

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.	1360 of 1994
Parties Name	<p>1. Sheru @ Mahendra Singh Aged about 22 years, S/o Shri Bhagirath Singh.</p> <p>2. Dashrath, Aged about 22 years, S/o Shri Hari Ram.</p> <p>Both R/o Ganesh Talai, Khandwa, Distt. Khandwa (M.P.)</p> <p style="text-align: center;">Vs.</p> <p>State of Madhya Pradesh, through - P.S. Kotwali, Khandwa (M.P.)</p>
Bench Constituted	Hon'ble Shri Justice S.K.Gangele & Hon'ble Shri Justice Anurag Shrivastava
Judgment delivered by	Hon'ble Shri Justice Anurag Shrivastava
Whether approved for reporting	Yes/No
Name of counsels for parties	<p>For appellant: Smt.Durgesh Gupta, learned counsel for the appellants.</p> <p>For respondent/State: Shri Pradeep Singh, G.A., for the respondent/State.</p>
Law laid down	
Significant paragraph numbers	

J U D G M E N T
(7.12.2017)

The present appeal has been preferred by the accused/appellants under Section 374(2) of Cr.P.C., being aggrieved by the judgment and sentence dated 1.8.1994 passed by Sessions Judge, Khandwa in S.T. No.223/1993, whereby the accused/appellants have been found guilty for commission of offence punishable under Section 302 read with section 34 of IPC and sentenced to undergo rigorous imprisonment for life.

2. The case of the prosecution in brief is that on 22.9.1993 at around 6 o'clock in the morning near Ganesh Talai Mazjid at Khandwa deceased Poonam was going to supply milk, meanwhile appellant Dashrath and Sheru @ Mahendra Singh came there. Dashrath caught hold of hands of the deceased and Sheru @ Mahendra Singh had inflicted the blows of knife on his abdomen. The deceased shouted for help. After assaulting him the appellants ran away. The incident is witnessed by complainant Nirmala Bai and other witnesses. The deceased Poonam was taken to District Hospital Khandwa but he succumbed to his injuries on the way. The report of incident Ex.P-1 has been lodged by Nirmala Bai. The police registered the offence and conducted the inquest. The spot map Ex.P-2 and Panchnama of dead body of deceased were prepared and body was sent for postmortem. A knife has been seized on the basis of memorandum statement of appellant Sheru @ Mahendra Singh. The statement of witnesses were recorded and after usual investigation charge sheet has been filed before the Court.

3. The appellants have been charged under section 302 read with section 34 of IPC. They abjured guilt and pleaded innocence. The prosecution has examined 8 witnesses, whereas appellants have not given any evidence in their defence.

4. The trial Court on appreciation of evidence held the appellant guilty under Section 302 read with section 34 of IPC and sentenced them as mentioned hereinabove.

5. It is argued by the learned counsel for appellants that relying upon the sole testimony of Nirmala Bai the trial Court has wrongly convicted the appellants for commission of alleged offence. There are material omission and contradiction occurred in the statement of Nirmala Bai, her presence at the scene of occurrence is not established beyond reasonable doubt. Though she had lodged the FIR, but name of appellant Sheru @ Mahendra Singh has not been mentioned in it. Therefore, the case of prosecution becomes suspicious against the appellant no.1. The appellant no.2 has not caused any injury to the deceased, he has no enmity with deceased, he has been falsely implicated in the offence. The trial Court on erroneous appreciation of evidence has held the appellants guilty.

6. Heard arguments, perused the record.

7. It is not disputed that at the time of incident the deceased Poonam had sustained injuries caused by hard and sharp object and he had been died due to injuries.

The police has conducted the inquest and sent the dead body for postmortem.

8. Dr.Rajesh Verma (P.W.8) deposed that on 22.9.1993 at District Hospital Khandwa he had performed the postmortem of deceased Poonam and found following injuries :-

“(1) Incised wound 1½ inch long with clear edges present at the level of 6th left rib, deep enough to cut 6th rib piercing into thoracic cavity. Blood is oozing from wound.

(2) Incised wound present over left lower axilla. Clean cut margin 1 ½ inch long x ½ inch wide, deep enough to pierce abdomen. Fresh blood is coming from the wound.

(3) Incised wound 1½ inch long x ½ inch wide between two edges obliquely placed downward over right renal region 3 inches lateral to umbilicus deep enough to pierce abdomen cavity. Blood is oozing from the wound.”

On internal examination it is found that 6th left rib is sharply cut below injury no.1 piercing pleura & pituitary left lower lobe of lung. The spleen and kidney were also found cut. The cause of death is the hemorrhage and shock result of injuries caused to deceased. On the basis of statement of doctor and pm report it is proved that the death of deceased was homicidal.

