

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 553-554 OF 2001

Rangnath Sharma

.... Appellant

versus

Satendra Sharma & Ors.

.... Respondents

JUDGMENT

Dr. Mukundakam Sharma, J.

1. These appeals, which are filed by the complainant, are against an order of acquittal passed by the Patna High Court on 9th August, 2000, whereby the Division Bench acquitted the respondents while allowing the appeals filed by them questioning the judgment of conviction and sentence passed by Additional Sessions Judge II, Gaya on 22nd December, 1997 in Sessions Tr. Nos. 177/1995 and 134/1995.
2. Satendra Sharma, respondent No. 1 in Crl. Appeal 553/2001 was tried for offences punishable under Section 364, Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and

Section 27 of the Arms Act, 1959 while Pankaj Sharma and Ramakant Sharma, respondent Nos. 1 and 2 respectively in Crl. Appeal 554/2001 were tried for offences punishable under Section 364, Section 302 read with Section 34 IPC for murder of one Ajay Sharma (hereinafter referred to as the 'deceased'). The trial court found that all the three respondents are guilty and sentenced them to undergo rigorous imprisonment for ten years for offence under Section 364 IPC and rigorous imprisonment for life for offence under Section 302 read with Section 34 IPC. Satendra Sharma was further sentenced to undergo rigorous imprisonment for five years for offence punishable under Section 27 Arms Act. All the sentences were to run concurrently.

3. The prosecution case as unfolded during the trial is as follows:

On 24.09.1994 at about 5.00 p.m., the deceased who was the nephew of Rangnath Sharma (PW-7), the informant, was sitting at the door of his house in village Bhor, Police Station Tekari, Distt. Gaya. At that time the three respondents herein who belong to the same village came there and took the deceased with them. It is alleged that Rangnath Sharma tried to prevent his deceased nephew from going along with the respondents but

Satendra Sharma, took the deceased along with him telling Rangnath Sharma that the deceased would return soon, whereupon the deceased went with the aforesaid three persons. It is also alleged that the deceased was taken by the three persons towards the northern side of the village.

It further appears to be the case of the prosecution that the informant along with Sidhnath Sharma (PW-5) also went towards his cabin situated on the northern side of the village for attending call of nature and giving the round around his field and that when they proceeded about 150 yards on the western side of the cabin they saw Satendra Sharma, Pankaj Sharma and Ramakant Sharma, grappling and exchanging hot words with the deceased. Thereafter, Satendra Sharma took out pistol from his waist and fired it on the chest of the deceased as a result of which the deceased fell down. Upon this Rangnath Sharma along with Sidhnath Sharma while raising hulla proceeded towards the place of occurrence. The accused persons threatened Rangnath Sharma and Sidhnath Sharma that if they proceed any further they would be shot dead and so saying the accused-respondents ran away towards the western side. In the meanwhile, some villagers who were playing football in the field also came there and saw the accused persons committing the alleged occurrence.

The informant also stated that the main reason for the alleged occurrence was the fact that about four days prior to the date of occurrence a quarrel had taken place regarding irrigation of the land with Satendra Sharma and his father which at that time was settled by the interference of the villagers but it is due to the said grudge that the accused persons killed the deceased on 24.09.1994. The informant stated that immediately after the said occurrence he went to Tekari Police Station where his statement was recorded. On the basis of the said statement First Information Report was drawn up and in the same night the police visited the place of occurrence, prepared the inquest report of the deceased and thereafter sent the dead body of the deceased for post mortem examination.

After completing of the investigation, the police submitted charge sheet against the three respondents for the offences under Sections 364 and 302 read with Section 34 IPC and an additional charge under Section 27 of the Arms Act was leveled against Satendra Sharma as he was in possession of a Pistol. After filing of the charge-sheet, charges were drawn up against the accused persons who pleaded not guilty for the said charges. Consequently, trial was held, during the course of which prosecution examined ten witnesses in support of their case. According to the prosecution, PWs 4 (Sahjanand Sharma), 5 (Sidhnath Sharma) and 6

(Kaushal Kishore Sharma) are eye witnesses. PW 7 – Rangnath Sharma is the informant and also an eye witness. On completion of the trial, on the basis of the evidence recorded, the trial court found the accused guilty under the above-mentioned charges and convicted and sentenced them as indicated hereinabove.

Aggrieved by the said judgment and order of the Trial Court the respondents preferred appeals before the High Court. The said appeals were allowed by the Division Bench of the High Court against which the present appeals are filed by the complainant. In the present appeals the order of acquittal has been challenged. The appeals were listed before us for final hearing on which we heard learned counsel appearing for the parties.

