



2026:AHC:177249-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 162 of 1988

Suresh and 7 others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Aryan Srivastava(a.c), Hemendra Pratap Singh, P.n. Misra
Counsel for Respondent(s)	: Anil Mullick, Dga

AFR

Reserved on : 14.08.2026

Delivered on : 21.08.2026

Court No. – 45

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE PADAM NARAIN MISHRA, J.**

(Delivered by Hon. Padam Narain Mishra,J.)

1. Heard Sri Aryan Srivastava, the Amicus Curiae representing the surviving appellant nos. 4 and 5, i.e. Nagendra and Jugendra and Mrs. Archana Singh, Advocate, representing the prosecution.

2. Present criminal appeal has been preferred against the judgment and order dated 19.01.1988 passed by the learned Additional Sessions Judge, District Meerut, whereby the accused persons namely, Suresh, Devendra, Harendra, Nagendra, Jugendra, Ramdhan, Jaipal and Ravendra were convicted for the offences punishable under Sections 147, 148, 302/149, 325/149, 323/149 and sentenced accordingly.

3. During pendency of the appeal, appellants Suresh, Devendra, Harendra, Ramdhan, Jaipal and Ravendra died, and consequently the appeal stood abated qua them on 18.09.2018.

4. The appeal survives only in respect of appellants Nagendra and Jugendra, who are represented by Sri Aryan Srivastava, learned Amicus Curiae.

5. The prosecution case, in brief, is that there was previous enmity between the accused persons and the complainant side on account of litigation pending between Smt. Bala and Vinod. The deceased, Om Pal Singh, was pursuing the said litigation on behalf of Smt. Bala. On the date of occurrence, at about 2:30 P.M., the deceased, Om Pal Singh, was returning from the house of Chandra Pal. When he reached near the house of Kajam Puriya, the accused persons, namely, Suresh, Devendra, Harendra, Nagendra, Jugendra, Ramdhan, Jaipal and Ravendra, allegedly assembled there, armed with lathis, spears, spades and a gadasa, and assaulted Om Pal Singh with the aforesaid weapons. On hearing the cries of Om Pal Singh, his sons, brother and wife, namely, Satendra, Rajpal, Vedpal and Smt. Gyan Devi, respectively, rushed to the spot in an attempt to rescue him. The accused persons also allegedly assaulted the aforesaid witnesses. The members of the complainant side were also carrying lathis and a spade for their self defence. During the course of the incident, Om Pal Singh sustained several injuries and subsequently succumbed to the injuries sustained by him. Thereafter, a written report was prepared by Vijendra at his house on the same day at about 3:30 P.M., on the basis of which an FIR was lodged against the aforesaid eight accused persons. The injured persons were sent to the hospital for their medical examination and treatment. After registration of the FIR, the Investigating Officer commenced the investigation, recorded the statements of the witnesses, conducted the necessary formalities and, upon completion of the investigation, submitted a

charge-sheet against all accused persons before the competent court for the offences punishable under Sections 147, 148, 302/149, 325/149 and 323/149 of the IPC.

6. Upon consideration of the evidence adduced by both the prosecution and the defence, the learned trial court found the accused persons guilty of the offences with which they were charged and accordingly convicted them.

7. In support of its case, the prosecution examined five witnesses. In defence, the accused persons placed reliance upon the relevant documents pertaining to the cross-case arising out of the same occurrence and also brought on record the injury reports showing the injuries sustained by the accused persons during the course of the occurrence. Aggrieved by the aforesaid judgment of conviction and order of sentence, the present criminal appeal has been preferred.

8. Learned Amicus Curiae, Sri Aryan Srivastava, appearing on behalf of the surviving appellants, namely, Nagendra and Jugendra, has submitted that the findings recorded by the learned trial court are not sustainable either in law or on facts. He submits that the prosecution examined only five witnesses of fact in support of its case. Out of them, except PW-1, who is the informant, all the remaining prosecution witnesses were declared hostile and did not support the prosecution version. It is contended that, despite the fact that the injured prosecution witnesses did not support the prosecution case, the learned trial court proceeded to convict all the accused persons without properly appreciating the effect of their hostile testimony and the other material available on record. Learned Amicus Curiae further submits that, so far as the surviving appellants, Nagendra and Jugendra, are concerned, there is no reliable evidence establishing their presence at the place of occurrence. No specific role or overt act has been assigned to either of them, either in the First Information Report or in the statements of the prosecution

