

STATE OF M.P.

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v.

DESHRAJ AND ORS.

JANUARY 29, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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*Penal Code, 1860:*

Ss.302/34, 323/34 and 304 Part II—Prosecution u/s 302/34 for murder of one and injuries to others—Injuries caused in course of sudden quarrel—Trial Court convicted 10 accused u/s 323/34 holding offence u/s 302/34 not made out in absence of evidence showing as to which injury was attributable to which accused—One of the accused acquitted—Judgment of Trial Court upheld by High Court—On appeal, held: Conviction u/s 323 not justified—However, in view of the fact that injuries caused in course of sudden quarrel accused convicted u/s 304 Part II—Acquittal of one of the accused is justified.

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Section 34—Nature and applicability of—Held: It is only a rule of evidence and does not create a substantive offence—Proof of common intention can only be inferred from circumstances appearing from proved facts—For applying the provision it is not necessary to show some overt act.

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Eleven accused-appellants faced trial u/s 302 r/w Section 34 IPC for having caused death of one person and having injured PWs 5, 9 and 10. Trial Court acquitted accused No.11 finding no material against him. As regards accused Nos. 1 to 10, it held that their case was not covered u/s 302/34 IPC in absence of any documentary evidence to show as to which injury could be attributed to which accused. But in view of several other injuries on the deceased, it held that case u/s 323/34 IPC was made out. High Court confirmed the judgment of trial court.

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In appeal to this Court appellant-State contended that the courts below had lost sight of true import of Section 34 IPC.

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Respondents-accused contended that in view of the fact that the occurrence took place in course of a quarrel and in absence of material to show as to who caused which injury, judgments of Courts below should

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A not be varied.

**Disposing of the appeal, the Court**

**HELD:** 1. Trial Court and the High Court were not justified in holding that offence committed was under Section 323 read with Section B 34 IPC. Applying the factual scenario noticed by the Trial Court and the High Court more particularly the fact that there was fight between accused and the deceased and the injured witnesses, and the injuries came to be inflicted in course of sudden quarrel, it would be appropriate to convict respondents 2 to 10 under Section 304 Part II IPC. Trial Court has rightly C observed that there was practically no material to find respondent No.11 guilty. [1190-D, F-G]

2.1. 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 Section is D the element of participation in action. The liability of one person for an offence committed by another in the course or 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 E 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- F 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 intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential G element for application of this Section. It is not necessary that the acts of the several persons charged with commission or 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. [1189-D-H; 1190-A]

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

**2.2. Section 34 is intended to meet a case in which it may be difficult A 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. It 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. [1190-B-D]**

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*Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh, AIR (1993) SC 1899, relied on.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1055 of 1997. C

From the Judgment and Order dated 14.3.90 of the Madhya Pradesh High Court in Crl. A. No. 72 of 1982.

Siddharth Dave for Ms. Vibha Datta Makhija for the Appellant.

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C.L. Sahu for the Respondents.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** In this appeal challenge is to the correctness of judgment rendered by a Division Bench of the Madhya Pradesh High Court which affirmed the conviction under Section 323 read with Section 34 of the Indian Penal Code, 1860 (in short 'the IPC') as recorded by the Trial Court in respect of respondents 1 to 10 and did not accept prosecutions' plea that it was a case covered by Section 302 read with Section 34 IPC. Eleven persons faced trial and the Trial Court held A-11 Toran Singh to be not guilty. The accused persons were charged for commission of offences punishable under Section 302 read with Section 34 IPC and Section 323 IPC for allegedly committing homicidal death of one Ramdin (hereinafter referred to as 'the deceased') and causing injuries on Harbhan (PW-5), Brijbhan (PW-10) and Bina Bai (PW-9). Trial Court while acquitting accused Toran Singh held that the other accused persons were to be convicted under Section 323 read with Section 34 IPC. The State of Madhya Pradesh filed appeal before the Madhya Pradesh High Court and the same was dismissed by the impugned judgment. It appears respondent no.1-Darua had died on 15.6.1986, and that being so, the appeal stands abated so far he is concerned.