4. Mr. Gaurav Agrawal, learned counsel appearing for the appellant drew our attention to the depositions of the witnesses and took us through the entire evidence on record. He submitted before us that the depositions of the eye-witnesses have not been believed and acted upon by the High Court and that the High Court acted illegally in setting aside the order of conviction passed by the Trial Court. It was also submitted that the High Court was not justified in holding that the identity of the respondents as killers of the deceased could not have been established in view of the

fact that the place of occurrence was not visible from the place where Ranganath Sharma, PW7 was allegedly standing. The learned counsel also submitted that the Division Bench of the High Court erred in holding that it was not possible for PWs 4 to 7 to see the actual occurrence because of the distance where they were allegedly standing at the time of occurrence, particularly, in view of the fact that there were number of bushes, plants and cultivation standing on the field which would have definitely hampered their view. Mr. Nagendra Rai, learned senior counsel appearing for the respondents, however, submitted that the judgment of the Division Bench of the High Court is justified, legal and valid in the eyes of law as the findings recorded by the High Court have been arrived at after due appreciation of the record.

5. In the light of the aforesaid submissions and the evidence on record, we proceed to appreciate the evidence and also examine the reasons given by the High Court in acquitting the accused persons. While passing the order of acquittal, the High Court has held that the place of occurrence was at a considerable distance from the cabin of the informant and also from the playground, and therefore, neither it was possible for PWs 4, 5, 6 and 7 to hear the quarrel nor it was possible for them to see the

occurrence from the place where they were stationed. The High Court also justified the order of acquittal on the ground that there was considerable delay in recording the first information report, and therefore, the case of the prosecution becomes tainted. It was also held by the High Court that the presence of alcohol in the stomach of the deceased coupled with ante mortem injuries on his penis create a doubt in the prosecution case and that the occurrence had taken place in some other manner and not in the manner disclosed by the prosecution.

6. The prosecution has led evidence through the aforesaid eye-witnesses, namely, PWs 4 to 7, which is sought to be supported by the evidence of PWs 1 to 3. Rangnath Sharma (PW-7) has stated in his deposition that the three accused, came to his house and asked the deceased to accompany them. It is also stated by him that he prevented the deceased for going with them but Satendra Sharma told that the deceased would return soon. The aforesaid version of the informant was not at all challenged by the defense by putting any direct question or otherwise in the cross examination. The only stand taken by defense was that the occurrence did not take place in the manner it is alleged. There is no other evidence available on record from which even a doubt with respect to correctness of the said statement could be created.

7. Soon thereafter when Rangnath Sharma along with Sidhnath Sharma went to inspect his fields, he saw that two of the accused persons, namely, Pankaj Sharma and Ramakant Sharma, were holding the deceased and were grappling with him. Having seen the said situation, Rangnath Sharma immediately learnt that some overt act is going to happen and he raised hulla. Immediately thereafter, he saw that Satendra Sharma took pistol from his waist and fired at the deceased and on receiving the bullet injury, the deceased fell down on the ground. The said version of Rangnath Sharma has been corroborated by Sidhanth Sharma in totality. The defense has challenged the aforesaid part of the statement of Rangnath Sharma on the ground that the said incident as alleged could not have been seen by the informant as he was standing at a distance and there was obstruction by bushes, plants and crops standing in the field. The aforesaid defense found favour with the High Court. On going through the record, we find that the place of occurrence was a terrace meaning thereby that it was a little bit high land. As per the statement of Anil Prasad Singh (PW 9), the officer in-charge, the height of the terrace was about two feet. From the evidence it is clearly proved and established that the place where the appellant had reached at

the time of occurrence was not very far from the place of occurrence. Therefore, it could not have been said that the said place was not visible and accordingly the High Court was not justified in arriving at the conclusion that the said place where the occurrence took place could not have been visible from the place where the informant was stationed at the time of occurrence. PW-7 as also the other witnesses have vividly described the manner in which the occurrence had taken place. All the said witnesses were examined at length during the trial by defense but on perusal of the same no contradiction was found.

8. Even otherwise if a person is well known to the other, then the probability of identification of said person even from a far away place is much higher. In the case of **State of A.P. v. Dr M.V. Ramana Reddy**, [(1991) 4 SCC 536] it was held by this Court that where the identity of the accused is well known to the eye-witness the same could be recognised even in the faint light.

9. The action of the eye witnesses is corroborated by the medical evidence. The doctor, PW-8 (Dr. Kapildeo Prasad), conducted the post mortem

examination and the injuries of the following nature were found on the body of the deceased:

“(1) Perforating wound of the size $\frac{1}{4}$ inch in diameter was found over right nipple. The margins of the wound were irregular and inverted. The wound was directed posteriorly towards left side and was communicating with an opening situated at the middle of the left scapular region. The margins of the opening were irregular and averted. On dissection right and left lungs were found perforated. The left scapula bone was found broken with the hole at its middle portion. Blood and clots were found in the thoracic cavity and over the wound.

(II) Abrasion of size $\frac{1}{2}$ ” x $\frac{1}{4}$ ” was found over the lower portion of the anterior surface of the penis”.

