

Seth Radhey Lal v. Ladli Parshad
 Falshaw, J.

barred by the provisions of section 11, Civil Procedure Code. Almost the same words were used again by Din Mohammad, J., in *Sir Ganga Ram Trust Society Lahore v. Mehta Sundar Lal and another* (1). Those decisions, however, were based on the particular facts of the cases decided by them, and while there can be no quarrel with the proposition laid down, it does not seem to me to be at all applicable in the present case, in which quite obviously it was open to the judgment debtor in his first petition under section 47, Civil Procedure Code, to claim rendition of accounts for the period in question on the alternative grounds that the decree-holders were enjoying use and occupation of the property in dispute either as partners or as mortgagees or charge-holders. The essential basis of the claim was the same and it could not possibly have caused any confusion to have claimed the relief on these alternative grounds. In the circumstances, I consider that the matter was correctly decided by the lower Court and I accordingly dismiss all the three appeals with costs.

APPELLATE CRIMINAL

Before Kapur and Passey, JJ.

JIT SINGH AND OTHERS.—Appellants

versus

THE STATE,—Respondent

Criminal Appeal No. 199 of 1956.

1957
 Jan., 9th

Indian Penal Code (XLV of 1860)—Section 149—Common object and common intention—Difference between—‘Prosecution of the Common object’—Meaning of.

Held, that common object is different from common intention in that it does not require prior consent and common meeting of minds before the attack and an unlawful object can develop after the people get together. So

(1) A.I.R. 1940 Lah. 27.

under section 149 there need not be prior meeting of minds. It is enough that each person has the same object in view and they act as an assembly to achieve that object.

Held further, that the words "in prosecution of the common object" do not mean "during the prosecution of the common object of the assembly". It means that the offence committed was immediately connected with the common object of the assembly or the act is one which upon the evidence appears to have been done with a view to accomplish the common object attributed to the members of the assembly. The words "in prosecution of the common object" have to be strictly construed as equivalent to "in order to attain common object."

Queen v. Sabid Ali (1), *Barendra Kumar Ghosh v. The King Emperor* (2), *Queen v. Basheshar* (3), *Rex v. George Edward Pridmore* (4), *Ram Charan v. King Emperor* (5), *Gajanand v. State of Uttar Pardesh* (6), *U. N. Singh v. King Emperor* (7), *Sukha v. The State of Rajasthan* (8), *Chikkarange Gowda and others v. State of Mysore* (9), and *Raghunandan v. King Emperor* (10), referred to.

Appeal from the order of Shri B. L. Goswami, Additional Sessions Judge, Amritsar, dated the 20th April, 1956, convicting the appellants.

H. L. SIBBAL, for Appellants.

HAR PARSHAD, Assistant Advocate-General, for Respondent.

JUDGMENT

KAPUR, J. This judgment will dispose of Criminal Appeals Nos. 199 of 1956, 210 of 1956, 238 of 1956, 240 of 1956 and 291 of 1956. The first four

-
- (1) (1873) 20 W.R. (Cr.) 5.
 - (2) 52 I.A. 40.
 - (3) I.L.R. 9 All. 645, 649.
 - (4) (1913) 8 Cr. Appl. Rep. 198.
 - (5) I.L.R. 24 Pat. 766.
 - (6) A.I.R. 1954 S.C. 695.
 - (7) I.L.R. 25 Pat. 215.
 - (8) A.I.R. 1956 S.C. 513.
 - (9) A.I.R. 1956 S.C. 731.
 - (10) I.L.R. 10 Luck. 320.

Jit Singh
and others
v.
The State

Kapur, J.

appeals have been brought by the various accused who were tried for various offences and were convicted and Criminal Appeal No. 291 of 1956 has been brought by the State against all the accused persons except Bahadur Singh for their being convicted under section 302, read with section 149 in addition to the other offences.

All the accused have been convicted under section 201 and have been sentenced to one year's rigorous imprisonment each. They have also been convicted under section 326, read with section 149, section 324, read with section 149 and section 323, read with section 149, Indian Penal Code, and sentenced to two years, one year and six 'months' rigorous imprisonment each, respectively. Bahadur Singh who is appellants in Criminal Appeal No. 240 of 1956, has also been convicted under section 302 and has been sentenced to imprisonment for life.

Iqbal Singh, the father of the deceased Ajmer Singh, has also filed Criminal Revision No. 620 of 1956, for setting aside the order of acquittal under section 302, read with section 149 and for retrial of the accused persons.

In Criminal Appeal No. 199 of 1956, the appellants are Jit Singh, son of Labh Singh, *Jat* (15), Gurmej Singh (18) and his father, Gaura Singh, *Jat* (45). Jit Singh was armed with a *dang*, Gurmej Singh with a spear and Gaura Singh with a *takwa*. Jit Singh and Gaura Singh were arrested on the 1st May, 1955, and Gurmej Singh was arrested on the 12th May, 1955.

