieved by the impugned judgment, accused no. 3 and 4 (appellant no. 1 and 2) and accused no. 6 (appellant) have filed the present appeals.

SUBMISSIONS ON BEHALF OF APPELLANT NO. 1 & 2

11. Learned counsel for the appellant no. 1 and 2 contended that the High Court erred in reversing a well-reasoned acquittal by the Trial Court and raised the following grounds:

    A. Ingredients of Section 149 of the IPC were not made out;

    B. High Court overstepped its jurisdiction by interfering with a plausible view of acquittal;

    C. Contradictions among eyewitnesses of the incident in question; and

    D. No recovery or evidence against accused no. 3/appellant no. 1.

12. *First*, it was argued that Section 149 of the IPC requires proof of a common object among at least five or more persons. The prosecution's own witnesses gave contradictory statements about whether accused no. 3/appellant no. 1 possessed a knife.PW-1 made inconsistent claims and admitted omissions in his earlier statements. No weapon was recovered from accused no. 3/appellant no. 1 and there was no evidence that he shared the intention to kill.

13. Since accused no. 5 remained acquitted and accused no. 3/appellant no. 1 was not proven guilty, only four persons could be said to have participated, which is below the minimum threshold of five members required under Section 141 of the IPC for constituting an unlawful assembly. Moreover, there were no specific allegations of assault by accused no. 4/appellant no. 2, further weakening the prosecution's case.

14. Reliance was placed on ***Daya Kishan v. State of Haryana, (2010) 5 SCC 81*** and ***Naresh v. State of Haryana, (2023) 10 SCC 134,*** where this Court held that mere presence in an unlawful assembly without participation or intent cannot attract liability under Section 149 of the IPC.

15. *Secondly*, learned counsel for the appellant no. 1 and 2 argued that the High Court exceeded its jurisdiction by overturning a plausible and well-reasoned acquittal. Relying upon ***Murugesan v. State, (2012) 10 SCC 383 (paras 32-34)*** and ***Siju Kurian v. State of Karnataka, (2023) 14 SCC 63 (para 21),*** it was submitted that a High Court can only reverse an acquittal when the Trial Court's view is perverse or unreasonable. Since the Trial Court's conclusions were based on a

detailed assessment of contradictions and witness credibility, the High Court's interference was unwarranted.

16. *Thirdly*, it was submitted that the defence highlighted material discrepancies between the statements of PW-1 and PW-7 regarding the weapons used and the role of the accused persons. PW-7, one of the injured eyewitnesses, was in critical condition when his statement was recorded. The Trial Court observed that PW-7 was not medically fit to give a coherent account at that time, undermining the reliability of his testimony. Thus, these inconsistencies should have prevented the High Court from relying on these witnesses.

17. *Lastly*, it was submitted that the Trial Court had categorically held that there was no recovery from accused no. 3/appellant no. 1 and no evidence that he had assaulted anyone or even possessed a weapon. It found that the allegation that accused no. 3/appellant no. 1 held the deceased while others attacked was unsupported by evidence.

18. Thus, learned counsel for the appellant no. 1 and 2 contended that the Trial Court's acquittal was based on a sound appreciation of evidence and contradictions in witness statements. The High Court ignored these crucial findings and erred in convicting appellant no. 1 and 2 without establishing their participation, intent or the existence of an

unlawful assembly. Therefore, the impugned judgment is liable to be set aside and appellant no. 1 and 2 to be acquitted of all charges.

SUBMISSIONS ON BEHALF OF APPELLANT (ACCUSED NO. 6)

19. Learned counsel for the appellant (accused no. 6) submitted that the evidence on record does not establish that appellant was a member of an unlawful assembly sharing a common object under Section 149 of the IPC to commit murder. The prosecution itself admitted that appellant did not inflict any injury upon the deceased and the only allegation against him is of causing hurt to PW-7. Consequently, the finding of guilt under Section 302 read with Section 149 of the IPC is unsustainable and the High Court erred in reversing the well-reasoned acquittal by the Sessions Court. The evidence, at best, may indicate participation in an incident resulting in hurt, but not in a premeditated murder committed in furtherance of a common object.

