

2023 Scej 471, (2023-4)212 PLR 185 (SC) (SN), PLRonline 482604

SUPREME COURT OF INDIA

Before : Justice Abhay S. Oka and Justice Pankaj Mithal.

Ram Naresh – Appellant

Versus

State of U.P. – Respondent

Criminal Appeal No. 3577 of 2023.

01.12.2023

Indian Penal Code, 1860, Section 34 - Common intention - When a criminal act is done by several persons with a common intention each of the person is liable for that act as it has been done by him alone - Where participation of the accused in a crime is proved and the common intention is also established, Section 34 IPC would come into play - To attract Section 34 IPC, it is not necessary that there must be a prior conspiracy or premeditated mind - The common intention can be formed even in the course of the incident i.e. during the occurrence of the crime. [Para 8]

Indian Penal Code, 1860, Section 34 - Common intention - For applying Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design - Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence - Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or even during the occurrence of the incidence. [Para 13]

Cases Referred :-

1. *Jasdeep Singh alias Jassu v. State of Punjab (2022) 2 SCC 545.*
2. *Krishnamurthy alias Gunodu v. State of Karnataka (2022) 7 SCC 521.*

For the Appellant :- Mr. Bibek Tripathi, Mr. Ashish Kumar Upadhyay, Mr. Y. Lokesh, Ms. Maitri Goal, Mr. Naganpillai, Ms. Bhaswati Anukampa, Mr. Sanjeev Kumar, Mr. Sachin Kumar Verma, Mr. Arun Singh, Mr. P.V. Yogeswaran, Advocates.

For the Respondent :- Mr. Garvesh Kabra, Mrs. Harshita Raghuvanshi, Mr. Abhishek Jaju, Mrs. Pooja Kabra, Mr. Ahmer Shaikh, Advocates.

JUDGMENT

Pankaj Mithal, J. – Heard learned counsel for the parties.

2. Leave was granted while reserving the judgment.

3. The correctness of the judgment and order of the trial court convicting and sentencing the appellant for life imprisonment for an offence under Section 302 read with 34 of the Indian Penal Code (“IPC” for short) and that of the High Court affirming the same is the subject-matter of examination in this appeal.

4. The notice on this appeal was issued to the respondent-State of U.P. on 17.04.2023 limited to the applicability of Section 34 of the IPC. Therefore, the only issue for consideration in this appeal is whether the appellant shared common intention along with other co-accused to kill the deceased Ram Kishore. Since the notice was confined to the applicability of Section 34 of the IPC, with the consent of the parties, we consider it appropriate to deal with the above aspect only in this appeal.

5. The facts as unfolded reveal that the First Information Report was lodged at the instance of one Balram at about 7:15 a.m. on 18.10.1982 at Police Station Ramnagar, District Varanasi alleging that when at 5:30 am on the same day he along with his brother Ram Kishore were going to attend the nature’s call and had reached Babulal’s Dhaba, he saw Virender armed with iron rod (Rambha), Rajaram, Jogendra and Ram Naresh holding lathis in their hands. All these four persons came out of the Dhaba and shouted to kill Ram Kishore. Upon seeing the said four persons, he and his brother Ram Kishore shouted for help but before any help could arrive, the above four persons gheraoed Ram Kishore and gave brutal blows to him from lathis and iron rod. As a consequence, Ram Kishore fell down and succumbed to the injuries inflicted upon him.

6. On the basis of the aforesaid FIR, a case under Section 302/34 IPC was registered and was investigated upon. In the light of the documentary and ocular evidence including the eyewitnesses, the trial court held all the four accused guilty and convicted them for the commission of offence under Section 302 read with Section 34 IPC which was affirmed by the High Court.

7. Learned counsel for the appellant had submitted that the trial court has not considered any evidence to record finding with regard to “common intention” on part of the appellant and, therefore, Section 34 IPC cannot be applied so as to convict him. He further submitted that even the High Court has not discussed the evidence on the above aspect.

8. A reading of Section 34 of the IPC reveals that when a criminal act is done by several persons with a common intention each of the person is liable for that act as it has been done by him alone. Therefore, where participation of the accused in a crime is proved and the common intention is also established, Section 34 IPC would come into play. To attract Section 34 IPC, it is not necessary that there must be a prior conspiracy or premeditated mind. The common intention can be formed even in the course of the incident i.e. during the occurrence of the crime.

9. In the case at hand, it is clearly stated in the FIR and also categorically stated by Balram

(PW-1) that Rajaram, Ram Naresh and Jogendra had lathis in their hands and Virender had iron rod in his hands. Rajaram by shouting instigated all of them to kill Ram Kishore. The accused persons having cornered/gheraoed Ram Kishore assaulted him with lathis and iron rod. Rajaram, Jogendra and Ram Naresh armed with lathis and Virender armed with iron rod assaulted Ram Kishore to death. The witness (PW-1) could not be shaken in cross examination and consistently stated that all the accused persons surrounded his brother Ram Kishore and assaulted him together. Thereafter, all of them left together.

10. The trial court recorded a finding that all accused persons belonged to village Chaurahat and that the evidence on record establishes beyond doubt that the accused persons attacked the deceased Ram Kishore with the intention to kill him. The intention to kill him is discernible from the very fact that all of them are related to each other and were armed when they came to the place of occurrence. All the accused persons, on the instigation of Rajaram simultaneously attacked the deceased Ram Kishore and thereafter left together. Thus, according to the findings of the trial court all the four accused persons had come to the place of occurrence together armed with weapons, assaulted the deceased Ram Kishore simultaneously and left the place together.

11. The High Court while dealing with the submission that there was no material available on record to establish common intention on part of the appellant-Ram Naresh and hence the appellant is not liable to be convicted with the aid of Section 34 IPC held that the argument has no substance inasmuch as the accused persons had come on the spot collectively and gave serious vital blows to the deceased with the weapons they were armed with causing his death. The collective action of all the accused persons indicated sharing of common intention.

12. Assistance has been taken of paragraph 26 of the decision of this Court in **Krishnamurthy alias Gunodu and Ors. v. State of Karnataka (2022) 7 SCC 521**, which is reproduced herein below.

"26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the

ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."

13. A plain reading of the above paragraph reveals that for applying Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or as stated earlier even during the occurrence of the incidence.

14. The aforesaid decision instead of helping the appellant rather supports the prosecution that the appellant was rightly convicted with the aid of Section 34 IPC for the offence of killing the deceased as they all had come armed, assaulted him together and thereafter left the place of occurrence together.

15. The decision in **Jasdeep Singh alias Jassu v. State of Punjab (2022) 2 SCC 545** to the effect that a mere common intention per se may not attract Section 34 IPC unless the present accused has done some act in furtherance thereof is of no assistance to the appellant as it is writ large on record as per the evidence that the appellant not only had common intention to kill the deceased Ram Kishore but also actively participated in assaulting and giving blows to the deceased Ram Kishore together with the other accused persons.

16. In view of the evidence on record and the findings of the trial court and the High Court as narrated above, the submission that the appellant cannot be convicted with the aid of Section 34 IPC is bereft of merit and cannot be sustained. Accordingly, appeal sans merit and is dismissed.