

A

KULWANT SINGH @ KULBANSI SINGH

v.

STATE OF BIHAR

JUNE 21, 2007

B

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Penal Code, 1860:

C

s. 302 r/w s. 109—Murder—Allegation that on exhortation by accused—Appellant, co-accused fired bullets on deceased—Conviction of Appellant under s. 302 r/w 109—Propriety of—On facts, held, proper—Evidence of eye-witnesses cogent—No reason for them to shield the actual culprit and falsely implicate Appellant—s. 109 clearly applicable.

D

s. 109—Applicability of—Discussed.

ss. 109 and 114—Distinction between—Outlined.

Evidence—Of relatives of deceased—Appreciation—Held: No proposition in law that the relatives are to be treated as untruthful witness.

E

According to the prosecution, on exhortation of accused-appellant and a co-accused 'A', another co-accused 'U' brought a barrel gun from his house and pumped bullets into the chest of the deceased resulting in his death. Trial Court convicted Appellant under Section 302 read with Section 109 IPC for having abetted the aforesaid murder. High Court upheld the conviction.

F

In appeal to this Court, the conviction of Appellant was challenged on the ground that the eye witnesses in the case at hand were relatives of the deceased and no conviction can be made on their evidence.

Dismissing the appeal, the Court

G

HELD: 1.1. PWs 2 and 3 are neighbours of both the accused and the deceased. No foundation was laid to substantiate the allegation that the relatives had any special reason to depose in favour of the prosecution. Since PWs 2 and 3 are neighbours of the accused and the deceased, the question of their being partial to prosecution does not arise. That being so, there is no

H

question to discard the veracity of the prosecution version. The evidence of PWs 2 and 3 was cogent and the courts below have rightly relied upon their evidence. [Para 8] [1182-B, C] A

1.2. 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 the actual culprit and falsely implicate the accused. No evidence has been led in this regard. [Para 9] [1182-C, D] B

2.1. Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or has been intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable. C
D
E

[Para 11] [1183-C, D, E]

2.2. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. Section 109 applies even where the abettor is not present. Active abetment at the time of committing the offence is covered by Section 109. [Para 12] [1183-F] F

2.3. Act abetted in Section 109 means the specific offence abetted. Mere help in the preparation for the commission of an offence which is not ultimately committed is not abetment within the meaning of Section 109. "Any offence" in Section 109 means offence punishable under the IPC or any Special or Local law. The abetment of an offence under the Special or Local law, therefore, is punishable under Section 109. I.P.C. For constituting offence of abetment, intentional and active participation by the abettor is necessary. G

[Para 12] [1183-G, H; 1184-A] H

A *Joseph Kurian v. State of Kerala, AIR (1994) SC 34, relied on.*

3.1. There is a distinction between Section 109 and Section 114. Section 114 applies where a criminal first abets an offence to be committed by another person, and is subsequently present at its commission. Active abetment at the time of committing the offence is covered by Section 109 and Section 114 is clearly intended for an abetment previous to the actual commission of the crime, that is before the first steps have been taken to commit it.

[Para 13] [1184-A, B]

3.2. Section 114 is not applicable in every case in which the abettor is present at the commission of the offence abetted. While Section 109 is a section dealing generally with abetment, Section 114 applies to those cases only in which not only is the abettor present at the time of the commission of the offence but abetment has been committed prior to and independently of his presence. [Para 13] [1184-B, C]

4. When the factual scenario is tested on the background of principles of law set out above, it is clear that Section 109 IPC has clear application.

[Para 14] [1184-C, D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 834 of 2007.

From the Judgment & Order dated 25.07.2003 of the High Court at Patna in Criminal Appeal No. 228 of 1999.

Binay K. Das and Anil Kumar Shrivastava (A.C.) for the Appellant.

Anukul Raj and Gopal Singh for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of Patna High Court. Appeals filed by the appellant and two co-accused were dismissed by a common judgment.

