

CASE NO.:
Appeal (crl.) 1695 of 2007

PETITIONER:
Sewa Ram and Another

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 11/12/2007

BENCH:
Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1695 OF 2007
(Arising out of SLP (Crl.) No.5400 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a Division Bench of the Allahabad High Court dismissing the appeal filed by the appellants. Before the High Court three persons had filed the appeal. During the pendency of the appeal, appellant no.2 Ram Prasad died. Therefore, the appeal was held to have abetted so far he is concerned.

3. The appellants were found guilty of having committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') and each was sentenced to undergo imprisonment for life. Appellant-Sewa Ram and the deceased-accused Ram Prasad were further convicted for offence punishable under Section 323 read with Section 34 IPC and each was sentenced to undergo RI for six months and to pay a fine of Rs.500/- with default stipulation.

4. The conviction was recorded by IV learned Additional Sessions Judge, Pillibhit, in Sessions Trial No. 249 of 1980.

5. Prosecution version as unfolded during trial is as follows:

The complainant Shaukat Ali, son of Nathu Bux, resident of Barhara, P.S. Bisalpur, was doing service at the house of Jagan Nath, Prasad resident of village Chandpura who was related to Smt. Genda Devi, widow of Jwala Prasad Kurmi, resident of Naugamia, P.S. Bilsanda, who is hereinafter referred to as the 'deceased'. Litigation was going on between Smt. Genda Devi and her step daughter Smt. Savitri Devi, who was living as wife of Ram Prasad of village Naugamia. On 22.8.1980, the complainant Shaukat Ali along with Jagan Nath and Smt. Genda Devi had gone to Tehsil Bisalpur in connection with the litigation and they were returning from Tehsil to village Chandpura at about 4 0 'clock and when they reached the outskirts of village Kangawan near the sugar cane field of Babuji at 6 '0 clock Smt. Genda Devi was going ahead; behind her was the complainant and behind him was Jagan Nath. Suddenly accused Ram Prasad, Sewa Ram and Parmeshwari having 'Lathis' in their hands and accused Sunder Lal having 'Kanta' in his hand suddenly came out from the sugar cane field and began to beat Smt. Genda Devi on which the complainant and Jagan Nath cried for help.

Accused Ram Prasad and Sewa Ram then beat the complainant with 'Lathis'. The complainant and Jagan Nath ran away towards the village Kangavan and the accused ran away towards east. The complainant and Jagan Nath saw Smt. Genda Devi and found that she had died in the paddy field. The accused persons had murdered Smt. Genda Devi due to enmity of litigation. Thereafter the complainant informed the residents of village Chandpura and the 'Chaukidar', Pradhan and other people of the village, who came with the complainant to the spot. It had fallen dark and due to fear, he at once did not come to the police station to lodge the F.I.R. and remained sitting the whole night looking after the dead body. In the next morning on 23.8.1980, the complainant lodged the F.I.R.(Ex. Ka. 3) at the Bisalpur police station. The crime was registered as crime No. 247 under Sections 302/323 I.P.C. at the Bisalpur police station and the S.O. Ram Lakhan Singh was entrusted with the investigation of the case. The details were entered in the G.D., a copy of which is Ex.Ka. 4. The I.O. along with the S.I. Sahabdin arrived at the spot and prepared inquest report (Ex. Ka. 8) of the dead-body of Smt. Genda Devi. The dead-body was sealed and sample seal was preserved, which is Ex. Ka. 11. The I.O. made spot inspection and prepared the site-plan Ex. Ka. 5. The post mortem of the dead-body of Smt. Genda Devi was conducted by Dr. V.P. Agarwal. The complainant Shaukat Ali who received injuries was also examined at the P.H.C. Bisalpur. His injury report is Ex. Ka.1. After completion of the investigation, the I.O. submitted charge-sheet against the accused persons. Finding a prima-facie case against the accused persons, they were charged under Section 302 read with Section 34 I.P.C. and Section 323 read with Section 34 I.P.C. The charges were read over and explained to the accused persons who pleaded not guilty and claimed to be tried.

In support of the prosecution version Shaukat Ali, (P.W.1), Dr. C.K. Chaturvedi (PW2) who conducted the medical examination of Shaukat Ali and Jagan Nath(P.W.3), Dr. V.P. Agarwal, (PW 4) who conducted post mortem of the deceased Smt. Genda Devi, A.C. Pancham Singh (PW 5), Constable Rampal Sharma, (PW 6) and S.I. Ramlakhan Singh (PW 7) who conducted investigation were produced. The accused were examined who denied the allegations and contended that they have been falsely implicated in this case due to enmity.

6. Shaukat Ali the informant (PW1) and Jagan Nath (PW-3) claimed to be eye-witnesses. The trial Court relying on the version of the eye-witnesses recorded conviction and imposed sentenced as aforesaid. Before the High Court the stand was that there was inordinate delay in dispatching special report to the Magistrate. In addition, it was submitted that the doctor who conducted the post-mortem noticed seven injuries and out of them three were incised wounds and injury 3, 4, 5, and 7 were lacerated wounds. It was submitted that the three accused persons who preferred appeal before the High Court were holding lathies and the Kanthi was held by Sewa Ram who had been acquitted. Therefore, it was submitted that offence under Section 302 IPC was not made out.

7. The case of the prosecution was that in view of the factual background offence punishable under Section 302 read with Section 34 IPC is made out. The High Court, as noted above, dismissed the appeal filed by the appellants.

8. In support of the appeal learned counsel for the appellant submitted that even if prosecution version is accepted in

totality, offence under Section 302 is not made out, much less by application of Section 34 IPC.

9. Learned counsel for the respondent\026State supported the judgment of the High Court.

10. As rightly held by the High Court the evidence of the eye-witnesses PWs 1 and 3 suffered from no infirmity. The trial Court was, therefore, justified in convicting and holding appellants guilty.

11. So far as the question as to whether Section 302 will be applied so far as appellants are concerned, it is to be noted that the trial Court and the High Court considered their cases in the background of Section 34 IPC.

12. 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.

13. 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) SCC 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.

14. The above position was highlighted in *Girija Shankar v.*

State of U.P. [2004(3) SCC 793].

15. When the factual background is considered in the light of the principles highlighted above, the inevitable conclusion is that the appellants have been rightly convicted in terms of Section 302 read with Section 34 IPC.

16. The appeal is without merit and is dismissed.

JUDIS