Y. VENKAIAH

*v.*

STATE OF A.P.

(Criminal Appeal No.1279 of 2004)

MARCH 3, 2009

**[S.B. SINHA, ASOK KUMAR GANGULY AND R.M. LODHA, JJ.]**

*Penal Code, 1860:*

*ss. 120-B and 420, 468, 477-A r/w s.34 IPC, ss.5(1)(d), and 5(2) of Prevention of Corruption Act r/w s.34 IPC – Accused withdrawing scholarship money in fictitious names of students – Conviction by trial court – Affirmed by High Court – **Held:** High Court has closely analysed the evidence of witnesses and recorded a finding that prosecution has been able to prove its case – There is no perversity in the finding nor any wrong conclusion has been reached by it – Conviction and sentences upheld – Prevention of Corruption Act, 1947 – s.5(1)(d) r/w s.5(2) – Constitution of India, 1950 – Article 136.*

*s.34 – Common intention – Five accused prosecuted for commission of offences punishable u/ss 120-B and 420, 468,477-A IPC and s.5(1)(d) r/w s.5(2) of Prevention of Corruption Act with the aid of s.34 IPC – One of them acquitted – HELD: Even if one of the co-accused is acquitted, that does not by itself absolve other co-accused of their conjoint liability of the crime – On facts, common intention of convicts and their prior concert is amply proved.*

**The appellants (Accused 1 to 4) in Crl. Appeal Nos. 1280/2004, 1282/2004 and 1283/2004 were prosecuted for commission of offences punishable u/s 120-B, ss. 420,468,477-A r/w s.34 IPC ss.5(1)(d) and 5(2) of the**

A Prevention of Corruption Act, 1947 r/w s.34 IPC, on the allegations that they withdrew scholarship amounts from various educational institutions in fictitious names of students and thus cheated the Government and misappropriated the government funds. The trial court B found the accusations proved against A-1, A-3 and A-4 in respect of all the transactions and against A-2 in respect of one transaction as he was stated to have been on leave when the other transactions took place. It accordingly convicted A-1 to A-4 of the charges and C sentenced A-1, A-3 and A-4 to rigorous imprisonment for three years and A-2 to rigorous imprisonment for one and half years. Accused A-1 to A-5 in Crl. Appeal Nos. 1279/2004 and 1281/2004 were prosecuted for similar offences for withdrawing scholarship amounts in fictitious names of students of a Junior College for Girls. The trial court D found the accusations proved against A-2 to A-5 and convicted and sentenced them to rigorous imprisonment for two years, but acquitted A-2 of all the charges. The High Court having dismissed appeals of all the convicts, they filed the appeals.

E

Dismissing the appeals, the Court

HELD: 1.1. On an analysis of evidence of the witnesses made by the High Court, it transpires that the F prosecution has been able to prove its case of conspiracy amongst the accused persons in withdrawing the money on the basis of fictitious names; thus, there has been cheating and misappropriation of Government funds. The High Court has very closely analysed the evidence of the G witnesses before coming to a finding that the prosecution has been able to prove its case. [Para 18 and 21] [921-G-H; 922-A-B; 924-H; 925-A]

2.1. In a case where s.34 IPC is applied, the liability of the accused must be considered through the prism of H that section if the charge of common intent against the

**accused stands proved. In the instant case, the charge of common intent among the accused persons has been clearly made out from the evidence which has been discussed in detail by both the trial court and the High Court. [Para 23] [925-C-D]**

*Mohan Singh and another Vs. State of Punjab* **AIR 1963 SC 174;** *Suresh and Another Vs. State of U.P.* **(2001) 3 SCC 673;** *Lallan Rai and Ors. Vs. State of Bihar* **(2003) 1 SCC 268;** *Saravanan and Anr. Vs. State of Pondicherry* **(2004) 13 SCC 238 and** *Rotash Vs. State of Rajasthan* **(2006) 12 SCC 64, relied on.**

