

“CONVENIENCE NOTE ON BEHALF OF MR. SUMEER SODHI,
STANDING COUNSEL FOR THE STATE OF CHHATTISGARH

Date of Incident	23.02.1997 at around 9-9:30 pm
F.I.R No.	32 of 1997 dated 26.02.1997 information received on 24.02.1997
Penal Sections	Sections 146, 148, 456, 307, 302 IPC
Complainant	PW-2 Netram
Convicted under	Sections 147,148,450,323,302 and 149 of IPC

DETAILS OF ACCUSED PERSONS:

1. Total No. of Accused persons as per F.I.R No. 32/1997 - 25-30
2. Total No. of Accused Convicted by Sessions Court – 17
3. Two appeals preferred by 17 convicted persons {Crl. App No. 410 and 698 of 2000} before the High Court.
4. High Court partly allowed appeal preferred by one convicted person viz. Birendra Kumar *alias* Teku Verma and held him to be a juvenile on the date of offence and rejected the appeals by the other 16 convicted persons.
5. Out of the remaining 16 convicted persons two SLPs were preferred by 12 convicted persons:

(i) SLP No. 457-458/2016 by nine convicts (dismissed qua five convicts by way of order dated 29.01.2016 and allowed qua four convicts vide judgment dated 15.03.2019 in Cr. App. No. 478-79/2019)

- SLP No. 457-458/2016 preferred by 9 Accused:
 1. Kamta Prasad (Dismissed – conviction upheld)
 2. Shankar Lal Verma (Dismissed– conviction upheld)
 3. Bharat Lal Verma (Dismissed– conviction upheld)
 4. Dauwalal alias Ganesh Dewagan (Allowed – conviction set aside)
 5. Hari Lal Verma (Dismissed– conviction upheld)
 6. Vinod Verma (Dismissed– conviction upheld)
 7. Punit Ram Verma (Allowed – conviction set aside)
 8. Santosh Kumar Verma (Allowed – conviction set aside)
 9. Manohar Verma (Allowed – conviction set aside)

(ii) SLP Crl No. 7801/2015 preferred by three convicted persons (initially dismissed vide Order dated 21.09.2015) (Vide Order dated 02.11.2020 in Review Petition (Crl.)(Dy.) No. 12093/2020, present SLP has been restored)

- SLP Crl No. 7801/2015 preferred by 3 convicted persons–
 1. Kaushal Verma
 2. Gaya Ram Verma
 3. Omkar Prasad

6. This Court by way of judgement dated 15.03.2019 acquitted four convicts by giving them the benefit of doubt on the grounds: **[Para 11/ Page 28 of Review Petition]**

- PW-2 in his F.I.R did not name any of the Appellants whereas in his statement in Court, the names of Appellants occurred in his Testimony, however did not attribute any overt act.
- PW-3 did not name any of the Appellants.
- PW-4 did indicate some role, however the same has to be seen in light of the fact that he and his brother were hidden by PW-3 (their mother).

7. Thus the present Review Petition filed by Accused on the ground that they are on similar footings as that of the Accused acquitted in Crl. Appeal No. 478-479 of 2019.

8. However, the case of the Accused/Appellants different from that of those Acquitted in Crl. Appeal No. 478-479 of 2010 :

S. No	Names	Kaushal Verma	Omkar Prasad	Gayaram Verma
1.	F.I.R	✓ (Pg 7, 9 & 10 of Additional Doc. filed in I.A No. 112646/2020 Of R.P)	✓ (Pg 8 & 9 of Additional Doc. filed in I.A No. 112646/2020 Of R.P)	✓ (Pg 9 of Additional Doc. filed in I.A No. 112646/2020 Of R.P)
2.	PW-2 (Statement u/s 161 Crpc)	✓ (Pg 66 of SLP)	✓ (Pg 66 & 67 of SLP)	✓ (Pg 66 of SLP)
3.	PW -2 (Deposition)	✓ (Pg 80 Para 80 of SLP)	✓ (Pg 74, para 1 and Pg 80, para 4 of SLP)	✓ (Pg 74 para 1 and Pg 88 para 17)
4.	PW-3 (statement u/s 161 Crpc)	×	×	×
5.	PW-3 (Deposition)	✓ (Pg 92, para1,Pg 95, Para 4, Pg 97 para 5 of SLP)	×	×
6.	PW-4 (statement u/s 161 Crpc)	✓ (Pg 65 of SLP)	✓ (Pg 65 of SLP)	✓ (Pg 65 of SLP)
7.	PW-4 (Deposition)	✓ (Pg 100 para 1 of SLP)	✓ (Pg 100 para 1of SLP)	✓ (Pg 100 para 1 of SLP)

9. LEGAL SUBMISSIONS :

- Two essential ingredients of S.149 viz: 1) Commission of an offence by any member of an unlawful assembly and 2) such offence must have been committed in furtherance of the common object of that assembly or must be such as members of that assembly knew likely to be committed, once the two conditions fulfilled, every person who at the time of committing of an offence was a member of the assembly would be held guilty. **Para 9 & 10 of Lalji and Ors. Vs. State of U.P (1989) 1 SCC 437**

- In order to attract S.149, it must be shown that the incriminating act was done towards accomplishment of common object of unlawful assembly. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in furtherance of a common object, they would be liable for the offence u/s 149 IPC – **Para 39-40 of Waman and Ors. Vs. State of Maharashtra (2011) 7 SCC 295”**