

CASE NO.:
Appeal (crl.) 176 of 2008

PETITIONER:
Sachin Jana and Anr

RESPONDENT:
State of West Bengal

DATE OF JUDGMENT: 25/01/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.4664 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of Calcutta High Court which confirmed conviction of the appellants while directing acquittal of twelve co-accused persons. Originally, 20 persons including the present appellants faced trial for offence punishable under Sections 148, 323, 324 and 307 read with Section 149 of the Indian Penal Code, 1860 (in short \021IPC\022). After recording evidence the Trial Court acquitted six persons under Section 232 of the Code of Criminal Procedure, 1973 (in short \021Cr.P.C.\022) and the rest 14 were convicted.

3. Prosecution version in a nutshell is as follows:
First information report was lodged by one Hrishikesh Jana on 17.1.1992, stating that on 17.1.1992 in the morning when said Hrishikesh Jana was busy in the field for cultivation of his land, the appellants under the leadership of appellant Sachin Jana forming an unlawful assembly and being armed with different weapons like bombs, sticks, knives, iron rods and bottle of acid threatened Hrishikesh Jana with dire consequences and when Hrishikesh Jana did not oblige them by leaving the work of cultivation, the accused persons started assaulting him with blows, kicks, iron rods etc. and acid was also poured on his face and body. Hrishikesh Jana alleged in his written complaint that the appellants also poured acid on one Amulya Giri and Kartick Maity and also assaulted one Sabitri Giri who came forward to save Hrishikesh Jana. After completion of investigation charge sheet was filed. Accused persons pleaded false implication.

4. In order to further its version the prosecution examined 11 witnesses including the informant Hrishikesh Jana and injured persons Amulya Giri, Kalipada Maity. The accused persons examined three persons to contend that the prosecution was not projecting the correct scenario. The Trial Court after considering the evidence came to the conclusion that on 17th January, 1992 Sachin Jana and remaining appellants, after forming an unlawful assembly assaulted him when Amulya (PW2), Kartick (PW3) and Sachin came to rescue Hrishikesh. The accused persons shared common intention and also poured acid on the person of Amulya and assaulted.

5. Fourteen persons were found guilty of offence punishable under Section 307 IPC and each was sentenced to ten years imprisonment and fine of Rs.2,000/- with default stipulation. Different sentences were also imposed for the other offences.

6. The Trial Court primarily relied on the evidence of PWs. 1, 2 and 3 who were claimed to be victims of acid pouring. The High Court in appeal found that the evidence of PWs. 1, 2 and 3 clearly established the guilt of the appellants, but was not sufficient to convict the 12 co-accused persons. Accordingly, the appeal so far it relates to the present appellants was dismissed. But the conviction was altered to Section 307/34 IPC.

7. In support of the appeal, learned counsel for the appellants submitted that the case was one of false implication. In any event, offence under Section 307 IPC is not made out and the sentence as imposed is clearly excessive.

8. It is also submitted that Section 34 IPC has no application.

9. It is to be noted that three persons suffered injuries on account of acid poured on them. The doctor had indicated that each of the injured persons suffered more than 50% burn injury which was caused due to acid and the same was sufficient to cause death if not attended by medical aid at appropriate time.

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 minds 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 the moment; but it must necessarily be before the commission of the crime. The true concept of the section is 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* (1977 1 SCC 746) 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. The section does not say "the common intentions of all", nor does it say "an 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 Chinta Pulla Reddy v. State of A.P. (1993 Supp. (3) 134) 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.

12. The above position was highlighted in Girija Shankar vs. State of U.P. (2004 (4) SCC 793).

13. Section 307 IPC reads:

\023307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.\024

To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

14. This position was highlighted in State of Maharashtra v. Balram Bama Patil (1983 (2) SCC 28).

15. When the evidence on record is analysed, it is clear that Section 307 read with Section 34 IPC has clear application. The acid burns caused disfigurement.

16. Considering the nature of dispute the custodial sentence is reduced to 5 years. However, each of the appellants is directed to pay a fine of Rs.25,000/-. If the amount is deposited by the appellants within six weeks from today, out of each deposit, Rs.10,000/- shall be paid to each of the victims PWs. 1, 2 and 3. In case the amount of fine imposed is not deposited, the default custodial sentence of one year each.

17. The appeal is disposed of accordingly.