IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 04th OF OCTOBER, 2024

CRIMINAL APPEAL No. 2874 of 2020

SAI LAL PATEL AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri R.S. Patel – Advocate for the appellants.

Shri A.S. Baghel – Government Advocate for the respondent/State.

WITH

CRIMINAL APPEAL No. 3171 of 2020

OMKAR PRASAD PATEL

Versus

STATE OF MADHYA PRADESH

Appearance:

Shri A.K. Shrivastava – Advocate for the appellant.

Shri A.S. Baghel – Government Advocate for the respondent / State.

Reserved on : 18/09/2024

Pronounced on : 04th/10/2024

JUDGMENT

Per: Justice G.S. Ahluwalia

By this common Judgment, Cr.A. No.2874 of 2020 filed by Sai Lal Patel, Awdhesh Patel, Rakesh @ Tidku Patel, Rajendra @ Chiju Patel, and

Pramod @ Bholi Patel and Cr.A. No.3171 of 2020 filed by Omkar Prasad Patel shall be decided.

2. It is not out of place to mention here that initially the co-accused Ram Kumar Patel and Shiv Kumar Patel were tried and the remaining co-accused persons, who are appellants in Cr.A. Nos.2874 of 2020 and 3171 of 2020 were absconding.

3. Ram Kumar Patel and Shiv Kumar Patel were convicted for offence under Sections 147, 452/149, 294, 323/149, 302/149 of IPC by Judgment and Sentence dated 19-8-2010 passed by Add. Judge to the Court of Add. Sessions Judge, Katni in S.T. No.172 of 2009. Against their conviction, Ram Kumar preferred Cr.A. No.1670/2010 and Shiv Kumar preferred Cr.A. No.2335/2010. Both the Criminal Appeals were dismissed by co-ordinate bench of this Court by Judgment dated 14-9-2018.

4. Being aggrieved by dismissal of appeal, Ram Kumar preferred Cr.A. No.424/2022, which was allowed by Supreme Court by order dated 14-3-2022 on the ground that the appeal was dismissed in the absence of the appellant-Ram Kumar and his Counsel and the matter has been remanded back. Cr.A. No.1670/2010 filed by Ram Kumar is also listed with these Criminal Appeals for analogous hearing. Since, Ram Kumar was tried separately, therefore, in the light of Judgment passed by Supreme Court in the case of **A.T. Mydeen Vs. The Asstt. Commissioner, Customs Department**, decided on **31/10/2021** passed in **Cr.A. No. 1306 of 2021,** the evidence led in the trial of Ram Kumar cannot be read in the present case, therefore, the appeal filed by Ram Kumar, which has been heard analogously, shall be decided separately.

5. So far as Shiv Kumar is concerned, he did not challenge the dismissal of his appeal and it has been informed by Counsel for the

Appellants that Shiv Kumar has been released from jail on 2nd of October, 2023 after undergoing the entire jail sentence.

6. Both the Criminal Appeals have been filed against the Judgment and Sentence dated 30-1-2020 passed by IVth A.S.J., Katni in S.T. No.172 of 2009, by which all the appellants have been convicted and sentenced for the following offences :

S.No.	Convicted under Section	Sentence
1	147 of IPC	1 year R.I.
2	452/149 of IPC	1 year R.I. and fine of Rs.1000/- in default 1 month R.I.
3	323/149 of IPC	1 year R.I.
4	302/149 of IPC	Life Imprisonment and fine of Rs.5000/- in default 3 months R.I.

All sentences to run concurrently

7. It is not out of place to mention here that although the incident took place on 11-3-2009, but the appellant Sai Lal Patel was arrested on 17-8-2012, Awdhesh Patel was arrested on 17-8-2012, Rakesh was arrested on 5-9-2012, Rajendra was arrested on 5-9-2012, Omkar was arrested on 16-8-2012 and Pramod @ Bholi was arrested on 20-4-2011.

8. Since Pramod @ Bholi was arrested on 20-4-2011 and remaining co-accused namely Sai Lal Patel, Awdhesh Patel, Rakesh, Rajendra and Omkar were absconding, therefore, supplementary charge sheet was filed against Pramod @ Bholi. Some of the witnesses were also examined, however, after the arrest of all the remaining accused persons, the Trial of Pramod @ Bholi was clubbed with the Trial of other appellants and witnesses who were already examined in respect of Pramod @ Bholi were re-summoned and they were examined in respect of other appellants. By common judgment, the Trial of all the appellants was decided.

9. According to the prosecution case, on 11-3-2009, Biharilal lodged an FIR alleging that he is the resident of village Kumharwara and is an

agriculturist by profession. At 2:30 P.M, he was preparing fodder in his courtyard situated in front of the house of his uncle Manraman Patel. Manraman Patel was sitting outside his house. At that time, co-accused Shiv Kumar Patel came. Manraman Patel scolded him as to why he is creating ruckus through Sai Lal Patel and Awdhesh Patel (In the FIR, exact abusive words have been used). In reply, Shiv Kumar responded that he would throw him on the ground. This witness pacified the situation and accordingly, Shiv Kumar went back and this witness also took Manraman inside his house. After some time, Shiv Kumar Patel, his son Pramod @ Bholi, Ram Kumar Patel, his son Rajendra and Rakesh, Awdhesh Patel, Omkar Patel and Sai Lal Patel came there. Thereafter Omkar Patel instigated Shiv Kumar to drag the deceased out of his house and accordingly, Shiv Kumar, Rakesh, Pramod, Rajendra and Ram Kumar Patel, entered inside the house of Manraman and dragged him out. Shiv Kumar Patel, Rakesh, Pramod, Rajendra, and Ram Kumar Patel, started assaulting Manraman by fists. During this assault, Omkar Patel, and Sai Lal Patel, were abusing Manraman and were instigating that he should be killed and they will handle the situation. Thereafter, Shiv Kumar strangulated Manraman with the help of the shirt of the deceased. Awdhesh Patel twisted the hand of Manraman. At that time, Phoolwati and Mohwati also reached on the spot in order to intervene. Rajendra and Pramod pushed them. Jagroop Patel and Sudama Patel who were standing there have witnessed the incident. Manraman died after 10 minutes. Thereafter, all the accused persons ran away.