In Criminal Appeal No. 210 of 1956, the appellants are Sohan Singh (72), and his son Dharam Singh (20). The former had a stick and the latter a *takwa*.

In Criminal Appeal No. 238 of 1956, the appellants are Sadhu Singh Mazhabi (60), who had a spear and his sons Jit Singh (22), who had a *sota* and Jogindar Singh *alias* Ghuga (20), who had a *sua* (a stick with a nail at the end), Kartar Singh Mazhabi (25), who had a spear, Sohan Singh, son of Surain Singh Mazhabi, who had a *dang* and his son Daya Singh (18), who had a *takwa*, Surjan Singh son of Bir Singh Mazhabi (20), who had a *dang*, Bhagat Singh Mazhabi (65) who had a *kirpan*, and Dharam Singh son of Nazar Singh (20), who had a *dang*. This Dharam Singh is the son of the sister of Sadhu Singh, accused.

Jit Singh
and others
v.
The State
Kapur, J.

In Criminal Appeal No. 240 of 1956, the appellant is Bahadur Singh Sansi (16), who had a *takwa*.

The deceased was Ajmer Singh, a Jat Sikh of 24 years of age who has been described by various witnesses as *sinazor* (meaning a bully). He was murdered at about sunset on the 30th April, 1955, and the report was made at the police station by Balwant Singh, his brother, at 9-30 p.m. the same day. All the accused were arrested on the 1st May, 1955, excepting Jit Singh son of Sadhu Singh Mazhabi who was arrested on the 12th, Kartar Singh who was arrested on the 3rd May and Gurmej Singh son of Gaura Singh who was arrested on the 12th May. The Sub-Inspector of Police, Pritam Singh, P.W. 14, arrived in the village at 11-30 p.m. and started investigation

According to Balwant Singh, P.W. 9, the motives of the offence were:—

1. One Kesar Singh Mazhabi had filed a complaint about receiving some injuries against Ajmer Singh in the Panchayat-deh but Ajmer Singh did not appear on being summoned and the Panchayat had

Jit Singh
and others
v.
The State

Kapur, J.

to get warrants of arrest issued against him. Sohan Singh, Ramgarhia, accused was the Sarpanch of the Panchayat.

2. Ajmer Singh used to publically say that Sohan Singh, Sarpanch was carrying on with the wife of Sadhu Singh Mazhabi. Sadhu Singh Mazhabi was also a member of the Panchayat.
3. Two months before the occurrence Ajmer Singh had gone to the house of Bahadur (Singh) Sansi for purchasing a cock. There was some dispute about the price between Ajmer Singh and the mother of Bahadur. Ajmer Singh gave a beating to Naraini, mother of Bahadur.
4. Two days before the occurrence, Ajmer Singh gave a beating to Jogindar Singh Mazhabi. Gurmej Singh Jat, tried to rescue Jogindar Singh and Ajmer Singh gave him also a beating.

The case for the prosecution is that on the evening of the 30th April, 1955, at about sunset Ajmer Singh deceased and Balwant Singh, P.W. 9, were returning from village Dhand. When they reached near the grave of Pallu Shah all the fifteen accused persons who were lying in wait appeared at the place of occurrence, and Sohan Singh, Sarpanch, appellant in Criminal Appeal No. 210 of 1956, raised a *lalkara* that Ajmer Singh should not be allowed to go alive. Both Ajmer Singh and the witness Balwant Singh thereupon ran from the place and when they were in front of the gate of the *shivala*, Sadhu Singh Mazhabi overtook Ajmer Singh and gave him a spear blow which struck him in his buttocks and then gave him another blow

with the spear using it as a *dang* which struck him on his head as a result of which he fell down. Mahbub Singh, Indar Singh, members of the Panchayat, and Upar Singh, *Kuram* of Mahbub Singh, also came there and they raised an alarm and went forward to rescue Ajmer Singh. At that time Sohan Singh again raised a *lalkara* that the rescuers of Ajmer Singh should not be spared. Indar Singh was then attacked by Gurmej Singh, Jit Singh Mazhabi, Sohan Singh Mazhabi and Bhai Dharam Singh. Mahbub Singh was attacked by Jit Singh, Jat, Jogindar Singh Mazhabi, Bhagat Singh Mazhabi and Daya Singh Mazhabi, and Upar Singh was attacked by Kartar Singh Mazhabi Gaura Singh, Jat and Surjan Singh Mazhabi, Dharam Singh Mazhabi gave a *dang* blow to one Bawa Singh who had also arrived at the spot. Bahadur Singh then caused injuries with a *takwa* to Ajmer Singh while he had fallen down and finished him. Mahbub Singh then ran back and then Sadhu Singh and Bahadur Singh caught hold of the legs of the dead body of Ajmer Singh and dragged it towards the grave of Pallu Shah and from there into the house of Sadhu Singh. Sohan Singh Mazhabi caught hold of Indar Singh by his long hair and Surjan Singh caught hold of Upar Singh by his hair and the others pushed them and they also took them into the house of Sadhu Singh. Mahbub Singh and Bawa Singh ran away and Balwant Singh made the first information report. Sub-Inspector Pritam Singh P.W. 14, went to the house of Sadhu Singh after he had come to the village at 11-30 p.m. and he found that there were two outer doors of the house of Sadhu Singh and both of them were chained from inside. Outside the two doors were sitting Karam Singh, Lambardar and Dhanwant Singh, P.Ws and others. He shouted to Sadhu Singh to open the door telling him that he was a police officer which Sadhu Singh did and the Sub-Inspector found Joginder Singh