20. It is further submitted that the incident in question occurred suddenly and without premeditation. The Sessions Court, after examining the evidence, particularly the testimony of PW-1, found material omissions and contradictions regarding the alleged possession of knives and the role of appellant. These omissions in the FIR and the witness's admission that certain facts were not recorded clearly indicate that the

alleged assault was a sudden incident, concluding within a short time. Such circumstances negate any inference of a shared common object to commit murder.

21. Moreover, appellant was not named in the FIR, which merely referred to unidentified pillion riders accompanying another accused on a motorcycle. The arrest and seizure proceedings are also doubtful, as the panch witness turned hostile and the search of appellant's house was conducted even before his formal arrest, contrary to the procedure established under the CrPC. These irregularities severely undermine the credibility of the investigation and the prosecution's case.

22. Further, the identification parade was conducted after an inordinate delay of 52 days and was procedurally flawed, as two accused persons were shown together in the same parade. The Sessions Court rightly found such identification unreliable. Reliance is placed on the principles laid down in ***Shivaji Sahabrao Bobde v. State of Maharashtra, (1973) 2 SCC 793***, where this Court held that an accused must be proved guilty beyond all reasonable doubt and mere suspicion cannot form the basis of conviction.

23. Learned counsel for the appellant also relied on ***Chellappa v. State, (2020) 5 SCC 160 (paras 10 and 11)***, wherein it was held that when there exists doubt as to whether the accused shared the common intention to commit murder, the benefit of such doubt must go to the accused. Similarly, in ***M.C. Ali & Anr. v. State of Kerala, (2010) 4 SCC 573***, this Court emphasized that if two views are reasonably possible, the appellate court should not interfere with the acquittal recorded by the trial court.

24. Thus, it is submitted that the impugned judgment is liable to be set aside and the judgment passed by the Sessions Court is to be restored.

SUBMISSIONS ON BEHALF OF RESPONDENT

25. Learned counsel for the respondent submitted that the conviction of the appellants was based on the consistent and credible ocular evidence of injured witnesses, duly corroborated by medical evidence and recoveries made at the instance of the accused persons. The High Court also relied on Section 149 of the IPC, holding that the prosecution had proved beyond reasonable doubt the presence, knowledge and participation of the appellants in the crime committed on 27.04.1999, resulting in the death of the deceased.

26. Section 149 of the IPC embodies the principle of vicarious liability, holding every member of an unlawful assembly responsible for offences committed in prosecution of its common object or for acts they knew were likely to be committed. Reliance was placed on ***Masalti v. State of U.P., AIR 1965 SC 202*** and ***Lalji & Ors. v. State of U.P., (1989) 1 SCC 437,*** which clarifies that once it is established that an unlawful assembly existed and an offence was committed in pursuant of its common object, every member is equally culpable, irrespective of who inflicted the fatal act.

27. Applying this principle, learned counsel for the respondent contended that the appellants, by riding the motorbikes carrying co-accused persons armed with weapons to the crime scene, facilitated the commission of murder and thus shared the requisite knowledge and common object. The evidence on record, therefore, fully established that the appellants were members of the unlawful assembly at the relevant time and were rightly held guilty under Sections 302 and 307 read with Section 149 of the IPC.

28. Thus, learned counsel for the respondent submitted that in light of the evidence and settled legal principles, the present appeals are liable to be dismissed as they are devoid of merit.

ANALYSIS AND FINDINGS

29. We have heard learned counsel for the parties and perused the material available on record. At the outset, it is well settled that interference with an order of acquittal must be exercised with great caution. However, such interference is justified where the findings of the Trial Court are manifestly perverse, unreasonable or contrary to the evidence on record. In ***Chandrappa v. State of Karnataka, (2007) 4 SCC 415 (para 42)***, this Court held that an appellate court possesses full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded and to reach its own conclusions if the view taken by the trial court is not reasonably sustainable.

