
(2025) 10 RH CK 0044

Rajasthan HC

Case No: Criminal Appeal No. 366 Of 1993

Fula Ram

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision: Oct. 15, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 — Section 374(2)
- Indian Penal Code, 1860 — Section 307, 452, 147, 148, 149, 341, 323

Hon'ble Judges: Farjand Ali, J

Bench: Single Bench

Advocate: S.K. Verma, Anil Gupta, N.S. Chandawat

Final Decision: Allowed

Judgement

Farjand Ali, J

1. This appeal has been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure against the judgment dated 13.08.1993 passed by the learned Additional Sessions Judge, Nohar, in Sessions Case No. 64/1992, whereby the appellants were convicted and sentenced as under:

Name of the Offence for Substantive Fine and default

accused

which

sentence

sentence

convicted

1. Fula Ram	148 IPC	2 years&™ RI
2. Ram Chander		
3. Ram Swaroop	323/149 IPC	6 months&™s
4. Dalip Singh		RI
5. Tara Chand		

1. Fula Ram	304 (I) r/w 8 years&™ RI Rs.500/- with 6
Ram	months, SI
2. Chander	149 IPC
3. Tara Chand	

All the sentences were directed to run concurrently.

2. Briefly stated the factual canvas delineates that there had been longstanding enmity between the accused persons namely Fularam, Ram Chandra, Dalip Singh, Tara Chand, Baluram, and Subhash, and the prosecution party comprising Kashiram (since deceased), Singaram, and their family members. This animosity had been simmering for nearly a month preceding the incident.

2.1. On 11.09.1992, accused Fularam allegedly hurled abuses at the prosecution side repeatedly during the day, heightening the tension. On the following morning, i.e., 12.09.1992, at about 9:00 a.m., Fularam went to the house of Singaram and again indulged in filthy abuses. When Smt. Reshma, wife of Singaram, objected, the accused struck her with a lathi, injuring her finger. The complainant, Laxmi Narayan, was present at that time.

2.2. Singaram then proceeded to the agricultural field to inform his relatives Kashiram, Ramkrishan, and Shankarlal about the episode. While returning, as the group reached near the residence of accused Ram Chandra, several accused persons including Fularam, Ram Chandra, Dalip Singh, Tara Chand, Baluram, and Subhash suddenly emerged from the house, armed with lathis, while Baluram held a firearm.

2.3. They collectively shouted that Kashiram "must be eliminated." Immediately thereafter, accused Fularam delivered a lathi blow on Kashiram's head, followed by another blow from Ram Chandra.

Kashiram fell to the ground bleeding profusely and later succumbed to the injuries. When the complainant and others attempted to intervene, accused Dalip Singh struck Laxmi Narayan on the head, while Baluram fired his gun, injuring Laxmi Narayan's finger.

2.4. The injured were taken to the Government Hospital, Bhadra, where the SHO, Shri Virendra Kumar, recorded the parcha bayan of Laxmi Narayan and registered FIR No. 111/1992 under Sections 307, 452, 147, 148, 149, 341, and 323 IPC. Upon completion of investigation and submission of the charge sheet, the case was committed to the Court of Session. The trial culminated in the conviction and sentence as detailed above.

2.5. During the pendency of the appeal, it was brought to the notice of this Court that appellants Fularam and Ram Chandra had expired. Their respective death certificates were placed on record, and vide order dated 06.10.2016, the appeal against them stood dismissed as abated. The present appeal thus survives only in respect of appellants Ram Swaroop, Dalip Singh, and Tara Chand.

3. Heard learned counsel for the appellants and the learned Public Prosecutor. Perused the record with anxious consideration.

3.1. Upon a careful evaluation of the evidence on record, it emerges that the prosecution case primarily rests on ocular testimonies coupled with medical evidence. The post-mortem report (Ex.P/10) reveals that the deceased Kashiram sustained two stitched wounds one on the occipital region and another on the parietal region of the skull with no other external or internal injuries except corresponding bony fractures beneath the wounds. The medical evidence thus corroborates that the total blows were only two in number, clearly attributable to Fularam and Ram Chandra.

