

PATAI @ KRISHNA KUMAR

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v.

STATE OF U.P.

(Criminal Appeal No. 1718 of 2007)

MARCH 30, 2010

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[DR. MUKUNDAKAM SHARMA AND A.K. PATNAIK, JJ.]

Penal Code, 1860: s.302 r.w. s.34 – Common intention – Appellants-accused committed act of accosting the deceased with pistols and dragging him away to the place of incident – The other two accused persons armed with pistols fired at the deceased which resulted in his death on the spot – Conviction under s.302 r.w. s.34 – Challenged by appellants on the ground that they were only holding the deceased and consequently, there was no pre-conceived or pre-concerted meeting of minds – Held: Appellants actively participated in the commission of the offence by doing acts in furtherance of the common intention of killing the deceased – Conviction upheld.

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FIR: Cryptic message – Not containing details regarding the manner in which incident took place or name of the deceased or accused – Held: Cannot be termed as FIR – A message or communication to be qualified to be an FIR must be something in the nature of a complaint or accusation or at least some information of the crime given with the object of setting the police or criminal law into motion – An FIR must at least contain some information about the crime committed as also some information about the manner in which the cognizable offence was committed – Penal Code, 1860 – s.302 r.w. s.34.

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Prosecution case was that on the fateful day, deceased, his son-PW-1 and PW-3 were returning from the court where litigation was pending between the deceased and 'G' alongwith others. When they got down

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A from the train, the accused-appellants and the accused
 'SK' armed with pistols accosted the deceased. 'G' who
 was travelling in the same train after alighting from the
 train exhorted to the other accused persons to avail the
 opportunity to eliminate the deceased, whereafter the
 B appellants dragged the deceased to the place of incident.
 'SK' and 'G' fired at the deceased which resulted in his
 death on the spot. On hue and cry, some villagers
 assembled there and saw the appellants, 'SK' and 'G'
 running away from that place. The informant wrote an
 C FIR on the spot itself and submitted it to the Police
 Station. Trial Court convicted the accused persons under
 Section 302 r.w. Section 34 IPC. High Court upheld the
 order of conviction.

In these appeals, it was contended for the appellants
 D that they were only holding the deceased and
 consequently, it could not be held that there was any pre-
 conceived or pre-concerted meeting of minds and
 therefore their conviction under Section 302 read with
 Section 34 IPC was illegal; that there were two separate
 E First Information Reports lodged with the police – the first
 one was lodged at about 4.30 p.m. by the Assistant
 Station Master whereas the First Information Report
 second in point of time was lodged by P.W. 1 at about
 5.15 p.m.; and that since the First Information Report
 F lodged by Assistant Station Master indicated that there
 was no eye-witness to the occurrence therefore framing
 and calling of the three eye-witnesses by the prosecution
 could not have been believed and the prosecution story
 should fail.

G Dismissing the appeals, the Court

HELD: 1.1. The report given by the Assistant Station
 Master appeared to be a telephonic message which was
 sent by the Cabin man at the Rooma Halt Station to GRP.
 H This also found corroboration in the deposition of DW-1

who stated in his evidence that he registered a case in GD and sent a message at 4.40 p.m. to the control room on telephone and also gave a wireless message to the Maharajpur Police Station. There was however nothing on record to indicate that the aforesaid report was sent to the Maharajpur Police Station immediately and the same was received at the Police Station Maharajpur prior to the lodging of the report given by P.W. 1. Besides, the alleged report given by the Assistant Station Master appeared to be very cryptic and without any details regarding the manner in which the incident had taken place or mentioning the name of the deceased. Considering the contents of the said message, it cannot be said that there was any possibility of recording a First Information Report on the basis of the message sent to the GRP by the Assistant Station Master. There was no concrete evidence to indicate that any such information was in fact sent and received at the police station. In order for a message or communication to be qualified to be a First Information Report, there must be something in the nature of a complaint or accusation or at least some information of the crime given with the object of setting the police or criminal law into motion. It is true that a First Information Report need not contain the minutest details as to how the offence had taken place nor it is required to contain the names of the offenders or the witnesses. But it must at least contain some information about the crime committed as also some information about the manner in which the cognizable offence has been committed. A cryptic message recording an occurrence cannot be termed as a First Information Report. [Paras 11 and 15] [1143-G-H; 1144-C-H; 1145-A]