Jit Singh
and others
v.
The State

Kapur, J.

Jit Singh
and others
^{v.}
The State

Kapur, J.

alias Ghoga, Daya Singh and Dharam Singh Mazhabi, accused inside the house. Indar Singh and Upar Singh witnesses were in one room and it was chained from outside. The Sub-Inspector asked Sadhu Singh as to where the body of Ajmer Singh was and the latter said that it was in his room and this statement was taken down as Exhibit P.E. A key was produced by Sadhu Singh and the lock on the door of the room was opened and the dead body of Ajmer Singh was found in it.

At the time when the Sub-Inspector went into the house of Sadhu Singh he found that Daya Singh son of Sohan Singh Mazhabi, had a bloodstained *takwa* and Jogindar Singh *alias* Ghoga had a blood-stained *sua*. Both of them were taken into possession. Daya Singh's shirt was also blood-stained and so was the shirt of Jogindar Singh Mazhabi. The *chaddar* of Sadhu Singh was also blood-stained and also his shirt which were taken into possession.

Besides this the shirt of Jit Singh, son of Labh Singh, was taken into possession on the 1st May, 1955. It was blood-stained. Bahadur Singh on the same day produced a *takwa* which was also blood-stained. Sohan Singh, son of Surain Singh, Mazhabi also produced a *dang* which was found to be blood-stained. All these articles have been found to be stained with human blood.

Balwant Singh P.W. 9 is the first eye-witness who has appeared for the State. He is the brother of Ajmer Singh, deceased. He has supported the story of the prosecution that all the fifteen accused persons appeared from near the grave and that Sohan Singh, Sarpanch raised a *lalkara*, and he has deposed about the carrying of the various weapons by the different accused. He further stated that when they reached near the gate of the

shivala Sadhu Singh gave a spear blow to Ajmer Singh which struck him on his buttocks and another blow was given with the spear but *dang*-wise as a result of which Ajmer Singh fell down. Bahadur Singh Sansi then gave him a *takwa* blow on his head. Witnesses Indar Singh, Upar Singh and Mahbub Singh reached the spot, they and Bawa Singh raised a hue and cry and also attempted to rescue Ajmer Singh and then various accused persons, whose names I have given above while giving the story for the prosecution, attacked these various helpers. His story is that thereafter Sadhu Singh and Bahadur Singh caught hold of the legs of Ajmer Singh and dragged him towards the grave of Pallu Shah and some other accused also inflicted injuries on Ajmer Singh but who he does not say. At that time according to this witness Ajmer Singh was dead. He has also supported the catching hold of Indar Singh by Sohan Singh Mazhabi and of Upar Singh by Surjan Singh and of the accused persons pushing them and taking them towards the side where the body of Ajmer Singh had been taken. This is all that he has stated in regard to the actual occurrence. In cross-examination he stated that Indar Singh and his two companions were injured after Bahadur Singh had injured Ajmer Singh. In his first information report he did not mention that anybody other than Bahadur Singh and Sadhu Singh inflicted any injury on Ajmer Singh. When asked how many injuries were caused to Ajmer Singh, he said he could not say whether there were five or fifty and that Bahadur Singh inflicted two or three injuries on Ajmer Singh. In his first information report he did not state where the blow given by Bahadur Singh with a *takwa* fell, and, of course, he did not say that it fell on his head, nor did he say in the first information report as to who were the persons who had caused injuries to Indar Singh, Mahbub

Jit Singh
and others
v.
The State
—
Kapur, J.

Jit Singh
and others
v.
The State
—
Kapur, J.

Singh, Upar Singh and Bawa Singh, nor did he give the identity of persons who had caught hold of Indar Singh and Upar Singh by their long hair. In the first information report Balwant Singh stated at page 15, line 30 of the paper-book that Sadhu Singh and Bahadur Singh had caught hold of the legs of the dead body of Ajmer Singh and dragged it towards the *khui*.

