RAJESH KUMAR V. STATE OF HIMACHAL PRADESH: IS TO ERR JUSTICE?

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I. INTRODUCTION

'*Judges as persons or courts as institutions are entitled to no greater immunity from criticism than other persons or institutions (Frankfurter).* '[1]

Iyer's reminiscence of this plutocratic ideal lubricates the psychological and intellectual intent of the author to ponder over the diktat of the case, *Rajesh Kumar* v. *State of Himachal Pradesh*.[2] Law and justice should share a symbiotic relationship and synchronization of the symmetry of the legal lexicon with ideals of universal goodness, utilitarianism and egalitarianism must be pronounced for a construction of a democratic polity. The voice of Austin that had echoed in the Classical legal sky had long been subdued by the revolutionizing faith of equity and good conscience. The lapse in the judgement does not call upon any exterior normative sense to be structured on the mind of the justice, but it merely indicates error in the perception of the codified law. Absolute justice rests on a Platonic ideal plane as judges are human and it is humane to err; however, partial justice in the form of conformity to the extant guiding and grounding administrative and judicial materials is to be achieved. The decision of the present case reveals a faulty perception of the law and facts of the case that form the structure of justice delivery.

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[1]JUSTICE V.R. KRISHNA IYER, JUSTICES AND JUSTICING, OFF THE BENCH 13 (Universal Law Publishing Co. Ltd., Delhi).

[2]A.I.R. 2009 SC 1(India).

The question of law dwells with one of the most discussed provisions of the Indian Penal Code, namely, Sec 302 read with Sec 34. Intention along with several other human mental intent forms the foundation of criminology. It is not only the overt act that imputes the person with liability, but also the psychology that had induced him to indulge in such deviant behaviour.

II. FACTS OF THE CASE AND RULING OF THE COURTS

The facts of the case are such that the deceased and the two accused belonged to the same village. The deceased had gone to a market where he met two of his friends, PW 14 and PW 15 and the former expressed his desire to excrete which led them to travel on his scooter to a secluded area. As the deceased and PW 15 waited, PW 14 came within a short period of time. The two accused happened to pass the place at that point of time and on seeing the deceased, they pounced on him, one wielding a *drat* and other a *danda*. Surjit Singh, one of the accused, hit the deceased on the head with a *drat* and Rajesh Kumar, the other accused, gave several blows to the other parts of the deceased's body. PW 14 could overpower the latter and somehow, freeing himself from the clutches of the former, the deceased ran for life, although he soon fell unconscious. Both the accused fled after the occurrence. Later that day, the deceased passed away and the report opined that the injury inflicted on the head was sufficient to cause death in the ordinary course of nature. The trial court established common intention of the accused and convicted both of them under Sec 302 read with Sec 34 of the IPC. The High Court also upheld the judgement. Both the accused appeared before the Apex Court under the Special Leave Petition. Though it was dismissed as far as Surjit Singh is concerned, yet the issues were debated widely in case of Rajesh Kumar. The court held the latter guilty merely under Section 326 of the Code.

III. PRINCIPLE OF LAW

'They also serve who only stand and wait.'

These words of Milton which tune the humanitarian chords of the mortal hearts, most melodiously in an unfathomable bliss, also serve as a guiding tenet to deciding a point of law. Sec 34 lays down the rule, "*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*." There are, thus, three main ingredients of the Section:[3]

a. A criminal act must be done by several persons
b. The criminal act must be to further the common intention of all, and
c. There must be participation of all persons in furthering the common intention.[4]

Sec 33 states that an 'act' implies a 'series of acts' and in the instant section where 'co-operative criminal act' is being delved on, then it is very much likely that the acts of the persons involved would not be of the same nature. There must be presence of a general intention and the act must be done in furtherance of a common design. Although, prior meeting of mind is important, however, a long duration between the formation of the intention and the actual execution of the act is not necessary.