1.2. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. In the present

- A case, however, there was no proof regarding the fact that the said information was sent to the Police at Maharajpur and that it was received and therefore, the said information cannot be said to be earliest first information report submitted to the police. The actual first information
- B report was the report which was submitted by P.W. 1, the informant at 5.15 p.m. [Paras 16 and 17] [1145-D, E, H; 1146-A-B]

Bavaji Jadeja v. State (1994) 2 SCC, relied on.

- C 2.1. The Investigating Officer clearly stated in his deposition that he had recovered three tickets from the possession of the deceased. From the said deposition, it was thus clearly established that on the fateful day not only the deceased was travelling by the said train but the
- D two other persons namely, P.W. 1, the informant and P.W. 3 also travelled with him in the same train and all the three got down at the Rooma Halt Railway Station where the incident took place. Therefore, there was no reasonable ground to doubt that P.W. 1, the informant and P.W. 3
- E were not the natural witnesses. They had in fact accompanied the deceased and also observed and saw the manner in which the entire incident happened and took place. P.W. 4 was also a fellow traveller in the same train who had also got down at the Rooma Halt Station. He clearly stated that he saw the occurrence. There was
- F nothing on record to cast a doubt as to the presence of P.W. 4 also at the time and at the place of occurrence. The evidence adduced by P.W. 1 and P.W. 3 clearly corroborated each other with respect to the fact that both the appellants accosted the deceased with pistols in their
- G hands and both of them dragged the deceased from the platform to the place near the *Peepal* tree where he was shot dead by the other two accused persons. The evidence adduced thus clearly established that all the four accused persons carried weapons with them and at
- H the exhortation of 'G' that it was the opportune time to

eliminate the deceased, appellants dragged the deceased from the platform to the *Peepal* tree, where the deceased was shot dead by the other two accused persons. A pre-concerted mind and a common intention to commit the offence were apparent on the face of the record. [Paras 18 and 19] [1146-C-H; 1147-A-B]

2.2. Section 34 IPC lays down that 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. The appellants committed the act of accosting the deceased with pistols and dragging him away from the platform to a place near the *Peepal* tree at the exhortation given by 'G'. Therefore, it could be said that not only the two appellants were present at the scene of offence but they actively participated in the commission of the offence by doing acts in furtherance of the common intention of killing the deceased. [Paras 19-20] [1147-C-E]

2.3. P.W. 1 clearly stated in his statement that he had drawn up the said first information report at the place of occurrence in his own handwriting. The fact that the said first information report was in a neat and clean handwriting cannot always lead to the conclusion that the said report was prepared by the police officer or at his dictation. If the hand writing of the writer of the information is neat and clean and he could express himself clearly, no fault could be found against such writing. In the present case, there was a clear deposition of PW-1 that it was drawn by himself and in his own hand writing and there is no evidence to impeach or doubt the said statement of the witness. [Para 22] [1147-H; 1148-A-C]

2.4. In the entire facts and circumstances of the case, the prosecution was able to establish by leading cogent

A and reliable evidence, the guilt of both the appellants and therefore their conviction and sentence under Section 302 read with Section 34 IPC cannot be said to be in any manner illegal or unjustified. [Para 23] [1148-D]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1718 of 2007.

From the Judgment & Order dated 8.11.2006 of the High Court of Judicature at Allahabad in Criminal Appeal No. 687 of 1980.

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CrI.A.No. 1719 of 2007.

D Ratnakar Dash, Anilendra Pandey, Priya Kashyap, Dr. Kailash Chand, P.K. Jain, Shekhar Raj Sharma, Chandra Prakash Pandey for the appearing parties.