So far as the first injury is concerned it is clear that the same was because of gun shot, which was established from the medical evidence on record. So far as the second injury is concerned, the defense tried to establish that the said injury could not have been received by the deceased during the incident and in the manner as stated by the prosecution and also that the doctor who conducted the post mortem examination has stated in his report that alcohol was found in the stomach of the deceased meaning thereby that the deceased was intoxicated at the time of his death. That, however, in no manner shakes the prosecution case nor any doubt could be created, for a person could otherwise consume alcohol during the course of the day. So far as the second injury is concerned, it is true that the doctor has found abrasion over

lower portion of the interior surface of the penis. Such an injury could have been received by the deceased during the scuffle and grappling, which had taken place before the firing of the pistol. But the fact remains that main injury received by the deceased which was the cause of death, was received by the gun shot injury received from the pistol, fired by Satendra Sharma.

10. One of the contentions which was raised by the defense was that the prosecution story cannot and should not be believed as there was considerable delay in filling the F.I.R., which creates doubt about the credibility of the Report. As per prosecution the incident took place between 5:30 – 6.00 P.M. and the informant along with two others left for the Police Station, on foot, at about 6:30 P.M., which is near about 4 miles away from the place of occurrence and reached there at about 8:30 P.M. As the report was not accepted immediately he had to wait. Thus the time period between the incident and filling of F.I.R. was satisfactorily explained.

11. The aforesaid evidence clearly proves and establishes that PWs 4 to 7 were near the place of occurrence at the time of alleged occurrence and that they had seen the accused Pankaj Sharma and Ramakant Sharma

holding the deceased and Satendra Sharma firing at the deceased. PWs 1 to 3 have also categorically stated that they heard the sound of firearm and they immediately rushed to the place of occurrence and saw the aforesaid three accused persons fleeing towards the western side. Although there is evidence to show that the place of occurrence was at a distance from the cabin of the informant and crops had intervened in between the playground and the place of occurrence but it has not come on evidence that because of the high crops of jinora and maize, eye witnesses could not have seen the occurrence which had taken place at a terrace, which was comparatively raised land. None of them could be said to be a chance witness and on reading the evidence we find that they were natural witnesses who had seen the occurrence, heard the sound of firearm and saw the accused- respondents fleeing away from the place of occurrence. All the aforesaid evidence confirm the fact that the deceased was taken away from his house before the alleged occurrence by the accused persons and has been shot dead by Satendra Sharma.

12. The next question which arises for our consideration is whether Pankaj Sharma and Ramakant Sharma can be held to be jointly liable for the above-mentioned offences. Section 34 IPC 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. 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 pervading amongst all accused in order to attract the provision. 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 specific overt act on the part of the accused, when it is shown that there was common intention and meeting of mind.

13. In **Ram Tahal v. State of U.P.**, [(1972) 1 SCC 136], it has been laid down as under:-

“5.....There is no doubt that a common intention should be anterior in time to the commission of the crime showing a pre-arranged plan and prior concert, and though, it is difficult in most cases to prove the intention of an individual it has to be inferred from the act or conduct or other relevant circumstances of the case. This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries, caused by one or some of them, the acts done by others to assist those causing the injuries the concerted conduct subsequent to the commission of the offence for instance that all of them had left the scene of the incident together and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted. This Court had in Krishna Govind Patil’s case already referred to earlier, held that the pre-arranged plan may develop on the spot during the course of the

commission of the offence but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so before a court convict a person under Section 302 or 304, read with 34 of IPC, it should come to a definite conclusion that the said person had a prior concert with one or more persons named or un-named for committing the offence.

We may also make a reference to a decision of this Court in **Ramesh Singh v. State of A.P.**, [(2004) 11 SCC 305], wherein it has been observed thus:

“12.....As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principle of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered from the manner in which the accused arrived at the scene and mounted the attack, the determination and concert with which the attack was made, and from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common

intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted. (See Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra (1970) 1 SCC 696).”

So far as Pankaj Sharma and Ramakant Sharma are concerned they were also instrumental in bringing the deceased from his house in the company of Satendra Sharma to the place of occurrence with the common intention. As per the F.I.R and in their depositions during trial PWs 4, 6 and 7 specifically mentioned that they saw the said two accused holding the deceased which made it possible for Satendra Sharma to fire gun shot injury on the deceased. In **Israr v. State of U.P.**, [(2005) 9 SCC 616], wherein one of us (Dr. Arijit Pasayat) was the member, it was held that a person who was holding the deceased and restraining his movements, enabling the co-accused to inflict the knife-blows causing the death of the deceased was rightly convicted under Section 302 with the aid of S. 34 IPC. Having thus independently considered the facts and circumstances in their totality and taking holistic view of the facts of this case, we are of the opinion that the prosecution has been able to establish that Pankaj Sharma and Ramakant Sharma shared a common intention with accused Satendra Sharma and therefore, by virtue of section 34 IPC they are liable for the same offence.

14. In the background of what has been stated above, we set aside the judgment of the Division Bench of the High Court and restore the judgment of the Trial Court. The accused-respondents shall surrender to custody to serve out the remaining sentence, failing which appropriate steps be taken for their arrest. Their bail bonds stand cancelled.

15. The appeals are, therefore, allowed.

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.....J.
(Arijit Pasayat)

.....J.
(Dr. Mukundakam Sharma)

New Delhi,
August 20, 2008