SUPREME COURT OF INDIA

Parasa Raja Manikyala Rao

Vs.

State of A.P.

Crl.A.No.49 of 2003

(Doraiswamy Raju and A. Pasayat JJ.)

15.10.2003

JUDGEMENT

Arijit Pasayat, J.

1. Three persons including present appellants, who were accused Nos. 2 and 3 faced trial by learned Sessions Judge, Krishna Division at Machilipatnam for allegedly having caused homicidal death of one Parasachinna Ramababu (hereinafter referred to as 'the deceased'). All the accused persons and the deceased who were closely related were in hostile terms on account of property dispute. The prosecution claimed that the appellants snuffed at deceased's life.

2. Accusations while led to trial of the accused persons are as follows:

> "There was enmity between the accused and the deceased. Though elder members of the community tried to settle the dispute there was no permanent solution. On 16-8-1997 accused-Parasa Satyanarayana (A-1) removed the stones at the boundary of the disputed land. Parasa Mohan Rao (P.W. 1) and his sons visited the place and chastised the accused and their father for their undesirable behaviour. This led to further animosity. On 19-8-1997, the fateful day, three accused persons along with their father came to the house of P.W. 1 and picked up quarrel. A-1 tried to Back P.W. 1 with a knife. But he warded off the stroke with the stick. Parasa Ghaneswara Rao and Parasa Venkateswara Rao and O. Gitchaiah protested and questioned the accused persons about their behaviour. Accused persons left the place. Subsequently, at about 10.45 a.m. deceased was returning to his house. As he reached near a shopping complex, all the accused persons in furtherance of their common intention murdered the deceased. Paras Raja Manikyala Rao-appellant No. 1 (A-2) caught his right hand and Parasa Raja Govind Rajulu-appellant No. 2 (A-3) caught his left hand. The deceased was practically immobilized. Taking advantage of this, Parasa Satyanarayana (A-1) gave various blows on the neck, back and the abdomen with the knife in a gruesome manner and even separated his head from the body. After doing so, A-1 carried the severed head and threw it at some distance. The ghastly attack was

witnessed by Parasa Mohana Rao (P.W. 1), Parasa Veeramma (P.W. 2), Parasa Yesoda Rao (P.W. 3) and Parasa Ganeswara Rao (P.W. 4). Information was lodged at the police station immediately. Investigation was undertaken and subsequently accused persons were arrested. On completion of investigation, charge-sheet was placed. While A-1 was charged with commission of offence punishable under S. 302 of the *Indian Penal Code, 1860* (for short 'the IPC') other accused persons were charged for commission of offence punishable under S. 302 read with S. 34, I.P.C. 13 witnesses were examined to further the prosecution version. Accused persons pleaded innocence and claimed trial. On consideration of the evidence of the witnesses the trial Court found that A-1 was guilty of offence punishable under S. 302, I.P.C., but found the present appellants to be not guilty by giving benefit of doubt. Matter was carried by the State in appeal before the High Court which by the impugned judgment found them guilty. The High Court held that they were guilty of offence punishable under S. 302 read with S. 34, I.P.C. and each one was to undergo life imprisonment. The appeal filed by A-1 was dismissed."

3. It is submitted that A-1 has not preferred any appeal, but present appellants have questioned the reversal of their acquittal to conviction by the High Court.

4. Learned senior counsel appearing for the appellants submitted that there are many significant improvements made by P.Ws. 1 and 2. Before the police they did not say to be waiting outside their house, while in Court they said so. It is highly improbable that four persons saw the attack but did not even try to protect or save the deceased. The High Court has failed to notice that the witnesses were highly interested. P.Ws. 3 and 4 are not independent witnesses and P.Ws. 1 and 2 were their supporters in their public life activities. It is improbable that present P.W. 1 would have alone gone to the police station, after having seen his son murdered. All this goes to show that because of the enmity with the accused persons, they were falsely implicated so that none of the male members could be available to run or take care of the family. Even though A-1 has not questioned his conviction, the totality of evidence show that effort was made to frame all the male members of the family. In any event, S. 34 has no application because it has not been established by evidence that there was any intention to commit murder.

5. In response, learned counsel for the respondent-State submitted that right from the beginning when the First Information Report was lodged, the definite roles played by present appellants was described, the overt acts and the instigations as well as exhortations done by them were clearly mentioned. The First Information Report was lodged immediately and, therefore, case of any false implication after deliberation as pleaded by the appellants does not arise. The evidence of eye-witnesses P.Ws. 1 to 4 clearly established the accusations. Evidence of P.W. 1 shows that after the first blow, these accused continued to restrain movement of the victim and that continued when blows were inflicted on different parts of his body. Names of all accused persons were also mentioned in the First Information Report.

6. At the outset, we think it proper to take note of what weighted with the trial Court to direct acquittal of present appellants. In para 39 of the judgment it was noted as follows:

> "39. Though all the other evidence even as against A-2 and A-3 was as nearly cogent as the one against A-1, the improbability of their participation became one of the two plausible views in the light of the last mentioned four rulings of the Hon'ble Supreme Court. This gives rise to a doubt in so far as A-2 and A-3 are concerned. Naturally the benefit of such a doubt must go to them."

