

CASE NO.:
Appeal (crl.) 1014 of 1999

PETITIONER:
GOPI NATH @ JHALLAR

APPELLANT

Vs.

RESPONDENT:
STATE OF U.P. RESPONDENT

DATE OF JUDGMENT: 31/07/2001

BENCH:
M.B. Shah & Doraiswamy Raju

JUDGMENT:

Raju, J.

This appeal filed against the judgment dated 7.7.1998 of a Division Bench of the Allahabad High Court in Criminal Appeal No.880 of 1980 by the second accused (Accused Nos.1 and 3 having died during the pendency of the appeal in the High Court) relates to an occurrence on 9.1.1979 at about 4 p.m. in Mashika village resulting in the death of one Ram Chandra. The learned Additional Sessions Judge found all the three accused guilty of the charge against them punishable under Section 302 read with Section 34, IPC, and sentenced them to undergo imprisonment for life. All the three accused pursued the matter before the High Court on appeal and, as noticed earlier, the appellants 1 and 3 before the High Court died during the pendency of the appeal and the appeal was heard and disposed of confirming the judgment of the learned Sessions Judge.

The case of the prosecution is that on 9.1.1979 at about 4 p.m. when the deceased Ram Chandra along with Ram Lalak (PW.1), Krishna Murari (PW.2) and Rajmani were sitting on a cot in front of the shop of one Chhotey Lal Bania situate in Village Mashika, all the three accused Jata Shanker, Gopi Nath (the appellant herein) and Shyam Shanker came there and Jata Shanker and Gopi Nath were armed with Farsas while Shyam Shanker was armed with Lathi. All the accused were said to have exhorted to kill the deceased and on hearing the exhortation of the accused, Ram Chandra tried to run away getting up from the cot on which he was sitting, but Jata Shanker and Gopi Nath attacked the deceased with the Farsas they held. On receiving the injuries, the deceased fell down and even thereafter Jata Shanker again assaulted the deceased with the Farsas on the right parietal region. Shyam Shanker, the other accused, was said to have remained standing on guard by the side of the two assailants shouting that if anybody dare to come, he too shall be killed. PW.1, PW.2 and Raj Narayan were said to have raised an alarm and attracted other persons and at that stage all the three accused persons ran away. Krishna Murari (PW.2), Ram Sanjivan, Mishri Lal and Raj Narayan were said to have taken the injured to Swaroop Rani Nehru Hospital, Allahabad, where he was stated to have been examined by Dr. R.P. Singh (PW.4) at 6.30 p.m. when the following injuries were found on the person of the deceased :-

1. Incised wound on the right side of face 6 x 1 bone deep extending from lobule of right ear to mid of chin, fresh bleeding present.

2. Incised wound on the right parietal region 2 x ½ bone deep 5 above the right ear fresh bleeding present.

3. Incised wound on the right side of neck 1 x ½ muscle deep, fresh bleeding present 5 x ½ below the right ear.

The victim was unconscious and though was kept under observation, died at about 6.55 p.m. in the Hospital.

A written report (Ex. Ka.1) relating to the incident was lodged by PW.1 at Police Station, Naini, District Allahabad, on 9.1.1979 at about 5.30 p.m., on the basis of which Crime Case No.15 under Section 307, IPC, was registered and investigation commenced. PW.6, the Sub-Inspector then on duty, took up the investigation and recorded the statement of Ram Lalak at the Police Station itself, then rushed to the scene of occurrence and on inspection of the place and on the information given by the complainant, recovered blood stained and simple earth as also blood stained bag (Ex. 7 to 9) from the scene of occurrence. The site plan (Ex. Ka-7) was said to have been prepared and statements of other witnesses were said to have been recorded till 11 p.m. On the next day, on receipt of the information about the death of Ram Chandra, I.O. went to the Hospital and after inspecting the dead body prepared an Inquest Report and thereafter sent the dead body with a Constable for post-mortem examination. After completing the investigation, the charge-sheet against all the three accused was filed under Section 302 read with Section 34, IPC, for committing the murder of the deceased Ram Chandra on 9.1.1979. The further case of the prosecution, the relevant materials relating to which have been brought on record also is that earlier on 1.11.1978 one Triveni Prasad Tiwari of the same village was murdered in which M/s Shishmani, Ram Sanjiwan and Jeevan Lal were arrayed as accused persons for the said murder, out of which Shishmani is said to be a nephew of Ram Chandra, the deceased in this case, and Ram Sanjiwan and Jeevan Lal were cousin brothers of the deceased. Therefore, Ram Chandra was doing Pairavi in the earlier murder case on behalf of the three accused therein and also was said to have filed an affidavit in connection with the bail application for the accused in that case. Similarly, Triveni Prasad, the person murdered in the other case, was said to be the younger brother of Shyam Shanker, the third accused in this case. Further, one Smt. Rajpati Devi, the aunt of Shishmani, was said to have lodged an FIR on 11.12.1978 against the first accused Jata Shanker in this case and the present appellant, alleging that Jata Shanker, Gopi Nath and Kesheo, son of Jata Shanker, had set fire to her house and in that complaint, the deceased Ram Chandra was cited as a prosecution witness and, therefore, the accused in this case bore enmity with the deceased.

