SUPREME COURT OF INDIA

Hari Ram

Vs

State of Uttar Pradesh

Criminal Appeal No. 827 of 2004

(Arijit Pasayat and C.K.Thakker)

09/08/2004

JUDGMENT

ARIJIT PASAYAT, J.

1. Leave granted.

2. Appellant was convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced to undergo imprisonment for life by learned Additional District and Sessions Judge, Bareilly. Such conviction and sentence were confirmed by the impugned judgment of the Allahabad High Court.

3. The prosecution version in a nutshell is as follows:

Kundan Lal (hereinafter referred to as 'deceased') was resident of village Siraura in district Bareilly, was real brother of Gendan Lal, the father of the appellant Hari Ram and co-accused Paramanand. Gendan Lal had another son Hardwari. Deceased had no male issue and had only one daughter named Smt. Nanhi, who was married to Ajudhia (P.W.1). Deceased owned about 34 Bighas agricultural land, which was jointly recorded in his name and in the name of Gendan Lal, but each of them had got separated their share by mutual agreement. Deceased had given his land on crop

share basis. Since deceased had no male issue, the appellant and co-accused Parmanand wanted to take his land and has also threatened him that in case he did not transfer his land in their favour, they would kill him. On 1.4.1980 at about 12.30 P.M. Parmanand again threatened deceased to transfer his land in his favour otherwise he would kill him. Deceased had lodged report of the said incident at Police Station-Bhojipura.

4. Apprehending danger to his life at village Sirura deceased had come to his daughter's house at village Ashpur and was residing there after 1.4.1980. After about a month Gendan Lal came to the deceased at village Ashpur and apologized for mistake of his sons and asked him to go to his village, but deceased refused to do so. Gendan Lal then asked him to give his land to him on crop share basis. Deceased agreed to it and gave his land to Gendan Lal. Thereafter, Gendan Lal had sent wheat of his share to deceased.

5. On 12.11.1980 i.e. a day before the date of occurrence of this case, Hardwari, brother of the appellant came to deceased at village Ashpur at about 10.00 A.M. and asked him to go to his house to take his share of paddy. Deceased agreed to it and told that he would come next day. On 13.11.1980 at about 8.00 A.M. deceased along with Ajudhia (P.W.1) and Mangli (P.W.2) started for village Siraura in a bullock cart and they reached at the Chaupal of appellant and Paramanand who asked deceased to go to Khalihan to take the paddy. Deceased proceeded to Khalihan along with appellant and Parmanand as well as Ajudhia (P.W.1) and Mangali (P.W.2). When they reached at a distance of about one furlong towards west of the village abadi in between Jwar Arhar and Jwar Patsan appellant whipped out a country made pistol from his waist and pointing towards Ajudhia (P.W.1) and Mangali (P.W.2) asked them to go back. Due to fear Ajudhia and Mangali receded back about 8 to 10 paces. Appellant stopped deceased. Then Parmanand whipped out a sickle from his waist and inflicted injuries on his abdomen. When Ajudhia (P.W.1) and Mangli (P.W.2) tried to raise alarm, appellant again threatened them on the point of pistol that they should not raise alarm. Deceased fell down and died on the spot. Ajudhia (P.W.1) came to Pradhan of the village and narrated the entire incident. Village people also assembled there. Thereafter they asked him to lodge report. Ajudhia (P.W.1) got prepared the report from one Niranjan and lodged the same at Police Station Bhojipura at 1.00 P.M.

6. Chik FIR was prepared by Head constable Mandan Mohan Chaubey, who made an endorsement of the same at G.D. report and registered a case under Section 302 I.P.C. against both Parmanand and Hari Ram.

7. A charge-sheet was placed and they faced trial. The prosecution mainly relied on the evidence of P.Ws. 1 & 2 who were stated to be eyewitnesses. They were found reliable, credible and their version was held to be cogent. Accused Parmanand was found guilty of offence punishable under Section 302 IPC while appellant was found guilty of offence punishable under Section 302 read with Section 34 IPC. The trial Court's judgment was affirmed by a Division Bench of the Allahabad High Court by the impugned judgment.

8. In support of the appeal learned counsel for the appellant submitted that the background scenario as projected by the prosecution does not show that the appellant had any role to play in the alleged commission of offence and, therefore, Section 34 could not be applied. It was submitted that P.Ws.

1 and 2 were related to the deceased and were not independent witnesses.

9. Learned counsel for the State supported the judgments of the Courts below and submitted that the accusations have been fully established and Section 34 IPC has been rightly applied.

10. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. **In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily by before the commission of the crime. #** The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in Ashok Kumar vs. State of Punjab), the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

11. As it originally stood the Section 34 was in the following terms:

"When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone." *

12. In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each", so as to make the object of Section 34 clear. This position was noted in Mahbub Shah vs. Emperor 1945 AIR (PC) 118).

13. The Section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed in Ch. Pulla Reddy and other vs. State of Andhra Pradesh 0), **Section 34 is applicable even if no injury has been caused by the**

particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused. #

14. The above position was highlighted recently Anil Sharma and Others vs. State of Jharkhand].

15. **Section 34 IPC has clear application to the facts of the case and has been rightly applied. #**

16. The plea that there is no independent witness is of no consequence.

17. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

18. In Dalip Singh and others vs. The State of Punjab it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts." *

19. The above decision has since been followed in Guli Chand and others vs. State of Rajasthan) in which Vadivelu Thevar vs. State of Madras was also relied upon.

20. We may also observe that the **ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance #** . This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed.

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of

no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - `Rameshwar vs. State of Rajasthan' (AIR 1952 SC 54 at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel." *

21. Again in Masalti and Ors. vs. State of U.P.) this Court observed: (p, 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct." *

22. As observed by this Court in State of Rajasthan vs. Teja Ram and other 4) the **over-insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house or nearby the most natural witnesses would be the inmates of that house. It would be unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also.** # (See Sucha Singh and Another vs. State of Punjab)

23. Appeal is without merit and deserves dismissal which we direct.