

Krishan Lal and anr. and Vs. State

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Court : Delhi

Decided On : Nov-12-1973

Reported in : 1974RLR54

Judge : P.S. Safeer, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34

Appeal No. : Criminal Appeal Nos. 158 and 164 of 1972

Appellant : Krishan Lal and anr. and ;ishwar Datt

Respondent : State

Advocate for Pet/Ap. : Bawa G. Singh and; D.C. Mathur, Advs

Judgement :

P.S. Safeer, J.

(1) This judgment will dispose of Cr. A. No. 158. and 164 of 1972. The first has been filed by Krishan Lal and Bal Krishan. .The appellant in Cr. A. No. 164 is Ishwar Dutt in respect of whom the allegation is that he gave the knife blow to Public Witness Harbhajan Singh.

(2) The prosecution case may best be seen in the light of statement of Public Witness 3 who received knife injury. He stated that on 13-11-71 at about 930 a.m.

he Along with his brother Inder Singh was going to Naraina from Ramesh Nagar. He was driving car No. Dle 8065. When the car reached block No. 8 in Ramesh Nagar they found that on one side of the road a taxi was standing while on the other was lying a cot. Four persons including three appellants were seen standing there. The deposition, is :-

'ALLthe accused persons present in Court were standing in the centre of the road. I blew my horn, but the accused did not move away from the place. the

He proceeded to state that Mohan Singh and'ian Singh PWs had arrived there before he was given the knife blow. It stands established that Public Witness 3 was removed to the Willingdon Hospital by the police after about 15-20 minutes. There he was operated upon.

(3) Public Witness 2 Inder Singh supported, the version given by his brother Public Witness 4. The variation in his deposition, however, is that he stated that Billa and Gopal had exhorted Ishwar to inflict the knife blow. If that be taken as an embellishment the statement of Inder Singh still remains :-

'ALLthe accused persons joined Isha and pulled out my brother from the car. I tried to rescue my brother. Billa (pointing out towards accused Bal Kishan and Gopal accused present in Court) caught hold of me and gave me beating with fists. I received injuries on my face, near eyes and nose (Pointing out towards accused Krishan Lal alias Chintti) he caught hold of my brother Harbhajan Singh from behind. Isha accused (pointing towards Ishwar) took out a knife from the right pocket of his pant.' Billa and Gopal had incited Ishwar Dutt to give the knife blow. 'The knife hit Harbhajan Singh in the right flank below the chest.'

The common version given by the two brothers one of whom had actually suffered the injury and had no reason to excuse the real assailant was that while Krishan Lal had caught hold of Harbhajan Singh from behind Ishwar Dutt took out the knife with which he gave the blow to Harbhajan Singh on his chest.

(4) Pws 2 and 3 are supported by Public Witness 4 and Public Witness 5 Gian Singh and Mohan Singh. Leaving aside the improvements which often occur in the

evidence of different witnesses, it may be noticed that Gian Singh deposed :

'KRISHAN Lal had caught hold of Harbhajan Singh when knife injury was inflicted to him.'

To the same effect is the deposition of PW. 5. On careful consideration of their evidence, I am of the view that their cross- examination established that they had seen the occurrence from a distance and had then rushed to the spot. They may not have witnessed the entire altercation. The car driven by Harbhajan Singh had reached the particular spot in Ramesh Nagar where on the road he found that a taxi was standing at one side of the road and a cot was lying on the other while four persons were blocking the way. He had asked them to move away. They did not and Isha i.e. Ishwar Dutt gave a fist blow even while he was sitting the driver's seat and thereafter Inder Singh came out of the car. PWs 4 and 5 could have reached the spot after Harbhajan Singh had been pulled out and Inder Singh had also came out of the car in order to help his brother. The counsel for the appellants has taken me through the first information report wherein it is not stated that anybody had raised any shout inciting Ishwar Dutt that they should give a knife blow to anyone. It is, however, stated therein that Ishwar Dutt took out the knife from the left pocket of his trousers and gave the knife blow to Harbhajan Singh. The first information report was recorded at the instance of Inder Singh. Harbhajan Singh injured had become unconscious and was lying in the hospital. His statement was recorded several days later on. It is significant that on Inder Singh's coming out of the car two of the assailants Billa and Gopal had caught hold of him and given him fist blows. His failure to state in the first information report that Krishan Lal had caught hold of Harbhajan Singh from behind and then knife blow was given by Ishwar Dutt seems to have occurred for the reason that he himself was receiving fist blows from two of the assailants. Injuries were found on his face near the eyes and the nose. When these injuries were administered there must have been a space of time when Inder Singh might have been compelled to close his eyes. The first information report is not substantive evidence and can be used in order to corroborate the deposition of witnesses. It can also be used to contradict the person making it but it cannot be used to contradict other, witnesses.

