

RANBEER SINGH (DEAD) BY L.R.

A

v.

STATE OF U. P. & ORS.

(Criminal Appeal No. 205 of 2009)

B

MARCH 27, 2015

[PINAKI CHANDRA GHOSE AND
UDAY UMESH LALIT, JJ.]

C

*Penal Code, 1860 – s.302/34 – Conviction under –
Of all the accused including respondent co-accused by trial
court – Acquittal of the co-accused by High Court on the
ground that they did not share Intention with the main accused
to kill the deceased – On appeal held: There is enough
material to infer the common and shared intention of the co-
accused with the main accused – High Court erred in
acquitting the co-accused.*

D

Allowing the appeal, the Court

E

HELD: There is enough material to infer the
common and shared intention of the accused-
respondents with that of the main accused. Although,
the respondents-accused have taken the plea that they
had not thrown the deceased down to the drain with
intention of killing him but merely assaulting him and the
shooting by the main accused was an independent act.
However, there was no justifiable reason for the 4
accused persons to go 100-150 yards inside the field of
the complainant. Second, the fact that they carried a
weapon being 315 bore country-made pistol with them
clearly shows that they had all the wrong intentions.

F

G

H

- A Nowhere in the case of defence has this come out that the three accused respondents were not aware of the fact that the main accused carried the weapon. Also, in the exhortation made by the accused persons against the complainant, the deceased mentioned about killing them. Having made such an exhortation, they threw the deceased on the ground. It goes on to show that they all shared a common intention and worked in tandem. Accused-respondent 'B' is the father of other three accused persons; he could have asked the main accused to stop short of shooting, but he did not do so.
- C The view taken by the High Court is not even a possible view. Thus, the High Court is not even a possible view. Thus, the High Court erred in acquitting the accused-respondents. [Para 11] [42-H; 43-A-E]
- D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 205 of 2009

- E From the Judgment and Order dated 30.04.2008 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1674 of 2006

- F Manoj Swarup, Lalita Kohli, Abhishek Swarup (for Manoj Swarup & Co.) for the Appellants.

Ajay Veer Singh Jain, Ajay Kumar Jain, U. R. Bokaida (for Mohd. Irshad Hanif), Rajesh Kumar Maurya, Mukesh Verma, Ravi Prakash Mehrotra for the Respondents.

- G The Judgment of the Court was delivered by

- H **PINAKI CHANDRA GHOSE, J.** 1. This is an appeal by the Complainant against the impugned judgment and order dated 30-04-2008 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 1674 of 2006.

In the impugned judgment the High Court had allowed the appeal of three accused persons and acquitted them while maintaining the conviction of the main accused. The present appeal before us has been filed by the complainant against the acquittal of the three accused by the High Court. The Sessions Court after trial had convicted the main accused Shyamu under S. 302, IPC along with Section 25 of the Arms Act while it convicted the other three accused persons, Balbir Singh, Vinod and Karua (respondents herein) under S. 302, IPC read with s.34 IPC. The appeal of Shyamu against his conviction by the High Court was filed in this Court but was dismissed, thus, his conviction has attained finality.

2. The facts of the present case are that Shyamu, Karua and Vinod are sons of Balbir Singh and Balbir Singh is the elder brother of the complainant Ranbeer Singh. The deceased Pooran Singh was the son of the complainant Ranbeer Singh. Admittedly, there is pending criminal litigation between Ranbeer Singh and Balbir Singh, the two brothers. The pending criminal litigation relates to an incident 13 to 14 months prior to the incident in question in present case wherein Balbir Singh had fired at Ranbeer Singh with intention of killing him. The pending civil litigation related to some property between the two brothers. As per the case of the prosecution, on the date of the incident in the instant case i.e. 07-02-2002, the complainant was irrigating his field along with his son Pooran Singh (the deceased) while the 7 year old son of Pooran Singh was sitting on the Mendh nearby. The four accused persons were irrigating their field, which was adjoining the field of the complainant, and while they were at the tubewell of their field, which is 100-150 yards away from the tubewell of the complainant's field, at around 4:45 pm, four accused persons came to the complainant making an exhortation "*Aaj mauke par mil gaye hain. Inhe jaan se*"

- A *maar do aur maan lo ki mukdmein ka faisla ho gaya aur*
zameen humain mil gayi." (Today, they have met at an
opportune time. Kill them and treat the litigation as decided
and we got the land). Thereafter, the present three
respondents Balbir Singh, Karua and Vinod held Pooran Singh
B and threw him on the ground and Shyamu made a shot with
his gun from behind at the Pooran Singh. As this happened,
the Complainant along with 7 year old grandson Ankit, ran away
to save their life. On hearing the shouts of the complainant,
C the persons working in the nearby field saw the accused
persons fleeing from the place of occurrence. The FIR was
registered on the same day at 6:05 pm by the Complainant.
During investigation the weapon being country made pistol
of 315 bore was recovered from the field of the accused on
D the disclosure statement made by Shyamu.

3. The prosecution evidence consisted of PW1
Ranbeer Singh (eye witness), PW2 Ankit (eye witness and
child witness), PW3 Dr. S.K. Seth (proved post mortem
E report), PW4 Constable Saiyed Mohd. Kasim, PW5 S.I.
Roop Chandra Verma, PW6 Inspector Incharge Narendra
Kumar Singh and PW7 Constable Pradeep Kumar.