The Judgment of the Court was delivered by

E **DR. MUKUNDAKAM SHARMA** 1. These two appeals arise out of a common judgment and order dated 08.11.2006 passed by the High Court of Allahabad dismissing the appeals filed by the appellants herein against their conviction and sentence under Section 302 read with Section 34 of the Indian Penal Code (for short the "IPC").

F 2. Shri Prithvi Pal Singh alias Chandra Prakash Singh, son of the deceased had lodged a report at the Police Station Maharajpur, District Kanpur contending, inter alia, that on 29.07.1977 while he alongwith his father, Vikramaditya Singh and one Sri Jagannath Dubey were coming back to their village by Kanpur Allahabad Passenger Train from the Court of Munsif G Hawali, Kanpur where a litigation was pending between his father Vikramaditya Singh and Sri Ganesh Singh and others, they alighted at the Rooma Halt Station for the purpose of going to their house. Further allegation was that the accused Sri Shrawan Kumar, Sri Patai @ Krishna Kumar and Brij Kishore,

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who were armed with country made pistols, accosted the deceased. A

3. It was alleged that the accused Ganesh Singh, who was travelling in the same train but in a different compartment, after alighting from the train exhorted that it is the opportune time to eliminate Sri Vikramaditya Singh, the deceased, whereupon the present appellants Brij Kishore and Patai @ Krishna Kumar dragged his father from the platform of the station to a place under a Peepal tree whereupon Sri Shrawan Kumar and Ganesh Singh put their country made pistols at the deceased and fired shots consequent to which Vikramaditya Singh died instantaneously. On hue and cry having been made by Prithvi Pal Singh @ Chandra Prakash Singh - the informant and Sri Jagannath Dubey, Sri Iqbal, Sri Mahendra Singh, Sri Ram Prasad Sharma and some other persons of village Gangaganj came to the place of occurrence and saw the appellants running away from that place. It is further alleged that Prithvi Pal Singh had written the First Information Report at the spot itself and had submitted the same to the Police Station wherein an entry was made. B
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4. After registering a case, investigation was conducted during the course of which all the accused persons were arrested. On completion of the investigation, a chargesheet was filed against all the accused persons under Section 302 read with Section 34 IPC. As many as 8 prosecution witnesses were examined which included, among others, Prithvi Pal Singh, P.W. 1, Jagannath Dubey, P.W. 3, Sri Iqbal Singh, P.W. 4. Sri Girja Shanker Yadav, the Sub-Inspector who had started the investigation was examined as P.W. 6. Dr. R.S. Pundrik who had conducted the post mortem examination on the dead body was examined as PW-7. The accused persons were examined under Section 313 of the CrPC and on completion of the trial, the arguments of the counsel appearing for the parties were heard. E
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deceased and consequently there was any pre-conceived mind and therefore their conviction under Section 302 is not sustainable. H

A 5. The learned trial Court, after appreciating the evidence
on record passed a judgment and order dated 12.03.1980
finding all the accused persons guilty of the charge under
Section 302 read with Section 34 of the IPC and convicted all
B were sentenced to undergo imprisonment for life.

C 6. Being aggrieved by the aforesaid judgment and order
passed by the trial Court, three separate appeals were filed by
the accused persons – one by Shrawan Kumar and Brij Kishore
and the others by Ganesh Singh & Patai @ Krishna Kumar
respectively. The High Court after considering the entire record
upheld the order of conviction and sentence and dismissed all
the appeals.

D 7. Being aggrieved by the aforesaid judgment and order
passed by the High Court, the accused Ganesh Singh and Sri
Patai filed an appeal in this Court which was registered as
Criminal Appeal No. 1718 of 2007 whereas the accused Brij
Kishore filed a separate appeal which was registered in this
Court as Criminal Appeal No. 1719 of 2007. As the facts and
E legal issues urged in both these appeals are similar in nature,
we propose to dispose of both the said appeals by this
common judgment and order. Before advertng to the other
issues, we may record that during the pendency of the present
appeal, one of the appellants namely Ganesh Singh died and
F therefore his appeal stands abated. Thus, in the present
appeals we are concerned with only the two accused persons
namely, Sri Patai and Brij Kishore.

