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**(1983) 08 CAL CK 0031**  
**In the Calcutta High Court**

Abdul Bari and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 25-08-1983

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 148, 149, 307, 324, 326

**Citation :** 87 CWN 1108

**Hon'ble Judges :** Jitendra Nath Chaudhary, J;B.C. Chakrabarti, J

**Bench :** Division Bench

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## Judgement

B.C. Chakrabarti, J.—This revisional application is directed against an appellate order passed by the learned Additional Sessions Judge, Murshidabad in Criminal Appeal No. 61 of 1980 affirming the order of conviction and sentence passed by the learned Assistant Sessions Judge, Murshidabad in Sessions Trial No. 2 of 1980.

2. Nine persons faced trial before the learned Assistant Sessions Judge on 3 counts of charges under Sections 148 307/149 and in the alternative 307/34, I. P. C. All the accused persons were acquitted of the charge u/s 148, I. P. C. and Sections 307/149, I. P. C. Five of the accused barring the present 4 petitioners were acquitted of the other charge as well. The petitioners were found guilty under Sections 307/34, I. P. C. and sentenced to suffer R. I. for 6 years each and also to pay a fine of Rs. 2,000/- each, in default to suffer R. I. for one year more. It was further directed that 50% of the fine, if realised, should go to the injured Lal Mohammad (P. W. 4) as compensation.

3. The petitioners preferred an appeal and the learned appellate Court while affirming the conviction under Sections 307/34, I. P. C. reduced the sentence to rigorous imprisonment for 4 years each and a fine of Rs. 700/-, in default to R. I. for 4 months each. Being aggrieved the petitioners have obtained the present Rule.

4. The prosecution case in brief is that on June 3, 1978 at about 3.30 p.m. the

victim Lal Mohammad went near the deep tubewell of their village in order to have water for the purpose of irrigation. He made requests to the operator for the purpose of operating the pump when the petitioners arrived there in a cart and demanded the supply of water to be given to them first. As a result an altercation ensued and then upon the orders of one Anisuddin the petitioners who had kept their bodies covered with chaddars threw the chaddars away and came out with sharp-cutting weapons which they kept concealed underneath the chaddars and entered into the pump house. There the petitioners fell upon the victim. The petitioner No. 1 hit the victim with the pasni and it landed on the left palm of the victim and the palm was completely chopped off. The other petitioners also assaulted the victim on various parts of his body with pasni carried by them as a result whereof the victim sustained bleeding injuries. Thereafter the accused persons carried the victim on their shoulders with a view to finish him in the nearby arahar field but seeing the arrival of villagers they left him there in the field and ran away. The victim was rescued by the villagers and then taken to the hospital. Before the learned lower appellate Court it was contended on behalf of the petitioners that there was no evidence to substantiate the case of common intention on the part of the petitioners and that the offence proved, if any, was only punishable u/s 324, I. P. C.

5. It appears that at the trial 17 witnesses were examined of whom P. Ws. 1, 2, 4, 5 and 9 are the material witnesses to the occurrence. P. W. 14 is the doctor. P. W. 4 is the injured himself. The learned advocate for the petitioners has contended before us that the evidence in this case does not establish, that there was a prior meeting of minds as amongst the petitioners to cause the death of the victim, that the evidence does not indicate that there was any common intention and that the petitioners may at the most be found guilty for the individual acts proved to have been committed by them.

6. The learned lower appellate Court in coming to discuss the evidence has observed- "It appears the learned Assistant Sessions Judge has not framed any point relating to the ingredients necessary to substantiate a charge under Sections 307/34, I. P. C. and as a result his findings are not very cogent or supported by reasons". However, the learned lower appellate Court considered the evidence for himself and came to the same finding. In arriving, at the finding the learned Judge relied on the following facts as establishing the element of common intention. They are (i) that the petitioners all came in a body with weapons concealed under their chaddars; (ii) that they together fell upon the victim; and (iii) that thereafter they were carrying away the victim to a nearby arahar field with the intention of finishing him. In this connection it may be relevant to bear in mind a part of the prosecution case, viz., that according to prosecution one Anisuddin gave orders for finishing the victim and that thereupon the victim was being carried away. It is significant that Anisuddin has been acquitted of all the charges in this case. It is also significant to note that there is no evidence that the petitioners or the victim knew that the victim would be there in the pump-room on the relevant day and at the relevant hour. There is