(5) In this case it is unquestioned that assailants were already known to Inder Singh and Harbhajan Singh who had at one time been living in the same locality. There could have been no mistake regarding their identity. Harbhajan Singh had no reason to mis-state as to who had caught hold of him and which person had given the knife blow. The evidence of PWs 2, 3, 4 and 5, after subtracting all improvements and embellishments leads to the conclusion that there was an altercation between Harbhajan Singh who was driving the car accompanied by Inder Singh and the four persons out of whom the three appellants had also suffered conviction. The four persons had refused to allow the car to pass and thereafter a fist blow was allegedly given to Harbhajan Singh while he was in the driver's seat. Then he was dragged out. The incident developed further when both the brothers were on the road and when the assailants divided themselves into two groups. The knife injury to Harbhajan Singh stands proved. The injuries near the eyes and nose of Inder Singh stand equally proved by authentic evidence. There is no doubt that PWs 2 and 3 were subjected to assault. A careful sifting of the evidence discloses all the stages of the occurrence which ended with a knife blow to Harbhajan Singh where after all the assailants ran away.

(6) It has been strenuously urged on behalf of Krishan Lal that even if it be found that he had caught hold of Harbhajan Singh no common intention within the scope of section 34 of the Indian Penal Code can be ascribed to him and that his conviction under section 326 read with section 34 of the Indian Penal Code, hereafter called 'the Code' is erroneous. Section 34, is

'S. 34. When a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for that act in the same manner as if it were done by him alone.'

6a. In order to punish a person on account of his vicarious liability it has to be established that he shared the common intention in consequence whereof the criminal act was done. Several cases have been cited in which distinction was drawn between the scope of section 34 and 149 of the Code. In Mohan Singh and another V. State of Punjab, : AIR 1963 SC174 . it was observed :

'COMMON intention denotes action in concert and necessarily postulates the existence of a prearranged plan and that must mean a prior meeting of minds. Cases to which section 34 can be applied disclose an element of participation in action on the part of all the accused persons. The acts may be different, may vary in their character, but they are all actuated by the same common intention. '

6a. Vicarious liability will bind different persons where their acts of participation are found to have been actuated by common intention to commit the crime. It is, however, urged that the prosecution must prove an overt act in order to establish that there was a pre-arranged plan or even the instantaneous meeting of the minds before the performance of the criminal act in order to fasten vicarious liability within the scope of section 34 of the Code. The submission is that even if Kishan Lal had caught hold of Harbhajan Singh that would not prove in him the common intention for causing the knife blow which was administered by Ishwar Dutt. Kishan Lal, it is submitted may have caught hold of Harbhajan Singh for many other reasons, one of which may have been to prevent him from assaulting Ishwar Dutt. On the other hand it is urged by the counsel appearing for the State that in order to find the common intention in Kishan Lal various stages in the occurrence must be kept in view. 6c. He points out that all the four assailants commonly prevented Harbhajan Singh's car from proceeding ahead. After the altercation began Ishwar Dutt gave the fist blow to Harbhajan Singh while he was sitting in the car and the third act was that of dragging Harbhajan Singh out of it. The fourth event according to him was the dividing of the assailants into two groups one of which was that of Kishan Lal and Ishwar Dutt who acted simultaneously and while Kishan Lal caught hold of Harbhajan Singh from behind Ishwar Dutt took out the knife and gave blow on chest of the injured. The final act, according to him, was that as soon as the injured suffered the injury all the assailants instantaneously ran away. That according to him proves the case within section 34 of the Code against Kishan Lal. The counsel for the appellants has read out paragraph 35 in *Pandurang, and others v. State of Hyderabad*. : 1955 CriLJ572 , wherein after noticing the argument made on the basis of the observations in in which all the accused had run away and it had been concluded that for that reason they shared common intention the Court took that view that it was not the mere running away of the assailants together but the background of