10. The police accordingly, registered the FIR in Crime No.52/2009 for offence under Sections 147, 149, 302, 452, 294, 506 of IPC. The dead body was sent for post mortem. The statements of witnesses were recorded. As only Ram Kumar and Shiv Kumar could be arrested

therefore, filed the charge sheet against them. Thereafter, Pramod @ Bholi was arrested and supplementary charge sheet was filed against him.

11. The Trial Court by order dated 10-10-2011, framed charges under Sections 147, 452, 294, 323/149, 302/149 of IPC. The appellant Pramod @ Bholi abjured his guilt and pleaded not guilty.

12. After the other appellants were arrested, a supplementary charge sheet was filed and Trial Court by order dated 10-6-2013 framed charges under Section 147, 452/149, 294, 323/149, 302/149 of IPC against Sai Lal Patel, Awdhesh Patel, Rajendra Patel, Rakesh Patel, and Omkar Patel.

13. The Appellants abjured their guilt and pleaded not guilty.

14. As already pointed out, some of the witnesses were examined when Pramod @ Bholi was facing trial all alone. Chintamani (P.W.1) was examined on 21/11/2011, Jagroop Prasad (P.W.2) was examined on 22-11-2011, Phoolwati (P.W.3) was examined on 24-12-2011, Biharilal (P.W.4) was examined on 15-2-2012, Mohan Singh (P.W.5) was examined on 16-2-2012, Mohwati (P.W.6) was examined on 27-6-2012, Sudama Prasad (P.W.7) was examined on 6-11-2012.

15. Thereafter, these witnesses were re-summoned after the arrest of remaining accused persons and Biharilal (P.W.1) was examined on 15-7-2013, Jagroop (P.W.2) was examined on 24-2-2016 and 29-4-2016, Chintamani Patel (P.W.2) was examined on 12-12-2014, Prahlad Patel (P.W.3) was examined on 22-1-2016, Phoolmati (P.W.4) was examined on 23-2-2016, Mohwati (P.W.6) was examined on 24-2-2016, Mohan Singh Gadkare (P.W.7) was examined on 2-4-2016, Yogendra Singh (P.W.8) was examined on 29-7-2016, Sudama Prasad (P.W.9) was examined on 6-9-2017, Ram Singh (P.W.10) was examined on 4-12-2012, Dr. Anil Jhamnani (P.W.11) was examined on 16-2-2018, Dev Raj Sharma

(P.W.12) was examined on 31-7-2018, S.K. Jharia (P.W.13) was examined on 31-7-2018, and Arvind Dubey (P.W.14) was examined on 3-12-2019.

16. The Appellants examined Ram Narayan Patel (D.W.1) and Ram Pankaj Patel (D.W.2) in their defence.

17 The Trial Court by the impugned Judgment and Sentence, has convicted and sentenced the appellants for the offences mentioned above.

18. Challenging the Judgment and Sentence awarded by the Trial Court, it is submitted by Counsel for the appellants, that if the entire incident is taken on its face value, then it is clear that it was the deceased Manraman who scolded the co-accused Shiv Kumar. Thus, it is clear that the incident was triggered by the deceased himself. Thereafter, all the accused came to the house of the deceased and none of them were having any weapon. The deceased was taken out of his house and was assaulted by fists and blows. None of the appellant had any idea that co-accused Shiv Kumar would strangulate the deceased by using the shirt of the deceased himself. The allegation of instigation by Omkar and Awdhesh is not reliable. Thus, it is clear that the accused persons were not sharing common object to strangulate the deceased and even if they had formed an Unlawful Assembly, then it was only for the purposes of thrashing the deceased by fists and blows. Thus, their conviction under Section 302/149 of IPC is bad in law.

19. Per contra, it is submitted by Counsel for the State that since, all the accused persons had come together and they not only dragged the deceased out of his house but also assaulted him and during the assault, Shiv Kumar strangulated the deceased, and Omkar and Awdhesh had instigated to kill the deceased, thus, it is clear that all the accused persons had formed an Unlawful Assembly with common object to kill the

deceased. Accordingly, the State Counsel has supported the findings recorded by the Trial Court.

20. Heard the learned Counsel for the parties.

21. Before considering the facts of the case, this Court would like to consider as to whether the death of Manraman was homicidal in nature or not?

22. Dr. Anil Chhawani (P.W.11) has conducted the postmortem of the dead body of Manraman. He found the following injuries on the dead body of Manraman :

> Eyes Closed, Mouth Closed, Tongue inside teeth;
> Ecchymosis contusions in front of neck 5 cm x 10 cm
> Ecchymosis present beneath neck skin
> Trachea ruptured.
> Stern mastoid muscle damaged. Large Ecchymosis present mark just below thyroid cartilage.
> On opening thoracic and abd cavity nothing significant finding. Brain healthy.
> The cause of death is Asphyxia due to throttling. However, Viscera preserved for precautionary measure.

