

STATE OF PUNJAB
v.
BAKSHISH SINGH & ORS.
(Criminal Appeal No. 1153 of 2002)

OCTOBER 17, 2008
[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court directing acquittal of respondents Bakhshish Singh, Balraj Singh and Gurmeet Kaur while altering the conviction of respondent Balbir Singh from one under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') to one under Section 304 Part I IPC. Learned Additional Sessions Judge Gurdaspur, had convicted each of the respondents for offence punishable under Section 302 read with Section 34 IPC.

2. Prosecution version as unfolded during trial is as follows:

Agricultural lands of Kabul Singh (PW4) and that of Mangal Singh (hereinafter referred to as the 'deceased'), his nephew, and that of respondent-Bakhshish Singh and others adjoin each other and are located in the same vicinity in village Bhoa and fall within the jurisdiction of Police Station Sadar, Pathankot, District Gurdaspur. The land of Darshan Singh is also located nearby. About one week before the occurrence Darshan Singh was irrigating his land with canal water. The canal water over-flowed through the Khal including the fields of Kabul Singh PW4 and entered into the fields of accused Bakhshish Singh wherein wheat crops were sown. Though this canal water had come, perhaps, from the field of Darshan Singh to the fields of the appellants but the accused were feeling that the canal water had come through the fields of deceased Mangal Singh. So, it was in this wake that on 1.5.1994, around 9.00 A.M. while Kabul Singh PW4 and his nephew deceased Mangal Singh were returning from the fields along with Swinder Kaur (PW5), mother of Mangal Singh, the accused persons, namely, Bakhshish Singh and Balbir Singh armed with a dang each, Balraj Singh armed with Chhavi were found standing on the pucca culvert on the metalled road near the

house of accused Bakhshish Singh. Gurmeet Kaur raised a lalkara saying that Kabul Singh and Mangal Singh should not be allowed to escape as they had damaged their crops. Bakhshish Singh and Balbir Singh took Mangal Singh in their grip and threw him on the ground while accused Balraj Singh at the instigation of his mother Gurmeet kaur inflicted a Chhavi blow on the head of Mangal Singh and it is only when the close relations of the deceased prayed for sparing the life of Mangal Singh, the accused persons ran away from the scene of occurrence. Mangal Singh was removed to Civil Hospital, Pathankot from where he was referred to C.M.C. Ludhiana.

The aforesaid Mangal Singh breathed his last due to injuries on the way of Ludhiana. The dead body was brought to Civil Hospital, Pathankot. The statement Ex. PJ of Kabul Singh was recorded by SI Jarnail Singh PW8 at 7.30 P.M. on 1.5.1994 and on its basis formal F.I.R. Ex. PJ/2 was recorded at 7.55/8.55 P.M. on 1.5.1994. The special report reached the learned Ilaga Magistrate at 5.05 A.M. on 2.5.1994. Thereafter SI Jarnail Singh (PW8) went to Civil Hospital, Pathankot and prepared inquest report Ex.PL and sent the dead body for postmortem. On 2.5.1994, the Investigating Officer went to the scene of occurrence and prepared rough site plan Ex.PO with marginal notes. He took into possession five copies of sale deeds produced by Kabul Singh vide memo Ex.PK. Accused Balbir Singh, Bakhshish Singh and Balraj Singh were arrested on 5.5.1994. In pursuance of his disclosure statement on Ex.PP, accused Balraj Singh got recovered Gandasi Ex. P1 which was taken into possession vide memo Ex.PR. Accused Gurmeet Kaur was also arrested.

Dr. Sunil Ghai (PW2) conducted autopsy on the dead body of deceased Mangal Singh on 2.5.1994 and found the following injury:-

Lacerated wound 2 cm x 0.5. cm stitched present on the middle of the head approximately 2 cm. Left to the mid line. On dissection, underlying parietal bone was fractured. S/C tissue was lacerated and there was extradural and sub dural haematoma present. Brain tissue underlying was lacerated.

In the opinion of the doctor, the cause of death was due to the injuries to the vital organ brain caused by injury No.1. The injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature. Ex. P.C. is the copy of the post mortem report.

After completion of investigation, charge sheet was filed and since the accused persons pleaded innocence, trial was held. The trial court placed reliance on the evidence of PW 4, the complainant, PW 5 who claimed to be an eye witness to hold the accused persons guilty.

In appeal the basic stand of the accused persons was that there was absolutely no evidence so far as accused Bakhshish, Balbir and Gurmeet are concerned. So far as Gurmeet is concerned it is stated that she is stated to have only raised a lalkara and that so far as accused Bakhshish and Balbir are concerned they are supposed to have held the accused in their grip while accused Balraj inflicted a single blow. The stand of the prosecution was that by application of Section 34 IPC each one of them had been rightly found guilty. The High Court found that the evidence did not establish the roles purportedly played by Gurmeet, Balbir and Bakhshish. It also noted that only a single blow was given by Balraj and that too in course of a sudden quarrel. Accordingly as noted above Gurmeet, Balbir and Bakhshish were acquitted while the conviction of Balraj was confirmed.

3. In support of the appeal learned counsel for the appellant submitted that the High Court ought to have held that Section 34 has full application to the facts of the case. It should not have altered conviction so far as accused Balbir is concerned.

4. Learned counsel for the respondents on the other hand supported the judgment of the High Court.

5. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for

which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v. State of Punjab* (AIR 1977 SC 109), the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

6. As it originally stood, Section 34 was in the following terms:

“When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone.”

7. In 1870, it was amended by the insertion of the words “in furtherance of the common intention of all” after the word “persons” and before the word “each”, so as to make the object of Section 34 clear. This position was noted in *Mahbub Shah v. Emperor* (AIR 1945 Privy Council 118).

8. The Section does not say “the common intention of all”, nor does it say “and intention common to all”. Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed in *Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh* (AIR 1993 SC 1899), Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused.

9. The above position was highlighted recently in *Anil Sharma and Others v. State of Jharkhand* [2004 (5) SCC 679], in *Harbans Kaur v. State of Haryana* [2005(9) SCC 195] and *Amit Singh Bhikamsingh Thakur v. State of Maharashtra* [2007(2) SCC 310].

10. The High Court analysed the evidence of PWs 4 & 5 to come to the conclusion that the role of the acquitted accused persons do not really attract Section 34 IPC. So far as alteration of conviction is concerned though in all cases it cannot be said that when only a single blow is given Section 302 IPC is made out yet it would depend upon the factual scenario of each case; more particularly the nature of the offence, the background facts, the part of the body where the injury is inflicted and the circumstances in which the assault is made.

11. In the instant case prosecution version itself shows that there were altercations. In that view of the matter the High Court was justified in altering the conviction from Section 302 to Section 304-I IPC.

12. We find no merit in this appeal, which is accordingly dismissed.