the offence of existing enmity which had led to the conclusions arrived at by the Privy Council. The Supreme Court after considering the argument based on , observed :-

'THERE was evidence that all three lived together and that one was a younger brother and the other a tenant of the appellant in question. There was evidence that they all ran away 'together' not simply that they ran away at the same moment of time when discovered, but that they ran away 'together' 6d. The submission before me is that mere running away together from the scene of occurrence would not by itself' determine that the appellants had the common intention.

(7) Mr. P.P. Malhotra appearing for the State counters the argument by submitting that he relies on all stages of the occurrence and is not urging that common intention within section 34 of the Indian penal Code be found merely on the basis of the running away of the assailants together To appreciate as to how and in what conditions common intention can be found within the meaning of section 34 of the Code, the cases cited may be discussed together. It was noticed in Banwari and another V. State of Uttar Pradesh : AIR 1982 SC1198 , that it was after the shouting of Bhagwan Singh that the assailants ran away together. The view taken was that Ram Charan in that case could not have participated in the incident as there was no occasion for pre-arranging of the shouting of Bhagwan Singh and the running away together by the particular accused after the shouting may have been motivated by bids instinct of saving himself from the villagers who could have thought that he was also a participant in various incidents.

(8) It was observed in : 1971 CriLJ1132 , that the words 'furtherance of the common intention of all' were the most essential part of section 34 of the Code. After discussing the facts of the case it was noticed in : 1971 CriLJ1285 , that no overt acts has been proved or established on the part of the appellants which could have shown that they shared the intention of the person or persons who inflicted the injury or injuries on the head of the deceased. That was a finding of fact.

(9) In the course of the judgment by which Cri. Appeal No. 215 of 1968 was disposed of on the 23rd of August, 1972 dealing with sections 149 and 34 of the

Code on taking into consideration the facts before it the Supreme Court, observed. 'There is nothing to show that there was any exhortation by Sheo Ram Singh to Arjun Singh to fire at Har Narain.' The observation was made on account of the absence of evidence which could have been taken into consideration for determining whether 'common intention' within section 34 of the Code had been established or not.

(10) THE VIEW expressed in Ranbir Singh and Others V. State of Punjab. : [1974]1SCR102, was that in cases of participation generally speaking there was tendency on the part of the prosecution witnesses to implicate some innocent persons Along with those who were guilty but where the general substratum of the occurrence is established beyond reasonable doubt then the prosecution witnesses where they are held to be the witness of the occurrence should be ordinarily believed to have not left out the actual offenders or guilty persons. Proceeding further, it was observed :-

'ALTHOUGH the witnesses for the prosecution are in such circumstances prone to exaggerate the culpability of the actual assailants as also to extend the participation in the occurrence to some possible innocent members of the opposite party as well, the Court has to sift the evidence and after a close scrutiny with anxious care and caution to try to come to a judicial conclusion as to who out of the accused persons can be safely considered to have taken part in the assault.'

