

A KILARI MALAKONDIAAH @ MALAYADRI & ORS.

v.

STATE OF ANDHRA PRADESH

[Criminal Appeal No. 376 of 2007]

B NOVEMBER 21, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

C *Penal Code, 1860:*

*s.302 r/w s.34 and s.307 r/w s.34 – Assault by accused with deadly weapons, resulting in death of victim – Common intention – Conviction by Courts below – Propriety of – On facts, held: Proper – Prosecution version sufficient to fasten
D guilt on the accused.*

s.34 – Applicability of – Discussed.

E Evidence – Witness – Related witness – Testimony of – Evidentiary value – Held: Relationship is not the factor to discard the prosecution version and render it suspect – At the most, the Court is required to analyze the evidence in some detail to rule out the possibility of false implication.

F According to the prosecution, owing to political rivalry, the accused-appellants assaulted the deceased with deadly weapons which proved fatal. PWs 1 to 3 were allegedly injured in the occurrence. The appellants were convicted by the Courts below under s.302 r/w 34 and/or s.307 r/w 34 IPC.

G In the instant appeal, the conviction of the appellants was challenged on various grounds viz. that the father of the deceased was not examined by the prosecution; that PWs 1, 2 and 3 were interested witnesses; and that

there was inordinate delay in filing of the FIR. It was also contended that s.34 IPC had no application to the facts of the case; and that details of the overt act were not given in the FIR.

Dismissing the appeal, the Court

HELD:1. The prosecution version is sufficient to fasten the guilt on the accused appellants. [Para 9] [522-F]

2. Though father of the deceased was not examined, three of the injured witnesses who had sustained injuries during the occurrence were examined. Though they were subjected to incisive cross examination, nothing material was elicited to discard their evidence. [Para 5] [520-G-H; 521-A]

3. Great emphasis was laid on the fact that PWs 1 to 3 are related to the deceased. Relationship is not the factor to discard the prosecution version and render it suspect. At the most, what the Court is required to do is to analyse the evidence in some detail to rule out the possibility of false implication. In the instant case, the trial Court has done that. [Para 6] [521-A-B]

4. Though it was urged that there was delay in lodging the FIR, the trial Court and the High Court found that in fact there was no delay and the FIR was lodged promptly. [Para 6] [521-C]

5.1. S.34 IPC has been enacted on the principle of joint liability in the commission 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 s.34 if such criminal act is done in

- A 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 s.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. [Para 7] [521-C-G]

- 5.2. 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 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. [Para 7] [521-G-H; 522-A]

- 5.3. S.34 IPC does not say "the common intention of all"; nor does it say "and intention common to all". Under the provisions of s.34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the commission of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in s.34, when an accused is convicted under s.302 read with s.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. [Para 8] [522-B-D]

5.4. S.34 is applicable even if no injury has been caused by the particular accused himself. For applying s.34 it is not necessary to show some overt act on the part of the accused. [Para 8] [522-E]

Ashok Kumar v. State of Punjab AIR 1977 SC 109 and *Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh* AIR 1993 SC 1899, relied on.

Case Law Reference:

AIR 1977 SC 109 relied on Para 7

AIR 1993 SC 1899 relied on Para 8

CRIMINAL APPELLANT JURISDICTION : Criminal Appeal No. 376 of 2007.

From the final Judgment and Order dated 21.9.2006 of the High Court of Judicature Andhra Pradesh at Hyderabad in Crl. Appeal Nos. 1231 and 1452 of 2004.

K. Sarada Devi for the Appellants.

Altaf Fatima and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court upholding the conviction of the appellants for offences punishable under Sections 147, 148, 323, 324, 307 and 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). The appellants who were A-1, A-2, A-5, A-8, A-11 and A-12 have been found guilty of various offences.

- A A-1, A-2 and A-8 were found guilty of offences punishable under Section 302 read with Section 34 IPC and Section 307 read with Section 34 IPC. A-5, A-11 and A-12 were found guilty of offence punishable under Section 307 read with Section 34 IPC. A-9 was acquitted by the High Court by the impugned judgment. A-3 died during the course of appeal. A-4, A-6, A-7, A-10 and A-13 to A-19 were found to be not guilty of the charged offences and they were acquitted by the trial Court.

2. Factual scenario giving rise to the present appeals is as follows:

- C There are political grudges and ill feelings between the groups led by A5 and Chandra Tirupathaiah in R.R. Palem village. A1, A3, A4 and A6 to A19 are the followers of A5. P.Ws. 1. to 3 belong to the group of Chandra Tirupathaiah. The wife of A5 and the mother of Chandra Tirupathaiah i.e. Chandra Punnamma contested in the Panchayat elections and was elected as Sarpanch of the village. Since then the group of the accused was waiting for an opportunity to prove their supremacy in the village. While so, on 14.1.1998 at about 7.00 A.M., A.6 and Kilari Manoz and Chintagumpala Vamsee went to the Pathuri lands of Kilari Venkata Subbamma and others to graze their cattle. After some time at about 7.30 A.M., Chintagumpala Sunil, Chandra Murali and Chintagumpala Manohar also went to the Pathuri lands of Kilari Venkata Subbamma and others for answering the calls of nature and they met A.6 and Kilari Manoz and Chintagumpala Vamsee there. A6 enquired from Chandra Murali about the cricket match, as to whether it was ended as draw by calling as "cricket raddaindira". Then, he replied in the same manner by calling A6 as "match raddu kaledura". By hearing such reply, A6 felt offended and grew wild against Chandra Murali and picked up quarrel with him, and there was a scuffle between them. Kilari Manoz went to the village and informed about the quarrel between A6 and Chandra Murali to the elders and A.2, in spite of the request made by Chintagumpala Manohar not to do so.