30. Applying these principles to the present case, it is evident that the acquittal recorded by the Trial Court suffered from a fundamental misappreciation of evidence. The Trial Court overlooked the consistent and corroborated testimony of injured eyewitnesses and failed to appreciate the legal effect of the active participation of the appellants as members of an unlawful assembly. The High Court, in reversing the acquittal, has given cogent and well-reasoned findings based on a proper appraisal of the record.

Evidence on Record

31. The prosecution examined PW-1, PW-7 and PW-9 as eyewitnesses, of whom PW-1 is the complainant, while PW-7 and PW-9 are injured witnesses.

32. The relevant paragraph of the deposition of PW-1 reads as under:

> *"4. On 27.4.1999 … Bhausaheb Dinkar Kharuse came on his motor-cycle and Pandharinath Deoba Gholap and Maruti Ramchandra Gholap were sitting behind him on the motor-cycle. The Rajendra Shira wale came on Bullet motor-cycle. Behind him two unknown persons were sitting on the said Bullet motor-cycle. I was knowing all these persons. The persons are present today in the Court. I can identify them in the Court. (The witness had gone near the dock of the accused where they are sitting.) He pointed his finger towards accd. No.1 and told that his name is Pandharinath Deoba Gholap. (I verified the same. He has identified correctly.) The witness pointed out the accused sitting at the second place from the accused No.1, and told that his name is Maruti Ramchandra Gholap. (I verified the same and found that he had correctly identified accused No.2.) the witness pointed the accused sitting at the third place and told his name as Bhausaheb Dinkar Kharuse. (I verified and found that he is accused No.3.) (The witness pointed out the finger to the accused sitting at fourth place and told his name that he is Rajendra Shirawale. (I verified and found that he is accused No.4.) I can identify those unknown persons who came on the Bullet motor-cycle of Rajendra Shirawale. (The witness has pointed out the accused Nos.5 and 6.) Both the motor-cycles were stopped on the left side of my jeep. All the accused persons got down from the motor-cycles. The accused persons removed weapons from the diccies of their motor-cycles. The accused No.2 Maruti was possessing Sattur, the accused No.1 Pandharinath and accused Nos.5*

and 6 were possessing knives (Suri), accused Nos.3 Bhausaheb and accd. No.4 Rajendra were possessing the knives. Accused No.3 Bhausaheb came near my jeep and he took off the key of my jeep. He gave first blow on my mouth. Thereafter, he immediately went behind the jeep. I saw black. All the accused were standing behind my jeep. They opened the rear side door of my jeep. They pulled Ankush Bhausaheb Gholap, Rajendra Maruti Gholap, Shivaji Sakharam Sanas and Gynaba Nagu Gholap on road from my jeep. The accused No.3 Bhausaheb was holding Ankush. Accused No.1 Pancharinath and No.2 Maruti assaulted Ankush on his stomach by Sattur and knife. Accused Nos.1 and 2 also assaulted Ankush on his head, stomach, back, hand. The intestine of the Ankush was came out of his stomach. He fall on ground. The accused Nos.1 and 2 and his campanions, the campanions were accused No.3 and 4 and unknown persons i.e. accused Nos.5 and 6 went towards Rajendra Maruti Gholap and Shivaji Sakharam Sanas. They assaulted them with weapons. I was afraid and therefore, I got down from the jeep. The two unknown person came towards me. They are accused Nos. 5 and 6, before the Court. They came to assault me. I ran towards market. Those persons who assaulted us i.e. the accd. before the Court stated their motor-cycles and went away I case near my jeep."