The Post mortem report is Ex. P.22.

23. In cross-examination, this witness clarified that no ligature mark was found around the neck. The injury which was found on the neck could be caused by pressing the neck with hard and blunt object.

24. Thus, it is clear that the death of Manraman was homicidal in nature.

25. In the present case, the prosecution has relied upon five eyewitnesses, namely Biharilal, Jagroop, Phoolmati, Mohwati and Sudama Prasad. Since, partial trial of Pramod @ Bholi had taken place separately, therefore, evidence led by prosecution in the trial of Pramod @ Bholi shall be considered separately.

Appellant Pramod

26. Vinay @ Bihari (P.W.4) who was examined on 15-2-2012 in respect of Pramod @ Bholi, stated that about 3 years back, it was 2-2:30 P.M. He was fetching water from the handpump. At that time Shiv Kumar came nearer to his house. Manraman scolded him as to why he is creating ruckus. It was further stated by this witness that two days prior thereto, dispute had taken place between Manraman and the accused persons. On this, Shiv Kumar started abusing Manraman. This witness pacified the situation and took the deceased inside his house and Shiv Kumar also went back to his house. After 10 minutes, all the eight persons came there and took the deceased Manraman out of his house and started assaulting him. The Appellant Pramod @ Bholi was also there and he was trying to save Manraman from the remaining accused persons. This witness further clarified that he could not understand as to whether Pramod @ Bholi had caught hold of Manraman with an intention to save him or not, but he had caught hold of Manraman. Thereafter, Shiv Kumar, Omkar and Awdhesh twisted the neck of Manraman. Omkar was also instigating to kill him. The accused persons ran away after the deceased Manraman died. The FIR, Ex P.6 was lodged and spot map, Ex.P.3 was prepared. This witness was declared hostile by the public prosecutor. In cross-examination, he accepted the suggestion that it was Shiv Kumar who strangulated the deceased. He also admitted that the appellant Pramod @ Bholi had also dragged the deceased out of his house. He further stated that the appellant Pramod @ Bholi and other accused persons had come with pre-plan. In cross-examination, this witness again stated that appellant Pramod @ Bholi was trying to save the deceased and clarified that since, he could not understand the same, therefore, he did not mention this fact in his police statement. Then again he stated that it is incorrect to say that the appellant Pramod @ Bholi was not involved in the incident.

27. Jagroop Prasad (P.W.2) who was examined on 22-11-2011, stated that all the eight accused persons dragged the deceased out of his house and started assaulting him by fists and he was also strangulated. However, in para 3 of his examination in chief, he clarified that Shiv Kumar had caught hold of neck of Manraman whereas Omkar was instigating the accused persons. All the accused persons had assaulted the deceased. However, in cross-examination, he admitted that the appellant Pramod @ Bholi was not present on the spot, when the murder of Manraman took place. He also could not explain as to why the fact that all the accused persons had twisted the neck of deceased was not mentioned in his police statement, Ex. D.1. He admitted that except Shiv Kumar, nobody else had caught hold of neck of Manraman. The appellant Pramod @ Bholi is the son of co-accused Shiv Kumar.

28. Phoolmati (P.W.3) who was examined on 24-12-2011 has stated that it was a festival of Holi. She was in her house. Her Daughter-in-law Mohwati was also in the house. Jagroop was feeding his cattles. It was about 1:30 P.M. Shiv Kumar was coming after taking bath and abused her husband on account of old enmity. When it was objected by her husband, then Shiv Kumar started assaulting her husband by fists and blows and also twisted his hand. At that time, except Shiv Kumar no body else was there. She started crying. Only Shiv Kumar had assaulted her husband and nobody else had assaulted him. Shiv Kumar had dragged her husband to the courtyard where he had assaulted him. This witness was declared hostile. She denied that any allegation was made by her against the appellant Pramod @ Bholi. In para 9 of her cross-examination, she further stated that the appellant Pramod @ Bholi was not present on the spot.

29. Mohwati (P.W.6) who was examined on 27-6-2012 has stated that all the eight accused persons, including the appellant Pramod @ Bholi

came on the spot and dragged her father-in-law Manraman out of the house and took him to the courtyard of Matadeen and started assaulting him by fists and blows. Shiv Kumar strangulated her father-in-law and Awdhesh had broken the hand of her father-in-law. In cross-examination, She stated that she cannot explain as to why the allegation that the accused persons dragged the deceased to the courtyard of Matadeen is not mentioned in her police statement. It is not out of place to mention that this witness in her police statement, Ex. D.1 had stated that the accused persons took the deceased to the courtyard of Surendra Patel. She denied that appellant Pramod @ Bholi was not present on the spot.

30. Sudama Prasad (P.W.7) who was examined on 6-11-2012 has stated that he was going back to his house and saw that Omkar Patel, Pramod @ Bholi, Sai Lal, Awdhesh Patel, Rajendra, Rakesh, Ram Kumar etc were abusing. Thereafter, he went back to his house. After 20-25 minutes, he came to know that Manraman has been killed. He was informed by daughter-in-law of Manraman that the above named persons had killed the deceased. This witness was declared hostile. However, even in his cross-examination by the Public Prosecutor, he did not support the prosecution case. In cross-examination by the appellant, this witness stated that he had told the police that Omkar, Awdhesh, Pramod @ Bholi, Sai Lal, Rajendra, Rakesh and Ram Kumar were abusing, but could not explain as to why this fact is not mentioned in his police statement, Ex. P.11.

