

CASE LAW

Supreme Court Digest of Recent Cases (2004) 5 SCC 141

1. Penal Code, 1860

— Ss. 149 and 141 — Constructive liability of members of an unlawful assembly — Common object as specified in S. 141 — Existence of — Proof in respect of — Held, is essential — However proof regarding overt act not necessary — Ascertainment of common object — Relevant considerations for, restated — When and how the common object comes into existence, explained — Once formed, it may exist up to a particular stage whereafter it may get modified or may be abandoned — Thus, effect of S. 149 may be different on different members of the same assembly, (2004) 5 SCC 141-A

2. Penal code,1860

— S. 149 — Applicability — Definite roles not assigned to accused — Plea that S. 149 not applicable in such case, held, untenable, (2004) 5 SCC 141-D

3. Penal Code, 1860

— S. 149 [Ss. 304 Pt. I/149 and 307/149] — Applicability — Number of actually convicted persons being less than five or acquittal of accused projected as having inflicted the fatal injury — Effect of, explained — Attack on deceased — Eight accused named — Two (*C* and *S*) holding pistols — Shot fired by *C* did not hit the deceased — But the one fired by *S* proving fatal — Held, evidence on record clearly established that there was an unlawful assembly whose common object was to kill the deceased — That being so, acquittal of *S* on some technical ground, held, would not wipe out application of S. 149 — Conviction and sentence upheld, (2004) 5 SCC 141-E

Supreme Court Digest of Recent Cases (2004) 4 SCC 205

4. Penal Code, 1860

— Ss. 149 and 141 — Constructive liability of members of an unlawful assembly — "Common object" as defined in S. 141 — Existence of — Proof in respect of — Held, is essential — Proof regarding overt act, held, not necessary — Determination of "common object" — Relevant considerations for, restated — Explaining the manner of formation of "common object", held, it can develop at the spot eo instanti — Once formed, it may exist up to a particular stage whereafter it may get modified or may be abandoned — Effect of S. 149 may be different on different members of the same assembly, (2004) 4 SCC 205-A

5. Penal Code, 1860

— S. 149 — "Common object" — Evidence — Held, direct evidence generally not available in respect thereof — Hence, the same has to be gathered from the acts committed and result therefrom, (2004) 4 SCC 205-B

6. Penal Code, 1860

2005 SCCL.COM 52

(Case No:Criminal Appeal No. 123 of 2005 (with CrI. A. Nos.124, 125, 126, 127 and 128 of 2005))
Sunil Kumar and another Appellants versus State of Rajasthan Respondent
Date of Decision(mm/dd/yy):1/19/2005.

Name of the Judge:Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice S.H. Kapadia.

Subject Index: Indian Penal Code, 1860 -- Sections 302 read with section 149 -- applicability of section 149 -- where a group of assailants who were members of the unlawful assembly proceeds to commit the crime in pursuance of the common object of that assembly, it is often not possible for witnesses to

describe the actual part played by each one of them and when several persons armed with weapons assault the intended victim, all of them may not take part in the actual assault. Therefore, it was not necessary for the prosecution to establish as to the specific overt act was done by each accused -- courts below were justified in applying Section 149 IPC to the case of the appellants. They have been rightly convicted under Section 302 read with Section 149 IPC

7. Evidence Act, 1872

— S. 9 — Identification of accused — In court for the first time in absence of TI parade — Generally sole testimony of witnesses in court identifying the accused who is a stranger to them is of weak character and court insists on corroboration — But this is only a rule of prudence and whether such testimony can form the basis of conviction without corroboration depends upon facts and circumstances of each case — Where accused is known to one of the witnesses who identified him in court and other witnesses corroborated his testimony, conviction can be based on such evidence, (2004) 2 SCC 694-D

8. Evidence Act, 1872

— S. 33 — It is not the quantity but quality of witnesses that matters, (2004) 2 SCC 694-G

9. Evidence Act, 1872

— S. 9 — Identification of accused — Identification in court by witnesses by going near the accused — Witnesses deposing to have seen the accused persons at the place of occurrence about eight years back — Held, identification after going near the accused would not render testimony of identification doubtful, (2004) 2 SCC 694-H