

SUPREME COURT OF INDIA

Chimanbhai Jagabhai Patel

Vs.

State of Gujarat

Crl.A.No.469 of 2009

(Arijit Pasayat and Dr. M.K.Sharma JJ.)

16.03.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal by accused no.2 is to the judgment of a learned Single Judge of the Gujarat High Court upholding the conviction of the appellant for offences punishable under Section 307 read with Section 34 and Section 120 B of the *Indian Penal Code, 1860* (in short the 'IPC').

“Learned Additional Sessions Judge, Valsad, had recorded the judgment of conviction and had imposed sentence of five years for the first offence and no separate sentence was imposed for latter offence. Fine of Rs.500/- with default stipulation was also imposed.”

3. Background facts in a nutshell are as follows:

“On 26.11.1987 around 07:30 p.m. in village Kaanjan Ranchhod, Tal in Dist. Valsad, the appellant-accused no.1 called the complainant Kalaben Jagabhai Patel at Khadi to take money and also told her that he had some work with her. The accused no.2 also reached at the same place from where both the accused took the complainant in Vadi of Chamarbhai Revlabhai, where for about half an hour, they were talking and thereafter with an intention to kill the complainant they, forcibly made the complainant drink an insecticide used in Chilly Crop named as 'Eka Laxys EC.25'. The accused no. 2 caught hold of the complainant and thus, committed offence of an attempt to murder the complainant.

The complainant was residing at Village 'Kaanjan Ranchhod' of Taluka Valsad along with her mother and brothers. The father of the complainant had expired about 6-7 years ago. She had studied upto 8th Standard. On 26.11.1987, the complainant had

gone to Khadi for washing the clothes at about 12 noon. At that time, her aunt had also come to wash the clothes and after completing the work of washing clothes, she (the aunt) went away. Thereafter, around 2 noon, Satishbhai Nichhabhai and Ishwarbhai Khusalbai, residents of the same Faliya as that of the complainant, had come to wash their clothes. The complainant, after getting her clothes dried around 3 O'clock, started to go to her house. On the way, the accused no.1 Jayantibhai Gulabbhai met her near his field and asked the complainant to come at Khadi in the evening to collect money. He (accused no.1) also told that he has some personal work with her. The complainant told him (accused no.1) that she will come in the evening and went to her home. Thereafter around 7:00 p.m., the complainant went to `Khadi' where the accused no.1 was present. While she was talking with the accused no.1, the appellant-accused no.2 Chimanbhai Jagabhai reached there. Thereafter, both the accused took the complainant to Vadi of Chamarbhai. There they talked for about an hour. Thereafter, all of a sudden accused No.2 Chimanbhai Jagabhai caught hold of the complainant and accused No.1 Jayantibhai took out a bottle of poisonous medicine used as insecticide in chilly crop forcibly poured the same in the mouth of the complainant. As the complainant was caught hold of by the accused no.2 Chimanbhai Jagabhai, she could not shout. On medicine being administered to the complainant, she fainted and the accused ran away from the place. After sometime the complainant regained consciousness and she shouted for help. On hearing shouts of the complainant, her brother Nahhubhai, Ishwarbhai and Ukadbhai came running there and they brought the complainant to the house of Ishwar. There she was administered juice of Neem tree, where after the complainant vomited. The complainant was then admitted, in the hospital at Valsad. On the next day, Mamlatdar, Valsad, recorded the statement of the complainant. The real cause of the incident was the love affair between the complainant Kalaben and accused no.1 Jayantibhai as a result of which the complainant became pregnant. The accused Jayantibhai advised the complainant and also gave some tablets to her to get the child aborted, but as it was not possible, the complainant asked the accused Jayantibhai to marry her. Initially, he agreed for the same, but then he turned around and did not marry the complainant. The brother of the complainant Nabhubhai then talked to Hirkabhai and meeting of `Caste Panch' was called. There it was agreed that Jayantibhai and complainant be married. But as the accused Jayantibhai was not willing to marry the complainant, he tried to kill the complainant by administering the poison forcibly.

The investigation was undertaken and charge sheet was filed. The trial court placed reliance on the evidence of the witnesses and found the appellant guilty. Emphasis was laid on the evidence of the complainant (PW 5), Nabhubhai Jagabhai (PW8), Balubhai Maganbhai (PW5) and Dr. Ram Ratan (PW2).

Before the High Court the primary stand in appeal was that offence under Section 307 is not made out. It was also submitted that Section 34 has no application. The High Court did not accept this plea and found the appellant, who was A2 before the trial

court, guilty. The High Court held that the present appellant rightly been convicted by application of Section 34 IPC.

4. The stand taken before the High Court was reiterated by learned counsel for the appellant. Additionally, it was submitted that out of the sentence of five years imposed, the appellant had already undergone sentence of more than 40 months and is entitled to certain remissions.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the trial court as affirmed by the High Court.

6. The essential ingredients required to be proved in the case of an offence under Section 307 are:

“(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as: (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.”

7. Section 34 has been enacted on the principle of joint liability in the commission 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.”

8. 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 commission 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.

9. In the background of the aforesaid provisions the trial court and the High Court was justified in holding that the appellant was guilty of offence punishable under Section 307 read with Section 34 IPC.

10. Coming to the question of sentence considering the nature of the accusations, the role played by the appellant and the period of custodial sentence already undergone without remission, the same is restricted to the period already undergone. The appellant shall be released from custody forthwith unless required to be in custody in any other case.

11. The appeal is disposed of accordingly.

¹(AIR 1977 SC 109)

²(AIR 1993 SC 1899)