G 8. Both the counsel appearing for the said two accused
persons namely Patai and Brij Kishore very forcefully submitted
before us that none of the aforesaid two appellants had fired
any shot at the deceased and the allegations that have been
made against them are that they were only holding the
deceased and consequently, it could not have been held that
there was any pre-conceived or pre-concerted meeting of
H minds and therefore their conviction under Section 302 read

with Section 34 IPC is illegal.

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9. It was also submitted that the prosecution has failed to prove that the present appellants had shared an intention common with that of the other two accused persons namely Ganesh and Shrawan Kumar who had in fact fired shots from their country made pistols at the deceased resulting in his death. The next submission of the counsel appearing for the appellants was that this is a case where there were two separate First Information Reports lodged with the police – the first one was lodged at about 4.30 p.m. by the Assistant Station Master whereas the First Information Report second in point of time was lodged by P.W. 1 at about 5.15 p.m. The counsel for the appellant forcefully contended before us that since the said First Information Report indicates that there was no eye-witness to the occurrence, framing and calling of the three eye-witnesses by the prosecution could not and should not have been believed and hence the prosecution story should fail.

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10. It was also submitted that under any circumstance it could not be said that the present appellants are guilty of charge under Section 302 and at the most they could be charged under Section 304 of the Indian Penal Code.

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11. We have considered the aforesaid submission in the light of which we have carefully scrutinized the records. Since there was a specific submission that there were two separate First Information Reports lodged with the police on the same date as aforesaid, we have analyzed the entire records. The alleged First Information Report stated to have been lodged by the Assistant Station Master is placed on record as Annexure P-1.

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12. The aforesaid report given by the Assistant Station Master appears to be a telephonic message which was sent by the Cabin man at the Rooma Halt Station to GRP. The text of the message reads as follows: -

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- A "Message at 16.20 hrs. One passenger was shot dead at Roome cabin got down by 2 KA passenger p1 proved and arranged disposal of dead body."

B 13. It therefore appears that the aforesaid message was sent by the Cabin man through the Assistant Station Master to the GRP which was received at the GRP and on the basis of which a chik report Ext. Kha-5 was prepared. This also finds corroboration in the deposition of Shri O.N. Pandey, DW-1.

C 14. He has also stated in his evidence that he registered a case in GD No. 72, the true copy of which is Ext. Kha-8. He further stated that at 4.40 p.m., he sent a message to the control room on telephone and also gave a wireless message to the Maharajpur Police Station, but he has admitted that he had sent the wireless message through the control room. There is D however nothing on record to indicate that the aforesaid report was sent to the Maharajpur Police Station immediately and the same was received at the Police Station Maharajpur prior to the lodging of the report given by P.W. 1. Besides, the aforesaid alleged report given by the Assistant Station Master appears E to be very cryptic and without any details regarding the manner in which the incident had taken place or mentioning the name of the deceased.

F 15. Considering the contents of the said message, it cannot be said that there was any possibility of recording a First Information Report on the basis of the message sent to the GRP by the Assistant Station Master. There is no concrete evidence to indicate that any such information was in fact sent and received at the police station. In order for a message or G communication to be qualified to be a First Information Report, there must be something in the nature of a complaint or accusation or at least some information of the crime given with the object of setting the police or criminal law into motion. It is true that a First Information Report need not contain the minutest details as to how the offence had taken place nor it is required H to contain the names of the offenders or the witnesses. But it

must at least contain some information about the crime committed as also some information about the manner in which the cognizable offence has been committed. A cryptic message recording an occurrence cannot be termed as a First Information Report.

16. In *Ramsinh Bavaji Jadeja v. State* (1994) 2 SCC 685, this Court, while dealing with the issue as to when investigation commences, observed with regard to the cryptic nature of a message as follows in para 7 of that judgment:

"7. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by Section 162 of the Code. That statement cannot be treated as first information report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report....."

