A SHASHI MOHAN

v.

STATE OF M.P.

(Criminal Appeal No. 1093 of 2008)

JULY 15, 2008

B

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

Penal Code, 1860:

s. 302 r/w s. 34 – Murder – Prosecution under alongwith C *two other accused – Accused not armed with any weapon – No overt act attributed to him – Conviction by courts below – On appeal, held: Conviction not justified – In the facts of the case accusation not proved against the accused – No evidence led to show his sharing of common intention with other accused.*

D

s. 34 – Common intention – Invocation– Scope of – Held: The aid of the provision is invoked when it is difficult to distinguish between acts of individual members of a party acting in furtherance of common intention – For invocation of the provision it is not necessary to show some overt act on the part of E *the accused.*

Appellant-accused (A2) along with two accused A1 and A3 was prosecuted u/s 302 r/w s. 34 IPC. There were three witnesses to the incident. The motive was alleged F **to be enmity between the parties. Trial Court convicted all the accused u/s 302 r/w s. 34 IPC. During pendency of appeal before High Court, A-1 died and his appeal abated. A-2 (appellant) was convicted u/s 302 r/w s. 34 while A-3 was convicted under s. 302.**

G **In appeal to this court, appellant-accused No.2 contended that his conviction was not justified by aid of s.34 as his pre-meditation with other accused was not proved and admittedly he was neither armed nor any overt act was attributed to him.**

H

Allowing the appeal, the Court A

HELD: Under the provisions of Section 34 IPC 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 r/w 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. 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. However, in the background facts of the present case, the accusations were not established so far as the present appellant is concerned. No evidence was led to show sharing of common intention. [Paras 8 and 9] [981-E,F,G & H; 982-A] B C D E

Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh **AIR 1993 SC 1899 – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1093 of 2008 F

From the final Judgment and Order dated 28.9.2007 of the High Court of Madhya Pradesh, Bench at Gwalior in Crl. Appeal No. 83 of 1993

Nagendra Rai, P.H. Parekh, Jetendra Singh and S.K. Sabharwal for the Appellant. G

Govind Goel, C.D. Singh, Ram Naresh Yadav, Merusagar Samanta Ray and Sunny Choudhary for the Respondent.

H

A The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to the judgment of the Division Bench of the Madhya Pradesh High Court, Jabalpur Bench. B Three persons, namely, Rameshwardayal, Shashimohan and Revimohan hereinafter described as A1, A2 and A3 faced trial for alleged commission of offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). Additional Sessions Judge, Morena, found them C guilty and sentenced each to life imprisonment. During the pendency of the appeal before the High Court A1 died and, therefore, the appeal was held to have abated so far as A1 is concerned. The present appeal is by A2. A1 and A2 were convicted and sentenced under Section 302 read with Section 34 IPC while D A3 was found guilty of offence punishable under Section 302 IPC.

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

On 3.3.92 at 9.30 a.m. on a road from Pipalwali Mata to Rui Ki Mandi and ahead of a Chauraha in Morena one Rakesh E S/o Ram Singh (hereinafter referred to as 'deceased') was shot dead by A3 who pumped into him three gun shots resulting in instant death of said Rakesh. There reportedly existed previous enmity between the family of A1 and of Ram Singh father of the deceased. A1 and Ram Singh are real brother. The incident F was reported to Police at Police Station Kotwali at 9.40 a.m. by Radheyshyam (PW1), brother of the deceased Rakesh. FIR (Ex.P/1) was recorded and the investigation was set in motion by Registering a crime at Sr. No.144/92 under Section 302/34 IPC. After completion of investigation, charge sheet was filed. G Accused persons abjured guilt and claimed trial.

4. In order to establish its accusations, the prosecution examined 12 witnesses. PWs, 1, 2 and 3 were stated to be eyewitnesses. In order to establish its plea of false implication DW1 was examined to prove the presence of A3 at a different H

place. Trial Court found the evidence to be cogent and recorded conviction as noted above. A

5. Before the High Court the primary stand of the appellant was that so far as he is concerned, Section 34 IPC has no application. The High Court did not accept that plea. B

6. In support of the appeal, learned counsel for the appellant submitted that the High Court has categorically noted that none of the eye witnesses stated that A2, the present appellant has pre-mediated with A1 and A3 before the offence was committed. The witnesses admitted that the appellant was not armed with weapon and no overt act was attributed to him. Further, he was coming from a different direction and, therefore, the question of his sharing the common intention was not there. C

7. Learned counsel for the respondent, on the other hand, submitted that though A2 was not armed with and was coming from a different direction, his presence has been established. He being the son of A1 and the brother of A3, the main assailant the ingredients of Section 34 have been clearly established. D

8. Under the provisions of Section 34 IPC 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. E F G H

A 9. When the background facts are considered in the light of legal principles set out above, the position is clear that the accusations were not established so far as the present appellant is concerned. No evidence was led to show sharing of common intention. The appeal deserves to be allowed which we B direct. He be set at liberty forthwith unless required to be in custody in connection with any other case.

K.K.T. Appeal allowed.