Next witness for the prosecution is Indar Singh P.W. 10. He stated that he came out of his house and met both Mahbub Singh and Upar Singh and they went towards the *shivala* on their way to the hospital. They saw Balwant Singh and Ajmer Singh running towards the *shivala* pursued by Sadhu Singh and all the other fourteen accused. When they reached near Ajmer Singh, Sadhu Singh gave the latter a blow on his back and then inflicted another injury on Ajmer Singh *dang*-wise as a result of which Ajmer Singh fell down and Bahadur Singh then gave *takwa* blows on Ajmer Singh. Seeing this Mahbub Singh, Upar Singh and this witness came forward to rescue Ajmer Singh and then Gurmej Singh, Jit Singh Mazhabi, Sohan Singh Mazhabi and Dharam Singh carpenter inflicted injuries on him (Indar Singh). Mahbub Singh was attacked by Jogindar Singh Mazhabi, Jit Singh Jat, Bhagat Singh Mazhabi and Daya Singh Mazhabi, and Upar Singh by Gaura Singh, Kartar Singh and Surjan Singh. Bahadur Singh gave blows to Ajmer Singh on his head and some other accused inflicted injuries on Ajmer Singh, but he could not say how many. Ajmer Singh died at the spot and then his dead body was dragged by Sadhu Singh and Bahadur Singh towards the house of Sadhu Singh and Sohan Singh caught hold of this witness by his long hair and others kicked him and they carried him "away". Upar Singh was caught hold of by Surjan Singh and he was also pushed towards the house of Sadhu Singh

and they were confined in a room. Ajmer Singh's body was taken into another room but no further injuries were inflicted on Indar Singh and Upar Singh and they were rescued by the police when they arrived about midnight. The witness has also deposed about the rumour started by Ajmer Singh that Sohan Singh had illicit connections with the wife of Sadhu Singh and that Bahadur Singh had complained to him in his capacity as a *panch* that Ajmer Singh had beaten his mother. This was about a month or a month-and-a-half before the occurrence. He has supported the story of Ajmer Singh giving a beating to Jogindar Singh and also to Gurmej Singh. In his cross-examination he stated that Ajmer Singh was a *sinazor* man (a bully). In his statement before the police there is no mention of Bahadur Singh inflicting injuries on the head of Ajmer Singh. He could not say even approximately the number of accused persons who inflicted injuries on Ajmer Singh excepting Bahadur Singh and Sadhu Singh, and he could not say whether the number was two or ten. He is a *panch* who was suspended about ten months before the occurrence but evidently Sohan Singh was not. The suspension was because he refused to pay taxes and he was still under suspension while others had been reinstated. When asked if it was on the complaint of Sohan Singh, *Sarpanch*, that he was suspended, he said he did not know.

Jit Singh
and others
v.
The State
Kapur, J.

The third witness is Mahbub Singh P.W. 11. He has stated the same thing in regard to the attack on Ajmer Singh and on the persons who came to rescue him. He ran away and was not, therefore, dragged into the house of Sadhu Singh. In his statement before the police he did not state that Bahadur Singh had given injuries on the head of Ajmer Singh.

Jit Singh
and others
v.
The State
—
Kapur, J.

The next witness is Upar Singh P. W. 12. His story in regard to the attack on Ajmer Singh is the same as of other witnesses. But he stated that after Sadhu Singh had given injuries to Ajmer Singh the latter fell down. Bahadur Singh then gave him three or four *takwa* blows but he did not know where they fell, and when he along with Mahbub Singh and Indar Singh stepped forward to save Ajmer Singh, they were attacked by various persons. He stated at page 47, line 36 of the paper-book that some of the accused persons were "similarly hurling blows on Ajmer Singh with the blunt side of their weapons". They were then taken into the house of Sadhu Singh and were confined. He belongs to another village and his son is betrothed to the daughter of Mahbub Singh. Before the police he had not mentioned the number of injuries inflicted by Bahadur Singh, nor was he called upon to identify any of the accused. He also admitted that Ajmer Singh had died before he was dragged. He denied that either he or Mahbub Singh or Indar Singh had been called by Ajmer Singh to insult Sadhu Singh, accused and his wife.

Besides these eye-witnesses there is the testimony of Karam Singh, P.W. 8, and Dhanwant Singh, P. W. 13, who were standing outside the house of Sadhu Singh to guard against the escape of the accused persons who were in the house. Karam Singh, P. W., stated that there were marks of dragging and there was also a trail of blood along the marks of dragging, and then when he went to the house of Sadhu Singh he called upon the latter to open the door but he refused and stated that they had murdered the man who they wanted to murder and had confined two others, and as he did not open the door he sat outside the door along with two others and three other persons sat outside the other door till the arrival of the police. The

evidence of Dhanwant Singh is the same on the question of admission by Sadhu Singh of murdering the man and of their standing outside the door of Sadhu Singh.