7. This is a strange way of dealing with the accusations and considerations of the the accusations and considerations of the guilty or otherwise of the accused. How a person reacts in a given case may be the determinative factor so far as that case is concerned. That cannot be applied as a rule of universal application to all cases irrespective of the fact situation in that particular case. There can be no empirical formula as to how one reacts in a given situation and its effect and impact. It would be almost like trying to put a square peg on a round hole. To imprint fact situation of one decided case upon another or observations made in the peculiar facts of a given case to any or every other case notwithstanding dissimilarity in effect and the distinctive features is legally impermissible.

8. Coming to the question whether the evidence is reliable, the High Court has analysed the evidence in great detail considering the fact that P.Ws. 1 and 2 were parents of the deceased and there was admitted hostility between the accused and the deceased's family. It has also analysed the evidence of P.Ws. 3 and 4 to conclude that the accusations have been established. The so-called omissions which have been tried to be magnified by learned counsel for the appellant, do not amount to any contradiction or any improvement and at any rate such variation as to undermine the chore of the prosecution case or its basic and essential aspects.

9. Each case, more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive. The vague and cryptic conclusion arrived at by the trial Court to treat their case differently from the manner it dealt with that of A-1, despite its very observation that the evidence was as cogent against them too as it was against A-1 lack a judicious approach and determination and, therefore, rightly interfered with by the High Court after an objective appreciation of the evidence independently and in the light of the relevant and guiding principles of law governing such determination.

10. The other point which was emphasised relates to applicability of S. 34, I.P.C.

11. The section really means that if two or more persons intentionally do a common thing jointly, it is just the same as if each of them had done it individually. It is a well recognised canon of criminal jurisprudence that the Courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object each and every person

becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In combination of this kind a mortal stroke, though given by one of the party, is deemed in the eye of law to have been given by every individual present and abetting. But a party not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act. Leading feature of this section is the element of participation in action. The essence of liability under this section is the existence of a common intention animating the offenders and the participation in a criminal act in furtherance of the common intention. The essence is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. (See *Ramaswami Ayyanagar and others v. State of Tamil Nadu*[1]). The participation need not in all cases be by physical presence. In offences involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different time and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case. Before a man can be held liable for acts done by another, under the provisions of this section, it must be established that (i) there was common intention in the sense of a pre-arranged plan between the two, and (ii) the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply.

12. 'Common intention' implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Under this section a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of offence showing a pre-arranged plan and prior concert. (See *Krishna Govind Patil v. State of Maharashtra*[2]). In *Amrik Singh and others v. State of Punjab*[3]) it has been held that common intention presupposes prior concert. Care must be taken not to confuse same or similar intention with common intention; the partition which divides their bonds is often very thin, nevertheless the distinction is real and substantial, and if overlooked will result in miscarriage of justice. To constitute common intention, it is necessary that intention of each one of them be known to the rest of them and shared by them. Undoubtedly, it is a difficult thing to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In *Maqsoodan and others v. State of U.P.*[4] it was observed that prosecution must lead evidence from which the common intention of the accused can be safely gathered. In most cases it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view of the facts involved. Whether an act is in

furtherance of the common intention is an incident of fact and not of law. In *Bhaba Nanda Sarma and others v. State of Assam*[5]) it was observed that prosecution must prove facts to justify an interference that all participants of the acts had shared a common intention to commit the criminal act which was finally committed by one or more of the participants. Mere presence of a person at the time of commission of an offence by his confederates is not, in itself sufficient to bring his case within the purview of S. 34, unless community of designs is proved against him (See *Malkhan and another v. State of Uttar Pradesh*[6]). In the Oxford English Dictionary, the word "furtherance" is defined as 'action of helping forward.' Adopting this definition, Russel says that "it indicates some kind of aid or assistance producing an effect in future" and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken , for the purpose of "effecting that felony. (Russel on Crime 12th Edn. Vol. I, pp. 487 and 488). In *Shankarlal Kacharabhai and others v. State of Gujarat*[7] this Court has interpreted the word "furtherance" as 'advancement of promotion.'

13. In view of the cogent, credible and trustworthy evidence of P.Ws. 1 to 4 about overt acts and the instigations, S. 34 has been rightly applied by the High Court. Having regard to the nature of disputes between the two families of the accused and victim, the happening of events immediately before the incident in question, the role found to have been played by them and the utterances said to have been made during the course of the assault are sufficient to provide a safe and sound basis for an inevitable inference of the existence of common intention in this case. Judgment of the High Court consequently does not need any interference and the appeal is dismissed.

Appeal dismissed.

[1]*AIR 1976 SC 2027*
[2]*AIR 1963 SC 1413*
[3]*1972 Cri LJ 465 (SC)*
[4]*AIR 1983 SC 126*
[5]*AIR 1977 SC 2252*
[6]*AIR 1975 SC 12*
[7]*AIR 1965 SC 1260*