

DE JURE NEXUS LAW JOURNAL

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**CRITICAL ANALYSIS OF SUBED ALI AND ORS. v. THE STATE OF
ASSAM**
(AIR 2020 SC 4657)

Hon'ble Judges/Coram: Rohinton Fali Nariman, Navin Sinha and Indira Banerjee, JJ.

Decided On: 30.09.2020

FACTS

On 5. 8. 2005 at about 6:00 PM while Md. Motin and Abdul Barek were returning home from Borsola market by riding on their respective by-cycles, the accused/appellants, together with other accused persons restrained both of them on the road at Rajgarh Chariali and injured them by means of sharp weapons. As a result of the injury caused, the victims i. e. Abdul Barek died on the spot and Md. Motin succumbed to his injuries later in the hospital. On receipt of the FIR in this regard, a case was registered by the officer-in-charge, North Lakhimpur and investigation was launched. On completion of the investigation, the I/o submitted charge sheet against 5 accused persons alleging commission of offence under Section 147/341/302 IPC.

The accused/appellants were put on trial for commission of offence under Section 302/34 IPC before the learned Sessions Judge, North Lakhimpur in Sessions Case No. 70 (NL)/06. It may be mentioned that out of 5 accused persons, facing the trial, accused Mamud Ali and Abdul

Barek were acquitted by the learned Sessions Judge, since the prosecution failed to prove the accusation against them beyond all reasonable doubt.

On conclusion of the trial, the accused/appellants were convicted under Section 302 r/w Section 34 of IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 5000/-, in default, to undergo further rigorous imprisonment for 1 year.

The conviction of the Appellants Under Section 302/34 of the IPC by the Sessions Judge, North Lakhimpur, has been affirmed by the High Court, sentencing them to life imprisonment along with fine and a default stipulation. Thus, the present appeal by the Appellants.

ISSUES RAISED

- i. Are the Accused liable under S. 302 r/w 34?
- ii. If two of the Accused had been acquitted giving them the benefit of doubt on basis of the same evidence, was the conviction of the Appellants unjustified u/s 302/34?

LAWS INVOLVED

Sections 34 r/w 302 Indian Penal Code, 1860

ANALYSIS DERIVED

- Appellants

The Appellants, submitted that if two of the Accused have been acquitted giving them the benefit of doubt on basis of the same evidence, the conviction of the Appellants was unjustified and they too were entitled to acquittal on benefit of doubt. There were several inconsistencies in the evidence of the eye witnesses P. Ws. 5, 6, 7 and 9. The occurrence had taken place after darkness had engulfed, making identification doubtful relying on the cross examination of P.W. 6. P.W. 1 deposed that he had been informed by Babulal and Asgar Ali that the Appellants were the assailants. The prosecution had not examined either of them. The eye witnesses had deposed of assault upon the two deceased by Appellants Nos. 2 and 3 only.

There was no allegation that Appellant No. 1 was armed in any manner or that he also assaulted any one of the two deceased. Thus, there was no material to infer common intention with regard to Appellant No. 1. Appellants Nos. 2 and 3 are therefore individually liable for their respective assault upon the two deceased. The recoveries attributed to the Appellants was disbelieved. It was lastly submitted that no charge had been framed Under Section 34 Indian Penal Code.

- ***Respondents***

Learned Counsel for the State submitted that the eye witnesses P. Ws. 5, 6, 7 and 9 were consistent with regard to the participation of the Appellants in the assault. The acquittal of the two co-Accused on benefit of doubt could be of no avail to the Appellants in view of the nature of evidence available with regard to them. Common intention was clearly established by the fact that the Appellants were armed and lay in wait for the two deceased who were accosted while returning from the market and the assault followed leading to the death of the two.

CONCLUSION

They were intercepted by the Appellants after which the assault followed. Abdul Barek died on the spot. The acquittal of the two co-Accused in the facts of the case, despite the deposition of the eye witnesses, can be of no avail to the Appellants in view of the consistent nature of the evidence available against them. Minor inconsistencies and contradictions in the evidence of the eye witnesses are considered inconsequential. Their evidence on all material aspects are consistent lending credibility to their eye witness account. The fact that both Babul Ali and Asgar Ali have not been examined by the prosecution is considered irrelevant in view of the evidence of the Investigating Officer P.W. 12 when confronted by the prosecution, he denied that P.W. 1 had ever made any such statement to him during investigation. it was evening time after sunset but not dark, making identification in the dusk possible. In any event, it was apparent that the parties were known to each other from before and therefore identification in the dusk cannot be doubted. Therefore, there was no reason to doubt the presence and assault on the two deceased by Appellant Nos. 2 & 3 to grant them acquittal on any benefit of doubt or parity with the acquitted Accused, merely because no appeal has been preferred.

Addressing the issue of common intention, the court concluded that a common intention to bring about a particular result may also develop on the spot as between a number of persons deducible from the facts and circumstances of a particular case. The coming together of the Accused to the place of occurrence, some or all of whom may be armed, the manner of assault, the active or passive role played by the Accused, are but only some of the materials for drawing inferences.

Thus, the court found no reason to interfere with the conviction and sentence of the Appellants and the appeal was dismissed.

ANALYSIS

The pertinent question here was with regard to appellant being charged u/s 34 despite others being acquitted. The court elaborated that common intention consists of several persons acting in unison to achieve a common purpose, though their roles may be different. The role may be active or passive is irrelevant, once common intention is established. The foundation for conviction on the basis of common intention is based on the principle of vicarious responsibility by which a person is held to be answerable for the acts of others with whom he shared the common intention. The presence of the mental element or the intention to commit the act if cogently established is sufficient for conviction, without actual participation in the assault. The court in this case very precisely took into consideration the post mortem report of the deceased in line with the weapons that were collected during the investigation. A very neutral approach was adopted by the court wherein despite the injuries and loss of life caused to the deceased, Mamud Ali and Abdul Barek were acquitted since there was lack of evidence against them. Minor inconsistencies and contradictions in the evidence of the eye witnesses were considered inconsequential and did not interfere in the course of rendering justice to the deceased and their families. Overall it was a very balanced judgement taking into cognizance the evidence put on record, the statements rendered by the witnesses and the post mortem reports in light of justice, equity and good conscience.