

SUPREME COURT OF INDIA

Hemchand Jha

Vs.

State of Bihar

Crl.A.No.7 of 2002

(Dr. Arijit Pasayat and P.P.Naolekar JJ.)

13.06.2008

JUDGEMENT

Dr.Arijit Pasayat, J

1. Appellant questions the legality of the judgment rendered by a Division Bench of the Patna High Court dismissing the appeals filed by the appellant and one Kripal Singh. Latter was convicted for offences punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') and sentenced to rigorous imprisonment for life and was further convicted for offences punishable under the Arms Act. The present appellant was convicted for offence punishable under Section 302 read with Section 34 IPC. He was sentenced to undergo imprisonment for life.
2. The trial court directed acquittal of the accused Sanjay Singh who faced trial with them while finding the appellants before the High Court to be guilty.
3. Prosecution version in a nutshell is as follows:

“Gyaneshwar Prasad Singh, the informant, gave a written report to the police on 5.6.1991 at 4.15 pm. that Mithilesh Kumar Singh, Krishna Kumar Singh (hereinafter referred to as the `deceased') and Krishna Dubey proceeded to village Nawadih in a jeep bearing No. ORC 9827 to attend the marriage of his nephew. At about 2.30 pm the jeep was stopped at Rabindra Petrol Pump for taking petrol. Petrol was taken. In the meantime accused Kripal Singh, Hemchand Jha and one person whom he identified by face came on a black Rajdoot motor cycle and stopped the motor cycle on the right side of the jeep. Appellant Hemchand Jha was driving the motor cycle. They got down from the motor cycle and went behind the petrol pump. Krishna Singh was capping the petrol tanki. The aforesaid three persons came near him. Kripal Singh came close to Krishna Singh, took out a pistol and fired near the ear of Krishna Singh. Krishna Singh fell down on the ground and started shaking because of unbearable pain. Mithilesh Singh and Krishna Dubey tried to apprehend them but the third person whom he identified by face took out a pistol from the waist and

threatened to kill if they proceeded further. All the three accused persons ran away towards west on the bye pass road on the motor cycle. The witnesses took Krishna Singh on the said jeep to Aurangabad hospital for treatment where he died. Many persons had seen the occurrence.

On the basis of the aforesaid written report a formal first information report was drawn, investigation was taken up and on completion of investigation charge sheet was submitted in the court against three persons. The court where same was filed took cognizance and committed the case to the Court of Sessions for trial. The defence of the appellants was that they were innocent and were falsely implicated in the case.

Ten witnesses were examined to further the prosecution case, out of them PWs. 1,2&3 claimed to be eye witnesses. Placing reliance on the statement of the aforesaid three eye witnesses, the trial court found the accused appellant guilty and sentenced them. But Sanjay Singh was acquitted.

The appeals filed by Kripal Singh and the present appellant, before the High Court, were dismissed.

In support of the appeal learned counsel for the Appellant submitted that no definite role has been ascribed to the appellant. According to the prosecution, it was Kripal Singh who had fired the gun and killed the deceased. According to him Section 34 IPC has no application.

Learned counsel for the State on the other hand supported the judgment.”

4. According to PWs 1, 2 & 3 the present appellant was driving the motor cycle. The assailant Kripal Singh and the appellant got down from the Motor cycle and went towards the petrol pump. The deceased was capping the petrol tanks. The accused Kripal Singh came close to the deceased and took out a pistol and fired near the ear of the deceased. When the three eye witnesses tried to apprehend the accused persons, they were threatened of dire consequences. The three accused persons ran away towards west on the bye pass road on the motor cycle which was being driven by the accused.

5. 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 be 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 v. State of Punjab*¹, 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.

6. 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 Ors. v. State of Andhra Pradesh*², 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.

7. In view of the background facts as noted above Section 34 IPC has clear application. The trial court and the High Court were justified in holding the appellant guilty and he has been rightly convicted for offence punishable under Section 302 read with Section 34 IPC.

8. Appeal is without merit, deserves dismissal, which we direct.

9. We record our appreciation for the able manner in which Mr. Vikas Rojipura, learned Amicus Curiae assisted the Court.

¹(AIR 1977 SC 109)

²(AIR 1993 SC 1899)