A CHAMAN & ANR.

v.

STATE OF UTTARANCHAL

(Criminal Appeal No. 409 of 2007)

B DECEMBER 1, 2008

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

Penal Code, 1860 – s. 34 – Common intention – C *Applicability of – Held: s. 34 is enacted on the principle of joint liability in the doing of a criminal act – Existence of a common intention amongst the participants in a crime is the essential element – It is applicable even if no injury has been caused by the particular accused himself – Some overt act* D *on the part of accused is not necessary – On facts and in view of the legal position, s. 34 applicable and offence made out in respect of accused persons – Thus, conviction u/s.302 r/w s. 34 by courts below justified.*

According to the prosecution case, appellant C E **hurled abuses at JS over a petty matter. During night appellant C along with appellant V, N and KR armed with deadly weapons entered the house of JS. Father of JS-PW 2 raised alarm. N pointed out the gun at him and PW 2 caught hold of the barrel of the gun. V gave him blows** F **with the Khukri. Appellant struck a blow on the person of JS. PW 5, 6, 7 and others reached there. They saw that V struck a blow with Khukri on JS. Thereafter, the appellants ran away from the place of occurrence. JS succumbed to his injuries. Trial court relying on the** G **evidence of PW 1, 2, 5 and 7, convicted the appellants for offence punishable u/s.302 r/w s. 34 IPC and awarded life imprisonment. V was also convicted for offence punishable u/s.323 IPC and sentenced to imprisonment for six months. KR died during pendency of appeal. High**

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Court upheld the conviction of appellant C, V and N. Hence the present appeal. A

Dismissing the appeal, the Court

HELD: 1.1. Section 34 IPC 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 in law is just the same as if each of them has done it individually by himself. [Para 6] [888-A-E] B C D E F

1.2. 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 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. [Para 6] [888-E-F] G H

A **1.3. 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**
B **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**
C **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. Section 34 is applicable even if**
D **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. [Para 9] [889-A-E]**

E **1.4. When the factual scenario is considered in the background of legal position, there is no merit in the instant appeal. [Para 11] [889-G]**

Ashok Kumar v. State of Punjab **AIR 1977 SC 109;** *Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh* **AIR 1993 SC 1899;** *Anil Sharma and Ors. v. State of Jharkhand* **2004 (5) SCC 679;** *Harbans Kaur v. State of Haryana* **2005(9) SCC 195 and** *Amit Singh Bhikamsingh Thakur v. State of Maharashtra* **2007(2) SCC 310, relied on.**

Mahbub Shah v. Emperor **AIR 1945 Privy Council 118,**
G **referred to.**

Case Law Reference:

AIR 1977 SC 109	**Relied on.**	**Para 6**
AIR 1945 Privy Council 118	**Referred to.**	**Para 8**
AIR 1993 SC 1899	**Relied on.**	**Para 9**

2004 (5) SCC 679	**Relied on.**	**Para 10**	A
2005(9) SCC 195	**Relied on.**	**Para 10**	
2007(2) SCC 310	**Relied on.**	**Para 10**	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 409 of 2007. B

From the Judgment and final Order dated 20.7.2006 of the High Court of Uttaranchal at Nainital in Cri. Appeal No. 1275 of 2001 (Old No. 991 of 1987).

Mahinder Singh Dahiya and A. Rama Devi for the Appellants. C

Jatinder Kumar Bhatia for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is D to the judgment of the Division Bench of the Hon'ble High Court of Uttaranchal at Nainital upholding the conviction of four appellants who had filed Criminal Appeal no.1275 of 2001. One of the appellants Khushi Ram died during the pendency of the appeal. By the impugned judgment, the High Court upheld the E conviction so far as other appellants Chaman, Vinod Kumar and Naresh are concerned. The first two are appellants in the present appeal. No appeal has been preferred by accused Naresh. Each of the accused was convicted for offence punishable under Section 302 read with Section 34 of the Indian F Penal Code, 1860 (in short the 'IPC') and sentenced to imprisonment for life. Appellant Vinod was additionally convicted for offence punishable under Section 323 IPC and sentenced to imprisonment for six months.

