

# SUPREME COURT OF INDIA

Rishideo Pande

Vs.

State of U.P.

CrI.A.No.134 of 1954

(S. R. Das, N. H. Bhagwati and S. J. Imam, JJ.)

03.02.1955

## JUDGEMENT

### **S. R. DAS, J.:-**

1. The appellant and his brother Ram Lochan Pandey and one Banslochan were convicted by the Sessions Judge of Ghazipur on 25-2-1954 under S. 302 read with S. 34, I. P. C., for having murdered one Sheomurat and each of them was sentenced to death subject to confirmation by the High Court There was an appeal to the High Court by all the three accused and there was a reference made by the learned sessions Judge for confirmation of the death sentence. The High Court gave Banslochan the benefit of doubt and rejected the reference and allowed the appeal so far as it concerned him. The High Court, however, dismissed the appeal so far as it concerned Ram Lochan and the appellant and accepted the reference and confirmed their conviction and the sentence passed on them. The present appeal is by Rishideo alone.

2. The main point urged by Sri Umrigar who appears in support of this appeal is that S. 34, I. P. C., has been wrongly applied to the facts of this case. The meaning, scope and effect of S. 34 have been explained on more than one occasion by the Privy Council and by this Court. It will suffice only to refer to the last decision of this Court in the case of - 'Pandurang v. The State of Hyderabad'. AIR 1955 SC 216 (A) pronounced on 1954. It is now well settled that the intention referred to in S. 34 presupposes a prior concert a pre-arranged plan, i.e., a meeting of minds. This does not mean there must be a long interval of time the formation of the common intention the doing of the act. It is not necessary adduce direct evidence of the common intention. Indeed, in many cases it may be impossible to do so. The common intention may be inferred from the surrounding and the conduct of the parties. Sri Umrigar submits that there is nothing on the record from which a common intention on the part of Ram Lochan and the appellant to murder Sheomurat can be properly inferred.

3. There is now no dispute as to the following facts, namely-

(i) that at dead of night-at 1 A. M. to be precise - between 4 and 5-6-1953 the two eye-witnesses Baney Pandey (P. W. 1) and Subrati (P. W. 2) on being awakened by the sound of a blow found Ram Lochan and the appellant standing near the cot on which Sheomurat, the victim had been sleeping;

(ii) that Ram Lochan was armed with a 'gandasa' and the appellant had a 'lathi' in his hand;

(iii) trial Ram Lochan who was standing near the head of the cot was just lifting up the 'gandasa' after having dealt a blow therewith on the neck of Sheomurat, while the appellant was standing at the foot of the cot armed with his 'lathi';

(iv) that according to the eye-witnesses and the doctor who carried out the 'post mortem' examination there was only one incised wound on the neck of the 'victim and there was no sign of any 'lathi' blow on his person;

(v) that on a hue and cry having been raised Ram Lochan and the appellant ran away together as deposed by Chauthi (P. W. 4), Nageswar (P. W. 5), Soyambar (P. W. 10) and Ram Dhari (P. W. 11);

(vi) that both Ram Lochan and the appellant absconded and surrendered before the Magistrate after proceedings under Ss. 87 and 88, Cr. P. C. had been taken against them.

In his examination under S. 342, Cr. P. C., the appellant denied the prosecution case 'in toto' and maintained that none of the accused persons had gone to the scene of occurrence and did not know anything about the murder of Sheomurat. The Sessions Judge who had the advantage of seeing the demeanour of the prosecution witnesses examined before him, however, believed their evidence and found the above facts to be clearly established beyond any doubt. On these facts the learned Sessions Judge came to the following conclusion:

"The question, therefore, arises what offence has been committed by the three accused. Though the actual blow which caused the death of Sheomurat was struck by Ram Lochan yet the only inference that can be drawn from the fact of the three accused going there in the manner is that all the three of them had gone there with premeditated intention to cause the death of Sheomurat and his death was caused in furtherance of that common intention; the very fact that Ram Lochan had been armed with a Gandasa shows that the other two had not only clearly known but had also shared his intention to cause Sheomurat's death and it was immaterial that the actual fatal blow was struck by Ram Lochan while the other two did not actually do anything except keeping guard and giving strengthening support to Ram Lochan. The death of Sheomurat was, therefore, caused in furtherance of the common intention and all the three accused were responsible therefore under S. 34, I. P. C."

In the grounds of appeal to the High Court no point was taken in terms that S. 34 had been misapplied in this case. All that was said was that the conviction was against the weight of evidence on the record and was bad in law. A perusal of the judgment of the High Court clearly indicates that what was urged before it was not that no inference as to the existence of a common intention on the part of Ram Lochan and the appellant to murder Shepmurat could be properly drawn from the above facts if held to be proved but that the evidence by which the above facts were sought to be proved should not have been believed. The High Court had no hesitation in rejecting that contention and finding, in agreement with the trial Court, that both Ram Lochan and the appellant were guilty of murder committed in furtherance of their common intention to kill Sheomurat.

It is only in the grounds of appeal to this Court and in the argument before us that the question of the misapplication of S. 34, I.P.C., has been prominently raised. In spite of the able arguments of Sri Umrigar we are not persuaded to take a different view of the facts and circumstances of this case. After all, the existence of a common intention said to have been shared by the accused persons is, on ultimate analysis, a question of fact. We are not of opinion that the inference of fact drawn by the learned Sessions Judge from the facts and circumstances appearing on the record of this case and which was accepted by the High Court was improper or that those facts and circumstances were

capable of any innocent explanation.

Indeed, no other explanation or hypothesis was at all suggested to any witness during their examination at the trial or even in the arguments advanced before us. We are, therefore, unable to hold, on the facts and circumstances of this case, that there was any misapplication of S. 34, I.P.C.

4. Sri Umrigar somewhat fervently appealed before us to consider the propriety of inflicting the extreme penalty of law on the appellant. It is true that the appellant did not inflict any blow on the deceased but he shared the common intention to kill him and actually participated in the criminal act by being present on the spot armed with his 'lathi'. In the eye of the law, therefore, he is as much guilty of the whole criminal act as was his brother Ram Lochan who actually dealt the fatal blow on the sleeping man. The sentence must therefore, be maintained. If there is any extenuating circumstance outside the record calling for the exercise of clemency the appeal must be to authorities other than the Court of law.

5. For reasons stated above we dismiss this appeal.

Appeal dismissed.

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