4. The PW1 Ranbeer Singh stated that the accused
F persons out of enmity in light of pending civil and criminal
litigation and with motive to take revenge, killed his son on
the fateful day. He testified that on 07.02.2002 he was irrigating
his field with tubewell along with his son and grandson Ankit
was sitting nearby. At the same time, the four accused
G were irrigating their field from a tubewell which was about
100-150 yards away from the tubewell of complainant. At
around 4:45 pm, they came and exhorted that "today they are
alone, hold them and kill them and so we would get our
farmland also". Then Balbir, Karua and Vinod held Pooran
H

RANBEER SINGH (DEAD) BY L. R. v. STATE OF U. P. 41
& ORS. [PINAKI CHANDRA GHOSE, J]

Singh and pushed him on the ground in/near the drain and Shyamu shot at him from behind. A

5. The PW2 Ankit was 7 years old when the incident happened and 9 years old when his statement was recorded. He testified that he was sitting 11-12 feet away from where his grandfather and father were irrigating the field. He saw that Shyamu shot his father at the back of his head and before Shyamu shot, Balbir, Karua and Vinod pushed his father in the drain. Thereafter his grandfather carrying him in his lap, ran away from there. B C

6. PW-3 Dr. S.K. Seth had conducted the autopsy of the deceased and found two wounds on head. The bullet entry wound on the front head near the nose while exit wound on the back side of the head. The parietal and occipital bone of both sides of the head were fractured. He told the cause of death was coma resulting from ante mortem injuries. D

7. The Session Court after going through the evidence concluded the guilt of all the accused and convicted Balbir, Karua and Vinod under Section 302/34 of IPC and Shyamu under Section 302 of IPC, and sentenced all of them to imprisonment for life, along with a fine of Rs.3000/- and in default of payment of fine, they shall have to undergo simple imprisonment for a period of seven months. Shyamu was further sentenced to rigorous imprisonment for three years under Section 25 of Arms Act. E F

8. The High Court in appeal dealt extensively with the question of interested witness and child witness. After a long discussion on both the points, the High Court found that the testimony of the PW1 Complainant as well as PW 2 Ankit is reliable. The High court found that there were questions asked to PW2 to test his understanding and only thereafter H

A examination pertaining to the case were asked. The statement of PW2 completely corroborated the case of the prosecution. However, after accepting the evidence of the prosecution, the High Court found that there was no case made out as against the present three respondent accused persons under S. 34 as there was no common intention. The High Court found that there was no prior meeting of minds or premeditation to commit the offence and that the incident was a sudden scuffle. These three accused persons did not share the intention to kill the deceased. Therefore, the High Court acquitted the three accused-respondents.

D 9. The learned counsel for the complainant-Appellant has sought conviction of the present respondents. The main contention is that when the case of prosecution has been believed and relied upon by the High Court and on that basis the main accused Shyamu is convicted, the present three respondents cannot be acquitted.

E 10. The learned counsel for the Respondents has tried to point out certain contradictions in the facts of the prosecution. However, in view of the dismissal of appeal of Shyamu by this Court, the facts in this case have become final and cannot be challenged anymore. If we accept any contention with respect to those facts, it would upset the finding of conviction in Shyamu's appeal to this Court. Therefore, the only question before us is whether, in the given facts and circumstances the case, the role attributed to the present three Accused-respondents lead to their implication under Section 34 of IPC.

H 11. Limiting ourselves to the above question, we find that there is indeed enough material to infer the common and shared intention of the present accused-respondents with that of Shyamu. Although, the learned counsel for the

respondents has argued that they had not thrown the deceased down to the drain with intention of killing him but merely assaulting him. According to him, the shooting by Shyamu was an independent act. However, we find that firstly, there was no justifiable reason for the 4 accused persons to go 100-150 yards inside the field of the complainant. Second, the fact that they carried a weapon being 315 bore country-made pistol with them clearly shows that they had all the wrong intentions. Nowhere in the case of defence has this come out that the present three accused-respondents were not aware of the fact that Shyamu carried the weapon. Also, the exhortation made by the accused persons against the complainant and the deceased mentioned about killing them. Having made such an exhortation, they threw the deceased on the ground. It goes on to show that they all shared a common intention and worked in tandem. Balbir Singh is the father of other three accused persons; he could have asked Shyamu to stop short of shooting, but he did not do so. We find, in the light of these circumstances, that the High Court erred in acquitting the present accused-respondents. We are satisfied that the view taken by the High Court is not even a possible view and therefore calls for interference in this appeal.

12. On the basis of above discussion, we allow the present appeal. The impugned judgment of the High Court is set aside and the judgment and order passed by the Sessions Court is restored.

13. Learned counsel for the accused persons - respondents herein has submitted that there is a marriage in the house of the accused persons on 22nd April, 2015 and prayed that the accused may not be arrested till the marriage is solemnized. In view of this submission, we grant six weeks'

- A time to the three accused-respondents to surrender, failing which the Court concerned shall take appropriate steps to take them into custody.

Kalpana K. Tripathy

Appeal allowed.

B