Jit Singh
and others
v.
The State

Kapur, J.

The other material witness excepting the doctor is Sub-Inspector Pritam Singh P.W. 14, the material parts of whose evidence I have given already in that he arrived and took out the dead and two detained persons from the house of Sadhu Singh on the key being given to him by Sadhu Singh and that the dead body was in a *kotha* other than the one where the other two persons were being confined.

Dr. Chandan Singh, P.W. 15, performed the post-mortem examination and found on the dead body of Ajmer Singh an incised wound 9" x 6" x 5" on the head. The bones of the head were smashed and the brain was grossly damaged. There were seventeen other injuries some of which were multiple, some incised and others abrasions. According to the doctor the injury on the head was individually fatal and was sufficient to cause death in the ordinary course of nature and the injury on the buttocks was grievous. All other injuries were individually simple.

Dr. Narain Singh P. W. 1, examined the other injured persons. Upar Singh had sharp-edged and sharp pointed weapon injuries but they were simple excepting the one which was kept under observation. Mahbub Singh had ten injuries two incised and the rest abrasions, but they were all simple. Indar Singh had eleven injuries—one penetrating, one incised and rest either abrasions or contusions—but they were all simple.

This is all the evidence which the prosecution has produced.

Jit Singh
and others
v.
The State
Kapur, J.

All the accused have denied their presence at the spot excepting Sadhu Singh who stated that Ajmer Singh, Indar Singh, Upar Singh and Mahbub Singh trespassed into his house while drunk. Ajmer Singh was a bully and he insulted the inmates. They first abused his wife and then dragged her by the arm. Then all the trespassers shouted that she was the wife of Sohan Singh, *Sarpanch* and not his (Sadhu Singh's) wife. Thereupon Bhagtu, Wasawa, Haria, Tochi *alias* Tilok, son of Sadhu Singh, accused and Mangal Singh, father-in-law of Sadhu Singh, accused who were also there caused injuries to Ajmer Singh and his companions in self-defence. The wife of Sadhu Singh, accused, took up a *takwa* and struck Ajmer Singh, deceased. As a result of all these injuries Ajmer Singh died. He denied the presence of any of the co-accused there. They kept confined the dead body and the companions of Ajmer Singh till the arrival of the police.

It appears to me established by the testimony of these various witnesses that the accused did waylay the deceased Ajmer Singh near the grave of Pallu Shah and when Ajmer Singh along with his brother Balwant Singh, P.W. 9, started running they were followed by the accused and Sadhu Singh was the first person to give a dangerous though not a fatal injury to the deceased with his spear. All the eye-witnesses in Court stated that Bahadur Singh gave the injury on the head which has been described by the doctor to be the real cause of death. No doubt Balwant Singh has stated in the first information report that Bahadur Singh caused injuries to Ajmer Singh while he had fallen down, but he did not say that he struck the deceased on the head. This is a very crucial point. Similarly the other witnesses who have stated in Court that Bahadur Singh gave the head injury did not say so in their statements before the police.

I am not satisfied, therefore, that the head injury which is the cause of death can be ascribed to Bahadur Singh. His case, therefore, is no different from the case of the other accused.

Jit Singh
and others
v.
The State

Kapur, J.

It is not proved, in my view, that the common object of the unlawful assembly was to cause death because if it had been so, they could have caused very much more extensive injuries to the deceased than they actually did. The evidence discloses that the common intention was to cause grievous injury and not murder.

It has been held that murder and assault are not mutually exclusive because murder is also a kind of an assault, but in order to convict for an offence of murder there must either be necessary intention or knowledge, see *U. N. Singh v. King Emperor* (1). But counsel for the State who has filed an appeal for convicting every accused of murder, submits that when people armed with dangerous weapons lie in wait and one of the members of the assembly causes death, all the members of the unlawful assembly are constructively liable of murder and must be convicted of that offence. For this purpose it is necessary to examine the various authorities on the subject. The essentials of section 149 of the Indian Penal Code are—

- (1) commission of an offence by a member of an unlawful assembly.
- (2) commission of an offence in prosecution of the common object of an unlawful assembly.
- (3) offence must be such as members of an unlawful assembly knew to be likely to be committed in prosecution of that object.

(1) I.L.R. 25 Pat. 215, 223.

Jit Singh
and others
v.
The State
Kapur, J.

In *Queen v. Sabid Ali* (1) it was held that section 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring it within that section the act must be one which is done with a view to accomplish the common object of the unlawful assembly or it must be proved that the offence though committed in prosecution of the common object of the assembly is one which the accused knew would be likely to be committed in the prosecution of the common object. That was a case in which the common object of the unlawful assembly was to drive off the other party from occupation of land and one of the members of the attacking party fired a gun which killed one of the persons in the party trying to resist the forcible possession and the accused persons were convicted under section 148 of the Penal Code.