3.2. The learned trial court has itself recorded an unambiguous finding that the fatal injuries to the deceased Kashiram were caused by the two now-deceased accused. Consequently, the appeal against them has abated in accordance with law. The surviving appellants Ram Swaroop, Dalip Singh, and Tara Chand have not been assigned any specific role in causing the injuries, nor has it been established that they were armed with deadly weapons at the relevant time. While the prosecution witnesses consistently deposed to the presence of these appellants at the scene, they have not attributed any overt act to them indicative of participation in the homicidal assault. It is a well-settled principle that mere presence at the scene, without active participation or sharing of the common object, is insufficient to attract liability under Sections 148 or 149 IPC.

3.3. To fully appreciate the applicability of Sections 148 and 149 IPC, it is imperative to examine the foundational legal concepts of unlawful assembly and the "common object" as envisaged under Sections 141 and 146 IPC. Section 141 IPC defines an "unlawful assembly" as an assembly of five or more persons, the common object of which is:

(i) to overawe, by criminal force or the show thereof, the Central or any State Government, Parliament, Legislature of a State, or any public servant in lawful exercise of duties;

(ii) to resist the execution of any law or legal process;

(iii) to commit mischief, criminal trespass, or any other offence;

(iv) by criminal force or its show, to deprive any person of possession of property or enjoyment of any right; or

(v) by criminal force or its show, to compel a person to do what he is not legally bound to do, or to omit what he is legally entitled to do.

The principal component in this definition is the “common object,” which establishes the shared criminal intention of the members. Importantly, if two members of an assembly commit a particular act, the remaining members cannot be held culpable unless it is established that all members collectively formed a design or consensus to pursue the unlawful object and were present at the scene with the determined intent. Furthermore, an assembly that was lawful at inception may subsequently attain the character of an unlawful assembly if the common object crystallizes during its course. In both the situations, there must be a consensus among the members of the assembly to commit any of the act enumerated in section 141 IPC from (i) to (v).

3.4. Section 146 IPC clarifies that whenever force or violence is employed by an unlawful assembly, or by any member thereof, in prosecution of its common object, every member of the assembly is guilty of the offence of rioting. Section 148 IPC further specifies the enhanced liability where rioting is committed while being armed with a deadly weapon, or with any instrument that, if used as a weapon, is likely to cause death. Such a provision underscores the gravity of rioting involving deadly weapons and the necessity of proving the presence of such instruments to sustain conviction.

3.5. In order to appreciate the true scope and ambit of the doctrine of constructive liability embodied therein, it is apposite to first reproduce the provision contained in Section 149 of the Indian Penal Code, which reads as under:

Section 149:- Every member of unlawful assembly guilty of offence committed in prosecution of common object

“If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

Not every assembly or congregation of persons present at the scene of crime ipso facto constitutes an unlawful assembly within the meaning of law. The crucial test lies in determining whether such an assembly shared a common object as contemplated under Section 141 IPC.

Section 149 IPC codifies the principle of vicarious liability, whereby if an offence is committed by any member of an unlawful assembly in prosecution of the common object, or an offence which the members knew was likely to be committed in prosecution of that object, every member of the assembly present at the

time is guilty of that offence. The essence of liability under Section 149 IPC, therefore, lies in establishing three elements:

- (i) existence of an unlawful assembly of five or more persons,
- (ii) presence of a common object shared by all members, and
- (iii) nexus between the common object and the offence actually committed.

It is not necessary that all members actively participate in the commission of the offence; mere presence and shared intent can suffice to attract liability under this section. The ultimate result or consequence must be one to which all members of the assembly are *ad idem*. The expression "in prosecution of the common object" signifies that the offence committed must be directly connected with the common object of the assembly, or that, upon appraisal of the evidence, the act must appear to have been done with a view to accomplish that common object. Section 149 of the IPC thus makes all members of an unlawful assembly constructively liable when an offence is committed by any member with a view to accomplish the common object of that assembly or when the members knew that such an offence was likely to be committed. However, such liability can be fastened only upon proof that the act was done in pursuance of the shared common object. The liability under this provision is attracted once it is established that an individual had knowledge that the offence committed was a probable consequence in furtherance of that object, thereby rendering him a participant in the unlawful assembly.