9. Nirmala Bai (P.W.1) deposed that on the date of incident at around 6 o'clock in the morning she was standing outside at the door of her house. She heard the cry of deceased Poonam. She saw that appellant Dashrath had caught hold of Poonam and appellant

Sheru @ Mahendra Singh was inflicting blows of knife at his abdomen. Nirmala Bai shouted for help. Hearing her cry appellants ran away from the spot. It is further deposed by Nirmala Bai that the appellant Sheru @ Mahendra Singh had inflicted three blows of knife at the chest and abdomen of Poonam. Later on Poonam was taken to the hospital by an auto rickshaw, but he had been died on the way. Nirmala Bai lodged the report of the incident Ex.P-1 at Police Station Kotwali, Khandwa. In cross-examination Nirmala Bai has not made any contradictory statement. She had explained that the incident occurred hardly 8 to 10 steps away from her house and she had clearly witnessed the incident. No question has been asked from this witness in respect of identity of appellant Sheru by the defence.

10. Another witness Rajjan (P.W.3) deposed that at the time of incident he was present in the house . His father woke up him, he saw his younger brother Poonam in injured condition. He had sustained injuries on his abdomen. Nirmala Bai told him that the appellant Dashrath had caught hold of Poonam and appellant Sheru @ Mahendra Singh had inflicted blows of knife and caused injuries to him.

11. Munnalal (P.W.4) deposed that one day prior to the incident, in the night of 21.9.1993 appellants were wandering in front of his house. Seeing them Munnalal and Poonam had asked them as to why they are wandering in front of their house. At that time appellants had abused Poonam and Munnalal.

12. Similar statement has been given by Rajjan (P.W.3) also. This shows that one day prior to the incident the appellants had a quarrel with the deceased when deceased had objected about their wandering at late hours of the night in front of his house.

13. The statement of Nirmala Bai (P.W.1) is duly corroborated by FIR Ex.P-1, which has been lodged soon after the incident. Nirmala Bai had informed about the incident to Rajjan (P.W.3) also. There is no material discrepancy found in the statement of Nirmala Bai and Rajjan. She had no enmity with the appellants and she cannot be treated as interested witness. Her testimony appears to be cogent, reliable and trustworthy.

14. It is argued by the learned counsel for appellant that appellant Dashrath had not inflicted any injury to the deceased. Therefore, he cannot be convicted for offence committed by main accused Sheru with the aid of Section 34 of IPC. There is no evidence to show that he has shared common intention with the main accused.

15. This argument cannot be accepted. Common intention is the question of fact. It is subjective but it can be inferred from the facts and circumstances of the case. The Hon'ble Apex Court in the case of **Israr Vs. State of U.P.** [(2005) 9 SCC 616] held in paras 21 to 28 as under :-

“21. 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 of 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 Supreme Court 109, the existence of 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."

22. 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.

23. 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 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 others v. State of Andhra Pradesh, 1993(3) RCR(Crl.) 319 (SC) , 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.

24. The above position was highlighted recently in Anil Sharma and others v. State of Jharkhand, 2004(3) RCR(Crl.) 774 (SC) : 2004(5) SCC 679.

25. In Abraham Sheikh and others v. State of West Bengal, AIR 1964 Supreme Court 1263 this Court stated that no doubt a person is only responsible ordinarily for what he does and Section 38 Indian Penal Code ensures that. But Section 34 as well as Section 35 provide that if the criminal act is the result of the common intention, then every person who did the criminal act with such intention would be responsible for the total offence irrespective of the share which he had in its perpetration. The logic, highlighted illuminatingly by the Judicial Committee in the illustrious case of Barendra Kumar Ghosh v. Emperor, AIR 1925 PC 1, is that in crimes as in other things "they also serve who only stand and wait".

16. In the aforesaid case law, the appellant caught hold of the deceased from the back and main accused had assaulted him by knife and thereby committed his murder. Hon'ble Apex Court held the appellant guilty for commission of offence with the aid of Section 34 of IPC. The facts are similar to present case. Relying upon the testimony of Nirmala Bai, it is rightly found proved by the trial Court that at the time of incident appellant Dashrath

had caught hold of deceased from his back and appellant Sheru had assaulted him by inflicting blows of knife on his chest and abdomen. It appears that the incident occurred when the deceased was going to supply milk. There was no quarrel or any sort of provocation given by the deceased. The appellants came on the spot, together caught hold of the deceased and inflicted blows of knife. There are multiple injuries caused on the vital parts of body of deceased. His lung, ribs, liver and spleen were cut. Causing multiple injuries on vital part of the body by a weapon like knife clearly shows the intention of appellant to commit murder.

17. Thus, the trial Court has not committed any error in recording the guilt of appellants for commission of offence punishable under Section 302 read with Section 34 of IPC. The findings recorded by the trial Court are neither perverse nor illegal.

18. Consequently, we do not find any merits in the present appeal and it is hereby dismissed. The appellants be taken into custody and be sent to jail in order to suffer remaining part of the sentence. Their bail bonds stand cancelled.

(S.K.Gangele)
Judge

(Anurag Shrivastava)
Judge