*"The Queen Vs. Gorachand Gope and others"* **Bengal Law Reports, Supplemental Volume, 443;** *Barendra Kumar Ghosh Vs. King Emperor* **AIR 1925 PC 1 and** *Emperor V. Nirmal Kanta Roy*, **ILR 1914 (Volume 41) Cal. 1072, referred to.**

**2.2. Applying the principles laid down by the Supreme Court to the incriminating facts and circumstances of the instant case concurrently noted and discussed by the trial Court and the High Court, the conclusion is inescapable that those facts are clearly incompatible with the innocence of the accused and are incapable of any explanation or any other reasonable hypothesis other than the guilt of the accused persons. In the facts and circumstances of the case, the common intention of the accused and their prior concert is amply proved. [Para 35 and 38] [928-F-G; 929-F]**

**2.3. In a case like the one in hand, even if one of the co-accused is acquitted, that does not by itself absolve the other co-accused of their conjoint liability of the crime. The law is quite clear that in spite of acquittal of one co-accused it is open to the court to convict the other accused on the basis of joint liability u/s 34, if there is evidence against them of committing the offence in**

A "furtherance of the common intention". [Para 39] [929-G-H]

3. In an appeal under Article 136 of the Constitution of India, this Court will not normally venture in the arena B of re-appreciation or review of the evidence unless it is shown that the trial court or the High Court has committed an apparent error of law and procedure or the conclusions which have been reached are patently perverse, or, on proved facts, wrong interference of law has been reached by the High Court. In the instant case, C there is no perversity in the finding of the High Court nor any wrong conclusion has been reached by it on proved facts. There is no merit in the appeals. [Para 41, 43 and 44] [936-B-D; F, G]

D *Duli Chand Vs. Delhi Admn.* (1975) 4 SCC 649; *Dalbir Kuar Vs. State of Punjab* (1976) 4 SCC 158; *Ramanbhai Naranbhai Patel Vs. State of Gujarat* - (2000) 1 SCC 358; *Chandra Bihari Gautam Vs. State of Bihar* (2002) 9 SCC 208 and *Radha Mohan Singh Alias Lal Saheb and Others Vs.* E *State of U.P.* (2006) 2 SCC 450, relied on.

Case Law Reference:

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| Bengal Law Reports, Supplemental Volume, 443 | referred to | para 26 |
| AIR 1925 PC 1 | referred to | para 27 |
| ILR 1914 (Volume 41) Cal. 1072 | referred to | para 30 |
| AIR 1963 SC 174 | relied on | para 31 |
| (2001) 3 SCC 673 | relied on | para 32 |
| (2003) 1 SCC 268 | relied on | para 34 |
| (2004) 13 SCC 238 | relied on | para 36 |
| (2006) 12 SCC 64 | relied on | para 37 |

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|---|---|---|
| **(1975) 4 SCC 649** | **relied on** | **para 41** |
| **(1976) 4 SCC 158** | **relied on** | **para 41** |
| **(2000) 1 SCC 358** | **relied on** | **para 41** |
| **(2002) 9 SCC 208** | **relied on** | **para 41** |
| **(2006) 2 SCC 450** | **relied on** | **para 42** |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1279 of 2004.

From the Judgment and Order dated 31.10.03 of the High Court of Judicature Andhra Pradesh at Hyderabad in Criminal Appeal No. 1188 of 1997.

WITH

Criminal Appeal Nos. 1280/2004, 1281/2004, 1282/2004 and 1283/2004.

G.V. Chandrasekhar, T.N. Rao, Manjeet Kirpal, Miten Mahapatra, K. Maruthi, K. Radha and Anjani Aiyagari for the Appellants.