The prosecution supported its case by examining PWs.1 to 9 of which PW.1, Ram Lalak, and PW.2, Krishna Murari, were ocular witnesses for the occurrence. PW.3, Dr. R.V. Singh, Medical Officer of Motilal Nehru Hospital, Allahabad, who conducted the autopsy on the dead body of the deceased, was also examined. Documentary evidence and material objects were also marked. No evidence was let in on the side of the defense, but the accused denied the charges necessitating the trial. On a consideration of the materials placed on

record, the learned Trial Judge arrived at the finding that the evidence let in by the prosecution proved beyond reasonable doubt that all the three accused came with the common intention to kill Ram Chandra and, therefore, each of them cannot be held liable for their individual acts and that the prosecution has succeeded in proving that the accused are guilty of the murder of Ram Chandra. Consequently, they were convicted under Section 302, IPC, read with Section 34, IPC, and sentenced to undergo imprisonment for life.

Aggrieved, all the three accused pursued the matter on appeal before the High Court and as pointed out earlier, the High Court, while rejecting the claim of the accused that they were falsely implicated in the case, though innocent and that in any event the appellant can be convicted, if at all, only under Section 324, IPC, because he merely caused a simple injury, confirmed the findings of the Sessions Court and their conviction and sentence imposed. Hence, this appeal.

Heard the learned counsel for the appellant and the respondent-State. The learned counsel for the appellant, while reiterating the stand taken before the courts below, contended that except the interested witnesses like those examined the prosecution failed to examine not only any independent witnesses from the public in the area since the occurrence was during day time but also committed a serious lapse in not examining the owner of the shop Chhotey Lal Bania in front of whose shop the occurrence was said to have taken place and this seriously undermines the credibility of the prosecution case. Grievance has also been made about the non-marking of the place from where the blood soiled earth was taken, in the site plan prepared pertaining to the place of occurrence, to claim that the said lapse cast a serious doubt about the very place of occurrence and the case of the prosecution thereby stood rendered highly improbable. Finally, it was also contended that, if at all, the appellant could only be held liable for causing injuries punishable under Section 324, IPC, and that the conviction under Section 302/34, IPC, cannot at all be sustained. The learned counsel for the State adopted the reasoning contained in the judgments of the courts below and contended that the findings recorded are well-merited and the concurrent findings rendered on proper appreciation of the evidence do not call for any interference. Both the learned counsel invited at length our attention to the relevant portions of the judgments to substantiate their respective stand.

We have carefully considered the submissions of the learned counsel on either side. As for the challenge made to the conviction under Section 302 read with Section 34 IPC, it is necessary to advert to the salient principles to be kept into consideration and often reiterated by this Court, in the matter of invoking the aid of Section 34 IPC, before dealing with the factual aspect of the claim made on behalf of the appellant. Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action be it that it was not overt or was only covert act or merely an omission constituting an illegal omission. The Section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the moment in the course of the commission of the

offence. The common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case.

So far as the facts of the case on hand are concerned, in our view the Courts below could not be in any manner faulted with, for arriving at the conclusion to indict all the accused applying the principles engrafted in Section 34, IPC, to punish them under Section 302, IPC. That Ram Prasad was actively assisting the accused in the case involving the murder of Triveni Prasad and that in another police complaint against the accused, Ram Prasad was cited as a witness for the occurrence, though a report has been filed on it, has annoyed the accused in this case on account of their relationship with Triveni Prasad as well as his preparedness to be a witness in the case of alleged house burning against the accused, sufficiently establish the motive and common intention of the accused to do away with Ram Prasad. The appellant and Jata Shanker were also armed with Farsa and Shyam Shanker was armed with a lethal weapon like lathi. The evidence on record established their conduct in shouting in unison to do away with Ram Prasad and the appellant along with the other giving a blow simultaneously with Farsa, in spite of the victim trying to run away from the place by surrounding him and the further evidence about the exhortation said to have been made by Shyam Shankar exhibiting lathi that anybody who tries to come to the rescue of the victim will also be done away with, are more than sufficient in law to substantiate the concerted move and the common intention shared by all the accused to do away with Ram Prasad. One of the blows was not only fatal and considered on the basis of medical evidence to be sufficient in the normal course to cause death, but the simultaneous attack with Farsa by the appellant and Jata Shankar have been held sufficient to constitute the required overt acts in furtherance of the common intention shared by all of them to put an end to the victim. Consequently, the application of the principles enshrined in Section 34, IPC, to the case on hand was fully justified and no exception could be legitimately taken to the same, on the peculiar facts of this case, to which due reference extensively had been made by both the courts below. The conviction under Section 302/34, IPC, is, therefore, well-merited, calling for no interference in this appeal.

The grievance about the non-examination of any independent witness from public or the shop owner in front of whose shop the occurrence has taken place, has been specifically dealt with and, in our view, the reasons given therefor in the judgment under challenge cannot be said to be erroneous. The fact that the accused formed a definite and desperate warring group of criminals and for quite sometime there had been open hostilities exhibited involving criminal actions would normally deter anyone from the public extending their service or co-operation to be a witness against them. Apart from this aspect of the matter, when the Investigation Officer (PW.6) was in the box nothing appears to have been said or even suggested to him about the non-examination of the owner of the shop. As for the lapse in not specifically marking in the site plan of occurrence about the actual place of recovery of soiled earth, the courts below did not consider it to be such a grave infirmity in the teeth of specific mention about the same in the case diary and the specific evidence of PW-5 considered otherwise sufficient to prove this fact. We see nothing wrong or illegal in the said reasoning of the courts below. The evidence of PWs. 1 & 2, inspired confidence with the courts below, despite the fact that they are persons belonging to the group of Ram Prasad and nothing concrete or substantial has been shown to us from the materials on record to castigate their version or condemn

their evidence and take a different view from the one concurrently held by both the courts below.

For all the reasons stated above, we find absolutely no merits in the above appeal. The same fails and shall stand dismissed.

[M. B. Shah]

[Doraiswamy Raju]

July 31, 2001.

JUDIS