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PROBY - 33

Report on Legal Research

Introduction

This report analyzes the application and development of **constructive liability** under Section 34 of the Penal Code of Bangladesh. Constructive liability holds all participants in a crime accountable for the collective outcomes of their actions. The focus is on key cases, such as *Moinul Haque vs State*, to understand how courts interpret and apply this principle in severe criminal cases like gang rape and murder.

Scope

The study covers:

1. **Case Analysis:** Examination of significant cases involving Section 32, including *Moinul Haque vs State*, to see how constructive liability is applied.
2. **Legal Principles:** Exploration of how Section 32 fits into the legal framework of collective guilt.
3. **Judicial Interpretation:** Review of court interpretations and their impact on legal precedents.
4. **Comparative Insight:** Brief comparison with similar principles in other jurisdictions for contextual understanding.

Limitations

The report acknowledges:

1. **Case Selection:** Focused on select cases, which may not cover all applications of Section 32.
2. **Legal Changes:** May not include recent amendments or interpretations.
3. **Contextual Variability:** Findings may not apply universally due to differences in case specifics and regional practices.
4. **Comparative Analysis:** Limited comparison with other jurisdictions may not capture all nuances.

The report provides an overview of Section 32's application and its role in ensuring justice in complex criminal cases.

Case: State vs. Md. Motiur Rahman & Others

Court: Appellate Division (Criminal)

Judgment Date: May 12, 2003

Reported in: 56 DLR (AD) 2004

Relevant Sections: 302 of the Penal Code

Case Development: 302

- **Incident:** On January 1, 2002, industrialist Mr. Alam and three maidservants were murdered at his residence in Shampur, Dhaka.
- **Investigation:** The case (Shampur PS Case No. 2 of 2002) was investigated, leading to the arrest of several suspects, including Md. Motiur Rahman and Md. Ali Babul Hassan. Confessions under Section 164 of the CrPC were recorded, and a second FIR was filed implicating the respondents.
- **Accusation:** The prosecution alleged that financial disputes between Mr. Alam and his sons-in-law, Motiur Rahman and Ali Babul, led them to conspire with a maid to hire professional killers.

Legal Proceedings:

- **Trial Court:** Bail was denied by the Metropolitan Sessions Judge, Dhaka.
- **High Court:** In Criminal Misc. Case No. 9916 of 2002, the High Court granted bail, citing circumstantial evidence and no direct link to the crime.
- **Appellate Division:** The State appealed, arguing strong circumstantial evidence and confessions implicated the accused. The Appellate Division overturned the High Court's bail order, noting the gravity of the crime and that the investigation was still ongoing.

Judgment:

The Appellate Division ruled that the High Court erred in granting bail. Given the severity of the charges, ongoing investigation, and strong evidence, bail was inappropriate.

Legal Development:

- **Bail in Serious Cases:** The judgment reinforced that bail should be denied in serious crimes like murder when strong circumstantial evidence and confessions exist.
- **Circumstantial Evidence:** The case emphasized the validity of circumstantial evidence, supported by confessions, in denying bail during the investigation phase.

References:

- **Sections Cited:** Sections 161, 164, 302, 120(b), 380, 201, 212, 114, and 34 of the Penal Code and CrPC.

Case: Haider Ali and Others vs. State

Court: Appellate Division (Criminal)

Judgment Date: November 4, 2003

Reported in: 56 DLR (AD) 2004

Relevant Sections: 302/149 of the Penal Code

Case Development:

- **Incident:** On February 10, 1989, a dispute arose between the informant, Sona Mia, and Dilbahar over uprooted fencing. The altercation escalated when the accused, armed with weapons, attacked the informant's family members. The victim, Fatik Mia, was fatally assaulted by multiple accused.
- **Accusation:** The accused were charged under Sections 302/149 of the Penal Code for committing murder as part of an unlawful assembly.

Legal Proceedings:

- **Trial Court:** The appellants were convicted under Sections 302/149 of the Penal Code and sentenced to life imprisonment, along with a fine of Taka 5,000 each.
- **High Court:** The conviction and sentence were upheld in Criminal Appeal No. 1565 of 1995 by the High Court.
- **Appellate Division:** Leave to appeal was granted to consider whether the prosecution had failed to prove that the murder of Fatik Mia was in furtherance of the common object of the unlawful assembly.

Judgment:

The Appellate Division dismissed the appeal, affirming the conviction under Sections 302/149. It ruled that although only four of the appellants directly caused injuries, the others were equally liable as they were part of an unlawful assembly with the common object of committing an offense, which could include murder. The court held that actual participation was unnecessary to establish liability under Section 149 if the assembly acted in prosecution of a common object.