31. Thus, it is clear that Sudama Prasad (P.W.7) and Phoolmati (P.W.3) have turned hostile with regard to the role played by the appellant Pramod @ Bholi. Although the evidence of Biharilal (P.W.2) is slightly shaky with regard to the role played by the appellant Pramod @ Bholi, but Mohwati (P.W. 6) has specifically stated that appellant Pramod @ Bholi

also came on the spot and dragged the deceased out of his house and assaulted him by fists and blows. But, the allegation of strangulating the deceased is against Shiv Kumar.

32. The FIR, Ex. P.2 was lodged at 19:00 whereas the incident took place at about 14:30. The place of incident is approximately 25 Kms away from the police station, and the reasons for delay in lodging the FIR has been disclosed as non-availability of conveyance.

33. Even otherwise, the FIR was lodged within a period of 4 hours of the incident. Under these circumstances, it cannot be said that there was any delay in lodging the FIR. Since, the appellant Pramod @ Bholi is specifically named in the FIR, and it has been alleged that he along with other accused persons, dragged the deceased out of his house and assaulted him by fists and blows, therefore, in the light of evidence of Bihari (P.W.2) and Mohwati (P.W.6), it is held that the prosecution has proved beyond reasonable doubt, that the deceased was dragged out of his house by the appellant Pramod @ Bholi along with other co-accused persons, and he had also assaulted the deceased. But, there is no allegation that the appellant Pramod @ Bholi had either instigated the co-accused or strangulated the deceased.

34. It is not out of place to mention here that no injury except on the neck of the deceased was found. No fracture of his hand was found.

Appellants Sai Lal, Awdhesh, Rakesh, Omkar and Rajendra

35. Biharilal (P.W.1) who was examined on 15-7-2013 has stated that the accused Omkar Prasad Patel, Rakesh Patel, Rajendra Prasad, Pramod, Sai Lal, Awdhesh and Shiv Kumar are known to him. On 11-3-2009 at about 2:30 P.M., he was fetching water from the hand pump. Shiv Kumar came from the side of Narba and Manraman was also sitting near his house. At that time, Shiv Kumar started abusing Manraman. When he tried

to pacify the situation, then Shiv Kumar asked him as to why he is not pursuing Manraman. Thereafter, he took Shiv Kumar back to his house. Thereafter, co-accused Omprakash Patel called Rajendra, Rakesh, Awdhesh, Sai Lal, Ram Kumar, Rajendra, Rakesh and Pramod. At that time, Manraman was inside his house. Thereafter, all the accused persons went inside the house of Manraman and dragged him out to his courtyard. All the accused persons started assaulting him by fists. Manraman was shouting for his help. Thereafter, Omkar Patel caught hold the collar of Manraman and twisted his neck. Thereafter, this witness stated that in fact Shiv Kumar had pressed the neck after catching hold of collar of Manraman. Thereafter, he narrated the incident to other villagers. He went to police station to lodge the FIR. Merg intimation is Ex. P.1. The police registered the FIR, Ex. P.2. On the next day, *Lash Panchnama* Ex. P.3 was prepared. At the time of preparation of *Lash Panchnama*, he had seen that right hand of the deceased was broken and ligature marks were seen around the neck. Thereafter, *Naksha Panchnama* Ex. P.4 was prepared. The dead body was sent for post mortem. He also stated that spot map, Ex. P.6 was prepared. This witness was cross-examined in detail. He could not explain as to why the fact that he was fetching water from hand pump, Shiv Kumar started abusing the deceased, Omprakash Patel had summoned the other accused person, Omkar Patel had caught the collar of the deceased and had twisted his neck were not mentioned in his FIR, Ex. P.2. He also stated that the deceased had not abused Shiv Kumar and had also not scolded as to why he creates ruckus with the help of Sai Lal and Awdhesh, but could not explain as to why aforesaid allegations were made in his FIR, Ex. P.2 and police statement, Ex. D.1. He admitted the suggestion that Shiv Kumar had twisted the neck of Manraman Patel. He admitted that elder son of Manraman namely Rajesh @ Kodu was in the

house. He further stated that hand pump is situated near the courtyard where the dispute took place. He had witnessed the incident from a distance of 50 ft.s. He further stated that after 2-3 hours of the incident, he went to the police station to lodge the FIR. He clarified that as no conveyance was available, therefore, he went after 2-3 hours. He denied that during this period he was tutoring the witnesses. He also stated that for preparing fodder he was fetching water. He denied that villagers had made a complaint to senior police officers that the accused have been falsely implicated. However, he admitted that his statements before S.P. were recorded. He denied that Crime branch had also come to investigate but admitted that his statements were also recorded by crime branch. The wife and daughter in law of Manraman took him back to his house under a hope and belief, that he might be alive. He denied that he, Jagroop and Sudama kept the body of Manraman back in the house and thereafter he went to lodge FIR. The spot map, Ex. P.5 was prepared on his instructions. He denied that the accused persons were falsely implicated on account of enmity. One door of the house of Manraman is in front of hand pump. He admitted that Manraman never participated in any election and he also had no enmity with any villager. He went to police station on the motorcycle of Sunil. He admitted that Omkar Patel had won the election of BDC and his wife had won the election of Sarpanch. He further admitted that Ram Kumar who is the father of Rakesh and Rajendra had won the election of Panch.