I. Venkatanarayana, Altaf Ftahima and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

**ASOK KUMAR GANGULY, J.**1. All these five criminal appeals are heard together and out of which Criminal Appeal Nos. 1280/2004, 1282/2004 and 1283/2004 are directed against the judgment and order dated 31.10.2003 in Criminal Appeal Nos. 1795/1997, 1757/1999 and 1826/1999 passed by the Andhra Pradesh High Court whereby the Hon'ble High Court while affirming the judgment dated 11.10.1999 in C.C. No. 6 of 1999 passed by the Addl. Special Judge of SPE & ACB Cases, Hyderabad dismissed the appeals.

A 2. The appellant- Y. Venkaiah (A-3) in Criminal Appeal No. 1280 was working as a Junior Assistant in the Office of the Deputy Director, Social Welfare Department, Nalgonda along with V. Rama Rao (A-1), S.A. Rasheed (A-2) and P. Kranwar (A-4).

B 3. The appellant-S.A. Rasheed (A-2) in Criminal Appeal No. 1282/2004 was working as a Social Welfare Inspector and the appellant-P Kranwar (A-4) in Criminal Appeal No. 1283/ 2004 was a Warden Social Welfare Govt. Boys Hostel, Nalgonda.

C 4. The aforesaid accused Nos. 2, 3 and 4 were prosecuted for an alleged conspiracy for drawing scholarships on the basis of fictitious post-matric students of Geeta Vignan Andhra Kalasala, Nalgonda and Government Junior College for D Boys, Nalgonda for an amount of Rs.63,522/- claiming the same for the second time vide Bill Nos. 504,238 and 326.

5. Further, it is alleged that A-1, A-2 and A-3 have also drawn scholarships amount for fictitious post-matric students E of S.L.L.S. Junior College, Alair, Nagarjuna Jr. College, Miryalaguda, Rajaram Memorial Junior College, Suryapet of Nalgonda District and cheated the Government and misappropriated an amount of Rs.4,57,050/- vide Bill Nos. 461, 506, 218 and 503 in collusion with A-4.

F 6. On 29.3.1990, sanction was accorded for prosecution of A-2, A-3 and A-4 for an offence under Sections 120B, 420, 468, 477A IPC and Section 5(2) r/w 5(1)(d) of the Prevention of Corruption Act.

G 7. On 11.10.1999, the learned Addl. Spl. Judge for the SPE & ACB Cases, Hyderabad came to the conclusion that A-1 to A-4 are guilty of the charges and convicted A-1,A-3 and A-4 for their involvement in respect of Bill Nos. 504,238,326(amounting to Rs.63,522/-) and also convicted them for misappropriation of Rs.4,57,050/- vide Bill nos. H

461,506,218 and 503. A

8. A-1, A-3 and A-4 were sentenced to undergo rigorous imprisonment for three years each for each charge and to pay a fine of Rs.2000/- each for each of the charges.

9. The trial Court gave A-2 the benefit in respect of other B bills namely Bill Nos. 505,506,503 and 218 as they were prepared when A-2 was on leave. Insofar as it relates to Bill No. 461,A-2 was convicted for an offence under Section 120(b),420,468,477-A r/w 34 IPC and under Section 5(1)(d) r/w 5(2) of the Prevention of Corruption Act, 1947 r/w Section C 34 IPC and sentenced to undergo rigorous imprisonment for 18 months under each charge and also to pay a fine of Rs.1000/- under each charge. A-2 was sentenced a lesser period as he was found guilty of double drawal of the amount of one fictitious Bill No. 461. In respect of other fictitious bills D as noted above, he was given the benefit of doubt as the bills were prepared when he was on medical leave.

10. The Single Bench of the High Court dismissed the appeals by an order dated 31.10.2003 and affirmed the E judgment, conviction and sentences recorded by the trial Court.

11. Insofar as Criminal Appeal Nos. 1279/2004 and 1281/2004 are concerned, they are directed against the judgment of the High Court dated 31.10.2003 in Criminal Appeal Nos. 1188/1997 and 1125/1997 respectively affirming the judgment F dated 30.9.1997 in C.C. No.5/1991 passed by the Addl. Special Judge for SPE & ACB Cases, Hyderabad.