In *Barendra Kumar Ghosh v. The King-Emperor* (2), which was really a case under section 34 of the Indian Penal Code, the Privy Council pointed out at page 52 —

“Section 149, however, is certainly not otiose for in any case it creates a specific offence and deals with the punishment of that offence alone. It postulates an assembly of five or more persons having a common object—namely, one of those named in section 141: *Reg v. Sabid Ali* (1)—and then the doing of acts by members of it in prosecution of that object. There is a difference between object and intention, for,

(1) (1873) 20 W.R. (Cr.) 5=(1873) 11 Beng. L.R. 847, 859.

(2) 52 I.A. 40.

though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action, which is the leading feature of section 34, is replaced in section 149 by membership of the assembly at the time of the committing of the offence."

Jit Singh
and others
v.
The State
—
Kapur, J.

In an earlier case *Queen v. Basheshar* (1), Sir John Edge, C. J., had pointed out that section 149 does not create a new offence. It merely declares the principles of English Common Law that in a riot all are principals, the rioter who committed the offence being the principal of the first degree and the others of the second degree on the ground that they by their presence have aided and abetted the doing of the act. Reference was there made to *Rex v. John Royce* (2).

In *Rex v. George Edward Pridmore* (3), the law was stated—

"Was the nature of the enterprise, * * * such that every member of the unlawful assembly ought to have realised that murder was likely to be committed?"

There are two cases of the Patna High Court which may here be referred to. The first is *Ram Charan v. King Emperor* (4), where Pande, J., at page 780 made the following observations—

"The liability of the other members of the offence committed during the continuance of the occurrence rests upon the

(1) I.L.R. 9 All. 645, 649.

(2) (1767) 4 Bu. 2072 (arguments).

(3) (1913) 8 Cr. App. Rep. 198.

(4) I.L.R. 24 Pat. 766.

Jit Singh
and others
v.
The State

Kapur, J.

fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms, or behaviour at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the family then their liability for the offence committed during the occurrence does not arise. But when it may reasonably be held that other members of the assembly knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object then such other members of the assembly are liable for the offence committed to the same extent as the actual perpetrator of the crime.

Sir William Oldnall Russell says—

‘the blow given under such circumstances is in point of law the blow of all, and it is unnecessary to prove which struck the blow (Russell on crimes, page 117).’”

This has received the approval of the Supreme Court in the judgment of Mahajan, J., as he then was, in *Gajanand v. State of Uttar Pradesh* (1). In that case one of the parties came to the place where the other party was and they came armed with deadly weapons and one of them inflicted a severe blow which resulted in death and others as many as twenty-seven serious injuries. Applying section 149 it was said that knowledge may reasonably be collected from the nature of the assembly,

(1) A.I.R. 1954 S.C. 695, 699.

arms or behaviour, at or before the scene of action. If such knowledge may not be reasonably attributed to other members of the assembly then their liability for the offence committed during the occurrence does not arise and persons who were carrying *lathis* were held liable under section 325, read with section 149, Indian Penal Code, the people with sharp-edged weapons had been acquitted.

Jit Singh
and others
v.
The State
Kapur, J.

In the other Patna case *U. N. Singh v. King-Emperor* (1), it was held that when persons set out with deadly weapons they must realise that in prosecution of the common object grievous hurt will be caused. The question will be, can it be said that people who go to assault with such weapons do not know that grievous hurt is likely? In that case excepting the one who caused death others used moderation in assaulting the people who came up. At page 225, Bennett, J., observed—

“* *, if it is clear that the common object of an unlawful assembly was to inflict no more than a particular grievous hurt upon another person in circumstances where death was not the likely consequence and one of the members of the assembly, for purposes of his own, and in the course of inflicting the particular grievous hurt, deliberately went beyond the common object and killed the victim, the killer would properly be charged with and convicted of murder, and the remaining members of the assembly with inflicting grievous hurt. Again, in such a case, if the identity of the killer were in doubt it would be proper also to charge and convict the supposed principal offender with inflicting grievous hurt.”

(2) I.L.R. 25 Pat. 215.

Ji Singh
and others
v.
The State

Kapur, J.

The opinion of the learned Judges was that in so far as the principal offender had inflicted grievous hurt all the other members must be held to constructively have committed the same offence.

In *Sukha v. The State of Rajasthan* (1) Bose, J., pointed out in paragraph 29, that common object is different from common intention in that it does not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the people get there. So that under section 149 there need not be a prior meeting of minds. It is enough that each has the same object in view and they act as an assembly to achieve that object. The commonness of purpose is an inference of fact.