3. Accused Uma Shankar was charged for commission of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') for having committed murder of Manji Singh (hereinafter referred to as the 'deceased'). Accused appellant Kulwant Singh and Awadh Singh were

charged in terms of Section 302 read with Section 109 IPC for having abetted the aforesaid murder of the deceased by Uma Shankar. The trial Court found that the accusations have been established against the accused persons, Kulwant and Awadh and accordingly sentenced each for life for the offence punishable under Section 302 read with Section 109 IPC. A

4. Before the High Court the basic stand of the appellants was that there was absolutely no motive for the gruesome crime. The first information report (in short the 'FIR') has not been proved to have been filed in the manner as claimed. The High Court found the evidence to be cogent and credible and held that no interference was called for. B

5. Background facts in a nutshell are as follows: C

Manji Singh (hereinafter referred to as 'the deceased') who was a teacher in a non-affiliated Sanskrit School had suffered expulsion from the Institution. Accused-appellant and two co-accused and the deceased were agnates and they were separate in mess and business from each other and were residing in houses adjacent to each other. As usually happens, there had been paltry dispute between females of the two families and as a fall out, after the said incident it was alleged that while the deceased was feeding cattle near his house, accused Uma Shankar Singh hurled abuses on him, pursuant to which accused appellant Kulwant Singh and accused Awadh Singh came out and exhorted Umashankar Singh to shoot. As for Umashankar Singh it was alleged that shortly thereafter he having brought one barrel gun from his house, pumped bullets in the chest of the deceased who dropped on the ground. Though all efforts were made by the family of the deceased for his survival before he could be admitted to Ara Sadar Hospital, where he was taken by the family members, he was declared dead and with these accusations fardbeyan of Kariman Singh was recorded by Shri S.N. Tiwary, ASI of Ara Town Police Station, following which formal First Information Report was drawn up at the Police Station. Investigation was undertaken. Charges were framed and accused faced trial. D E F

As noted above, trial Court convicted the accused which was upheld by the High Court. G

6. In support of the appeal, learned counsel for the appellant submitted that the relatives of the deceased who are the so called eye witnesses lodged the first information report and conviction cannot be made on the evidence of the relatives. PW-1 was the wife of the deceased. PW-2 and PW-3 who H

A claimed to be eye witnesses were also relatives of the deceased.

7. Learned counsel for the State submitted that merely because the eye witnesses are relatives of the deceased, their evidence should not be discarded and after detailed analysis the trial Court and the High Court have found the prosecution version cogent.

B

8. It is to be noted that PWs 2 and 3 are neighbours of both the accused and the deceased. No foundation was laid to substantiate the allegation that the relatives had any special reason to depose in favour of the prosecution. Since PWs 2 and 3 are neighbours of the accused and the deceased, the question of their being partial to prosecution does not arise. That being so, there is no question to discard the veracity of the prosecution version. The evidence of PWs 2 and 3 was cogent and the courts below have rightly relied upon their evidence.

C

9. 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 the actual culprit and falsely implicate the accused. No evidence has been led in this regard.

D

10. Section 109 IPC reads as follows:-

E

“109- PUNISHMENT OF ABETMENT IF THE ACT ABETTED IS COMMITTED IN CONSEQUENCE AND WHERE NO EXPRESS PROVISION IS MADE FOR ITS PUNISHMENT.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

F

Explanation : An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

G

Illustrations

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts

H

the bribe. A has abetted the offence defined in section 161. A

(b) A instigates B to give false evidence. B in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuant of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder." B

11. Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abettor is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or has been intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable. (See *Joseph Kurian v. State of Kerala*. AIR (1994) SC 34) C

12. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. Section 109 applies even where the abettor is not present. Active abetment at the time of committing the offence is covered by Section 109. D

Act abetted in Section 109 means the specific offence abetted. Mere help in the preparation for the commission of an offence which is not ultimately committed is not abetment within the meaning of Section 109. "Any offence" in Section 109 means offence punishable under the IPC or any Special or Local law. The abetment of an offence under the Special or Local law, therefore, is punishable under Section 109. I.P.C. For constituting offence of abetment, E

G

H

A intentional and active participation by the abettor is necessary.

13. There is a distinction between Section 109 and Section 114. Section 114 applies where a criminal first abets an offence to be committed by another person, and is subsequently present at its commission. Active abetment at the time of committing the offence is covered by Section 109. and Section 114 is clearly intended for an abetment previous to the actual commission of the crime, that is before the first steps have been taken to commit it.

B

Section 114 is not applicable in every case in which the abettor is present at the commission of the offence abetted. While Section 109 is a section dealing generally with abetment, Section 114 applies to those cases only in which not only is the abettor present at the time of the commission of the offence but abetment has been committed prior to and independently of his presence.

C

14. When the factual scenario is tested on the background of principles of law set out above, it is clear that Section 109 IPC has clear application.

D

15. The appeal is sans merit, deserves to be dismissed which we direct.

B.B.B.

Appeal dismissed