witnesses before the trial court. Their implication is, therefore, alleged to be the result of previous enmity between the parties. He further submits that the occurrence was not a one-sided assault and that a quarrel had taken place between the two sides, during the course of which the accused persons also sustained injuries. He submits that the prosecution has failed to explain the injuries sustained by the accused persons. In contrast, the prosecution alleges injuries to only three persons from the complainant side, whereas six accused persons sustained injuries on the side of the accused. According to learned Amicus Curiae, these circumstances assume considerable significance while appreciating the prosecution version, particularly in view of the existence of a cross-case arising out of the same occurrence.

He further submits that the prosecution has failed to establish the participation of the surviving appellants, Nagendra and Jugendra, beyond reasonable doubt. Therefore, they cannot be held to have been members of any unlawful assembly and consequently cannot be fastened with vicarious liability on the basis of the common object under Section 149 IPC. Learned Amicus Curiae, therefore, submits that the surviving appellants are entitled to the benefit of doubt and that the present appeal deserves to be allowed. Consequently, their conviction and sentence deserve to be set aside.

9. Per contra, learned AGA appearing for the State has opposed the appeal and supported the judgment and order passed by the learned trial court. He submits that the injuries sustained by the accused persons, coupled with the statements of the accused persons recorded under Section 313 Cr.P.C., clearly establish their presence at the place of occurrence and further demonstrate that the incident in question had, in fact, taken place. Learned AGA further submits that PW-1, Vijendra, the informant, has categorically stated that all the eight accused persons were present at the spot and were armed with lathis, spears, spades and gandasas. According to him, the testimony of PW-1, coupled with the medical evidence on record, is sufficient to establish the prosecution

case, particularly with regard to the applicability of Section 149 IPC. He submits that, in a case involving an unlawful assembly, it is not necessary to establish an active or specific overt role on the part of each individual accused, provided his membership of the unlawful assembly and the existence of the common object are established. Learned AGA, therefore, submits that the mere fact that the surviving appellants were members of the unlawful assembly is sufficient to attract the provisions of Section 149 IPC in the facts and circumstances of the present case. He accordingly submits that the learned trial court has rightly convicted the accused persons and that no interference with the impugned judgment and order is warranted.

10. We have considered the rival submissions advanced by learned Amicus Curiae appearing on behalf of the surviving appellants, namely, Nagendra and Jugendra, and learned AGA for the State, and have carefully perused the record of the trial court. At the outset, it would be appropriate to notice the nature of the conviction recorded by the learned trial court. The accused persons, including the surviving appellants, Nagendra and Jugendra, were charged under Sections 147 and 148 IPC and were further charged for the substantive offences with the aid of Section 149 IPC. The conviction of the surviving appellants for the offence punishable under Section 302 IPC is, thus, founded not upon any specific overt act attributed to them, but upon the principle of constructive liability embodied in Section 149 IPC.

11. It is not disputed that the surviving appellants, Nagendra and Jugendra, were named in the First Information Report. However, mere nomination in the FIR, by itself, cannot establish their guilt. Significantly, no specific role has been assigned to either Nagendra or Jugendra. There is also no specific allegation regarding any particular weapon being carried or used by either of them. The evidence led before the learned trial court also does not disclose any overt act specifically attributable to either of the surviving appellants.

12. The matter assumes greater significance is the fact that, apart from PW-1, the informant, the prosecution examined only four other witnesses of fact. The remaining material witnesses did not support the prosecution case in material particulars and were accordingly declared hostile. PW-2, Satendra, though an injured witness, stated that when he reached the place of occurrence, several persons were assaulting each other. He further stated that he could not notice which persons were carrying which weapons and was also unable to identify the person who had assaulted him. PW-3, Rajpal, also did not support the prosecution version and was declared hostile. Significantly, PW-5, Smt. Gyan Devi, wife of the deceased and an alleged injured witness, also failed to identify the assailants and stated that she did not know who had killed her husband. In such circumstances, the conviction of the surviving appellants requires careful examination with reference to the essential ingredients and legal requirements for attracting Section 149 IPC.