17. In the present case, however, there is no proof regarding the fact that the said information was sent to the

A Police at Maharajpur and that it was received and therefore, the said information cannot be said to be earliest first information report submitted to the police. The actual first information report as appears to us from the record is the report which was submitted by P.W. 1, Prithvi Pal Singh, the informant at 5.15 p.m. Therefore, the contention urged by the counsel of the appellants that there were two separate First Information Reports lodged with the police on the day of the occurrence is without any merit.

C 18. The Investigating Officer has clearly stated in his deposition that he had recovered three tickets from the possession of the deceased. From the said deposition, it is thus clearly established that on the fateful day i.e. 29.07.1977 not only the deceased was travelling by the aforesaid train but the two other persons namely, P.W. 1, Prithvi Pal Singh, the informant and P.W. 3 Sri Jagannath Dubey, also travelled with him in the same train and all the three got down at the Rooma Halt Railway Station where the incident had taken place. Therefore, there is no reasonable ground to doubt that P.W. 1, the informant and P.W. 3 are not the natural witnesses. They had in fact accompanied the deceased and also observed and saw the manner in which the entire incident had happened and taken place. P.W. 4, Iqbal Singh was also a fellow traveller in the same train who had also got down at the Rooma Halt Station. He has clearly stated that he had seen the occurrence. F There is nothing on record to cast a doubt as to the presence of P.W. 4 also at the time and at the place of occurrence. The evidence adduced by P.W. 1 and P.W. 3 clearly corroborate each other with respect to the fact that both the present appellants had accosted the deceased with pistols in their hands and both of them had dragged the deceased from the platform to the place near the Peepal tree where he was shot dead by the other two accused persons.

H 19. The evidence adduced thus clearly establishes that all the four accused persons carried weapons with them and at

the exhortation of Sri Ganesh Singh that it is the opportune time to eliminate the deceased, accused persons namely Brij Kishore and Patai dragged the deceased from the platform to the Peepal tree, where the deceased was shot dead by the other two accused persons namely, Sri Shrawan Kumar and Sri Ganesh Singh. A pre-concerted mind and a common intention to commit the offence are apparent on the face of the record. Section 33, IPC defines the expression "act" in the following words:

"The word "act" denotes as well a series of acts as a single act."

Section 34, on the other hand, lays down that 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.

20. In our considered opinion, here is a case where the appellants have committed the act of accosting the deceased with pistols and dragging him away from the platform to a place near the Peepal tree at the exhortation given by Sri Ganesh Singh. Therefore, it could be said that not only the two appellants were present at the scene of offence but they actively participated in the commission of the offence by doing acts in furtherance of the common intention of killing the deceased. Therefore, the contention of the counsel appearing for the appellants stands rejected.

21. It was also submitted by one of the counsel that the First Information Report submitted by P.W.-1 was actually written by the Police Officer or at least at his dictation and the same could not have been drawn up at the place of occurrence as alleged. The aforesaid submission is not supported by any evidence on record.

22. On the other hand P.W. 1 has clearly stated in his statement that he had drawn up the said first information report

- A at the place of occurrence in his own handwriting. The fact that the said first information report is in a neat and clean handwriting cannot always lead to the conclusion that the said report was prepared by the police officer or at his dictation. If the hand writing of the writer of the information is neat and clean
- B and he could express himself clearly, no fault could be found against such writing. In the present case, there is a clear deposition of PW-1 that it was drawn by himself and in his own hand writing and there is no evidence to impeach or doubt the said statement of the witness. Consequently, the aforesaid
- C submission is also found to be without any merit.

23. Considering the entire facts and circumstances of the case, we are of the considered opinion that the prosecution has been able to establish by leading cogent and reliable evidence, the guilt of both the accused persons who are appellants before

D this Court, and therefore their conviction and sentence under Section 302 read with Section 34 IPC cannot be said to be in any manner illegal or unjustified.

24. The appeals, therefore, have no merit and are

E dismissed. The records may be transmitted immediately.

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Appeals dismissed.