

Case :- CRIMINAL APPEAL No. - 674 of 1982

Appellant :- Ram Khelawan And Another

Respondent :- State of U.P.

Counsel for Appellant :- Ram Chandra, Akhilesh Kumar
Srivastava, Girish Kumar Pande, Pawan Kumar Tiwari, Rajesh Kumar
Dwivedi(A.C)

Counsel for Respondent :- Govt. Advocate

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Dinesh Kumar Singh, J.

(Per Hon'ble Dinesh Kumar Singh, J.)

1. This criminal appeal under Section 374(2) CrPC arises out of judgment and order dated 31st August, 1982 passed by the IVth Additional Sessions Judge, Lucknow in Sessions Trial No.170 of 1981, convicting accused, Ram Khelawan (appellant no. 1) under Section 302 IPC and accused Budhu and Ram Dutt (appellant no. 2) under Section 302/34 IPC and sentenced them to undergo life imprisonment. Accused, Ram Khelwan (appellant no. 1) had been further convicted under Section 324 IPC and accused, Budhu and Ram Dutt (appellant No. 2) had been convicted under Section 324/34 IPC and sentenced to undergo two years rigorous imprisonment.

2. Appeal filed by accused, Budhu, being Criminal Appeal No.685 of 1982, who was also convicted and sentenced, as noted above, has been dismissed by this Court vide judgment and order dated 06.04.2018. While dismissing the said criminal appeal, this Court had observed as under:-

"We find that there are consistent statements of prosecution witnesses on record which are also corroborated by the injury reports as well as the opinion of the doctor with regard to receiving fatal blow by the deceased as well as the injuries received by Ketar. The case of the prosecution that Buddhoo had come armed with knife giving challenge that he would not allow Ram Beti to be married in Village Kharika and then Ram Khelawan took knife from Buddhoo and gave knife blow at the left hand of Ketar and thereafter Ram Dutt and Buddhoo caught hold of Ram Deen by his hands and Ram Khelawan gave him knife blow near his neck, go to establish that all the accused have common intention of committing the offence of murder. Therefore, they are liable to be convicted, having the common intention of committing the offence, as has been proved beyond all reasonable doubts by the statements of the prosecution witnesses."

3. As per prosecution case, Ramdin (deceased) his brother Ketar (injured), accused, complainant and witnesses belong to 'Mangta Community'. All these persons were living in their huts, near Banthara Market.

4. Ramdin and Ketar were having sister, Sarjoo, whose husband died and, she was living in a nearby hut. Her elder daughter, Samrata was married to Budhu. Marriage of her younger daughter, Rambeti was arranged and settled by Ramdin and Ketar in village, Kharika. On the date of incident, *Barat* was to come as marriage was scheduled. At around, 8.30 p.m., when music was being played, two petromaxes were burning and arrangements were being made of food etc., for the guests etc., accused Budhu, followed by present appellants, came there having an open knife in his hand. He challenged that he would not allow Rambeti to get married in village Kharika from where Barat was coming.

5. It is said that when deceased, Ramdin and his brother, injured, Ketar tried to caution and make him understand not to make any disturbance/turbulence in marriage, Ram Khelawan snatched the knife from Budhu and gave knife blow on left hand of Ketar. Ramdin intervened to save his brother and apprehend, accused, Ram Khelawan, Budhu and Ram Dutt caught hood of his hands and Ram Khelawan gave knife blow on neck of Ramdin, who instantly fell down. All the accused fled away from the place of occurrence towards Banthara Market.

6. FIR of the incident was lodged on same day at Banthara Police Station.

7. Injured Ramdin and Ketar were sent to Sarojini Nagar Primary Health Center for medical aid. Since Ramdin's condition was serious, he was referred to Balrampur Hospital where he died next morning i.e. on 29.11.1980. After investigating the offence, charge-sheet was filed. The accused denied charges and demanded for trial.

8. Deceased, Ramdin was initially medically examined at 9.30 p.m. and Doctor found incised wound 3/4"x1/4" into muscle deep on the lower part of front of middle of neck with bleeding.

9. Injured, Ketar was medically examined at 12.30 a.m. on intervening night of 27/28.11.1980, and the Doctor found him to have suffered incised wound 1"x1/4" into muscle deep on the dorsal surface of left hand and one abrasion 1/4"x1/8" on the tip of left middle finger.