The latest pronouncement of their Lordships of the Supreme Court is in *Chikkarange Gowda and others v. State of Mysore* (2), where the rule laid down in *Queen v. Sabid Ali* (3), and *Barendra Kumar Ghosh v. Emperor* (4), was quoted with approval. In that case in the charge framed against the appellants it was not mentioned that they knew that the deceased was likely to be killed in prosecution of the common object of chastisement.

It has also been held that the words "in prosecution of the common object" do not mean "during the prosecution of the common object of the assembly". It means that the offence committed was immediately connected with the common object of the assembly or the act is one which upon the evidence appears to have been done with a view to accomplish the common object attributed

(1) A.I.R. 1956 S.C. 513.

(2) A.I.R. 1956 S.C. 731.

(3) 20 Suth. W.R. (Cr.) 5.

(4) 52 I.A. 40.

to the members of the assembly: *Raghunandan v. King-Emperor* (1). The words 'in prosecution of the common object' have to be strictly construed as equivalent to "in order to attain the common object". This is the law which is deducible from the various authorities which I have quoted above.

Jit Singh
and others
v.
The State

Kapur, J.

In the present case the prosecution set out to prove that the common object of the assembly was to murder Ajmer Singh in prosecution of which they set out to act. Evidence was produced that Bahadur Singh and Sadhu Singh caught up Ajmer Singh. Sadhu Singh gave an injury on his buttocks which was a fairly deep being 9" deep and Bahadur Singh who is a Sansi boy of about seventeen gave the injury on the head. The latter portion I am unable to accept because it is not in conformity with what was stated before the police. The evidence also shows that after the assault had been made by Bahadur Singh and Sadhu Singh, Indar Singh, Mahbub Singh and Upar Singh tried to intervene and they were set upon by other accused persons. Sadhu Singh and Bahadur Singh began to drag the body of Ajmer Singh, who, it is stated, was dead at the time, and subsequently some injuries were caused to him. Whether he was dead or not, the injuries which were subsequently caused were of a comparatively minor nature. Prosecution have tried to prove that Bahadur Singh was responsible for the death of Ajmer Singh, and in that they have failed. Prosecution witnesses have also stated that the other accused persons caused injuries later, i.e., after Ajmer Singh was dead but who they were they have not stated. In these circumstances, it cannot be found as to who caused the death of Ajmer Singh, and in my opinion the conduct of the accused is such that it cannot be said that the

(1) I.L.R. 10 Luck. 320.

Jit Singh
and others
v.
The State

Kapur, J.

common object of the accused persons was to cause murder, but it was only one which falls under section 326, Indian Penal Code, and, therefore, I am unable to accept the contention raised by the State that everyone of the accused persons should be convicted under section 302 read with section 149, Indian Penal Code. In my opinion, the proper section under which they should be convicted is section 326 read with section 149, and, therefore, section 307, Indian Penal Code, will not apply.

With regard to individual accused persons who caused injuries to Indar Singh, Mahbub Singh and Upar Singh, the conviction can only be for the injuries caused. It cannot be said that they would be liable to conviction under section 307, Indian Penal Code.

Sadhu Singh and Bahadur Singh dragged the body of Ajmer Singh into the house and Sadhu Singh even shouted out when he was asked to open the door by P.W. 8 Karam Singh that they had achieved the object, i.e., of killing Ajmer Singh. Whether it was his intention or not or even the intention of his sons or not makes no difference because the common object of the assembly, as I have held, was to cause grievous injury and it has not been proved that Sadhu Singh or his sons, who were found with the dead body in the house of Sadhu Singh, had caused any injury which resulted in the death of Ajmer Singh. The proper inference in my judgment is that all the members of the unlawful assembly must be convicted under section 326 read with section 149, Indian Penal Code, and individual members are guilty for causing such injuries as they did to the persons who intervened to rescue Ajmer Singh, and although the injuries were simple, those individuals would also be liable under section 324 of the Indian Penal Code.

All the accused have also been convicted under section 201 of the Indian Penal Code. I do not think any case under section 201 is made out against the accused because removal of the corpse of a murdered man from the place of murder to another place is not causing disappearance of some evidence of commission of the murder and the offence would not fall under section 201, Indian Penal Code: see *Nagendra Bhakta v. Emperor* (1), and *Upendra Chandra v. Emperor* (2). I would, therefore, acquit all the accused of the offence under section 201, Indian Penal Code.

Jit Singh
and others
v.
The State
—————
Kapur, J.

Sohan Singh caught hold of Indar Singh by his long hair and others carried him. Upar Singh was caught hold of by Surjan Singh and others helped him in pushing him towards the house of Sadhu Singh where they were confined. In the circumstances, I think they have been rightly convicted under section 342 and I would maintain the conviction and sentence of six months' rigorous imprisonment of each one of them. All the fifteen persons have been convicted under section 148, Indian Penal Code, and in my opinion rightly they are guilty of rioting while armed with deadly weapons, and I would, therefore, maintain their conviction under this section and also the sentence of one year's rigorous imprisonment.