33. The relevant paragraph of the deposition of PW-7 reads as under:

"3. On 27.4.1999 … Haribhau alias Bhausaheb Dinkar Kharuse came on his motor-cycle. Pandharinath Deoba Gholap and Maruti Ramchandra Gholap were sitting behind him on his motor-cycle. With the said motorcycle another motor-cycle came. Raju Shirawale was driving that motor-cycle. Behind him Subhash Raghunath Pawar and one person wearing red colour shirt were sitting. I know all the persons whose named I have stated above. I can identify them. They are present in Court. (The witness went to the dock of the accused and pointed out one accused, and told his name as Pandharinath Deoba Gholap. The accused was asked to

stand. I asked his name and he told his name as Pandharinath Deoba Gholap. The witness pointed one of the accused and told his name as Maruti Ramchandra Gholap. I asked the name of the accused and he told his name as Maruti Ramchandra Gholap. He is accused No.2. The witness pointed one of the accused sitting in the dock and told his name as Haribhau alias Bhausaheb Dinkar Kharuse. The accused told his name as Haribhau Dinkar Kharuse. He is accused No.3. The witness pointed one of the accused sitting in the dock and told his name as Raju alias Rajendra Bhivrao Shirawale. I asked the name to the accd. and he told his name as Raju Bhivrao Shirawale. He is accused No.4. Then witness pointed his finger to one of the accused sitting in the dock that he is the same per who worn the red colour shirt on that day. I asked him his name. He told his name as Vitthal Baburao Shinde. He is accused No.5. The witness pointed his finger towards one of the accd. sitting in the dock and told his name Subhash Raghunath Pawar. I asked his name. He told him name Subhash Raghunath Pawar. I asked his name. He told his name Subhash Raghunath Pawar. He is accused No.6. The motor-cycles were stopped on the left side of the jeep. All the accused down from the motor-cycles. The accused persons removed the weapons from the diccies of the motorcycles. The accused No.1 Maruti Gholap was holding Sattur in his hand. The accused No.1 Pandharinath Gholap was holding knife (suri). (The accused No.4 Raju Shirwale, accd. No.5 Vitthal Shinde i.e. the person who worn the red shirt, accd. No.6 Subhash Pawar/were holding knives. (Accd. No.3 Bhausaheb went near Sopan. He removed the keys jeep and gave fist below on the fact of Sopan Dagadu Gholap. (By that time, accused No.1 Pandharinath, No.2-Maruti, accd. No.4 Rajendra, accused No.5 Vitthal i.e. the person wearing red shirt and accused No.6 Subhash came behind the jeep. The accused No.3 Haribhau also came behind the jeep. They opened the backside door of the jeep. They dragged us out of the jeep. They dragged Ankush Gholap, Shivaji Sanas, and myself, out of the jeep. After dragging out of the jeep, accused No.3 Bhausaheb Kharuse caught hold Ankush. Thereafter, accused No.1 Pandharinath

accused No.2 Maruti assaulted Ankush by Sattur and knife, Ankush was assaulted at his chest, stomack backside of the head and back. The intestine of the Ankush came out of the stomach and he fall, on ground. Thereafter, the accused started assaulting Shivaji Sanas. Shivaji Sanas rescued himself from the hands of the accused and ran away. Accused No.4 Raju caught hold of me. The accused No.6 Subhash inflicted two blows on my chest. Accused No. 2 Maruti inflicted blows on my back. I fall in front of the shop of Mhasawade by haltering. The persons who had worn red shirt, accused No. 5 inflicted blows on my right hand."