12. The appellants in these appeals Y. Venkaiah (A-4) and S.A. Rasheed (A-3) were prosecuted for the alleged G conspiracy for drawing scholarships on the basis of fictitious post-matric students of Government Junior College for Girls, Nalgonda in an amount of Rs.54,600/- claimed vide Bill Nos. 363 and 405 in collusion with Beaula-A-5(Matron).

13. The Principal Secretary to the Government of Andhra H

A Pradesh vide order dated 29.3.1990 gave sanction for prosecution of A-1, A-3 to A-5 and vide order dated 21.9.1990 for prosecution of A-2.

14. On 30.9.1997, the learned Addl. Special Judge for B SPE & ACB Cases, Hyderabad held that A-1 has not committed any offence and consequently acquitted him of all the charges. The learned Judge found accused Nos. 2 to 5 guilty of the offences and sentenced them to undergo rigorous imprisonment for two years and a fine of Rs.500/- on each count.
C

15. On 31.10.2003, the High Court while affirming the judgment, conviction and sentence recorded by the trial Court dismissed the appeals by observing that the accused had conspired to cheat the Government by claiming fictitious post-D matric scholarship by falsifying the records in abuse of their official position as public servants and have acted in furtherance of their common intention to do the acts which amount to criminal misconduct.

E 16. In so far as sanction is concerned, its validity was not questioned before us.

17. It appears that several witnesses were examined. From the judgment of the High Court dated 31.10.2003 in Criminal Appeal Nos. 1757, 1795 and 1826 of 1999, it appears F that 18 witnesses were examined by the prosecution. The other judgment of the High Court, also dated 31.10.2003, dealt with Criminal Appeal Nos. 1125 and 1188 of 1997. From the said judgments it appears that 8 witnesses were examined by the prosecution.

G

18. Witnesses were all holding official position and on analysis of their evidence made by the High Court in the judgments under appeal, it transpires that the prosecution has been able to prove its case of conspiracy amongst the accused H persons in drawing the money twice over in respect of students

of Geeta Vignana Andhra Kalasala, Nalgonda (GVA Kalasala), Government Junior College for Boys, Nalgonda (GJ College), students of SYLNS Junior College, Alair, Nagarjuna Junior College, Miryalguda, Rajaram Memorial Junior College, Suryapet and Government Junior College for Boys, Nalgonda. Those amounts were drawn against various bills, being bill Nos. 405, 461, 505, 506, 503, 218, 238, 231, 326, 240, 219 and 504. It has been proved that in respect of those bills money has been drawn twice on the basis of fictitious names, thus, there has been cheating and misappropriation of Government funds.

19. The witnesses who were examined in connection with Criminal Appeal Nos. 1757, 1795 and 1826 of 1999 are the PW1, the Accounts Officer in the Office of the Director, Social Welfare Department during 1986-87. PW2 was the Accountant in the office of Deputy Director, Social Welfare Department during July, 1984 and January, 1987. PW3 was the Sub-Treasury Officer in the office of DTO, Nalgonda during 1986-88. PW4 was the Senior Accounts Officer in the AG's Office during the relevant point of time. PW5 was the Manager, SBH, Nalgonda during 1986-89. The Principal, GVA Kalasala, Nalgonda was incharge of the college during 1986-87 was PW6. PW7 was the Junior Lecturer of GJ College, Nalgonda during 1980-89. PW8 was the Principal of Boys Junior College, Nalgonda who worked as such in 1987 and retired in 1988. PW9 was the Principal Sy L MS Jr. College, Alair since 1985. PW10 was the former Principal Nagarjuna Jr. College, Miryalguda who used to send proposal to Social Welfare Department for scholarship for Scheduled Castes students. PW11 was the student of B.A. in Geeta Vignana Andhra kalasala, Nalgonda. PW12 was the First year Intermediate student in GJ College for Boys, Nalgonda, this witness was declared hostile. PW13 was the witness who pursued Degree course in GVA Kalasala, Nalgonda during 1986-88, he was also declared hostile. Another student of GVK College, Nalgonda was examined as PW14. PW15 was another student who testified to having received only once an amount of Rs.825/