10. During the course of postmortem examination of deceased, Ramdin, which was conducted on 29.11.1980, following antemortem injures were noticed on his body:-

1. Stitched wound 2 cm. long with one stiph on the base of the neck left side 0.5 cm. Left to the supra esternal notch.

2. Multiple abraded contusion in an area of 5 cm. X 2.5 cm. On the back of left elbow.

3. Abraded contusion 1.5 cm. X 0.5 cm. on the front of right leg 26 cm. below right knee.

11. As per opinion given by the Doctor, the death was caused as a result of shock and hemorrhage due to injury no. 1, which was sufficient in ordinary course of nature to cause death.

12. Prosecution, to prove its case, examined injured, Ketar as PW-1 and Prabhudin as PW-2, Dr. S.H.A. Rizvi, the then Medical Officer, who was posted at PHC, Sarojini Nagar, who initially examined Ketar and Ramdin on 27.11.1980, as PW-3, Dr. V.P. Singh, Medical Officer, posted at Civil Hospital, Lucknow, who conducted postmortem examination of deceased, Ramdin, as PW-4, Mr. Ram Singh, Head Constable, who was posted as Head Mohrir at Police Station Banthara on 27.11.1980 and prepared chick report, Exhibit Ka-1, as PW-5, and Mr. Sukh Dev Pandey, Sub-Inspector, who conducted inquest, as PW-6. Mr. Biraj Shyam Mishra, the Investigating Officer who completed investigation, as PW-7.

13. After the prosecution evidence got concluded, statements of accused were recorded under Section 313 CrPC.

14. Since one of the appellants, Ram Khelawan was absconding, the present appeal filed by him and Ram Dutt was disconnected from Criminal Appeal No.685 of 1982 filed by Budhu.

15. This Court has already discussed the evidence in the judgment and order dated 06.04.2018 passed in Criminal Appeal No. 685 of 1982 and, therefore, no useful purpose would be served by extracting the evidence on hereunder. It would suffice to note that the place of incident, manner in which the incident was caused, presence of the accused and role played by them in furtherance of common intention is fully established by injured witness and independent witness and the evidence of two doctors, who initially conducted the medical examination of the injured and postmortem examination of the deceased respectively.

16. The prosecution story gets corroborated by the medical evidence as well. There is direct evidence of injured and eye-witness, who have fully supported the prosecution case.

17. Mr. Rajesh Kumar Dwivedi, learned Amicus, however, has submitted that the judgment and order dated 06.04.2018 passed in Criminal Appeal No. 685 of 1982 preferred by co-accused, Budhu would not be binding on the present accused-appellants. This Court should examine their case irrespective of finding recorded in the said judgment and order. It has been further submitted that no motive is coming forth for committing the offence by the appellants, Ram Khelawan and Ram Dutt. As per the prosecution case, it was Budhu, who was aggrieved by settling of marriage of Rambeti, his sister-in-law, in village Kharika and, he came with knife. It has been further submitted that it does not appeal to reason that Ram Khelawan would snatch knife from Budhu and give fatal blow on deceased, Ramdin and injure Ketar. It has been further submitted that accused, Ram Dutt has been assigned role of catching hold of the deceased and there is no reason to believe that the accused, Ram Khelawan, and Ram Dutt would have common intention of committing murder of Ramdin. There is nothing on record to suggest that the accused had come prepared to commit the offence or there was premeditation/prior

meeting of minds of the accused for commission of offence. He has submitted that it would not be proper to convict appellant, Ram Dutt with aid of Section 34 IPC for offence under Section 302 IPC as role assigned to him of catching hold of the hand of the deceased only single blow was given on deceased, Ramdin and that too by appellant, Ram Khelawan. Except for role of catching hold of appellant, Ram Dutt, no other role has been assigned to him. Therefore, it has been submitted that since there was single injury which was caused to deceased, Ramdin by accused Ram Khelawan and Ramdin died on next day, it is a fit case where appellant, Ram Khelawan and Ram Dutt should be convicted under Section 304 IPC and not under Section 302 IPC, even if the prosecution story is believed.

