**It is not necessary for every person constituting an unlawful assembly to play an active role in convicting him with the aid of Section 149 of the IPC.**

**Case title: Parshuram Vs State of M.P**

**Case no.: SLP (Crl.) No. 1718 of 2022**

**Decided on: 03.11.2023**

**Quorum: Hon’ble Chief Justice B.R Gavai, Hon’ble Justice B.V Nagarathna, Hon’ble Justice Prasanth Kumar Mishra.**

***Hon’ble Justices stated that*** *“the Constitution Bench has held that it is not necessary that every person constituting an unlawful assembly must play an active role for convicting him with the aid of Section 149 of IPC. What has to be established by the prosecution is that a person has to be a member of an unlawful assembly, i.e. he has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly.”*

**BRIEF FACTS:**

The complainant party's buffalo had damaged the shed, which the appellant had built on the village passage for the cattle. As a result, the appellant had driven the buffalo away by beating it with a lathi. When the appellant and the other accused individuals arrived at the man's home after that, the man fled the house in terror. After smashing through the doors, the accused people beat three people inside the house before leaving.

Furthermore, the accused individuals, armed with deadly weapons like a sword, barchi, lathi, and a domestic bomb, waylaid the complainant party and caused injuries as they were riding a tractor to the police station to file the complaint. Serious injuries were sustained during this and one has died, leading to the filing of a formal complaint for violations of Sections 302, 323, 452, 148, and 149 of the IPC. The trail court sentenced the accused and the High Court subsequently upheld the Trial Court's decision, which led to the accused parties' conviction. As a result, the Supreme Court is hearing this appeal.

**COURT ANALYSIS AND JUDGEMENT:**

After carefully analysing the evidence, the court determined that the current appellants were clearly members of the unlawful assembly. Without a doubt, the present appellants play no specific role in assaulting the deceased.

Furthermore, based on the evidence presented, it is unclear whether the common purpose of the unlawful assembly was to cause the deceased's death. It is entirely possible that the accused did not intend to cause the death of anyone from the complainant party. It is conceivable that the accused came together solely to teach the complainant party a lesson.

They therefore concluded that there is a benefit of doubt on appellant. The conviction under Section 302 of the IPC would be unsustainable. The prosecution has failed to establish beyond a reasonable doubt that the unlawful assembly had the intent to kill the deceased. Part-II of Section 304 of the IPC replaces the conviction under Section 302 of the IPC.

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**Written by – Surya Venkata Sujith**