A - by way of scholarship. The former Principal of Rajaram Memorial Jr. College, Suryapet, was examined as PW16. PW17 was the Deputy Director, Social Welfare Department, Nalgonda. PW18 was the Investigating Officer who testified to the issuance of FIR and submitted that after receiving sanction B from the Government submitted the chargesheet in court. All these witnesses excepting two students (PWs.12 and 13), who were declared hostile, supported the prosecution case. The learned Judge of the High Court made a detailed discussion of the evidence of the witnesses before coming to the C conclusion that the prosecution case has been proved. The judgment of the High Court in connection with the criminal cases referred to above, namely, Criminal Appeal Nos. 1125 and 1188 of 1997 also shows that eight witnesses were examined for the prosecution. Of the witnesses who were examined, PW1 D was a retired Joint Director of Accounts, Pension Payment Officer, Hyderabad, and at the relevant point of time was working as Accounts Officer in the office of Director of Social Welfare, Hyderabad. PW2 was Sub-Treasury Officer, Nakrekal, Nalgonda District and previously worked as Accountant with the office of Deputy Director, Social Welfare, Nalgonda. PW3 was E retired Principal, Government Junior College for Girls, Nalgonda, who worked as the Principal of the said college at the relevant point of time between 1979 and 1988. PW4 worked as Assistant Social Welfare Officer at Nalgonda at the relevant point of time. PW5 was a STO, Nalgonda, PW6 was the Senior F Accounts Officer, AG's Office, Hyderabad. PW7 was the Manager, SBH, Nalgonda and PW8 was the Inspector of Police, Anti Corruption Branch, Hyderabad, Range.

20. In this case, on behalf of the accused, two witnesses G were examined. DW1, who joined as Deputy Director, Social Welfare Department, Nalgonda on 12.06.1997 and DW2, who worked as Social Welfare Organiser in Social Welfare Office, Nalgonda from 1984 to 1988.

21. This court finds that the High Court has very closely H

analysed the evidence of the witnesses before coming to a finding that the prosecution has been able to prove its case. A

22. A specific defense was taken by A-2 in Criminal Appeal No. 1282 of 2004 that he was on medical leave from 26.8.1986 to 14.10.1986, so he could not have signed the bill. This defense has been categorically dealt with by the High Court in its judgment by finding that the date of signature of A-2 on the bill (Ex.P1) was on 25.8.1986, when he was not on leave. Therefore, this defense was also considered and rightly rejected. B C

23. In a case where Section 34 of the Indian Penal Code is applied, as in this case, the liability of the accused must be considered through the prism of that Section if the charge of common intent against the accused stands proved. Here the charge of common intent among the accused persons has been clearly made out from the evidence which has been discussed in detail by both the Trial Court and the High Court. D

24. It is true that Section 34 does not create any substantive offence and is basically a rule of evidence. But the crucial words in this section are "in furtherance of the common intention of all" which originally were not there when the section was enacted in the Code of 1860. Section 34, as enacted in the Code of 1860, ran as follows: E

> "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." F

25. The words "in furtherance of the common intention of all" came by way of amendment, by Act XXVII of 1870, to widen the scope and sweep of the section. G

26. The felicitous phrase "in furtherance of the common intention", was first coined by Chief Justice Barnes Peacock, sitting in the Full Bench of Calcutta High Court, and while rendering the decision in *"The Queen Vs. Gorachand Gope* H

A *and others"* on 3rd March 1866 (reported in Bengal Law Reports, Supplemental Volume, 443, at page 456). The views of the Chief Justice in *Gorachand Gope* (supra) possibly inspired the amendment in 1870.

