

A

HARBANS KAUR AND ANR.

v.

STATE OF HARYANA

MARCH 1, 2005

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Penal Code, 1860 :

C

Sections 323, 325 and 326 r/w. Section 34—Injuries caused—Resulting in subsequent death—Incident seen by related eye-witnesses—Conviction by Courts below—Sentences of 3 months 2 years and 7 years respectively—On appeal, held: Conviction justified—However in view of background of the case, sentence of 7 years reduced to custodial sentence of 4 years.

D

Section 34—Common intention—Applicability of—Held: In order to make the common intention applicable, plan or meeting of mind of all the accused, either prearranged or on the spur of moment, is to be established—Proof of common intention, in absence of direct proof, can be inferred from the circumstances of proved facts and circumstances of the case—Evidence.

E

Criminal Trial :

Related witness—Evidentiary value of—Held: such witness cannot be treated as untruthful—In case of plea of their partiality, reason for the witness to shield the actual culprit is to be shown.

F

FIR—Delay in lodging—Effect of—On prosecution case—Held: The delay in lodging FIR does not necessarily make the prosecution case suspect—Even a long delay can be condoned if witnesses are shown to have no motive to implicate the accused and cogent reason for delay is given—The suspicion due to delay will depend on the facts of each case.

G

Appellants-accused caused grievous injuries to a person. Father (PW-6) and wife (PW-7) of the victim were the eyewitnesses to the incident. After some time of the incident, when the condition of the victim deteriorated he was taken to hospital. The doctor sent information to the Police and on the basis of statement of PW-6, FIR was recorded. After some time the victim died. Appellants were charged u/s. 304 Part-I IPC r/w Section 34. Trial Court, relying on the evidence of eye-witnesses held the accused guilty u/s 323, 325 and 326 r/w Section 34 IPC and sentenced

H

them to rigorous imprisonment for three months, two years and seven years respectively. High Court confirmed the conviction. A

In appeal to this Court, appellants contended that prosecution version did not inspire confidence as the same was based on evidence of related witnesses; that there was delay in lodging FIR; that Section 34 IPC was not applicable in the facts of the case; and that the sentences imposed were high. B

Disposing of the appeal, the Court

HELD : 1.1. Courts below have rightly relied on the evidence of prosecution witnesses. 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. [454-E] C

1.2. There cannot be any generalization that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done. It is to be noted that though there was cross-examination at length no infirmity was noticed in their evidence. [454-F-G] D

2.1. Section 34 has been rightly applied in this case. 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 E

A 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.

[456-C; 454-H; 455-C]

Ashok Kumar v. State of Punjab, AIR (1977) SC 109, relied on.

B *Mahbub Shah v. Emperor*, AIR (1945) Privy Council 118, referred to.

C 2.2. Section 34 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. [455-G; 456-A]

E *Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh*, AIR (1993) SC (1899) and *Anil Sharma and Ors. v. State of Jharkhand*, [2004] 5 SCC 679, relied on.

F 3. In view of the background facts, custodial sentence of 4 years in place of 7 years for the offence relating to Section 326 read with Section 34 IPC would meet the ends of justice. The other sentences imposed remain unaltered. [456-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 370 of 2005.

G From the Judgment and Order dated 12.11.2003 of the Punjab and Haryana High Court at Chandigarh in Crl. A. No. 332(SB) of 1991.

Salil Bali, Rajesh K. Sharma and Ms. Shalu Sharma for the Appellants.

D.P. Singh, Ms. Avneet Toor and Vijay Kumar Garg for the Respondent.

H The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Appellants call in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court upholding conviction of the appellants (hereinafter referred to as the 'accused') under Sections 323, 325 and 326 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence as imposed by the trial Court which had sentenced each to undergo rigorous imprisonment for three months, two years and seven years respectively with separate fines for each of the alleged offences with default stipulations.

