

HEMCHAND JHA
v.
STATE OF BIHAR
(Criminal Appeal No. 7 of 2002)

JUNE 13, 2008

[DR. ARIJIT PASAYAT AND P.P.NAOLEKAR, JJ.]

Penal Code, 1860 – s. 34 – Common intention – Applicability of – Requirement for – Held: s. 34 is applicable even if no injury has been caused by the particular accused himself – Some overt act on the part of accused not necessary – In the instant case, plea of accused that no definite role ascribed to him and co-accused fired the gun and killed the deceased, thus, s. 34 not applicable, not tenable – On facts, s.34 clearly applicable – Thus, conviction of accused u/s.302 r/w s.34 by courts below justified.

According to the prosecution case, on the fateful day, appellant-accused and co-accused along with one other came on a motor cycle and stopped next to the jeep of KKS. Appellant was driving the motor cycle. They got down from the motor cycle and went towards KKS who was capping the petrol tanks. The co-accused went near KKS, took out pistol and fired near the ear of KKS. The accused persons threatened the eye witnesses. Accused persons ran away. KKS succumbed to his injuries. FIR was lodged. Investigation was carried out. Appellant was convicted and sentenced u/s.302 r/w s.34 IPC. High Court upheld the order. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1 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 Sec-

A tion 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 u/s 34 if such criminal act is done in furtherance of
a common intention of the persons who join in committing
B 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,
C 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
D be before the commission of the crime. The true
contents 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. [Para 5] [1175-G & H; 1176-A,B & C]

E 1.2 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
F acts may be different in character, but must have been
actuated by one and the same common intention in order
to attract the provision. [Para 5] [1176-D & E]

Ashok Kumar v. State of Punjab AIR 1977 SC 1094 –
relied on.

G 1.3 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 crimi-
H

nal act in furtherance of such intention. As a result of the application of principles enunciated in s. 34, when an accused is convicted u/s. 302 read with s.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. 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. [Para 6] [1176-E,F,G & H; 1177-A]

Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh AIR 1993 SC 1899 – relied on.

2. In view of the facts, s. 34 IPC has clear application. The trial court and the High Court were justified in holding the appellant guilty and he has been rightly convicted for offence punishable u/s 302 rw s. 34 IPC. [Para 7] [1177-B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 7 of 2002

From the Judgment dated 22.6.2001 of the High Court of Judicature at Patna in CrI. Appeal No. 400 of 1993

Vikas Rojipura (A.C.) for the Appellant.

Gopal Singh and Manish Kumar for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Appellant questions the legality of the judgment rendered by a Division Bench of the Patna High Court dismissing the appeals filed by the appellant and one Kripal Singh. Latter was convicted for offences punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to rigorous imprisonment for life and was

A further convicted for offences punishable under the Arms Act. The present appellant was convicted for offence punishable under Section 302 read with Section 34 IPC. He was sentenced to undergo imprisonment for life.

B 2. The trial court directed acquittal of the accused Sanjay Singh who faced trial with them while finding the appellants before the High Court to be guilty.

3. Prosecution version in a nutshell is as follows:

C Gyaneshwar Prasad Singh, the informant, gave a written report to the police on 5.6.1991 at 4.15 pm. that Mithilesh Kumar Singh, Krishna Kumar Singh (hereinafter referred to as the 'deceased') and Krishna Dubey proceeded to village Nawadih in a jeep bearing No. ORC 9827 to attend the marriage of his nephew. At about 2.30 pm the jeep was stopped at Rabindra D Petrol Pump for taking petrol. Petrol was taken. In the meantime accused Kripal Singh, Hemchand Jha and one person whom he identified by face came on a black Rajdoot motor cycle and stopped the motor cycle on the right side of the jeep. Appellant Hemchand Jha was driving the motor cycle. They got E down from the motor cycle and went behind the petrol pump. Krishna Singh was capping the petrol tanki. The aforesaid three persons came near him. Kripal Singh came close to Krishna Singh, took out a pistol and fired near the ear of Krishna Singh. Krishna Singh fell down on the ground and started shaking because of unbearable pain. Mithilesh Singh and Krishna Dubey F tried to apprehend them but the third person whom he identified by face took out a pistol from the waist and threatened to kill if they proceeded further. All the three accused persons ran away towards west on the bye pass road on the motor cycle. G The witnesses took Krishna Singh on the said jeep to Aurangabad hospital for treatment where he died. Many persons had seen the occurrence.

H On the basis of the aforesaid written report a formal first information report was drawn, investigation was taken up and on completion of investigation charge sheet was submitted in

the court against three persons. The court where same was filed, took cognizance and committed the case to the Court of Sessions for trial. The defence of the appellants was that they were innocent and were falsely implicated in the case. A

Ten witnesses were examined to further the prosecution case, out of them PWs. 1,2&3 claimed to be eye witnesses. Placing reliance on the statement of the aforesaid three eye witnesses, the trial court found the accused appellant guilty and sentenced them. But Sanjay Singh was acquitted. B

The appeals filed by Kripal Singh and the present appellant, before the High Court, were dismissed. C

In support of the appeal learned counsel for the Appellant submitted that no definite role has been ascribed to the appellant. According to the prosecution, it was Kripal Singh who had fired the gun and killed the deceased. According to him Section 34 IPC has no application. D

Learned counsel for the State on the other hand supported the judgment.

4. According to PWs 1, 2 & 3 the present appellant was driving the motor cycle. The assailant Kripal Singh and the appellant got down from the Motor cycle and went towards the petrol pump. The deceased was capping the petrol tanks. The accused Kripal Singh came close to the deceased and took out a pistol and fired near the ear of the deceased. When the three eye witnesses tried to apprehend the accused persons, they were threatened of dire consequences. The three accused persons ran away towards west on the bye pass road on the motor cycle which was being driven by the accused. E
iple o
F
nce com
ated by s

5. 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. G
H

A 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 sel-
dom available and, therefore, such intention can only be inferred
B 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
C 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 is that if two or more persons intention-
ally do an act jointly, the position in law is just the same as if
D 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 iden-
E tically 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.

6. The Section does not say "the common intention of all",
nor does it say "and intention common to all". Under the provi-
F sions of Section 34 the essence of the liability is to be found in
the existence of a common intention animating the accused lead-
ing to the doing of a criminal act in furtherance of such intention.
As a result of the application of principles enunciated in Sec-
tion 34, when an accused is convicted under Section 302 read
G with Section 34, in law it means that the accused is liable for
the act which caused death of the deceased in the same man-
ner 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
H 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. A

7. In view of the background facts as noted above Section 34 IPC has clear application. The trial court and the High Court were justified in holding the appellant guilty and he has been rightly convicted for offence punishable under Section 302 read with Section 34 IPC. B

8. Appeal is without merit, deserves dismissal, which we direct. C

9. We record our appreciation for the able manner in which Mr. Vikas Rojipura, learned Amicus Curiae assisted the Court.

N.J.

Appeal dismissed