ISSUE # 05 I AUGUST, 2024

THE LAW LEDGER

The Fortnightly e-journal from Delhi Police Academy



THE SUPREME COURT OF INDIA

SURESH DATTU BHOJANE & ANR. VS STATE OF MAHARASHTRA

Presence Of Accused As Part Of Unlawful Assembly Itself Is Sufficient For Conviction U/S 149 IPC

Issue # 05 I August 2024

THE LAW LEDGER

Presence Of Accused As Part Of Unlawful Assembly Itself Is Sufficient For Conviction U/S 149 IPC

SURESH DATTU BHOJANE & ANR.

VS STATE OF MAHARASHTRA

BRIEF OF THE JUDGEMENT



CRIMINAL APPEAL NO. 412 OF 2012
Date of Judgement: 08/07/2024



Click here to Read the Complete Judgement

Facts of the Case:

Under challenge in the present criminal appeals is the judgment and order dated 18.10.2010 of High Court of Judicature at Bombay whereby it has dismissed the criminal appeals of appellants confirming the judgment and order of the Trial Court 2 dated 21.02.2002 convicting accused Nos. 1-6 including the present appellants (i.e. A-3, A-5 & A-6) for offences punishable under Sections 147, 148, 302 r/w 149 and 307 r/w 149 of IPC and at the same time acquitting A-7 and A-8.

The background of the matter is that on February 6, 1999, a group of accused, including the appellants, attacked one Mohan Mungase at the house of Mama Bhojane in Village Borale, Maharashtra. This assault resulted in Mohan's death and injuries to his brother, Nandkumar Mungase, and another individual, Maruti Nakate. The conflict originated from a dispute over the management of a country liquor shop, which was initially managed by one of the accused but later entrusted to the deceased and his brother. The trial court convicted the accused, including A-3(Satish Rama Bhojane), A-5 (Suresh Dattu Bhojane), and A-6 (Anna Bhojane),under Sections 147, 148, 302 r/w 149, and 307 r/w 149 IPC, sentencing them to life imprisonment for murder.

The conviction is challenged herein mainly on the ground that there was no active participation of the appellants visible from evidence on record so as to form a common object which would warrant the application of Section 149 of IPC.

Issues Advanced

1. **Whether the accused persons, despite not being specifically assigned roles or armed with weapons, could be convicted under Section 149 of the IPC for their involvement in the unlawful assembly with the common object to commit murder?**

Judgment

1. The Hon'ble Supreme Court upheld the convictions of all three appellants (A-3, A-5, and A-6).

2. The Hon'ble Court observed that ***the aforesaid accused persons may not be armed and may not have been assigned any specific role but nonetheless their presence at the scene of the crime along with other accused persons is duly established. They were held to be part of the unlawful assembly with common object.*** *The evidence of Nandkumar Mungase (PW-5) proves the presence of Suresh (A-5) and Anna (A-6). He has also stated that they were armed with swords at the material time. They were likely to strike him with sword but was timely saved by Savita (PW-4). The testimony of Savita (PW-4) also speaks about the armed presence of both the above accused and that they have gheraoed the deceased Mohan Mungase. The evidence of both the above eye-witnesses clearly proves that both of them were present at the scene of the crime and were having the common object to kill Mohan Mungase. All of them had joined together and have come to the house of Mama Bhojane after a quarrel was picked up with the deceased Mohan Mungase earlier to the incident at the shop of Shiva Chougale situate in the village. (Para 27)*

3. ***The accused A-5 and A-6 are undoubtedly part of unlawful assembly and were having the common object viz the killing of deceased Mohan Mungase and his brother Nandkumar Mungase. They had a clear motive for the above purpose*** *as the country liquor shop which was settled in favour of A-1 was subsequently entrusted to the deceased and his brother by the owner Mama Bhojane. The accused A-5 and A-6 were present even at the time when the deceased was threatened with dire consequences while he was sitting on the platform of a shop just before the fatal incident. They both were present in the house of Mama Bhojane when the crime took place.*

The assembly of all the accused persons in the house of Mama Bhojane with the deadly weapons was apparently for the purposes of teaching a lesson to the deceased and his brother to settle the score arising from the entrustment of the country liquor shop. Therefore, both A-5 and A-6 were certainly part of the unlawful assembly having the common object and as such are guilty of the offence as envisaged under Section 149 of the IPC*. (Para 28)*

4. The Court highlighted that **under Section 149 of the IPC, the mere presence of accused individuals at the crime scene as part of an unlawful assembly with a common object is sufficient for conviction, even if they did not actively participate in the crime**. Although A-5 and A-6 were not assigned specific roles or armed with weapons, their presence and membership in the unlawful assembly, which had the common objective of committing the crime, met the criteria for conviction under Section 149.

5. Appellant A-3 has also sought remission on the grounds of having served over 13 years of incarceration, requesting either a reduction of his sentence to the time already served or premature release. The Court found no reason to interfere with his conviction and sentence as all eyewitnesses testified to his active role, noting that he was armed with a deadly weapon (sword) and directly involved in the assault on the deceased and others. The Court noted that life imprisonment is the minimum sentence for murder and could not bereduced. However, it acknowledged that A-3, or any of the other appellants,could apply for remission in accordance with the state's remission policy.

6. The Hon'ble apex court dismissed the appeals with the observation that in the event any application or representation is made by any of the appellants for remission for premature release, the same shall be considered most expeditiously by the authority concerned in accordance with law and in the light of the remission policy of the State in vogue.