Legal Development:

- **Common Object in Unlawful Assemblies:** The case reaffirmed that under Section 149 of the Penal Code, all members of an unlawful assembly are liable if any member

commits an offense in furtherance of the assembly's common object, even if they did not personally participate in the act.

- **Constructive Liability:** The decision emphasized the principle of constructive liability, where even those not directly involved in the murder could be held responsible if they were part of the unlawful assembly.

References:

- **Sections Cited:** Sections 302 and 149 of the Penal Code.
- **Relevant Cases:** Abdus Samad @ AKM Abdus Samad and Others vs State, 44 DLR (AD) 233; Bangladesh vs Abed Ali and Others, 36 DLR (AD) 234.

Case Brief: *Ibrahim Ali and Others vs. State*

Court: Appellate Division (Criminal)

Judgment Date: July 8, 2002

Criminal Appeal No.: 22 of 1997

From: High Court Division, Criminal Revision No. 732 of 1996

Relevant Sections: 463 of the Penal Code

Judges: Md Ruhul Amin J, Syed JR Mudassir Hussain J

Facts:

The appellants were convicted under Sections 468 and 468/109 of the Penal Code for forging two *Muktipatras* (deeds of release) that falsely claimed government-leased vested property as ancestral property. The prosecution argued that these documents were created to deceive the government and deprive it of its vested property rights.

Issues:

1. Whether the execution of *Muktipatras* containing false statements constituted forgery under Sections 463 and 464 of the Penal Code.
2. Whether the appellants, by making false statements in their own names, could be convicted of forgery.

Argument:

The appellants argued that making false statements in a document executed by themselves did not amount to forgery under Section 463, as the documents were signed by them without impersonation or fraudulent alteration. They cited several precedents, including:

- *Shamsul Huda Khan vs. Aminul Islam Chowdhury* (3 DLR 201)
- *Ali Akbar vs. State* (10 DLR 354), where it was held that false statements in a document do not constitute forgery if there is no impersonation or creation of a false document.

Judgment:

The court held that the appellants' actions did not meet the definition of forgery as outlined in Sections 463 and 464 of the Penal Code. The documents were executed by the appellants in their own names, and while the statements made in the *Muktipatras* were false, this alone did not satisfy the legal requirements of forgery. Therefore, the conviction under Sections 468 and 468/109 was set aside.

References:

- *Shamsul Huda Khan vs. Aminul Islam Chowdhury* (3 DLR 201)
- *Ali Akbar vs. State* (10 DLR 354)
- *Gunjar Mahmmd and Another vs Shuruz Ali* (AIR 1924 Cal 536)
- *Adaikalammai vs Raman* (1909 ILR 32 Madras 90)

Case Title: Moinul Haque vs State, 55 DLR (AD) (2004)

Court: Appellate Division, Supreme Court of Bangladesh

Judgment Date: March 13, 2004

Relevant Sections: 34 of the Penal Code

Case Law Development (Section 34, Penal Code of Bangladesh):

Section 34 of the Penal Code of Bangladesh establishes **constructive liability**, holding all participants in a crime equally responsible, even if they did not commit the act themselves.

In *Moinul Haque vs State*, the Appellate Division applied this principle in a gang rape and murder case, affirming death sentences for all accused, regardless of their specific roles. This case highlights how Section 34 is used to ensure collective responsibility in crimes committed by groups, reinforcing the stance that all involved in such violent crimes are equally liable.

Case in Brief:

This case involves the rape and murder of Yasmin, an 18-year-old girl, who was last seen in the custody of three police officers, including Moinul Haque, in 1995. Yasmin's body was found the next morning, showing signs of rape and strangulation. The accused were convicted under Section 6(4) of the Nari-o-Shishu Nirjatan Act, 1995. The High Court confirmed their death sentences, which were appealed.

Arguments:

- **Defense:**
The defense argued the prosecution failed to prove guilt beyond reasonable doubt, highlighting conflicting medical reports and claiming Yasmin had jumped from a moving vehicle.
- **Prosecution (State):**
The State argued that Yasmin died in police custody and that the circumstantial evidence, including medical reports showing rape and asphyxiation, implicated the accused.

Judgment:

The Appellate Division upheld the death penalty, ruling that:

1. **Constructive Liability in Gang Rape:**
All members of the gang could be held liable without needing to prove individual acts.
2. **Medical Evidence:**
The Court found no significant conflict between the two medical reports, which supported the prosecution's case.
3. **Custodial Death:**
The accused were responsible for Yasmin's death, dismissing the defense's narrative as implausible.

The Court referenced several prior cases but found that the present circumstances and evidence supported the conviction.

Conclusion:

The appeals were dismissed, affirming the death sentence based on the legal and circumstantial evidence.