(11) That test is to be applied in every case. Witnesses may be tempted for many reasons to make improvements and their statements in every part may not be true. It is the duty of the Court to find from the entire evidence as to what extent the prosecution has precisely established the guilt. After considering the various aspects of the case in paragraph 15, the Supreme Court observed in Ram Tahal and others v. The State of U.P. : 1972 CriLJ227 :-

'In our view the totality of the circumstances indicate without doubt the inference that there was a preconcrete plan and a common intention to remove the thatch and to attack any person if he resisted The accused in the furtherance of that common intention began to remove the Chhapar arid when Ram Harakh obstructed, they beat him and others who came to resist their attack and

aggression'

(12) Again in State of U.P.v. Iftikhar Khan and others 1973 Cal L.J 636, the Supreme Court observed :-

'THEabove principles have been reiterated by this Court in : 1955 CriLJ572 . It has also been stated in the said decision that there is no special rule of evidence for applying section 34 and 'at bottom' it is a question of fact in every case and however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. All that is necessary is either to have direct proof of prior concert or proof of circumstances which necessarily lead to that inference or as we prefer to put it in the time-honoured way, the incriminating facts must be incompatible with the innocence of the accused and incapable of Explanationn on any other reasonable hypothesis.'

(13) The result is that common intention within the purview of section 34 of the Code may be established by proving direct act or acts of participation or on the basis of the total evidence which may lead to the only conclusion that the crime had been the consequence of such intention. As a fact common intention may be found in a pre-arranged plan or in an instantaneous anterior meeting of the minds. Where it is proved that in the course of the occurrence whatever the speed of events, prior to the commission of the criminal act the minds of the culprits had met, it would be open fo the Court to conclude that common intention to commit the crime had been conceived. The Court will of necessity weigh the entire evidence establishing the participation in 'a criminal act' in order to determine whether vicarious liability within section 3 of the Code had been incurred and if so by whom.

(14) In the present case all the assailants were previously known to Public Witness s 2 3,4 and 5. The act of Kishan Lal in catching hold of the victim was a definite participation facilitating the giving of the knife blow by Ishwar Dutt. But for the common intention which Kishan Lal shared with Ishwar Dutt he could, have released Harbhajan Singh from his grip as soon as the knife was taken out The pre- arrangement is obvious from the pattern of the occurrence. The act of Kishan Lal in catching hold of the victim from behind and keeping him exposed to attack

was with the common intention that he should suffer the injury which was going to be given by Ishwar Dutt. Kishan Lal promoted the giving of the knife blow by his companion. His running away instantaneously with Ishwar Dutt indicated that he was carrying with him the feeling of a common guilt arising out of a crime committed with common intention with Ishwar Dutt and as a result of his participation the victim suffered the knife injury.

(15) It is urged that even then the said appellants could not have been convicted under section 326 of the Code. Their counsel submits that the Court below acted erroneously in basing itself on the opinion recorded by Dr. R. Prasad who was never examined at the trial in order to give chance to the accused to cross-examine him. There is merit in the argument that the accused should have had the opportunity of cross-examining Dr. R. Prasad in order to find out the reasons of his describing the injury as grievous. Harbibajan Singh did not remain for many days in the hospital. His statement was recorded after five days of the occurrence. I find that on evidence the prosecution has made out a case for punishing Ishwar Dutt only under section 324 of the Code and Kishan Lal who incurred vicarious liability should also have been convicted under that provision read with section 34 of the Code.

(16) Ishwar Dutt was sentenced to two years' rigorous imprisonment and a fine of Rs. 1,000.00 was imposed. In default of payment of the fine he was to undergo nine months' rigorous imprisonment. Kishan Lal was sentenced to 1 1/2 years rigorous imprisonment and a fine of Rs. 500.00 was imposed, in default of payment whereof he was to undergo four months' rigorous imprisonment.

(17) As a result of my findings Ishwar Dutt will stand convicted under section 324 of the Code and will undergo rigorous imprisonment for a year and half. The fine imposed is reduced to Rs. 500.00 and if he commits default in paying the same he will undergo further rigorous imprisonment for four months. Kishan Lal convicted under section 324 read with section 34 of the Code is sentenced to one year's rigorous imprisonment. He will not be liable to pay any fine. Bal Kishan stands convicted under section 322/34. The sentence imposed is of six months' rigorous imprisonment. I have heard the appellants' counsel in respect of him. The injuries

caused to Inder Singh were such that I am of the view that it will meet the ends of justice if the sentence imposed is reduced to one months' rigorous imprisonment.

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