no evidence of any previous enmity between them. Therefore the fact that the petitioners came near the pump-room at the time when the victim was there was obviously a mere coincidence and not the result of a pre-conceived plan. The observations of the learned lower appellate Court that the petitioners came there keeping the weapons concealed underneath their chaddars, in the circumstance of the case, seems to us to be not at all a matter of much moment. This apart, the weapons though they may be deadly are actually harvesting implements and it was not unlikely for the petitioners to have carried the same with them as a matter of routine. The only incriminating fact that remains is the prosecution evidence that the petitioners were alleged to have carried the victim on their shoulders to a nearby arahar field with a view to killing him and that they left him there seeing the villagers approaching. Obviously at the time when they were carrying the victim, the villagers had not arrived at the scene. Therefore, there could have been no point in carrying the victim to the nearby field if their common intention was to kill the victim. They could have done it then and there. There is no evidence of any effective resistance being offered to them at the place. The plea taken by the petitioners before the learned lower appellate Court, of course, is unsustainable. They seem to have taken the plea that they were carrying the victim for the purpose of arranging medical aid. If they were so well-intentioned, they could not have left the victim in the arahar field seeing the villagers approaching. But then this is the only fact which could be said in support of a theory of common intention. But here again Mr. Mukherjee appearing on behalf of the petitioners contends that common intention implies an intention that developed prior to the commission of the act itself and not something that happened subsequent to the act. We are unable to agree with this contention as a general proposition, for there may be circumstances where incidents subsequent to the act may also have to be considered in arriving at a conclusion as to whether or not there was a common intention provided the subsequent act is so proximate in point of time that the act and the incident may be correlated. But here in this case basing on the subsequent act itself it may be unsafe to infer that the actual assault was the result of a common intention. In a somewhat similar case *Hardev Singh and Another Vs. The State of Punjab*, the appellants who were found guilty with the aid of Section 34, it was observed that the common intention must be to commit the particular crime although the actual crime may be committed by anyone sharing the common intention. It is only in such circumstances that the others can be held guilty. The conviction with the aid of Section 34 of all the appellants was set aside but they were found guilty for the individual acts don't by thorn. On a question of fact not two cases can be exactly identical. Therefore the decision on facts cannot be relied upon as a precedent in this case. But in this case itself we are unable to find that except the fact that the accused persons were said to have carried the victim to a nearby field and left him there, it is difficult to find any other element constituting or indicating a common intention as between the petitioners. Consequently we are of the view that the petitioners can be held guilty for the individual acts committed by them.

7. The evidence indicates that petitioner No. 1 gave a blow which resulted in the chopping off of the left palm of the victim. The other 3 petitioners also struck the victim with pasni in their hands on the neck or the skull and other parts of the body. But the medical evidence reveals that even though inflicted by a sharp-cutting instrument those injuries were simple in nature. Since we have already indicated that as there is no evidence of prior enmity between the parties and there is no evidence that either party knew that the other would be there at the place of occurrence, the fact of arrival of the petitioners together cannot be suggestive of any common intention as between them. The assault that took place thereafter was a result of an altercation and it is difficult to say upon the evidence as it is that any common intention to cause the death developed on the spot. Had it been so, the injuries upon the victim possibly would have been of a different nature. The prosecution story that the petitioners were moved to activity on the direction of one Anisuddin stands discredited by the fact that Anisuddin himself had been acquitted and the State has not preferred any appeal against the acquittal. In such circumstances, we are unable to sustain the conviction of the petitioners under Sections 307/34, I. P. C. They are, however, liable for the individual acts committed by them. Petitioner No. 1 is proved to have caused a grievous injury. He is, therefore, found guilty u/s 326, I. P. C. We convert the conviction of petitioner No. 1 from Sections 307/34 to Section 326, I. P. C. but we affirm the sentence passed by the learned Court of Appeal below.

8. As regards the petitioners Nos. 2, 3 and 4 We set aside the conviction under Sections 307/34, I. P. C. but find them guilty u/s 324, I. P. C. They are sentenced to suffer R. I. for 3 years each and to pay a fine of Rs. 500/- each; in default to suffer R. I. for two months each. Fifty per cent of the fine, if realised, should go to the victim, viz., P. W. 4, Lal Mohammad.

9. The revisional application succeeds to the extent above and is thus disposed of. The petitioners do surrender to their bail-bonds and serve out the remainder of the sentence.

Jitendra Nath Chaudhary, J.

10. I agree.