36. Jagroop (P.W.2) in his evidence recorded on 29-4-2016 turned hostile. However, on cross-examination by Public Prosecutor, he admitted that on the day of Holi, all the eight accused persons had dragged Manraman out of his house and assaulted him. He admitted that earlier some dispute took place between accused and Manraman on the question

of cattles and Manraman had lodged a report in this regard. He admitted that he was in his courtyard when Manraman was being assaulted. He also admitted that he too was assaulted by the accused persons. *Safina form*, Ex. P.9 contains his signatures, and spot map Ex. P.11 was prepared. Omkar Prasad was instigating the accused persons, whereas Shiv Kumar had caught hold of neck of Manraman and others were assaulting by fists and blows. Thereafter, the accused persons killed Manraman by twisting his neck. In cross-examination, he clarified that Shiv Kumar had strangulated the deceased whereas Rajendra and Rakesh had assaulted him.

37. Phoolmati (P.W.4) was examined on 23-2-2016. She has stated that on the date of incident, She was in her house. Omkar Prasad Patel, Sai Lal Patel, Awdhesh Patel, Rakesh Patel, Rajendra Patel are known to her. Deceased Manraman was her husband. It was about 6 years back. Rakesh Patel, Omkar Patel, Bholi, Sikku all eight persons came to her house. They assaulted her husband Manraman by fists and blows and killed him by twisting his neck. The incident took place on the issue of cattles. When She tried to intervene, then She was pushed. Since, this witness was an old lady, therefore, permission was granted to the Public Prosecutor to ask questions. She admitted that when Shiv Kumar was coming from the side of Nala, he was scolded by her husband as to why he creates ruckus with the help of Sai Lal and Awdhesh. Thereafter, Shiv Kumar started talking to her husband in high pitch and also abused him. Biharilal pacified the situation and accordingly, Shiv Kumar went away. Thereafter, Shiv Kumar, his son Pramod @ Bholi, Ram Kumar Patel, his son Rajendra, Rakesh Awdhesh Patel, Omkar Patel, Sai Lal came there. She further stated that Omkar Patel had instigated Sai Lal Patel that the deceased be dragged out of the house and accordingly, Shiv Kumar, Rakesh, Pramod,

Rajendra, Ram Kumar Patel entered inside the house and dragged her husband out of the house. She further admitted that her husband was taken to the courtyard of Surendra. There, Shiv Kumar Patel, Rakesh Patel, Pramod Patel, Rajendra Patel, and Ram Kumar Patel started assaulting her husband by fists and blows. She further admitted that Omkar and Sai Lal were instigating that the deceased should be killed. Thereafter, Shiv Kumar strangulated the deceased. In cross-examination, she stated that since, certain allegations were reminded by the Public Prosecutor, therefore, She has stated the same. She further stated that 7 years have passed. She admitted that none of the accused was armed with any weapon. She further stated that her son came after the incident and Biharilal (P.W.1) came after the arrival of her son. The incident was narrated by her to Biharilal. Thereafter, Biharilal went to lodge the FIR.

38. If the evidence of this witness is considered, then it is clear that earlier She did not say about the instigation by Omkar Prasad and Sai Lal. After her examination was recorded, a note was appended by the Court that since, the witness is an old lady and the incident took place about 6 years back, therefore, the Public Prosecutor was permitted to ask Leading Question.

39. Now the question for consideration is that whether the Trial Court could have permitted the Public Prosecutor to put leading question to this witness. It is made clear that this witness was never declared hostile.

40. Sections 142, 154 of Evidence Act, read as under :

> **142. When they must not be asked.**—Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.
>
> The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

> **154. Question by party to his own witness.**—(1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.
>
> (2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

41. The Supreme Court in the case of **Varkey Joseph Vs. State of Kerala** reported in **1993 Supp (3) SCC 745** has held as under :

> **10.** The most startling aspect we came across from the record is that the criminal trial was unfair to the appellant and the procedure adopted in the trial is obviously illegal and unconstitutional. The Sessions Court in fairness recorded the evidence in the form of questions put by the prosecutor and defence counsel and answers given by each witness. As seen the material part of the prosecution case to connect the appellant with the crime is from the aforestated witnesses. The Sessions Court permitted even without objection by the defence to put leading questions in the chief examination itself suggesting all the answers which the prosecutor intended to get from the witnesses to connect the appellant with the crime. For instance, see the evidence of PW 1, "Then I saw Jose (appellant) coming from the north and going towards south". Did you notice his dress then? Yes. He had worn a white Dhoti … Did you notice his Dhoti? Yes. I had seen two or three drops of blood on his Dhoti. Suddenly I had a doubt". Similarly PW 4 also at that time "Did anyone from Ramanattu House come for tea? Yes. Jose came. When did Jose came to have tea? I do not remember … Did Jose come on the previous day. Yes came about 6 p.m. in the evening. Did he say anything? He brought a bag and said let it be here I shall take this bag after some time … What was the dress of the accused when he came to the shop? He was wearing white Dhoti and tied a cloth on his hand. Have you noticed anything particular on the Dhoti? No". Similar leading questions were put to other witnesses also to elicit on material part of the prosecution case in the chief

examination itself without treating any of the witnesses hostile. Section 141 of the Indian Evidence Act, 1872 defined leading question to mean "any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question". Section 142 provides leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the court. The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved. Section 143 envisages that leading questions may be asked in cross-examination. Section 145 gives power to cross-examine a witness as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