On the same day, at about 12.00 noon, A2 went to the house of Chintagumpala Manohar and kicked him on his stomach for his prevention and interference with Kilari Manoz when he was proceeding to the village for informing the quarrel to the elders. P.W.3, who is the father of P.W.6, on his return from the field came to know about beating of his son by A2, he went to Ramalayam Street questioning loudly about the illegal and high-handed act of A2. P.Ws.1 and 2 and Chandra Venkateshwarlu (hereinafter referred to as the 'deceased') tried their best to convince P.W.3 to adjust the matter. A6, who was passing through the street, heard the cries of P.W.3 and picked up quarrel with him. At about 1.00 p.m. A1 and A3 to A19 armed with deadly weapons beat the deceased and also injured P.Ws.1 to 3. A-1 beat P.W.1 with an iron rod on his head. A12 also beat P.W.1 with a stick on his shoulder. A5 beat P.W.2 with a stick on his head and hands. A-1 beat P.W.3 with an axe on his head and A-11 beat P.W.3 with a stick on his eyebrows. A2 beat the deceased with a stick on his back. A-1 also beat the deceased with an iron rod on his head and all over the body. As a result the deceased fell down with injuries and became unconscious. PWs 1 to 3 fell down with injuries. All the accused hurled stones against P.Ws.1 to 3 and the deceased. All the accused left the place thereafter. At about 5.00 p.m. P.Ws.1 to 3 went to Lingasamudram Police Station, where P.W.1 gave a statement to the police. P.W.9 recorded the statement of P.W.1 and registered a case in Cr.No.1 of 1998 under Sections 147, 148, 323, 324, 307 read with Section 149 IPC and sent the injured-P.Ws.1 to 3 to the Government Hospital for treatment. P.W.11 took up investigation, examined P.Ws.1 to 3. P.W.14 visited the scene of offence in the presence of mediators-Chandra Venkateswarlu and Choppara Kotaiah, seized sticks, iron rod and stones under a cover of observation report and sent the deceased to the nursing home of P.W.13 for treatment. P.W.13 after examining the deceased declared him dead. On giving death intimation, provision of law was altered to Section 302 IPC. P.W.14 conducted inquest over the dead body of the deceased and sent the dead body for postmortem

- A examination. P.W.12, the Medical Officer, Government Hospital, Kandukur conducted autopsy over the dead body of the deceased and issued Ex.P10-postmortem certificate opining that the deceased would appear to have died of shock due to injury No.2. On completion of investigation police laid the charge sheet for the above offences. Accused persons pleaded innocence.

In order to establish the accusations prosecution examined 14 witnesses. Out of them PWs 1 to 3 were stated to be injured eye witnesses. PW-4 was stated to be another eye witness.

- C Stand of the accused before the trial Court was that the best witness would have been the father of the deceased who was not examined for reasons known to the prosecution. There was inordinate delay in filing the first information report and PWs 1 to 3 are interested witnesses. It was also submitted that in the Ext.P-1 report details have not been given. The trial Court did not find any substance in the plea and as noted above convicted some of the accused persons.

- E In appeal except A-9 the appeal filed by rest of the accused persons was dismissed.

- F 3. According to learned counsel for the appellants the details of the overt act were not given in the FIR. Therefore, there were considerable improvements in the evidence of the witnesses. It is submitted that the FIR was lodged after a long time. It is also submitted that Section 34 IPC has no application to the facts of the present case.

- G 4. Learned counsel for the respondent-State on the other hand supported the judgment.

- H 5. It is to be seen that though father of the deceased was not examined, three of the injured witnesses who had sustained injuries during the occurrence were examined. Though they were subjected to incisive cross examination, nothing material

was elicited to discard their evidence.

A

6. Great emphasis was laid on the fact that PWs 1 to 3 are related to the deceased. Relationship is not the factor to discard the prosecution version and render it suspect. At the most, what the Court is required to do is to analyse the evidence in some detail to rule out the possibility of false implication. In the instant case, the trial Court has done that. Though it was urged that there was delay in lodging the FIR, the trial Court and the High Court found that in fact there was no delay and Ext.P-1 was lodged promptly.

B

C

7. Section 34 has been enacted on the principle of joint liability in the commission 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

D

E

F

G

H

A 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.

B 8. 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 commission 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.

F 9. The prosecution version is sufficient to fasten the guilt on the accused appellants. The appeal is without merit, deserves dismissal which we direct.

B.B.B.

Appeal dismissed.