In the case of *Barendra Kumar Ghosh* v. *King Emperor,*[5] a landmark in this regard, a person who stood guard to the locus operandi was also convicted in the same manner as the accused who had committed the crime. The Section is the evidentiary expression of the unity of criminal behaviour. In the case of *Ch Pulla Reddy and others* v. *State of Andhra Pradesh*[6] it was held that the accused can be held liable

[3]K.I. VIBHUTE, PSA PILLAI'S CRIMINAL LAW 349 (Lexis Nexis Butterworths, Wadhwa, Nagpur, 10th ed., 2008).
[4]Parichhat v. State of Madhya Pradesh, A.I.R. 1972 SC 535(India).
[5]A.I.R. 1925 PC 1(India).
[6]A.I.R. 1993 SC 1899(India).

even if no overt act has been accomplished by him. Quite interestingly, the same justice had been a part of the Division bench that had given its verdict in the case, *State of MP* v *Deshraj*[7] and to the utter astonishment of the author similar facts as of this case has been painted with the true colour of justice. The death of the deceased in that case, according to the report, was the result of the single fatal blow on the head and not the other injuries that were inflicted to him by other agents. The High Court's plea of frailty of evidence was not met with pleasure in the Supreme Court which pronounced, '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'. Thus it is not the overt act that should govern the juristic intellect; rather, it is the intention that should relish the aura of prominence.

IV. FAILED JUSTICE?

In the same case,[8] it was inferred that direct proof of common intention is seldom available and therefore it must be concocted from the set of facts and circumstances. The paradoxical stand of the judge has been virtually potent of shocking the good sense of justice. There has been no reason stated in the judgement that appeals the apt chord of understanding. The judge had put forth very few points to further his temperament.

Firstly, he reasoned that as the accused did not make any attempt to recover the *lathi* once made devoid of it, he cannot be held to nurture the same intention as his brother.

Secondly, the report of the medical practitioner clearly revealed that the blow on the head was grave enough to cause death in the ordinary course of nature.

[7] A.I.R. 2004 SC 2764(India).
[8] *Id.*

Thirdly, he opined that as the accused had hit only the non-vital parts of the body of the deceased, he cannot be held liable.
The depravity in comprehension can be gauged by arguing in similar lines.

Firstly, human psychology cannot be predicted or hypothesized with that relaxing lucidity. The ground put forth in the judgement is feeble and does not take into account of the several other instances where the intention of the accused explicitly came to the fore. That the accused did not stop his brother when he pounced on the victim with the 'drat' (the severity of the blow of which is well comprehensible) and that he accompanied him with a *lathi* clearly reveals that he shared the common intention.

Secondly, the doctor had used the term 'could' before his interpretation of the causal factor behind the demise of the victim. The divergence in the degree of certainty can be questioned in this instance. However, even if the singular blow was potential enough to cause the death of the deceased, it did not make much difference with regard to the affective stretch of the Section. In the case of *Rishideo Pandey* v. *State of Uttar Pradesh,*[9] where the facts were very much similar to the case under discussion and the appellant had only been holding a *lathi* without striking any blow when the accused had hit the deceased with a *gandasa,* the Supreme Court had observed that he is guilty of the same offence as committed by the other as he was in full knowledge of the fact that the act of the latter would inevitably lead to the death of the deceased. Thus, though he had remained dormant in case of striking the deceased, yet he definitely shared the common intention. In the case under discussion, as can be comprehended from the facts of the case, the accused were not in the knowledge that the victim would be found in the place of occurrence. However, the enmity must have existed from before that led to their prompt action. This could have been the reason for their less preparedness, for the reason of which the accused was carrying merely a *lathi*. Their

[9]A.I.R. 1955 SC 331(India).

immediate attack on the victim does not go to contradict the principles of Sec 34. It was held in *Krishna Govind Patil* v. *State of Maharashtra*[10] that the pre-arranged plan may develop on the spot during the course of the commission of the offence; the crucial circumstance is that the said plan must precede the act constituting the offence.

The reason, as stated above nullifies the third reasoning of the court also.