2. Prosecution version in a nutshell is as follows: G

On 09.07.1985, at about 5:00 P.M., Jaswant Singh (hereinafter referred to as the 'deceased') was returning to his home, when he met Rani, daughter of Onkar Das and they started talking to each other. Appellant Chaman, brother of Rani, came from his house hurling abuses at Jaswant Singh, saying H

A "TU BAHUT BADA SAAND BANTA HAI, RUK TUJHE MAJAA CHAKHATAA HUN" (You think yourself to be a big bull, wait I will teach you a lesson). Thereafter, on the same day, at about 1:30 A.M. in the intervening night of 9th/10th of July, 1985, when Jaswant-deceased, his father Chamela Ram (P.W. 2), brother B Data Ram (P.W. 1), were sleeping in the verandah of their house, they woke up on hearing the barking of their dog and flashed their torches and saw that appellants Naresh, (armed with a gun), Vinod, (armed with a KHUKRI-a sharp edged weapon), Chaman, (armed with SAINTA-a sharp edged weapon) and Khushi Ram, (armed with a country made pistol), C entered their house. Appellant Chaman, asked Jaswant to stand up. On which, Jaswant along with Data Ram, got up from their cots. Meanwhile, Chamela Ram (P.W.2) raised an alarm "BACHAO! BACHAO!! (Save! Save!!). Naresh pointed the gun at him. Chamela Ram caught hold the barrel of the gun to save D himself. On this, appellant Vinod gave him blows with the butt of Khukri. Meanwhile, appellant Chaman struck a blow with SAINTA (a sharp edged weapon) on the person of Jaswant, who ran to save his life. However, Jaswant could not go far and fell down near the house of Nain Singh. By then, witnesses E Bhuru (P.W.5), Ramu, Isam (P.W.6), Nakli (P.W.7) and Nain Singh had reached there. They also flashed their torches and saw that appellant Vinod, struck a blow with the Khukri on injured Jaswant. Thereafter, all the four appellants ran away from the place of occurrence. Jaswant Singh, succumbed to the injuries F on the spot, near the house of Nain Singh. A written report (Ext. A-1) of the incident was got scribed by Raj Kumar (P.W. 4) by Chamela Ram (P.W. 2), which was lodged against all the four accused persons with the police station Doiwala on 10.07.1985, at about 5:30 A.M. The distance between the place of occurrence (Chandi Plantation) and the police station is 15 G kms. On the basis of said report (Ext. A-1), its check report (Ext. A-18) was prepared at the police station and necessary entry was made in the general diary, a copy of which is Ext. A-17. Crime No.117 of 1985 was registered against all the four accused persons, for the offence allegedly committed by them

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under Section 302 of I.P.C. P. W. 8 H.C. Panda, Sub Inspector, after aforesaid report was lodged with the police station, proceeded to the place of occurrence on 10.07.1985 and took the dead body of Jaswant in his possession and prepared the inquest report (Ext. A-4). He also prepared site plan (Ext. A-5), filled police form No.13 (Ext. A-6), prepared letter (Ext. A-7) addressed to Chief Medical Officer, requesting for post mortem examination of the dead body. H.C. Pandey, Sub-Inspector (P.W.8) also took blood stained 'BANIYAN' (undershirt) Ext.8 in his possession and prepared memo (Ext. A-9). He further took into his possession simple soil (Ext. 12) and blood stained- soil (Ext. 13) and prepared memo (Ext. A-10). Autopsy was conducted by Dr. A.S. Khanuja (P.W. 11) on the very day i.e. on 10.07.1985 at 4:00 P.M, on the dead body of the deceased, prepared post-mortem examination report (Ext. A-26) and opined that the death has been caused due to shock and haemorrhage, resulting from injury over the lung. Investigating Officer also recovered the torches, in the light of which the crime was witnessed by the witnesses. After recording the statements of the witnesses and on completion of the investigation, the Investigating Officer submitted charge sheet (Ext. A25) before the Magistrate concerned. Since accused persons pleaded innocence, trial was held.

3. Relying on the evidence of eye witnesses PWs 1, 2, 5 and 7 the Trial Court found the accused persons guilty and sentenced them as aforesaid.

4. In appeal, the main ground was that the offence has not been made out in respect of the accused persons. It was further stated that one of the accused persons was a juvenile. It was also submitted that Section 34 has no application.

5. Reliance is placed on a certificate dated 20.8.2008 to contend that one of the accused persons was a juvenile. The same has not been brought on record earlier. In any event, the certificate came into the existence much after the completion of the trial and disposal of the appeal by the High Court. We, therefore, are not inclined to take note of the certificate which

A is pressed into service.

6. 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 B 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 C 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, D 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 E 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 F 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.

7. As it originally stood, Section 34 was in the following G 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."

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8. 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). A

9. 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 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. B C D E

10. The above position was highlighted recently in *Anil Sharma and Others v. State of Jharkhand* [2004 (5) SCC 679], in *Harbans Kaur v. State of Haryana* [2005(9) SCC 195] and *Amit Singh Bhikamsingh Thakur v. State of Maharashtra* [2007(2) SCC 310]. F

11. When the factual scenario is considered in the background of legal position, there is no merit in this appeal. Looked from any angle the appeal is without merit, deserves dismissal, which we direct. G

N.J. Appeal dismissed.