While proof of direct participation in the act is not required, active membership in the assembly and shared intent are indispensable. Put differently, although the principal act may be carried out by one member, others can only be implicated if it is demonstrated that a concerted consensus existed among the members to achieve the criminal objective through force or violence. 3.6. Applying the above principles to the facts of the present case, it is apparent that the evidence on record fails to establish that appellants Ram Swaroop, Dalip Singh, and Tara Chand were part of an unlawful assembly formed with the common object of causing the death of Kashiram. No material indicates premeditation, coordination, or a collective design among these appellants. The prosecution has neither shown that they were armed with deadly weapons nor that they engaged in any act of violence that could constitute rioting. Accordingly, the essential elements for invoking Sections 141, 146, 148, or 149 IPC formation of an unlawful assembly of five or more persons, presence of a shared common object, and active participation in prosecution of that object remain wholly unfulfilled.

3.7. It is firmly established that mere presence at the scene, or passive association without shared criminal intent or overt action, is insufficient to attract vicarious liability under Section 149 IPC. Similarly, in the absence of credible evidence showing that the appellants were armed with deadly weapons or engaged in rioting, conviction under Section 148 IPC is unsustainable. Therefore, having regard to the facts, circumstances, and the legal framework discussed herein, no offence under Sections 148, or 149 IPC can be sustained against the surviving appellants.

3.8. The above legal position finds authoritative support from the recent judgment of the Hon^{ble} Supreme Court in *Zainul v. State of Bihar*, Criminal Appeal Nos. 1187-1188 of 2014, decided

on 07.10.2025, wherein the Court elaborately interpreted Section 149 IPC, reiterating the distinction between “innocent bystanders” and “members of an unlawful assembly”. Relevant observations are reproduced below:

“A. Interpretation of Section 149 of the Indian Penal Code

45. Albeit the essentials of Section 149 of the IPC are oft-repeated and firmly established, they are reiterated herein for the sake of convenience:

- i. There must be an assembly of five or more persons;
- ii. An offence must be committed by any member of that unlawful assembly;
- iii. The offence committed must be in order to attain the common object of that assembly, or
- iv. The members of the assembly must have the knowledge that the particular offence is likely to be committed in order to attain the common object.

46. Section 149 of the IPC stipulates that if an offence is committed by any member of an unlawful assembly (of 5 or more persons) in prosecution of the common object (as defined in Section 141 of the IPC) of that assembly, or if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who, at the time of committing that offence, was a member of that assembly, will be guilty of that offence.

47. The first limb of the provision envisages the commission of an offence by a member of an unlawful assembly in order to attain the common object of that assembly. Whereas, the second limb of the provision encapsulates knowledge on the part of a member of the unlawful assembly qua the likelihood of such offence being committed in order to attain the common object.

48. The distinction between the two limbs of Section 149 of the IPC was elucidated in the decision of *Mizaji v. State of U.P.*, reported in 1958 SCC OnLine SC 95. The relevant observations are reproduced hereinbelow:-

“6. This section has been the subject-matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression “know” does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the

unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C.J., in *Sabid Ali* case [(1873) 20 WR 5 Cr] that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. (Emphasis supplied)

49. The expression "in prosecution of the common object" means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. In *Charan Singh v. State of U.P.*, reported in (2004) 4 SCC 205, this Court held that the test for determining the "common object" of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons carried by its members, and their conduct before, during, or after the incident. The relevant observations read as thus:-

13. [Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in

their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

14. "Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot eo instanti. (Emphasis supplied)]

50. To put it briefly, Section 149 of the IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fastened only upon proof that the act was done in pursuance of a common object. The essentials of Section 149 were succinctly explained by the Constitution Bench in the decision of Mohan Singh v. State of Punjab, reported in AIR 1963 SC 174. It reads thus:-

8. The true legal position in regard to the essential ingredients of an offence specified by Section 149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such 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. It would thus be noticed that one of the essential ingredients of Section 149 is that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. (Emphasis supplied)

51. Undoubtedly, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a probable consequence in furtherance of the common object, thereby rendering him a "member" of the

unlawful assembly.