18. On the other hand, Mr. Umesh Verma, learned A.G.A., has submitted that this Court, while analyzing the evidence on record, has specifically held that the prosecution case was fully proved by evidence on record. This Court also held that all the three accused had common intention for committing murder and, therefore, this Court cannot review the judgment in which specific finding that all the three accused had common intention for committing murder has been recorded. This Court is neither sitting in appeal nor in review against the judgment and order dated 06.04.2018 and, therefore, the findings recorded in judgment and order dated 06.04.2018 passed in Criminal Appeal No.685 of 1982 are binding in the present appeal, and a different view cannot be taken. Mr. Verma has further submitted that even otherwise, when the prosecution has established the role of giving knife blow by Ram Khelawan and catching hold by Budhu and Ram Dutt, it cannot be said that all the three accused did not have common intention to cause death of Ramdin. It is submitted that common intention could develop instantly. Ram Khelawan assaulted Ketar after snatching knife from Budhu and when Ramdin tried to save him, accused Ram Dutt and Budhu caught hold of Ramdin and accused, Ram Khelawan gave fatal blow as a result thereof, he died. It has been further submitted that the Doctor had opined that injury no. 1 suffered by deceased, Ramdin was sufficient in ordinary course of

nature to cause death. It has been further submitted that there is no ground to interfere with the conviction and sentence of the accused-appellants by the trial Court and the appeal is liable to be dismissed.

19. We have considered the submissions advanced by the learned amicus and learned Government Counsel.

20. Section 34 of the IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one into others. It is for the prosecution to prove the common intention to the satisfaction of the Court.

21. This Court in its judgment and order dated 06.04.2018 passed in Criminal Appeal No.685 of 1982, after analyzing the evidence in detail, has held that all the three accused had common intention to commit murder of the deceased.

22. The Supreme Court in recent judgment **(2022) 2 SCC 545 (Jasdeep Singh alias Jassu Vs. State of Punjab)** has held that common intention to commit an offence is a team effort akin to a game of football involving several positions manned by many. It would be apt to extract few paragraphs from the said judgment hereunder:-

"22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, midfielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative

assessment. It is only a rule of evidence and thus does not create any substantive offence.

24. Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.

25. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

26. There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

27. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court."

23. The essence of Section 34 IPC is consensus of minds of the persons participating in a criminal action to bring about a particular result. It does not create any distinct offence but lays down the principle of constructive criminal liability. The facts of this case would disclose that all the three accused had participated in commission of the offence inasmuch as two of them caught hold of the deceased and one gave fatal blow on neck as a result thereof deceased, Ramdin died. According to Doctor, who conducted autopsy

on dead-body of the deceased, the injury caused on neck of Ramdin was sufficient in ordinary course to cause death. There is no hard and fast rule that in case of single injury, provisions of Section 302 IPC would not be attracted. It would depend upon facts of each case, nature of injury, part of body where injury is caused, weapon used in causing such injury to ascertain intention of causing death. Therefore, the submission of learned Amicus that since single injury was caused on neck of the deceased, the accused did not have intention to cause death does not appeal to us.

24. The Supreme Court in **(2020) 9 SCC 524 (Stalin Vs. State Represented by the Inspector of Police)** noted down on this issue, the observations in **AIR 1958 SC 465 (Virsa Singh Vs. State of Punjab)** and held in paragraph 7.2 as under:-

"7.2 From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence."

25. Accused, Ram Khelawan had given knife blow on neck of the deceased which resulted into death of deceased on next day. Considering the opinion of the Doctor, weapon used in committing offence and body part where knife blow was given, this Court is of the view that the accused had intention to cause death while the deceased was caught hold by two other co-accused. In view thereof, this Court does not find any ground to take a different view than the view which has been taken in Criminal Appeal No.685 of 1982. In the result, this appeal also fails and is hereby **dismissed**. However, considering the

fact that the incident took place in the year 1980. The appellants are in their advance age and, therefore, the State Government should consider their case for remission expeditiously, taking into consideration their advance age and their conduct in jail etc. in accordance with law.

26. We appreciate valuable assistance rendered by Mr. Rajesh Kumar Dwivedi, learned Amicus and Mr. Umesh Verma, learned A.G.A. during the course of hearing of this appeal.

27. We fix Rs.11,000/- to be paid to learned Amicus as fee, for assisting the Court.

Order Date :- 25th May, 2022

MVS/-