34. The relevant paragraph of the deposition of PW-9 reads as under:

"3. On 27.4.1999 … Bhausabeb Kharuse came on motorcycle, along with Pandharinath Deoba Gholap and Maruti Ramchandra Gholap. With them, Raju Shirawale, came on bullet motor-cycle with Subhash Pawar and one unknown person wearing red shirt. The above persons came on the motorcycles, are known to me. I can identify them, if shown to me. They are present in the court-hall. (The witness went to the dock where the accused persons are sitting. He touched one accused sitting amongst others, and told his name as Pandharinath Gholap. I verified the same. The accused told his name as Pandharinath Gholap. He is accused told his name as Pandharinath Gholp. He is accused No.1. The witness pointed finger to one person of the accused sitting amongst others and told his name as Maruti Gholap. The accused told his name Maruti Gholap. He is accused No.2. The witness pointed one of the accused sitting sitting amongst the other and told his name as Bhausaheb Kharuse. The accused told his name as Haribhau Dinkar Kharuse. He is accused No.3. The witness pointed one of the accused sitting amongst the others and told his name as Raju Shirawale. The accused stood up and told his name as Raju Shirawale. He is accused No.4. The witness pointed one of the accused sitting in the dock and told his name as Subhash Pawar. The accused stood and told his name as Subhash Raghunath Pawar. He is accused No.6. The witness pointed

one of the accused sitting in the dock and told that he is unknown person who was wearing red shirt at that time. The accused stood and hold his name Vitthal Baburao Shinde. He is accused No. 5. The accused persons stopped their motor-cycles by the side of our jeep. They got down from the motor-cycles. They removed the weapons from the diccies of their motor-cycles. The accused No.2 Maruti Gholap was holding Sattur in his hand. Accused No. 1 Pandharinath Gholap accused No. 3 Haribhau Kharuse, accused No.4 Raju Shirawale, accused No.5 who was wearing red shirt and accused No. 6 Subhash were holding knives in their hands. Accused No.3 Bhausaheb Kharuse then went to Sopan Gholap. All other accused came behind our jeep. They opened the back-door of the jeep and dragged us out of the jeep. Accused No.3 Bhausaheb Kharuse ought hold Ankush. The accused No.2 Maruti and accused No.1 Pandharinath assaulted Ankush by Sattur and knife. Ankush was assaulted on his stomach, chest, on both the hands, back his head, and on legs. The intestine of the Ankush came out of the stomach, and he fall down on earth. Thereafter, the accused No.1 Pandharinath, accused No.2 Maruti, accused No.6 Subhash and accused No.5 unknown person wearing red shirt and accused No.4 Raju Shirawale came to me. The accused No.2 Maruti Gholap inflicted blow on backside of my head, accused No.6 Subhash Pawar inflicted blow on my hand, accused No.1 Pandharinath Gholap inflicted blow on my waist. I feel uneasy and I fell down on the earth. All the accused then went towards the Rajendra Gholap and assaulted him. In order to save myself I ran towards vegetable market."

35. On a careful perusal of the above depositions, it is revealed that the testimonies of the eyewitnesses are natural, coherent and mutually corroborative on all material particulars. They consistently deposed that on 27.04.1999, the accused persons, including the present

appellants, arrived at the scene on two motorcycles armed with deadly weapons such as knives and *sattur*. The appellants actively facilitated the commission of the offence by accompanying the co-accused persons, ensuring the confinement of the victims and participating in the coordinated assault.

36. PW-1 and PW-7 categorically stated that appellant no. 1 and 2 (accused no. 3 and 4) were among those who surrounded the deceased and the injured witnesses, thereby preventing their escape and were fully aware that the co-accused persons were armed. The evidence further establishes that appellant (accused no.6) inflicted grievous injuries upon PW-7, demonstrating his direct participation in the attack. PW-9 corroborated these accounts and unambiguously identified all three appellants as members of the group acting in concert and sharing a common objective.

37. The consistent narrative of these eyewitnesses leaves no room for doubt that appellants no. 1 and 2 (accused no. 3 and 4), by transporting the armed assailants to the spot and facilitating the attack, and appellant (accused no. 6), by inflicting injuries during the assault, were integral participants in the execution of the unlawful design.