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Background facts as projected by the prosecution are as follows:

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A On 26.5.1980, about 8.15 a.m. PW-5 lodged first information report with the police regarding alleged occurrence which took place on the previous day i.e. 25.5.1980. There was an exchange of words between Harbhan (PW-5) and Pratap Singh Thakur over payment of fare relating to hire of bullock cart. According to the informant, the rent was fixed at Rs.15/- but Pratap

B Singh Thakur wanted to pay Rs.13/-. When the exchange of words was going on, the accused persons armed with various weapons arrived there and accused Balkishan hit on the head of the deceased. The other accused persons assaulted him with various weapons. The deceased ran inside the house for protection. The accused persons continued to assault. When Brijbhan (PW-10) and Bina (PW-9) tried to rescue accused, Maharaj Singh struck on the head of Bina

C with farsa. Bhagwan Das and Badhraj struck her with lathies. Maharaj Singh gave a farsa blow on the head of the informant. Bhagwan Das and Badhraj struck on the head with lathi on his left arm while accused Halka struck lathi on the right arm. Jagna struck him on the shoulder and he fell down. Even then accused persons inflicted lathi blows. Accused Ramdas also assaulted

D Brijbhan (PW-10). On hearing his cries for help, several villagers gathered. They also witnessed the assaults. Deceased breathed his last instantaneously and the informant became unconscious. Acting on the information given by the informant first information report was lodged. The dead body was sent for post-mortem and the injured persons were sent for medical examination.

E On the body of the deceased 8 injuries were noticed. One of them was the fracture of the skull. According to the doctor (PW-8) who conducted the post-mortem: the injuries on the skull were sufficient to cause death in the normal course. The accused persons pleaded innocence and false implication. Some of them were also examined and the medical reports indicated that they had sustained injuries. The Trial Court held that the death was homicidal: but

F there was no definite material as to which of the injuries was inflicted by which accused. Additionally, it was observed that there was fight between the parties and the accused persons had sustained injuries. In the absence of any documentary evidence to show as to which injury could be attributed to which accused, the case was not covered by Section 302 read with Section

G 34 IPC. But he held there being several other injuries on the body of the deceased as noticed, case under Section 323/34 IPC was made out so far as the deceased is concerned, as well as injuries noticed on PWs. 5, 9 and 10. As there was no definite material, so far accused Toran is concerned, he was acquitted. As noted (supra), the State of M.P. filed an appeal before the Madhya Pradesh High Court which came to be disposed of by a Division

H Bench of the High Court at Jabalpur Bench. The High Court found that there

were several injuries on the person of the deceased. Some were lacerated A wounds and others were bruises. Doctor had opined that the injury on the skull was vital one. Having noticed this factor, the High Court further observed that the material evidence which has not come from the doctor, is the result of cumulative effect of the several injuries that the accused persons stated to have been caused, and for which death took place. There was also no evidence as to the authorship of fatal injury and, therefore, Section 302/34 IPC was ruled out. B

The appeal was dismissed so far as accused Toran is concerned.

Learned counsel for the appellant-State submitted that the approach of C the Trial Court and the High Court is clearly erroneous. The true import of Section 34 of the Act has been lost sight of. Learned counsel for the respondents accused submitted that the occurrence was the result of a sudden quarrel and free fight and, therefore, the judgments of the Courts below do not suffer from any infirmity. D

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 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. 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, E F G H

A but must have been actuated by one and the same common intention in order to attract the provision.

B 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 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 C 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 D to show some overt act on the part of the accused.

Above being the legal position, the Trial Court and the High Court were not justified in holding that offence committed was under Section 323 read with Section 34 IPC.

E Stand of learned counsel for the accused as noted above was that the occurrence took place in the course of a quarrel. The accused persons have not taken any undue advantage and have also not acted with cruelty and, therefore, in the absence of any material to show as to who caused the injury, the conviction as recorded by the Trial Court and confirmed by the High F Court should not be varied.

G Applying the factual scenario noticed by the Trial Court and the High Court more particularly the fact that there was fight between accused and the deceased and the injured witnesses, and the injuries came to be inflicted in course of sudden quarrel, it would be appropriate to convict the respondents 2 to 10 under Section 304 Part II IPC. Custodial sentence of 8 years would meet the ends of justice.

H So far as accused-respondent Toran is concerned, the Trial Court has rightly observed that there was practically no material to find him guilty. Though the High Court has not given any reason for affirming the conclusion

of the Trial Court so far as he is concerned, we find no scope for interference. A

In substance, the appeal filed by the State is allowed so far as respondents 2 to 10 are concerned and dismissed so far as respondent no.11 Toran Singh is concerned.

K.K.T.

Appeal dismissed. B