SUPREME COURT OF INDIA

Rajkishore Purohit

Vs.

State of Madhya Pradesh

Crl.A.No.1292 of 2017

(Ranjan Gogoi and Navin Sinha,JJ.,)

01.08.2017

JUDGMENT

Navin Sinha,J.,

SLP(Crl.)No.10053 of 2014

1. Leave granted.

2. The conviction of respondent no.2, under Section 302/34 IPC, by the Sessions Judge, Sagar, in Sessions Trial No. 369 of 1997, has been reversed by the High Court in appeal, acquitting him. The appellant, brother of the deceased, assails the acquittal.

3. Lokman Khatik, accused no.3, was peeved with the meeting being held for his removal from the post of Mayor. The deceased was the President of the Congress Sewa Dal, spearheading the campaign. The trial court from the evidence arrived at the finding that all the four accused came together to the place of occurrence in a white ambassador car. Accused no.3 identified the deceased to Jitendra @ Jittu, accused no.2. Thereafter, respondent no.2 accompanied by the latter and accused no.4, Bhupendra, proceeded towards the deceased. Accused no.2 took out a revolver from his waist and fired at the deceased while the other two accused provided cover. All the four accused then left the place of occurrence in the ambassador car. The deceased died on the way to the hospital. The plea of alibi by respondent no.2 was disbelieved.

4. Accused no.2 was convicted under Section 302, IPC to Life imprisonment and rigorous imprisonment for one year under Section 25(1)(a) of the Arms Act. He is stated to have served out his sentence. Respondent no.2 and the other accused were convicted to Life imprisonment under Section 302/34 IPC.

5. The High Court, in the appeal preferred by respondent no.2, acquitted him, on the reasoning that no overt act of assault was attributed to him, neither was he armed, much less gave any exhortation. His mere presence was not sufficient to sustain the conviction,

attributing common intention. It was further reasoned that respondent no. 2 may have had no knowledge that accused no.2 was carrying a revolver.

6. The submission on behalf of the appellant was that the High Court has grossly erred in acquitting respondent no.2. There existed sufficient evidence to decipher common intention. Overt act by a co-accused or possession of weapons by him was not necessary to conclude the existence of common intention. There has been inadequate appreciation of evidence to erroneously conclude lack of common intention. A well reasoned order of the Trial Court has erroneously been set aside on a presumptive reasoning based on conjectures and surmises beyond the defence of respondent no.2 himself, that he may have been unaware of the fact that the co-accused was possessed of a revolver. It has resulted in grave miscarriage of justice, warranting interference by this Court.

7. Learned counsel for respondent no. 2 submitted that his mere presence at the place of occurrence along with other co-accused was not sufficient to infer common intention. The fact that they may have come together to the place of occurrence was also not sufficient. There is no positive evidence that they all left together after the assault in the same car. No overt act had been attributed to him and neither was he possessed of any weapon. The High Court has held that he was not aware of the fact that the co-accused was carrying a revolver. There was inadequate evidence that he had moved forward with co-accused towards the deceased after which the assault took place.

8. We have considered the respective submissions, and the materials on record. The order of acquittal, in the facts and circumstances of the case, is unsustainable, and deserves to be set aside for reasons discussed hereinafter.

9. Respondent no.2 was the nephew of accused no.3. The meeting had been called to protest for removal of accused no.3 from the post of Mayor on allegations of corruption, with the slogan "Lokman Hatao Congress Bachaao". The deceased was the President of the Congress Sewa Dal. Apparently the accused were peeved with the summoning of the meeting. The evidence of PWs 1, 4, 5, 13 and 23 are consistent that the four accused came together and alighted from a white Ambassador Car. Accused no.3 identified the deceased. Respondent no. 2, along with accused nos.2 and 4 moved forward towards the deceased. Accused no.4 and respondent no.2 then exhorted to kill the deceased, at which stage accused no.2 pulled out a revolver and fired at the deceased. In the melee that followed the shooting, the accused persons fled together in the car. The appellant, PW-1 was the own brother of the deceased and PW-5, the brother-in-law. There is no reason why they should be lying and falsely naming another as the assailants, shielding the real accused, especially when they were eye witnesses to the occurrence. Respondent no.2 has not urged false implication, and on the contrary took the defence of alibi, which has been disbelieved by the trial court and affirmed by the High Court. The taking of a false plea is an additional aggravating factor against the accused.

10.Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behavior in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula. The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.

11.Though judicial precedents with regard to common intention stand well entrenched, it will be sufficient to refer *State of Rajasthan vs. Shobha Ram*[1], observing as follows :-

> "10. Insofar as common intention is concerned, it is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime and also from prior and subsequent attendant circumstances. As observed in Hari Ram v. State of U.P.6 (SCC p. 622, para 21), the existence of 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. Therefore, 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 before a person can be vicariously convicted for the act of the other."

12. Motive for the assault existed because the accused were aggrieved by the meeting summoned. The assault was planned in a gathering, where escape would have been easy, in the chaos that would follow the assault. The accused persons came together in a car to facilitate a quick get-away. Exhortation was made by respondent no.2, when the accused were at very close quarters to the deceased. The firing was done from a distance of about 6 inches. The respondent no.2 and accused no.4 provided cover at this time. There is nothing in the conduct of respondent no.2 to draw any inference that he was taken by surprise, when the co-accused opened fire. Rather than provide help to the deceased and his relatives, respondent no.2 immediately escaped from the place of occurrence in the chaos that followed, indicative of his awareness of the common intention. The sequence of events, and the manner in which the occurrence took place, manifests a pre-concerted plan and a prior meeting of minds. It was not the case of respondent no.2 that he was taken by surprise and was unaware that the co-accused was carrying a revolver or that they had no intention to kill the deceased. If common intention by meeting of minds is established in the facts and circumstances of the case, there need not be an overt act or possession of weapon required, to establish common intention.

13. In *Ramaswami Ayyangar vs. State of Tamil Nadu*[2], explaining the essence and purport of common intention, it was observed as follows:-

> "12 The acts committed by different confederates in the criminal action may be different but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim, or may otherwise facilitate the [commission of crime]. Such a person also commits an 'act' as much as his co-participants actually committing the planned crime."

14. Though this Court, in exercise of discretionary jurisdiction under Article 136 of the Constitution, may not interfere with an order of acquittal, reversing a conviction, yet if it finds that the High Court has completely erred in appreciation of evidence, has applied the wrong principles to negate common intention, and has based its conclusions on speculative reasoning, beyond the defence of the accused himself, justice will demand that the acquittal is reversed. We, therefore, set aside the order of acquittal passed by the High Court and restore the order of conviction of respondent no.2 under Section 302/34 IPC passed by the Sessions Judge. Respondent no.2 has remained in custody only for 3 years, 10 months and 7 days. He is directed to surrender forthwith for serving out the remaining period of his sentence.

15. The appeal is allowed.

Judgment Referred.

[1]*(2013) 14 SCC 0732*
[2]*(1976) 3 SCC 0779*