The Court has convicted all the accused persons under section 326, 324 and 323 all read with section 149, Indian Penal Code, and has given them various terms of imprisonment. Under section 326 they have been given two years' rigorous imprisonment, under section 324 one year's rigorous imprisonment and under section 323 six months' rigorous imprisonment. The case of Sadhu Singh is distinguishable from the case of others, in that

(1) 37 C.W.N. 348.

(2) 45 C.W.N. 633.

Jit Singh
and others
v.
The State

Kapur, J.

he caused a very serious injury to the deceased and, in my opinion, two years' rigorous imprisonment is absolutely inadequate, and I would, therefore, sentence him to seven years' rigorous imprisonment. In the case of others a sentence of two years' rigorous imprisonment will meet the ends of justice.

As the common object of the assembly was to cause grievous hurt and during the prosecution of that common object some persons whose names have not been specified caused simple injuries with sharp-edged weapons and blunt weapons, their conviction under sections 324 and 323 both read with section 149, Indian Penal Code, cannot be sustained, I would, therefore, acquit all the accused persons of the offences under these sections in regard to the injuries caused to Ajmer Singh.

The learned Sessions Judge has held—and, in my opinion, rightly—that each of the accused who attacked Indar Singh, Mahbub Singh, Upar Singh P.Ws. and Bawa Singh is guilty of the offences committed by him individually.

In regard to Indar Singh, Jit Singh and Sohan Singh have been convicted under section 323, Indian Penal Code, and given six months' rigorous imprisonment each of which I uphold. Gurmej Singh and Dharam Singh carpenter have been convicted under section 324, Indian Penal Code, and given one year's rigorous imprisonment each of which also I uphold.

In regard to Mahbub Singh, the Court has held—and I agree—that Jogindar Singh, Daya Singh, Jit Singh, Jat and Bhagat Singh, accused, caused the injuries, and I also agree that Jogindar Singh, Daya Singh and Bhagat Singh have been rightly convicted and sentenced under section 324,

Indian Penal Code, and Jit Singh, Jat under section 323, Indian Penal Code.

Jit Singh
and others

v.

The State

Kapur, J.

Similarly, Upar Singh's assailants were Gaura Singh, Kartar Singh and Surjan Singh, accused, Gaura Singh and Kartar Singh have been convicted under section 324, Indian Penal Code, and Surjan Singh under section 323, Indian Penal Code. I uphold their convictions and sentences.

Similarly, Bawa Singh was injured by Dharam Singh Mazhabi. He was convicted under section 323, Indian Penal Code, and sentenced to undergo rigorous imprisonment for a period of six months. I would uphold his conviction and sentence.

In the result:—

- (1) all the accused are convicted under section 326, read with section 149, Indian Penal Code, and except Sadhu Singh, accused, they are sentenced to two years' rigorous imprisonment each and Sadhu Singh is sentenced to seven years' rigorous imprisonment;
- (2) the convictions and sentences under sections 324 and 323 both read with section 149, Indian Penal Code, in the case of all the accused are set aside *qua* Ajmer Singh;
- (3) the conviction under section 201, Indian Penal Code, is also set aside in the case of all the accused;
- (4) the conviction under section 342, Indian Penal Code, and the sentence of six months' rigorous imprisonment are upheld;

Jit Singh
and others

v.

The State

Kapur, J.

(5) the conviction of Bahadur Singh under section 302 of the Indian Penal Code, is set aside and he is acquitted of that charge;

(6) the convictions and sentences of the accused Dharam Singh, carpenter, Jit Singh Mazhabi, Gurmej Singh, Jat, Sohan Singh Mazhabi, Jogindar Singh, Daya Singh, Jit Singh, Jat, Bhagat Singh, Gaura Singh, Kartar Singh, Surjan Singh and Dharam Singh Mazhabi who assaulted Indar Singh, Mahbub Singh, Upar Singh P.Ws. and Bawa Singh as ordered by the Court below are upheld.

I agree that the sentences of all the accused for the different offences committed by them would be concurrent. The State appeal is, therefore, dismissed except as to Sadhu Singh's sentence.

Passey, J.

PASSEY, J.—I agree.

APPELLATE CRIMINAL

Before Kapur and Passey, JJ.

THE STATE,—Appellant

versus

ABDUL HAMID, ETC.,—Accused-Respondents.

Criminal Appeal No. 459 of 1956.

1957

Jan., 9th

Indian Evidence Act (I of 1872)—Section 86—Provisions of, whether mandatory—Certified copy of a foreign judgment—Copy not authenticated as required by section 86, whether admissible in evidence—Code of Criminal Procedure—Sections 591 and 537—Jurisdiction—Territorial defect of—No objection taken at the trial and no prejudice caused—Whether defect curable.