B 27. Since then, this section has been judicially interpreted in a large number of decisions. Lord Sumner speaking for the Privy Council in the case of *Barendra Kumar Ghosh Vs. King Emperor*- AIR 1925 PC 1) opined against a narrow construction of that section and said:

C " ... As soon, however, as the other sections of this part of the Code are looked at, it becomes plain that the words of S.34 are not to be eviscerated by reading them in this exceedingly limited sense."

D 28. The learned Law Lord came to this conclusion by interpreting Section 34 in the context of Section 33 of the Code.

29. The aforesaid formulation by Lord Sumner has been followed by this Court on many occasions in different cases, some of which are noted hereinbelow.

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30. In *Barendra Kumar Ghosh* (Supra), the Privy Council did not agree with the narrow construction given to Section 34 of the Code by Justice Stephen in *Emperor V. Nirmal Kanta Roy,* ILR 1914 (Volume 41) Cal. 1072, as according to the F Privy-council such a construction may lead to undesirable results.

31. The Constitution Bench of this Court in *Mohan Singh and another Vs. State of Punjab* – AIR 1963 SC 174, construed the scope of Section 34 and compared it with Section 149 and G pointed out the essential distinction between the two. Justice Gajendragadkar (as His Lordship then was) speaking for the Constitution Bench held that like Section 149, Section 34 also deals with cases of constructive criminal liability in the sense where a criminal act is done by several persons in furtherance H of the common intention of all, each of such persons is liable

for that act in the same manner as if it were done by him alone. According to the Constitution Bench, the essential constituent of the vicarious criminal liability contemplated by Section 34 is the existence of common intention. When such common intention animates the accused persons and leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done by one of them. The Constitution Bench held that in some ways Section 34 and Section 149 are similar and in some areas they may overlap but nevertheless the common intention, which is the sine-qua-non of Section 34 is different from the common object which brings together an unlawful assembly of persons within the meaning of Section 149 of the Code.

32. In the case of *Suresh and Another Vs. State of U.P.* – (2001) 3 SCC 673, a three-Judge Bench of this Court while considering the scope of Section 34, referred to and relied upon the ratio in *Mohan Singh* (supra), and further held that a reference to Sections 35, 37 and 38 of the Code is of relevance for understanding the purport of Section 34. Justice Thomas in *Suresh* (supra) opined that these four provisions belong to one cognate group. In *Suresh* (supra), Justice Thomas held that to attract Section 34 IPC two conditions must be present; (1) the criminal act (consisting of a series of acts) should have been done, not by one person, but by more than one person, (2) doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons.

33. In *Suresh* (supra), Justice Sethi, in a concurring but a different opinion, held that the dominant feature for attracting Section 34 of the Code is the element of participation resulting in the ultimate criminal act. The "act" referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the

A common intention of all of them. The section does not envisage separate acts by all the accused persons for becoming responsible for the ultimate criminal act. According to the learned Judge the word 'act' used in Section 34 denotes a series of acts as a single act and the learned Judge further B made it clear that the culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence.

34. In *Lallan Rai and Ors. Vs. State of Bihar* –(2003) 1 SCC 268, this Court again had to consider the ingredients of Section 34 and relied on the principles laid down in *Mohan* C *Singh* (supra) and *Suresh* (Supra). While approving the principles laid down in para 44 in *Suresh* (supra), the Court enumerated that for proving the common intention it is necessary either to have direct proof of prior concert or proof of circumstances which necessarily leads to an inference on D incriminating facts and which must be incompatible with the innocence of the accused and incapable of explanation or any other reasonable hypothesis. The Court held that a look at Section 34 makes it clear that the essence of Section 34 is simultaneous consensus of the mind of persons participating E in the criminal action to bring about a particular result. Such consensus may develop at the spot or it may be prior to the commission of the crime but in any event such consensus must precede the commission of the crime.