Background facts leading to the trial of the accused appellants are as follows :

The case was registered on the basis of information lodged by Piara Singh (PW-6), which was recorded on 10.11.1989 at about 2.00 a.m. According to the informant, he and his son Sham Singh's wife Sito (PW-7) were sitting in the courtyard of the house of Sham Singh (hereinafter referred to as the 'deceased'). It was about 11.00 a.m. on 9.11.1989 when deceased was coming from the village after purchasing vegetables. When he reached near the house of Janta Singh, son of Dharam Singh, Harbans Kaur (A-1) armed with a Gandasi and Mitta Singh (A-2) armed with a lathi were present there. Mitta made an obscene gesture. At this Mitta Singh and the deceased exchanged hot words and abused each other. Harbans Kaur gave a Gandasi blow on the right hand of the deceased, which caused a grievous injury. Mitta Singh gave a lathi blow on the left foot of the deceased and also gave a thrust blow of lathi on the left side of his head. Deceased fell down on the ground. The occurrence was witnessed by Piara Singh (PW-6) and Sitto (PW-7). Both of them took Sham Singh injured to their house. When Piara Singh and Sito raised alarm, both the accused persons ran away from the spot. Since the condition of Sham Singh became serious during the night time, he was taken to the Primary Health Centre, Ratia. On 10.11.1989 at night at about 0.15 a.m. Dr. O.P. Kakkar examined Sham Singh. He found injury No. 1 which was an incised wound in the middle phalanx of the index finger of right hand. The second injury was an abrasion on the lateral side of upper 1/3rd part of left leg and the patient complained of pain on different parts of the body. Dr. O.P. Kakkar sent information to the Police Station, Ratia. ASI Ram Rattan reached the Primary Health Centre and recorded the statement of Piara Singh which is the FIR. On the basis of this statement, FIR was recorded by ASI Bharat Singh. Sham Singh expired at about 1.50 a.m. on 10.11.1989.

A Hence, information to this effect was sent.

The accused persons were charged for alleged commission of offences punishable under Section 304 Part-I read with Section 34 IPC. The accused persons pleaded innocence and claimed trial. Eight persons were examined to further the prosecution case. Piara Singh (PW-6) was the complainant and
B claimed to be an eye-witness. Smt. Sito (PW-7) wife of the deceased also claimed to be an eye-witness. Placing reliance on their evidence, the learned Additional Session Judge, Hissar found the accused persons guilty and sentenced them to undergo sentences as noted above. In appeal, the High Court confirmed the conviction and the sentences.

C In support of the appeal, learned counsel for the accused appellants submitted that the prosecution version was based on testimonies of relatives and, therefore, does not inspire confidence. Section 34 IPC has no application to the facts of the case. Further there was delay in lodging the FIR. Additionally, it was submitted that the sentences imposed were high.

D In response, learned counsel for the State submitted that after analysing the factual position the Courts below have found the accused persons guilty and no interference is called for. The sentences imposed are also not in any manner on the higher side.

E 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. So far as the delay in lodging the FIR is concerned, the witnesses have clearly stated that after seeing the deceased in an injured condition immediate effort was to get him hospitalized and get him treated. There cannot be any generalization that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of
F implicating the accused and have given a plausible reason as to why the
G report was lodged belatedly. In the instant case, this has been done. It is to be noted that though there was cross-examination at length no infirmity was noticed in their evidence. Therefore, the trial Court and the High Court were right in relying on the evidence of the prosecution witnesses.

H 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.

As it originally stood the 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.”

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.

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

A 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.

The above position was highlighted recently *Anil Sharma and Ors. v. State of Jharkhand*, [2004] 5 SCC 679.

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.

The residual question is whether any interference is called for on the quantum of sentence. Looking into the background facts as noted above, we are of the view that custodial sentence of 4 years in place of 7 years as recorded by the Courts below for the offence relatable to Section 326 read with Section 34 IPC would meet the ends of justice. The other sentences imposed remain unaltered. With the aforesaid modification, the appeal is disposed of.

K.K.T.

Appeal disposed of.