

Suffice it to say that the appellants before us Zahoor, Subrati and Babu were brought to trial for an offence punishable under Section 302 of the IPC for having committed the murder of Mahipal Singh @ Puttan on the 18th May, 1979. The Trial court convicted them under Section 302 of the IPC and sentenced them to life imprisonment. The High Court has by the impugned judgment held that the appellants were liable to conviction under Section 304 (I) of the IPC read with Section 34 as the matter related to a sudden quarrel without premeditation and that a fine of Rs.5000/- would meet the ends of justice.. The matter is before us after the grant of special leave at the instance of the accused.

We have heard the learned counsel for the parties and find no reason to interfere with the conviction recorded by the High Court in so far as the appellant-Babu is concerned. However, in the light of the fact that the other two appellants i.e. Zahoor and Subrati have been brought in with the aid of Section 34 of the IPC, their conviction and sentence cannot be maintained as the vicarious liability under Section 34 cannot be fastened as Section 34 deals with common intention which pre-supposes some prior planning or pre-concept of minds even during the incident. Moreover, we find that Zahoor and Subrati had not caused any injury to the deceased or to anybody else and the only allegation against them that they had exhorted their co-accused to shoot at the deceased Puttan. In other words no overt act has been attributed to them.

We also see from the record that the appellant-Babu was of tender age on the date of the incident. The incident happened in the year 1979 which would now make him about 60 years of age as of now. We quite appreciate that one man has been shot dead but in the overall picture we feel that the ends of justice would be met if the sentence is reduced from 10 to 5 years under Section 304 Part-I of

the IPC. The appeal against Zahoor and Subrati is allowed in toto but insofar as the appellant-Babu is concerned, the appeal is dismissed with the reduction in the sentence.

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In the meantime, we direct that the appellants-Zahoor and Subrati, who are in custody, shall be released forthwith if not required in connection with any other case. The appellant-Babu be released on the completion of his sentence of 5 years.

The appeal is disposed of accordingly.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

New Delhi,
April 26, 2011.