52. While ascertaining this fact, it is of utmost importance to consider whether the assembly consisted of some persons who were merely passive onlookers who had joined the assembly as a matter of idle curiosity, without the knowledge of the common object of the assembly, since such persons cannot be said to be members of the unlawful assembly. We say so because, the nucleus of Section 149 is "common object".

a. Innocent Bystander v/s Member of an Unlawful Assembly

53. Once the two broad essentials of Section 149 are fulfilled, i.e., (1) an offence is committed by any member of an unlawful assembly in prosecution of the common object, or (2) if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who at the time of commission of the offence was a member of the assembly is to be held guilty of that offence.

54. At the same time, mere presence at the scene does not ipso facto render a person a member of the unlawful assembly, unless it is established that such an accused also shared its common object. A mere bystander, to whom no specific role is attributed, would not fall within the ambit of Section 149 of the IPC. The prosecution has to establish, through reasonably direct or indirect circumstances, that the accused persons shared a common object of the unlawful assembly. The test to determine whether a person is a passive onlooker or an innocent bystander is the same as that applied to ascertain the existence of a common object. The existence of a common object is to be inferred from the circumstances of each case, such as:

- a. the time and place at which the assembly was formed;
- b. the conduct and behaviour of its members at or near the scene of the offence;
- c. the collective conduct of the assembly, as distinct from that of individual members;
- d. the motive underlying the crime;
- e. the manner in which the occurrence unfolded
- f. the nature of the weapons carried and used;
- g. the nature, extent, and number of the injuries inflicted, and other relevant considerations.

i. Rule of Prudence in Convicting Members of an Unlawful Assembly

55. This Court, as a matter of caution, has enunciated parameters to safeguard innocent spectators or passive onlookers from being convicted merely on account of their presence. This cautionary rule, however, does not dilute the doctrine of constructive liability, under which proof of an overt act by each individual is not indispensable. Where the presence of a large number of persons is established and many are implicated, prudence mandates strict adherence to this rule of caution.

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60. In Subal Ghorai (supra), about 200/250 persons armed with weapons had launched an attack, in which three persons succumbed to their injuries. The trial court convicted 36 persons. The Court held that the constructive liability enshrined in Section 149 of the IPC can be extended to the acts done only in pursuance of the common object. The commission of an overt act by such a person would prove that he shared the common object. It ought to be proved that the accused was not only a member of the unlawful assembly but shared the common object of the assembly at all stages that he was a part of the assembly. At the same time, the Court left a note of caution stating that the courts must guard against the possibility of convicting mere passive onlookers. The relevant observations read thus:-

“52. The above judgments outline the scope of Section 149 IPC. We need to sum up the principles so as to examine the present case in their light. Section 141 IPC defines unlawful assembly to be an assembly of five or more persons. They must have common object to commit an offence. Section 142 IPC postulates that whoever being aware of facts which render any assembly an unlawful one intentionally joins the same would be a member thereof. Section 143 IPC provides for punishment for being a member of unlawful assembly. Section 149 IPC provides for constructive liability of every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly who knew to be likely to be committed in prosecution of that object. The most important ingredient of unlawful assembly is common object. Common object of the persons composing that assembly is to do any act or acts stated in clauses “First”, “Second”, “Third”, “Fourth” and “Fifth” of that section. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of common assembly is a relevant factor. At what point of time common object of unlawful assembly was formed would depend upon the facts and circumstances of each case. Once the case of the person falls within the ingredients of Section 149 IPC, the question that he did nothing with his own hands would be immaterial. If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly.