35. If the test of proof which was laid down in *Lallan Rai* F (supra), following the principles in *Suresh* (Supra), is applied to the incriminating facts and circumstances noted and discussed in this case concurrently by the trial Court and the High Court, to which reference has been made hereinbefore, the conclusion is inescapable that those facts are clearly G incompatible with the innocence of the accused and are incapable of any explanation or any other reasonable hypothesis other than the guilt of the accused persons.

36. In *Saravanan and Anr. Vs. State of Pondicherry* (2004) 13 SCC 238, Justice Thakker delivering the judgment held that H

in English law there is a distinction between the two types of offenders (i) principals in the first degree, that is, who actually commit the crime; and (ii) principals in the second degree, that is, who aid in commission of the crime. But this distinction in English law has not been strictly followed in India. The Learned Judge came to this conclusion in *Sarvanan* (supra) relying on the principles enumerated in *Barendra Kumar Ghosh* (supra). Learned Judge concurring with the aforesaid principle in *Barendra Kumar Ghosh* (supra) held that the criminal act referred to in Section 34 IPC is the result of the concerted action of more than one person and if the said result was reached in furtherance of the common intention then each person must be held liable for the ultimate act as if he had done it himself.

37. In a later judgment in *Rotash Vs. State of Rajasthan* (2006) 12 SCC 64, one of us (Hon'ble Mr. Justice S.B. Sinha) delivering the judgment relied upon the principles laid down in *Lallan Rai* (supra) and *Suresh* (supra) and also *Barendra Kumar Ghosh* (supra) and held that the effect of common intention to commit the crime must be judged from the totality of the circumstances. Thus, Justice Sinha gave the provisions of Section 34 a very wide interpretation which is consistent with the interpretation given to this Section right from the decision of the Privy Council in *Barendra Kumar Ghosh* (supra).

38. Following the above principles as we must, this Court has no hesitation in concluding that in the facts and circumstances of this case the common intention of the accused and their prior concert is amply proved.

39. In a case, as in the present one, even if one of the co-accused is acquitted, that does not by itself absolve other co-accused of their conjoint liability of the crime. The law is quite clear that in spite of acquittal of one co-accused it is open to the Court to convict the other accused on the basis of joint liability under Section 34, if there is evidence against them of committing the offence in "furtherance of the common intention".

A 40. Keeping the above principles in mind, in our view, this Court does not find any infirmity in the findings which have been reached by the High Court while affirming the conclusion of the trial Court.

B 41. Apart from that in an appeal under Article 136 of the Constitution of India, this Court will not normally venture in the arena of re-appreciation or review of the evidence unless it is demonstrably shown that the trial Court or the High Court has committed an apparent error of law and procedure or the conclusions which have been reached are patently perverse. C The other area of interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India may be when, on proved facts, wrong interference of law has been reached by the High Court. This position is far too well settled to be disputed. However, reference in this regard may be made D to the decisions of this Court in *Duli Chand Vs Delhi Admn.* – (1975) 4 SCC 649, *Dalbir Kuar Vs. State of Punjab* – (1976) 4 SCC 158, *Ramanbhai Naranbhai Patel Vs. State of Gujarat* – (2000) 1 SCC 358, *Chandra Bihari Gautam Vs. State of Bihar* – (2002) 9 SCC 208).

E 42. All these cases have been considered by the Supreme Court recently in the case of *Radha Mohan Singh Alias Lal Saheb and Others Vs. State of U.P.* – (2006) 2 SCC 450 and the same conclusion has been reached.

F 43. Here there is no perversity in the finding of the High Court nor any wrong legal conclusion has been reached on proved facts.

44. For the reasons discussed above, this Court does not find any merit in the aforesaid appeals, which are accordingly G dismissed.

45. The appellants are on bail, their bail bonds are cancelled and they shall be taken into custody forthwith to serve out the remaining part of sentence, if any.

H R.P. Appeals dismissed.