

CASE NO.:
Appeal (crl.) 1116 of 2006

PETITIONER:
Lala Ram

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 20/06/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Three appellants before the Rajasthan High Court alongwith one Giluda faced trial for alleged offence under Section 302 read with Section 34 of the Indian Penal Code (in short the 'IPC'). A Division Bench of the Rajasthan High Court Jaipur Bench directed acquittal of the Giluda and upheld the conviction so far as the appellants before it are concerned. Each one of them was found guilty of offence punishable under Section 302 read with Section 34 IPC and was sentenced to undergo imprisonment for life. 23 persons were named in the First Information Report (in short the 'FIR') but after investigation police filed charge sheet against seven of them. The appellants before High Court along with three others, namely, Babu Ram, Raghuveer and Kailash faced trial. Said Babu Ram, Raghuveer and Kailash were acquitted by the trial court. Each of the appellants was sentenced to undergo imprisonment for life each to pay fine about Rs.1,000/- with default stipulation. Only the present appellant has questioned legality of the judgment of the High Court.

2. Background facts in a nutshell are as follows:

On 1.4.2000 at 4.30 p.m. First Information Report (in short the 'FIR') with regard to the incident came to be lodged on the same day at 7.30 p.m. by Bhonr Singh, brother of deceased Prabhu and Reghuveer. It was a written report on the basis of which formal FIR came into being. Bhonr Singh in the FIR lodged by him stated that between 4 to 5 in the evening on 1.4.2000, his brother Prabhu and Raghuveer were coming back from Thanagazhi after attending hearing of a case. When they were going from Mandawara to Talvriksha, on the outskirts of the village, because of personal enmity, Girdhari son of Dola Ram Rebari, Hanuman, Lala and their younger brother's sons of Girdhari Rebari, Talsa wife of Girdhari, Hardeva, Giluda, Gopal, Shimbhu sons of Hardeva, Santi wife of Hardeva and Hardeva himself, Ramjilal, Manaram, Pancha, Yada sons of Bhora Jat, Prabhu, Maharam sons of Shankar and relations of Girdhari Rebari whose names he did not know, Dholi wife of Sunda Ram, Sundaram and his four sons started beating Prabhu and Raghuveer with lathis, farsi, Jell etc. and injured them. At the spot, the occurrence was witnessed by Ranveer, son of Dilip Singh, Hanuman, son of Gangaram, Girvar Singh, son of Mukhram Singh, Bhima, son of Mukhram, Harinarain Gujar and Ramniwas, sons of

Phoola Gujar. He was taking bath in Talviksha when the occurrence had taken place. He was told about this occurrence by Sugla Dhankar who told him that above named persons had beaten his brothers. He then straightway went to lodge the report.

3. After completion of investigation charge sheet was filed. Accused persons pleaded innocence.

4. Placing reliance on the evidence of PWs. 3 & 4 the trial court recorded conviction of the appellant and others, while directing acquittal of Giluda. It is to be noted that before PW 3- the deceased persons purportedly made dying declaration while PW4 was stated to be an eye witness. The High Court found that the evidence of PW 3 to be relevant as he is the person who saw the deceased persons in injured condition and gave water to them while they were gasping for breath. So far as PW 4 is concerned he was related to the deceased persons and, therefore, the Court analysed his evidence in detail and found it to be credible.

5. In support of the appeal, learned counsel for the appellant submitted that the evidence of PWs 3 & 4 cannot be called credible and cogent. PW 4 was related to the deceased. There was no reason as to why the deceased would make any disclosure to PW 3 about the assailants. Further, Section 34 has no application. Learned counsel for the State supported the judgment.

6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused. No evidence has been led in this regard.

7. 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 mind 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 moment; but it must necessarily be before the commission of the crime. The true contents of the Section are 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* (AIR 1977 SC 109), 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.

8. As it originally stood, Section 34 was in the following terms:

"When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone."

9. In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each", so as to make the object of Section 34 clear. This position was noted in *Mahbub Shah v. Emperor* (AIR 1945 Privy Council 118).

10. The Section does not say "the common intention of all", nor does it say "and 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 *Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh* (AIR 1993 SC 1899), 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.

11. The above position was highlighted recently in *Anil Sharma and Others v. State of Jharkhand* [2004 (5) SCC 679], in *Harbans Kaur v. State of Haryana* [2005(9) SCC 195] and *Amit Singh Bhikamsingh Thakur v. State of Maharashtra* [2007(2) SCC 310].

12. If the factual scenario as noted above is considered in the background of legal principles set out above, the inevitable conclusion is that Section 34 has been rightly applied.

13. So far as PW 3 is concerned he was the person who gave water to the deceased while he was gasping for breath and only he lent helping hand and tried to find out how the injuries were sustained. The deceased persons told the witness that they were given beatings near the temple of Peerji on the road. He was also told who the assailants were. In that view of the matter the judgment and conviction of the High Court does not suffer from any infirmity to warrant interference.

14. We record our appreciation for the able manner in which Mr. Shakeel Ahmed, learned Amicus Curiae assisted the Court.

15. Appeal stands dismissed.