11. Leading question is one which indicates to the witnesses the real or supposed fact which the prosecutor (plaintiff) expects and desires to have confirmed by the answer. Leading question may be used to prepare him to give the answers to the questions about to be put to him for the purpose of identification or to lead him to the main evidence or fact in dispute. The attention of the witness cannot be directed in chief examination to the subject of the enquiry/trial. The court may permit leading question to draw the attention of the witness which cannot otherwise be called to the matter under enquiry, trial or investigation. The discretion of the court must only be controlled towards that end but a question which suggests to the witness the answer the prosecutor expects must not be allowed unless the witness, with the permission of the court, is declared hostile and cross-examination is directed thereafter in that behalf. Therefore, as soon as the witness has been conducted to the material portion of his examination, it is generally the duty of the prosecutor to ask the witness to state the facts or to give his own account of the matter making him speak as to what he had seen. The prosecutor will not be allowed to frame his questions in such a manner

> that the witness by answering merely "yes" or "no" will give the evidence which the prosecutor wishes to elicit. The witness must account for what he himself had seen. Sections 145 and 154 of the Evidence Act are intended to provide for cases to contradict the previous statement of the witnesses called by the prosecution. Sections 143 and 154 provide the right to cross-examination of the witnesses by the adverse party even by leading questions to contradict answers given by the witnesses or to test the veracity or to drag the truth of the statement made by him. Therein the adverse party is entitled to put leading questions but Section 142 does not give such power to the prosecutor to put leading questions on the material part of the evidence which the witness intends to speak against the accused and the prosecutor shall not be allowed to frame questions in such a manner to which the witness answer merely "yes" or "no"; but he shall be directed to give evidence which he witnessed. The question shall not be put to enable the witness to give evidence which the prosecutor wishes to elicit from the witness nor the prosecutor shall put into witness's mouth the words which he hoped that the witness will utter nor in any other way suggest to him the answer which it is desired that the witness would give. The counsel must leave the witness to tell unvarnished tale of his own account. Sample leading questions extracted hereinbefore clearly show the fact that the prosecutor led the witnesses to what he intended that they should say on the material part of the prosecution case to prove against the appellant which is illegal and obviously unfair to the appellant offending his right to fair trial enshrined under Article 21 of the Constitution. It is not a curable irregularity.

42. If the evidence of Phoolmati (P.W.4) which was recorded after the Public Prosecutor was permitted to ask leading question, then it is clear that suggestions were given to this witness which were accepted. For example:

> 6. यह कहना सही है कि तब ओमकार पटेल ने साईलाल को बोला कि मादरचोद को धर से खींचकर बाहर लाओ तब शिवकुमार राकेश प्रमोद राजेन्द्र

रामकुमार पटेल मेरे धर के अंदर धुस आये और मेरे पति को धर के अंदर खींचकर बाहर ले गये। यह कहना सही है कि सभी लोग मेरे पति का धसीटकर पास ही सुरेन्द्र पटेल की बाडी ले गये। यह कहना सही है कि वहां पर शिवकुमार पटेल राकेश पटेल प्रमोद पटेल राजेन्द्र पटेल एवं रामकुमार पटेल सभी लोग मेरे पति का हाथ मुक्को से मारना शुरू कर दिये। यह कहना सही है कि मेरे पति को काफी मारा वही पर खडा ओमकार व साई लाल कहते रहे मादरचोद को आज जान से खत्म कर दो।

43. Thus, it is clear that the permission granted by the Trial Court to ask leading question was certainly not in the light of Section 154 of Evidence Act, because the aforesaid leading questions would not have been put to her in cross-examination by the adverse party. Further, the provision of Section 142 of Evidence Act also would not apply because the allegations in respect of which leading questions were allowed to be put to the witness were neither introductory or undisputed, nor were already sufficiently proved.

44. Therefore, the answers which were elicited by putting leading questions to Phoolmati (P.W.4) cannot be read because the permission to put leading question was granted without declaring the witness as hostile.

45. Therefore, the allegation against Omkar Prasad and Sai Lal that they were instigating the other accused persons to kill cannot be read.

46. Mohwati (P.W.6) was examined on 24-2-2016. She stated that the incident took place about 7 years back. Her father-in-law was in the house. Omkar Patel, Sai Lal Patel, Awdhesh Patel, Rajendra Patel, Rakesh Patel came to her house and took her father-in-law out of the house. Initially She was assaulted by them. Thereafter, her father in law was assaulted. Sai Lal, Awdhesh, Rakesh, Rajendra, Shiv Kumar, Ram Kumar, Pramod, Omkar had assaulted her father in law by fists and blows. Thereafter, Shiv Kumar and Omkar strangulated her father.

47. This witness in her police statement, had not stated that Omkar had also strangulated her father-in-law, but unfortunately she was not confronted with her earlier statement. Section 145 of Evidence Act reads as under :

> **145. Cross-examination as to previous statements in writing.**—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

48. Thus, it is clear that if a party intends to contradict a witness, then his attention must be invited to those parts of the previous statements, which are to be used for the purpose of contradicting him.

49. The Supreme Court in the case of **Major Som Nath v. Union of India,** reported in **(1971) 2 SCC 387** has held as under :

> 24…….The only question is, what use can be made of such statements even where the witness admits having signed the statements made before the Military Authorities. They can at best be used to contradict in the cross-examination of such a witness when he gives evidence at the trial court of the accused in the manner provided under Section 145 of the Evidence Act. If it is intended to contradict the witness by the writing, the attention of the witness should be called before the writing can be proved to those parts of it which are to be used for the purpose of contradicting him. If this is not done, the evidence of the witnesses cannot be assailed in respect of those statements by merely proving that the witness had signed the document. Then the witnesses are contradicted by their previous statements in the manner aforesaid, then that part of the statements which has been put to the witness will be considered along with the evidence to assess the worth of the witness in determining his veracity. The whole of the previous statement however cannot be treated as substantive evidence.