13. Section 149 IPC embodies the principle of constructive or vicarious criminal liability and creates a distinct offence whereby every member of an unlawful assembly may be held liable for an offence committed by any other member of such assembly. However, before such vicarious liability can be fastened upon an accused, the prosecution must first establish, beyond reasonable doubt, the existence of an unlawful assembly within the meaning of Section 141 IPC, consisting of five or more persons having one of the common objects specified therein. It must further be established that the accused was a member of such unlawful assembly at the time when the offence was committed and that the offence was either committed in prosecution of the common object of the assembly or was such as the members of the assembly knew to be likely to be committed in prosecution of that object.

14. The Supreme Court has repeatedly cautioned that mere presence at the place of occurrence or mere membership of a group is not, by itself,

sufficient to attract Section 149 IPC. In *Kuldip Yadav & Ors. v. State of Bihar*, (2011) 5 SCC 324, the Supreme Court held that, before convicting an accused with the aid of Section 149 IPC, the Court must record a clear finding regarding the nature of the common object of the assembly and that such object was unlawful. The evidence must establish not merely the presence or number of persons constituting the assembly, but also the unlawful nature of the common object and the nexus between such common object and the offence committed. The Supreme Court has reiterated in subsequent decisions that the essential ingredients of Section 141 IPC must first be established before constructive liability under Section 149 IPC can be fastened upon an accused.

15. Similarly, in *Ramachandran v. State of Kerala*, (2011) 9 SCC 257, the Supreme Court cautioned that the principle of constructive liability embodied in Section 149 IPC cannot be extended so as to result in the conviction of innocent persons merely because they happened to be present at or near the place of occurrence. There must be cogent and reliable material on record from which the Court can reasonably conclude that the accused was a member of the unlawful assembly and shared its common object. The existence and nature of the common object have to be determined from the facts and circumstances of each case, having regard, inter alia, to the nature of the assembly, the conduct of its members before, during and after the occurrence, the weapons carried or used by them, the nature and extent of the injuries caused, the surrounding circumstances, and the manner and course of the occurrence. Thus, before fastening constructive liability upon an accused under Section 149 IPC, the Court must be satisfied that the prosecution has established, beyond reasonable doubt, not only his membership of the alleged unlawful assembly but also the existence of the requisite common object or the knowledge contemplated by Section 149 IPC. Mere presence, without more, cannot be treated as sufficient to attract such vicarious criminal liability.

16. In the present case, the impugned judgment dated 19.01.1988 has been examined in the light of the aforesaid settled legal principles. We find that the learned trial court has not recorded any clear or specific finding regarding the existence of an unlawful assembly. There is no discussion as to **how the assembly constituted an unlawful assembly within the meaning of Section 141 IPC, what was the common object of the assembly, when and where such common object was formed, and in what manner the surviving appellants shared or were proved to have shared such common object.**

17. The learned trial court has also not discussed the individual circumstances connecting Nagendra and Jugendra with the alleged unlawful assembly. Their conviction appears to have proceeded substantially on the basis that they were named as accused in the First Information Report and were sought to be fastened with vicarious liability with the aid of Section 149 IPC. However, mere nomination as an accused, without reliable evidence establishing their membership of the unlawful assembly and their sharing of its common object, cannot, by itself, sustain a conviction under Section 149 IPC.

18. Such an approach cannot be sustained in a criminal trial, particularly where the consequence is conviction for an offence punishable with imprisonment for life.

19. An additional circumstance of considerable significance emerges from the material on record indicates that a cross-case was lodged by the accused side in respect of the same occurrence. The defence has also placed on record the medical reports showing injuries sustained by the named accused persons, except the surviving appellants. The existence of injuries on the accused side, by itself, may not necessarily demolish the prosecution case. However, where the prosecution alleges a unilateral and organised assault by an unlawful assembly, and the defence establishes that several persons from the accused side also sustained

injuries in the same occurrence, the Court is required to examine the entire occurrence with greater care and caution. Such circumstances assume particular significance while determining the genesis of the occurrence, the nature of the incident, the respective roles of the parties, and, more importantly, whether the prosecution has established the existence of the alleged unlawful assembly and the common object shared by its members beyond reasonable doubt.