The order has absolutely not been a reasoned one and such discrepancy in a judgement delivered by the Court occupying the highest pedestal in the nation is highly unfortunate. Such understanding completely dissolves the principle of joint liability. If such comprehension be given utmost priority, then a multitude of cases of the similar fervor which had been decided at a prior date would be considered to be completely flawed. It would not be a deviance from the discussion if the author furnishes the following example. In a case of gang-rape, if seven individuals are present and six were able to rape the victim whereas, the other could not perpetrate the act due to some reason or the other, then going by the present decision, he would not be held guilty. If this be the understanding, then the dome of justice would demolish in its entirety.

The sense of justice attained plutocratic leaps as the resonance of the verbatim reverberated in the court room:

> *'My Lords, murder is widely thought to be the gravest of crimes. One could expect a developed system to embody a law of murder clear enough to yield an unequivocal result on a given set of facts, a result which conforms with apparent justice and has a sound intellectual base,'* (as per Lord Mustill at p.938).[11] The culpable causing of another person's death

[10]A.I.R. 1963 SC 1413(India).

[11]DAVID ORMEROD, SMITH AND HOGAN'S CRIMINAL LAW (Oxford University Press, New York, 9th ed., 2006).

> may fairly be regarded as the most serious offence in the criminal calendar.[12] Death is final and it is this finality that makes it proper to regard the culpable causing of death without justification or excuse as the highest wrong.[13]

If for instance two persons go together to kill a particular person and several wounds are inflicted on him by a person, with a knife, which are sufficient enough to lead to his death and subsequently, to make sure of the fact of his death the other stabs him for the first time. However, by the time the latter stabs the deceased he had already breathed his last. Then also for the upholding of a sound principle the person inflicting the last stab after the death of the person should be convicted in a similar manner as the person afflicting the former stabs.[14] If such be the nature of stricture, then it blandly puts forth the argument of the author.

Sec 300 of the IPC defines murder and Sec 302 lays down the punishment for the offence. With respect to the present case, the issue related to this provision has not gained much significance as it has not come up in the dais of discussion. The main ingredient to reason the conviction of a person for murder is his mens rea. The act as committed in the case under discussion has been denoted as the third part of the definition of murder as engraved in Sec 300. The idea that the provision beholds is that there must be some infliction of bodily injury and the intention must be the causing of the death of the person which would happen in the ordinary course of nature due to the bodily injury. Though in the instant case, the blow was given by one person, yet the presence of the other explicitly indicated the latter's intention, which was, to kill the deceased.

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[12]ANDREW ASHWORTH, PRINCIPLES OF CRIMINAL LAW 249 (Oxford University Press, New York, 5th ed., 2006).

[13]*Id.*

[14]Example influenced by the one cited in GLANVILLE WILLIAMS, TEXT BOOK OF CRIMINAL LAW 225 (Universal Law Publishing Co. Pvt. Ltd, Delhi, 2nd ed., 2009).

V. CONCLUSION

Intention should be given its normal meaning. Lord Asquith in *Cunliffe* v. *Goodman*[15] explained that "*intention connotes a state of affairs which the party intending…does more than merely contemplate; it connotes a state of affairs which on the contrary, he decides, so far as in him lies, to bring about.*"[16] The jury can draw the inference from the surrounding circumstances including the presumption of law that a man intends the natural and probable consequence of his acts.[17] Common intention should be constructed from the facts and circumstances of the cases. Sec 34 of the IPC is not a substantive section but one of evidence, thus, involving greater technicalities with respect to those of other sections. A show of greater prudence is demanded from such a high pedestal of justice delivery mechanism. We should not be oblivious of the fact there is left a scope for rectification of the error that can be committed by the subordinate judiciary. However, no such opportunity is vested with the system in case of any miscarriage of justice by the Apex Court. Ergo, such blatant errors, as displayed in this case, would hammer the last nail to the coffin of pervasive ideas of right and proper.

[15](1950) 2KB 237, 253 (CA).
[16]JONATHAN HERRING, CRIMINAL LAW TEXT, CASES AND MATERIALS (Oxford University Press, Great Britain, 3rd ed., 2006).
[17]STEPHEN FORESTER, CRIMINAL LAW AND PRACTICE 38 (Thomson, Sweet and Maxwell, London, 1st ed., 2008).