



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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MAHBOOB SHAH VS. EMPEROR, 1945 (INDUS VALLEY CASE)

By-Mitali Nishad

SUBJECT - The concept of 'common intention' is defined in this case, and a discussion on section 34 of the Indian Penal Code 1860 is made.

INTRODUCTION OF THE CASE:

-Court- Court of Session, High Court, Privy Council

-Decided on - January-31-1945

-Judges- LORD THANKERTON, SIR MADHAVAN NAIR, and SIR JOHN BEAUMONT

-Reported in - A.I.R. 1946, P.C. 118

-Appellant - Mahboob Shah

-Respondent - King Emperor

-Appellant Advocate- Phineas Quass; Douglas Grant and Dold; Solicitors Crown, Solicitor, India office

PARTIES:

1. Allahadad (deceased)
2. Hamidullah
3. Some other friends of Allahadad
4. Mohammad Shah (Father of Wali Shah)
5. Wali Shah
6. Ghulam Shah
7. Mahboob Shah

FACT OF THE CASE:

Allahadad (deceased), with Hamidullah and a few others, went to cut reeds growing on the bank of the river Indus on 24-08-1943 at the time of sunrise. They were the residents of the village of Khandakel.

As they moved downstream about a mile, they saw that Mohammad Hussain Shah (Father of Wali Shah) was taking a bath on the bank of the river.

On being told by Allahadad and others that they were going to cut reeds, Mohammed Shah warned them because that land was his own property. But despite Mohammad Hussain Shah's warnings, they did not stop and collect 16 bundles of reeds. While they were returning home, sailing upstream after cutting the reeds, one Ghulam Qasim Shah (Nephew of Mohammad Hussain Shah) told them to return the reeds that belonged to his uncle's property (Mohammed Shah's property), but they refused to do so.

Therefore, a quarrel arose between the two parties. Ghulam Qasim caught a rope of the boat and pushed Allahadad with the intent to stop them. Then Allahadad picked up a pole of bamboo from the boat and hit Ghulam Shah. Ghulam Shah cried for help. He called Wali Shah and Mahboob Shah with the purpose of rescuing him. After listening to the voices of Ghulam Shah, Wali Shah, and Mehboob Shah, they came up with loaded guns.

Seeing Wali Shah and Mahboob Shah, Allahadad, and Hamidullah, with others, started to run away upstream of the river. Wali Shah fired at Allahadad who fell down and died. Mahboob Shah fired at Hamidullah, due to which he suffered severe injuries. Mahboob Shah, Ghulam Shah, and Mohammad Shah were accused, but Wali Shah absconded. An inquiry was held by the magistrate in which Mohammed Shah was discharged under section -208 of the Indian Penal Code, 1860, and brought Ghulam Shah and Mahboob Shah to the Court of Sessions for the trial of the murder of Allahadad and attempt to murder Hamidullah.

ISSUES RAISED IN THE CASE:

1. Whether the murder of Allahadad and Hamidullah was pre-planned by Mahboob Shah and Wali Shah?
2. Whether the concepts of 'common intention' and 'same intention' are similar or different under the law?

JUDGEMENT

COURT OF SESSION:

The conviction of Mahboob Shah and Ghulam Shah was made under section-34 and 302 of the Indian Penal Code,1860. A rigorous imprisonment of 7 years was awarded to Mahboob Shah by the Court of Sessions.

HIGH COURT:

An appeal was preferred by both the aggrieved parties before the Lahore High Court against the judgment of the court of Sessions. The High Court confirmed the conviction of Mahboob Shah, but Ghulam Shah was acquitted on the ground that he did not fire at anyone. Wali Shah fired someone who absconded. But Mahboob Shah was sentenced to death under section-300, read with section -34 of the Indian Penal Code,1860, for the murder of Allahadad.

PRIVY COUNCIL: (this case is from 1946 when India was subject to British Empires, therefore matter went to the Privy Council)

Being aggrieved from the judgment of the Lahore High Court, Mahboob Shah preferred an appeal before the Privy Council. The main question for determination before the Privy Council was 'whether there was a common intention between Mahboob Shah and Wali Shah to commit crime?'

The Lordship of the Privy Council presumed, according to section 34 of the Indian Penal Code, 1860, that 'When a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.'

Section- 34 of the Indian Penal Code,1860, lays down a principle of joint liability in doing a criminal act. The section does not say 'the common intention of all' nor say 'an intention common to all.

It was held by the Lordship that within the meaning of section- 34, common intention implies a pre-arranged plan or prior meeting of minds. To convict the accused by applying this section, it is mandatory to prove that the criminal act was done in pursuance of the pre-arranged plans. Thus, it appears by the Lordship, upon careful consideration of the case, that there were no circumstances through which it might be inferred that the appellant acted in consent with Wali Shah (murderer of Allahadad)

Therefore, the Privy Council acquitted the appellant, convicted under sections- 302 and 34 of the Indian Penal Code 1860. The Privy Council held that Wali Shah (absconder) and the appellant Mahboob Shah had the same intention, i.e., the intention to rescue Ghulam Shah, but

not the common intention. There was no scope for a prior meeting of minds or pre-planned meeting between them. Elements of section- 34 of the Indian Penal Code do not satisfy this case.

Therefore, the Privy Council acquitted Mahboob Shah from all the charges and set aside the judgment of the Lahore High Court.

ELEMENTS OF SECTION 34:

There are four elements :

1. Criminal act - The act or series of acts should be criminal in nature.
2. Two or more persons- The criminal act should be done by two or more persons.
3. Common intention - There should be a pre-arranged plan or prior meeting of minds of persons participating in the criminal act.
4. In furtherance of- The criminal act must be done in furtherance of common intention.

- Within the meaning of section- 34 of the Indian Penal Code, 1860, common intention implies pre-arranged plan.

- In order to invoke section- 34 of the Indian penal code, there should be a meeting of minds between the accused and other members forming a common intention to commit a particular crime, and the act would be done by any of the person in furtherance of the common intention and in that event the other one would be liable in the same manner as he actually commits the crime.

- section- 34 of the Indian Penal Code does not itself create any substantive offense but only relates to the liability of the accused.

- section- 34 of the Indian Penal Code contemplates a principle of joint liability in doing of a criminal act, and the essence of that liability is the existence of a common intention.

CONCLUSION:

The judgment passed by the Privy Council in Mahboob Shah vs. Emperor case became a landmark judgment because it differentiated the term 'common intention' and 'same intention.' This distinction is crucial for determining liability.

REFERENCES:

Studocu. (n.d.). *Mahboob Shah v. Emperor - Mahboob Shah v. Emperor* INDEX S. no.

Particulars Pg. no. 1. Introduction - Studocu.

<https://www.studocu.com/in/document/symbiosis-international-university/law-of-crimes-paper-ii-penal-code-ii/mahboob-shah-v-emperor/70362303> (last visited

June.4,2024)

The Indian Penal Code,1860,s.34