53. But this concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. Quite often, people gather at the scene of offence out of curiosity. They do not share common object of the unlawful assembly. If a general allegation is made against large number of people, the court has to be cautious. It must guard against the possibility of convicting mere passive onlookers who

did not share the common object of the unlawful assembly. Unless reasonable direct or indirect circumstances lend assurance to the prosecution case that they shared common object of the unlawful assembly, they cannot be convicted with the aid of Section 149 IPC. It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution.â€ (Emphasis supplied)

61. The law on the point can be summarized to the effect that where there are general allegations against a large number of persons, the court must remain very careful before convicting all of them on vague or general evidence. Therefore, the courts ought to look for some cogent and credible material that lends assurance. It is safe to convict only those whose presence is not only consistently established from the stage of FIR, but also to whom overt acts are attributed which are in furtherance of the common object of the unlawful assembly.â€

4. The ratio laid down in the aforesaid decision squarely applies to the facts of the present case. Tested on the touchstone of these principles, the evidence on record unmistakably shows that the appellants cannot be fastened with constructive liability under Section 149 IPC, as there is no credible proof of any shared common object or overt participation on their part.

5. Upon a holistic appreciation of the oral and documentary evidence, this Court is constrained to observe that the substratum of the prosecution case against the present appellants rests on fragile evidentiary footing. The medical and ocular testimonies, when read conjointly, unequivocally establish that the fatal injuries were inflicted exclusively by the deceased accused Fularam and Ram Chandra. There is an absolute absence of any incriminating material showing that appellants Ram Swaroop, Dalip Singh, and Tara Chand shared a pre-conceived plan, common object, or prior meeting of minds to cause the death of Kashiram.

6. The evidence does not disclose that these appellants exhorted or encouraged the principal assailants, or that they were in possession of any deadly weapon capable of inflicting fatal injuries. Their mere presence at or near the scene, in the backdrop of an existing village dispute, by itself, cannot be construed as participation in an unlawful assembly with the object of committing murder. The essential element of community of object integral to Section 149 IPC is conspicuously absent.

7. Further, the prosecution has failed to adduce any evidence suggestive of prior concert or post-event conduct which may reasonably lead to an inference of commonality of design. The trial court, in its approach, appears to have mechanically extended the doctrine of constructive liability to all the accused merely on the basis of proximity of presence, a proposition which finds no sanction in law. Judicial precedents have consistently held that vicarious liability under Section 149 IPC cannot be imposed unless the prosecution conclusively proves that the accused shared the unlawful object and acted in furtherance thereof.

8. In view of the foregoing analysis, this Court is of the considered opinion that the learned trial Court fell in manifest error in convicting appellants Ram Swaroop, Dalip Singh, and Tara Chand under Sections 148, 304 Part-I/149, and 323/149 IPC. The evidence on record fails to establish their complicity or their participation in any unlawful assembly formed with the intent to kill Kashiram. The prosecution has also failed to establish that, prior to the commission of the offence, these three appellants had consented with or shared any understanding with the two principal assailants to commit the said act. The prosecution having failed to discharge its burden beyond reasonable doubt, the appellants are entitled to the benefit of doubt.

9. Accordingly, the appeal succeeds and is hereby allowed. The impugned judgment dated 13.08.1993 passed by the learned Additional Sessions Judge, Nohar, in Sessions Case No. 64/1992, is set aside. Consequently, the conviction and sentence of appellants Ram Swaroop, Dalip Singh, and Tara Chand under Sections 148, 304 Part-I read with Section 149, and 323/149 of the IPC are quashed. The appellants are acquitted of all the charges. Their bail bonds stand cancelled and sureties discharged.

10. However, in compliance with Section 437-A Cr.P.C., the appellants are directed to furnish a personal bond of ₹40,000/- along with one surety in the like amount before the trial court. The bond shall remain in force for six months to ensure the appellants' presence before the Hon^{ble} Supreme Court in the event a Special Leave Petition is filed against this judgment and notice thereof is received.

11. The record be transmitted back forthwith.