Medical Corroboration

38. The High Court also noted the medical evidence in the present case, which reads as under:

> *"8. As noted earlier P.W.16- had conducted postmortem examination of the dead body of Ankush on 27th April, 1999 at about 2.30 p.m., and sent the postmortem report at Exhibit 70. As per Dr. Praveen Haribhau Chaudhary the deceased Ankush had sustained the following injuries:-…*
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> *9. … The Medical Officer further stated that the external as well as internal injuries could be caused by hard and sharp weapon like that of Sattur and knife, articles 7, 9 and 10 shown to him in the Court while he was in the witness box. He also stated that all the injuries were ante-mortem and fresh and they were sufficient to cause death in the ordinary course of nature. In his opinion the deceased died due to haemorrhagic shock due to multiple injuries to vital organs like heart, liver, kidney, intestinal vessels and brain.*
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> *10. P.W.9- Shivaji Sakharam Sanas was also examined by him on 27th April, 1999 when he was taken to the Rural Hospital, Bhor without a police yadi. He had prepared emergency case papers for the patient (accused No.69) and as per him the injuries were grievous in nature. The following external injuries were seen on the person of Shivaji Sakharam Sanas:- …*
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> *He also stated that if the patient would not have got proper treatment immediately, he would have landed in haemorrhagic shock due to blood loss which would have possibly caused his death. Hence the patient was immediately referred to Sassoon Hospital at Pune for further treatment because the injuries required expert management. As per the evidence of P.W.19 Dr. P.K. Sancheti, P.W.9 - Shivaji Sakharam Sanas came to be admitted in the Sancheti Hospital at Pune on 27th April, 1999 at about 5.00*

p.m., and apart from the injuries noted by P.W.16, Shivaji had sustained the following injuries on his person:-…

P.W.19 stated before the Court that the injuries on the had was of grievous nature and they could be caused by sharp and hard object like that of Sattur and knife shown to him in the Court. The injury on the hand could be possible by the knife as was shown to him. He also stated that Shivaji was issued a certificate on 6th May, 1999 and came to be discharged on the same day. He had placed before the Court the medical papers at Exhibit 76. He also admitted that he had treated Shivaji on 27th April, 1999 between 5.30 p.m. to 6.00 p.m., and Shivaji had given the history of assault.

11. As per P.W.21- Dr. Yogesh Pralhad Chaudhary, P.W.7- Rajendra Maruti Gholap was admitted at the KEM Hospital on 27th April, 1999 at 3.00 p.m., and he was discharged on 18th May, 1999 and the medical history was recorded in the case papers placed before the Court at Exhibit 79. He was operated on 28th April, 1999 and consequently on 13th May, 1999. When he had examined P.W.7-Rajendra Maruti Gholap on 27th April, 1999 the following injuries were noticed on his person: …

12. As per Dr. Yogesh Pralhad Chaudhary all the injuries could have been caused within 5 to 6 hours and by sharp weapons like sattur and knife. Article 7, 10, 40, 41 and 42 were shown to him before the Court. The injuries on the back had caused the perforation of anterior and posterior wall of descending colon which had caused feacal leak and peritonitis. The injuries on the chest and back were sufficient to cause death in the ordinary course of nature individually and collectively. P.W. 7- Rajendra Maruti Gholap was treated by Dr. S.A. Patki and his team. The history of the patient was recorded as it was told by the accompanying person i.e. Baburao Kothawale the father-in-law and the patient was brought from Goregaonkar Hospital at Bhor by him. The Doctor had noticed fracture on the 5th rib of the chest and was described as a serious injury. The said facture could have been caused by Article 7 if it was used by force. If the

knifes were used by force from the sharp edge they would cause incised wound and if the blow is given by the sharp side, then the edges of the wound would be clean-cut. He denied the suggestion that the injury on the chest and corresponding internal injury were not sufficient to cause death in the ordinary course of nature."

39. The medical evidence provides strong corroboration to the prosecution's case and reinforces the credibility of the eyewitness testimonies. PW-16, the doctor who conducted the post-mortem on the deceased, noted multiple incised and penetrating wounds on vital organs, such as the heart, liver and brain, injuries sufficient in the ordinary course of nature to cause death due to haemorrhagic shock. Similarly, PW-7 and PW-9 sustained grievous injuries, including rib fractures and internal perforations, as confirmed by two doctors, PW-19 and PW-21, both of whom testified that the injuries were caused by sharp and hard weapons like knives and *sattur*.