20. The present case is further distinguishable inasmuch as the defence taken by the accused under Section 313 Cr.P.C. was not a mere bald denial. The accused stated that they had themselves sustained injuries and that an altercation had taken place between the two sides. The learned trial court was, therefore, required to consider this defence in the light of the medical evidence on record and the existence of the cross-case. The surviving appellants, Nagendra and Jugendra, stated in their respective statements under Section 313 Cr.P.C. that they had been falsely implicated in the present case, that they had not participated in the occurrence, and that they had been implicated merely because they were the sons of co-accused Jaipal. In the present case, upon a comprehensive consideration of the evidence on record, we find that there is no reliable evidence attributing any specific overt act to either Nagendra or Jugendra. No particular weapon has been specifically attributed to either of them. Except PW-1, the material prosecution witnesses did not support the prosecution case on material particulars and were declared hostile. Significantly, the injured witnesses also stated in their testimony that they could not identify the assailants. In these circumstances, the evidence on record does not satisfactorily establish the presence and participation of the surviving appellants as members of the alleged unlawful assembly or their sharing of the common object so as to attract constructive liability under Section 149 IPC.

21. Most importantly, the foundational requirements for the application of Section 149 IPC, namely, the existence of an unlawful assembly and

the common object shared by its members, have not been established against the surviving appellants by reliable and cogent evidence. Nor has the learned trial court recorded the requisite findings in this regard.

22. The Supreme Court has repeatedly cautioned that Section 149 IPC embodies a principle of constructive liability and, since it fastens criminal liability upon an accused for an act committed by another member of the unlawful assembly, the Court must exercise particular caution before invoking its provisions. Mere presence in an assembly does not, by itself, constitute criminal liability. The prosecution must establish the existence of an unlawful assembly within the meaning of Section 141 IPC, the membership of the accused therein, and the requisite common object contemplated under Section 149 IPC. Therefore, in the absence of a finding that the surviving appellants were members of an unlawful assembly within the meaning of Section 141 IPC and shared its common object, their conviction with the aid of Section 149 IPC cannot be sustained.

23. In the facts and circumstances of the present case, therefore, it would be unsafe to sustain the conviction of Nagendra and Jugendra merely on the ground that they were named in the FIR and were allegedly members of the group. The prosecution was required to establish, beyond reasonable doubt, that they were members of the unlawful assembly and shared its common object, or that the offence committed was one which they knew to be likely to be committed in prosecution of such common object. This foundational requirement has not been satisfactorily established by the prosecution.

24. Having regard to the totality of the circumstances, namely, the absence of any specific role or weapon attributed to the surviving appellants; the failure of the material prosecution witnesses to support the prosecution case; the existence of a cross-case arising out of the same occurrence; the injuries sustained by several persons on the

accused side; and the failure of the learned trial court to record any clear and specific finding regarding the existence and unlawful character of the alleged assembly, as well as the common object allegedly shared by its members, we are of the considered view that the prosecution has failed to establish the essential ingredients necessary for attracting the constructive liability u/s 149 IPC against the surviving appellants.

25. In the light of aforesaid discussion, we are of the considered opinion that the conviction and sentenced of surviving appellants Nagendra and Jugendra with the aid of Section 149 I.P.C. cannot be sustained.

26. The appellants are therefore, entitled to get the benefit of reasonable doubt.

27 Accordingly, the appeal is **allowed**. The judgment and order dated 19.01.1988, passed by learned Sessions Judge, Azamgarh in Sessions Trial No. 10 of 1989, under Sections 302, 201 & 120-B of I.P.C. is hereby **set aside against the surviving appellants Nagendra and Jugendra**.

28. The surviving appellants are on bail. Their bail bonds are cancelled and the sureties are discharged. They need not surrender before the learned trial court. However, they shall comply with the provisions of Section 437-A Cr.P.C. (Corresponding Section 481 of BNSS) and shall furnish the requisite bonds before the learned trial court, which shall remain in force for the period prescribed by law.

29. The lower Court records, along with the copy of this judgment be transmitted to the Court concerned forthwith.

30. Shri Aryan Srivastava, Advocate is appointed as Amicus Curiae in this case on behalf of the appellants, who shall be paid a sum of Rs. 15,000/- for his assistance to the Court from the Legal Services Authority, High Court, Allahabad as per rules after the judgment.

(Padam Narain Mishra,J.) (Salil Kumar Rai,J.)

August 21, 2026
Israr Ahmad