Common Intention enough to convict - SC

In the case of Subed Ali And Others Vs The State of Assam [Criminal Appeal NO 1401 of 2012] Supreme Court held that it is not necessary that before a person is convicted on the ground of common intention, he must be actively involved in the physical activity of assault.

The accused were charged under Section 34 and 302 of Indian Penal Code, 1860. There were total 5 accused out of which 2 were acquitted on benefit of doubt. The remaining accused were awarded a sentence of life imprisonment along with fine by the sessions court which was further upheld by the High Court. The present appeal has been filed by the accused praying for acquittal contending that the facts were same for acquitted persons and thus they are also liable to have the benefit of doubt.

The Respondent- state contended that the findings of the lower courts were correct and that the accused had assaulted the two deceased, one of them died on spot and the other succumbed to his injuries while admitted in the hospital. There were eye-witnesses who have identified the Appellant no 1,2 and 3. The second deceased was injured and tried to flee from the spot but he was chased down by appellant no 3. The incident had taken place after sunset and it was not dark. The Appellant and the witness already knew each other hence, it was not difficult to identify the Appellants.

The Appellant contended that appellant no.1 is entitled to acquittal as he cannot be said to have shared any common intention with appellants nos.2 and 3 and who are liable for their individual acts. The credibility of the witnesses was also questioned as it was dark and difficult to see when the incident took place. The Appellant prayed for acquittal of the charge under Section 34 as there was no direct evidence to the assault done by Appellant no 1.

The court observed 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 Appellants had waited for the deceased to return from market and had made the deceased halt and then assault was committed as a consequence of an argument. 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 referred the case of Surender Chauhan vs. State of Madhya Pradesh, (2000) 4 SCC 110, where it was noticed that absence of a positive act of assault was not a necessary ingredient to establish common intention observing :­ *‘Under Section 34 a person must be physically present   at   the   actual commission of the crime for the purpose of facilitating   or   promoting   the   offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation in the criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to   bring   about   a   particular   result. Such consensus can be developed at the spot and thereby intended by all of them.’*

Therefore, the Court rejected the plea for pardon and held that there is no need to interfere in the conviction by the court.