50. The Supreme Court in the case of **V.K. Mishra v. State of Uttarakhand,** reported in **(2015) 9 SCC 588** has held as under :

> **19.** Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

51. Therefore, it is held that although Mohwati (P.W.6) had not stated in her police statement, that Omkar had also instigated the accused persons to kill Manraman, but as this witness was not confronted with her previous

statement, therefore, the omission in police statement, Ex. D.1 cannot be read in favor of the appellants.

52. Now the question is that whether the allegation of Mohwati (P.W.6) that Omkar had also instigated the accused persons is reliable or not?

53. This witness in para 8 of her examination-in-chief has stated that after the accused persons entered inside the house, they assaulted this witness and thereafter, took away Manraman with them. In para 22 of her cross examination, She has stated that after She was pushed by the accused in the room, She fell down. Thereafter, when She reached to the courtyard of Matadeen, by that time, the entire incident had taken place. She further stated in the same para that when She was pushed, she fell unconscious therefore, could not see that who had taken her father–in-law out of the house.

54. Thus, the evidence of this witness that Omkar had also strangulated the deceased Manraman is not reliable and hence, it is disbelieved.

55. Sudama Prasad (P.W.9) who was examined on 6/9/2017 has stated that at about 2:30 P.M. he was coming from the side of community hall. Manraman Patel (deceased) was abusing the accused persons and Pramod, Awdhesh Patel, Sai Lal, Rajendra Patel, Rakesh Patel, Omkar Patel were also abusing him. Thereafter, this witness went away and expressed that thereafter he does not know as to how the incident took place. This witness was declared hostile. But, nothing could be elicited by the Public Prosecutor which may support the prosecution case.

56. Thus, if the evidence of eye-witnesses are considered, then it is clear that initially Manraman scolded Shiv Kumar as to why he is creating ruckus with the help of Sai Lal and Awdhesh Patel. Thereafter, all the appellants came there and dragged Manraman out of his house and

assaulted him by fists and blows. None of them was armed with any weapon. At that time, Shiv Kumar strangulated the deceased with the help of shirt of deceased. Thus, it is clear that even Shiv Kumar was also not armed with any weapon.

57. Now the only question for consideration is that whether all the appellants had formed an Unlawful Assembly by sharing common object to kill Manraman, or it was an independent act of Shiv Kumar and Whether the appellants knew that such an act of killing Manraman is likely to take place.

58. The Supreme Court in the case of **Manjit Singh v. State of Punjab,** reported in **(2019) 8 SCC 529** has held as under :

> **14.1.** The relevant part of Section 141 IPC could be usefully extracted as under:
>
> "**141.** ***Unlawful assembly***.—An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—
>
> ***
>
> **Third**.—To commit any mischief or criminal trespass, or other offence; or
>
> ***
>
> *Explanation*.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."
>
> **14.2.** Section 149, rendering every member of unlawful assembly guilty of offence committed in prosecution of common object reads as under:
>
> "**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."
>
> **14.3.** We may also take note of the principles enunciated and

explained by this Court as regards the ingredients of an unlawful assembly and the vicarious/constructive liability of every member of such an assembly. In *Sikandar Singh*, this Court observed as under : (SCC pp. 483-85, paras 15 & 17-18)

"*15.* The provision has essentially two ingredients viz. (*i*) the commission of an offence by any member of an unlawful assembly, and (*ii*) such offence must be committed in prosecution of the common object of the assembly or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object. Once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability for the offence committed by a member of such unlawful assembly under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object.

***

17. A "common object" does not require a prior concert and a common meeting of minds before the attack. It is enough if each member of the unlawful assembly 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. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. 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.

18. In *Masalti* v. *State of U.P.* a Constitution Bench of this Court had observed that : (AIR p. 211, para 17)

'*17.* … Section 149 makes it clear that 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; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.'"

14.4. In *Subal Ghorai*, this Court, after a survey of leading cases, summed up the principles as follows : (SCC pp. 632-33, paras 52-53)

"*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."
>
> **14.5.** We need not expand on the other cited decisions because the basic principles remain that the important ingredients of an unlawful assembly are the number of persons forming it i.e. five; and their common object. Common object of the persons composing that assembly could be formed on the spur of the moment and does not require prior deliberations. The course of conduct adopted by the members of such assembly; their behaviour before, during, and after the incident; and the arms carried by them are a few basic and relevant factors to determine the common object.

59. The Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra,** reported in **(2016) 10 SCC 537** has held as under :

> **21.** An offence committed in prosecution of common object of an unlawful assembly by one person renders members of unlawful assembly sharing the common object vicariously liable for the offence. The common object has to be ascertained from the acts and language of the members of the assembly and all the surrounding circumstances. It can be gathered from the course of conduct of the members. It is to be assessed keeping in view the nature of the assembly, arms carried by the members and the behaviour of the members at or near the scene of incident. Sharing of common object is a mental attitude which is to be gathered from the act of a person and result thereof. No hard-and-fast rule can be laid down as to when common object can be inferred. When a crowd of assailants are members of an unlawful assembly, it may not be possible for witnesses to accurately describe the part played by each one of the assailants. It may not be necessary that all members take part in the actual assault. In *Gangadhar Behera*, this Court observed : (SCC pp. 398-99, para 25)
>
> "*25*. The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. A four-Judge Bench of this Court in *Masalti case* observed as follows : (AIR p. 210, para 15)

> '*15*. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.'"