40. These medical findings align perfectly with the ocular evidence and highlight the brutal and coordinated nature of the attack. The timing, nature and multiplicity of injuries clearly indicate a deliberate and orchestrated assault executed in furtherance of a common unlawful object. The harmony between the medical and ocular evidence leaves

no scope for doubt as to the active participation of the appellants in the premeditated attack.

Common Object and Vicarious Liability

41. The principal defence advanced on behalf of the appellants is that there was no common object to commit murder and, at best, the intention was only to cause hurt. This contention is untenable in light of the evidence on record. The prosecution has clearly established that all the accused persons, including the appellants, arrived together, armed with lethal weapons and jointly executed a deliberate and coordinated assault on the deceased and other victims. The nature of the weapons used, coupled with the ferocity and precision of the attack, unmistakably demonstrates that the common object of the assembly extended well beyond merely causing hurt and encompassed the commission of murder.

42. Section 149 of the IPC unequivocally provides that every member of an unlawful assembly is guilty of an offence committed in prosecution of the common object or of one which such members knew to be likely committed in furtherance thereof. In ***Masalti (supra) (para 17)***, this Court clarified that it is not necessary for each member of the unlawful assembly to have committed a specific overt act. Once

participation and sharing of the common object are proved, every member becomes vicariously liable for offences committed in prosecution of that object.

43. In the present case, the evidence conclusively establishes that all three appellants were members of an unlawful assembly that carried out a premeditated and violent attack resulting in the death of the deceased and grievous injuries to PW-7 and PW-9. The role of appellant (accused no. 6) in inflicting serious injuries upon PW-7 demonstrates his direct involvement and awareness of the collective design. The appellant no. 1 and 2 (accused no. 3 and 4), who transported the armed assailants to the scene, played an equally crucial role by facilitating the attack and ensuring its execution in furtherance of the common object.

44. The cumulative evidence clearly shows that the appellants were not passive spectators but active participants and facilitators in a deliberate and planned assault. Their conduct and presence at the scene, in concert with the armed co-accused persons, establish their common intention and vicarious liability under Sections 302 and 307 read with Section 149 of the IPC.

CONCLUSION

45. Upon a comprehensive appraisal of the entire record, this Court finds that the prosecution has proved beyond reasonable doubt that all three appellants were members of an unlawful assembly sharing the common object to commit murder and grievous assault. The ocular testimonies of PW-1, PW-7 and PW-9, being natural, cogent and corroborated by medical evidence, clearly establish the active participation of the appellants in a concerted and premeditated attack. The appellants have failed to raise any reasonable doubt or to demonstrate any perversity in the findings of the High Court.

46. The High Court was correct in holding that the Trial Court's acquittal was unsustainable, as it failed to properly appreciate the material evidence and adopted an implausible view contrary to the record. The impugned judgment of the High Court reflects a careful and reasoned reappraisal of the evidence and cannot be said to suffer from any illegality, perversity or infirmity.

47. In view of the consistent and corroborated ocular and medical evidence, coupled with the established presence and active participation of accused no. 3, 4 and 6 (the appellants herein) in furtherance of the common object, this Court finds no error in the conviction recorded by the High Court. The ingredients of Section 149

of the IPC stand fully satisfied, rendering each appellant vicariously liable for the offences committed in prosecution of the unlawful object.

48. Accordingly, this Court finds no merit in the present appeals. The conviction and sentence imposed on accused no. 3, 4 and 6 (the appellants herein) by the High Court *vide* the impugned judgment dated 02.02.2011 are affirmed. The appeals are dismissed as devoid of merit.

.....J.
[PRASHANT KUMAR MISHRA]

.....J.
[VIPUL M. PANCHOLI]

NEW DELHI,
OCTOBER 29, 2025.