60. The Supreme Court in the case of **Bhanwar Singh v. State of M.P.,** reported in **(2008) 16 SCC 657** has held as under :

> **43.** Regarding the application of Section 149, the following observations are extracted from *Charan Singh* v. *State of U.P.*: (SCC pp. 209-10, paras 13-14)
>
> "*13*. … 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. … 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.…

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)

44. Hence, the common object of the unlawful assembly in question depends firstly on whether such object can be classified as one of those described in Section 141 IPC. Secondly, such common object need not be the product of prior concert but, as per established law, may form on the

> spur of the moment (see also *Sukha* v. *State of Rajasthan*). Finally, the nature of this common object is a question of fact to be determined by considering nature of arms, nature of the assembly, behaviour of the members, etc. (see also *Rachamreddi Chenna Reddy* v. *State of A.P.*).

61. The Supreme Court in the case of **Kirtan Bhuyan v. State of Orissa,** reported in **1993 Supp (1) SCC 558** has held as under :

> 4….The villagers may have been fraction ridden on caste lines as suggested but the motive for the crime was so small that there was no reason for the prosecution witnesses to falsely implicate the accused persons. Besides, Kirtan Bhuyan, the author of the injury on the deceased, must be presumed to have intended the consequences of his act. The sole injury caused to her on the neck cut the main artery. The death was immediate due to hemorrhage. There is therefore no escape from Section 302 IPC being attracted. The High Court thus rightly singled Kirtan Bhuyan to be guilty under Section 302 IPC and the remaining appellants under Section 147 read with Section 323/149 IPC. The conviction of the appellants in these circumstances appears to us to be well based requiring no interference.

62. Thus, the law is, therefore, clear on the point that the vicarious liability of the members of the Unlawful Assembly will extend only to (1) the acts done in pursuance of the common object of the Unlawful Assembly, or (2) such offences as the members of the Unlawful Assembly knew to be likely to be committed in prosecution of that object. Members of an unlawful assembly can be held vicariously liable for acts committed by others if those acts are in furtherance of the assembly's common object or if they knew such acts were likely to occur.

63. This Court has already reproduced the sequence in which the offence took place. This incident was not triggered by Shiv Kumar but it was the deceased who initiated the dispute by abusing Shiv Kumar and scolding that why he is creating ruckus with the help of Sai Lal and

Awdhesh. Furthermore, except entering inside the house and dragging the deceased out of the house and giving a beating to him by fists and blows, nothing else was alleged against them. Even Shiv Kumar was unarmed and he strangulated the deceased with the help of shirt of deceased himself. No overt act was attributed to any of the appellant while Shiv Kumar was strangulating the deceased. No external or internal injury except on the neck of the deceased was found, but if the person is not assaulted by fists with great force, then generally no internal injury would be found. Therefore, it is clear that although the appellants formed an Unlawful Assembly with common object of assaulting the deceased, but the manner in which the incident took place, it is clear that strangulation of the deceased was the independent act of Shiv Kumar and none of the appellant ever knew that this incident may occur. Even at the time of strangulation, no overt act was attributed to any of the appellant. Thus, it is held that the appellants are **guilty** of committing offence under Sections 147, 323/149, and 452/149 of IPC, but they are **acquitted** for the offence under Section 302/149 of IPC.

64. So far the question of sentence is concerned, the appellants have been sentenced to undergo R.I. of 1 year for offence under Section 147 of IPC, R.I. of 1 year for offence under Section 323/149 of IPC and R.I. of 1 year and a fine of Rs.1000/- with default imprisonment of 1 month R.I. for offence under Section 452/149 of IPC. The sentence awarded by the Trial Court does not require any interference and it is hereby **affirmed**. The Sentences shall run concurrently.

65. *Ex-consequenti,* the Judgment and Sentence dated 30-1-2020 passed by IVth A.S.J., Katni in S.T. No.172 of 2009 is **affirmed** to the extent of conviction of appellants for offence under Sections 147, 323/149

and 452/149 of IPC and is **set aside** to the extent of conviction under Section 302/149.

66. As per the certificate issued by the Trial Court under Section 428 of Cr.P.C., the appellant Pramod @ Bholi had remained in jail for a period of 167 days as an undertrial prisoner, the appellant Rajendra, Rakesh had remained in jail for a period of 29 days as an undertrial prisoner, Awdhesh had remained in jail for a period of 355 days as an undertrial prisoner, Sai Lal Patel had remained in jail for a period of 158 days as an undertrial prisoner, and Omkar Prasad Patel had remained in jail for a period of 117 days as an undertrial prisoner.

67. The Appellants were convicted by Judgment and Sentence dated 30-1-2020. Appellant Omkar Patel, Awdhesh Patel, Rajendra Patel and Rakesh Patel were granted bail by order dated 25-2-2022, whereas Appellant Pramod @ Bholi was granted bail by order dated 4-2-2022. Omkar Patel was granted bail by order dated 25-11-2020. Thus, it is clear that all the appellants have already undergone the Rigorous Imprisonment of more than 1 year. Therefore, their bail bonds are hereby discharged. They are no more required in the present case.

68. Let a copy of this judgment be sent back to the Trial Court along with its record for necessary information and compliance.

69. The Cr.A. No.s 2874 of 2020 and 3171 of 2020 filed by Sai Lal, Awdhesh, Rakesh @ Tidku Patel, Rajendra @ Chiju Patel, Pramod Patel and Omkar Prasad Patel are hereby **allowed** to the extent mentioned above.

(G.S. AHLUWALIA)
JUDGE

(VISHAL MISHRA)
JUDGE

Arun*