

SUPREME COURT OF INDIA

Wazir Singh

Vs.

State of Punjab

Crl.A.No.57 of 1956

(N. H. Bhagwati and T. L. Venkatarama Ayyar, JJ.)

10.05.1956

JUDGEMENT

BHAGWATI, J. –

1. This appeal with special leave is limited to the question of sentence only.
2. The appellant along with one Inder Singh and 4 others was charged under S. 302 read with S. 34 Penal Code with having committed the murder of one Sohan Singh. The four others were acquitted but the appellant and Inder Singh were convicted of the offence with which they had been charged. The learned Sessions Judge, Ferozepore, while convicting them as above, sentenced each of them to death subject to confirmation by the High Court. The High Court, on hearing the death reference, confirmed the convictions and the sentence of death passed on the appellant though it reduced the sentence imposed upon Inder Singh to one of transportation for life.
3. Both the appellant and Inder Singh were armed with rifles and both of them were alleged to have fired the rifles at Bishan Singh, who was the target of the attack. Both the Courts found that the appellant and Inder Singh entertained the common intention of killing Bishan Singh. As events transpired, however, Bishan Singh and Sohan Singh were both sitting on the same cot when the rifles were aimed at them by the appellant and Inder Singh. Both began to run away. Bishan Singh succeeded in hiding himself behind a kikar tree but Sohan Singh was injured by the shots which were fired from the rifles.
4. The evidence, which were led on behalf of the prosecution established that Sohan Singh received 4 injuries - (1) Gun Shot wound 2/5" x 2/5" on the left buttock in the mid scapular line 3" below the illiac orest, (2) Gun shot would 3" x 3" with clotted blood on the right trigonouter aspect just below the anterior illiac spine, (3) Gun shot would 1/2 x 1/2 on the back of the right lower forearm outer border 1 1/2" above the wrist, (4) Gun shot wound 3" x 3" on the inner and front aspect of the right forearm 1/2" above injury No. 3 Injuries (1) and (2) were intercommunicated and so were injuries (3) and (4). Injuries 1 and 2 were sufficient in the ordinary course of nature to cause death and prove fatal. Injuries 3 and 4 were merely on the right forearm of the deceased and were of a minor character.
5. The learned Sessions Judge convicted the appellant and Inder Singh under S. 302 read with S. 34 Penal Code holding that both were acting in furtherance of a common intention to cause the death of Bishan Singh, that the injuries were sufficient in the ordinary course of nature to cause the death of

the deceased and that in the circumstances both the accused who fired 303 bullets from their rifles must be presumed to have intended to cause the death of their victim.

6. The High Court, in appeal, held that the appellant was the person who fired the shot which struck Sohan Singh and caused the injury, which was deposed to by the doctor one as a result of which he died and that the case against him was proved and there were no ground to interfere with the sentence imposed upon him by the learned Sessions Judge.

7. We have been taken through the evidence by the learned counsel for the appellant and we do not find therein anything to show that it was the appellant who was responsible for the injuries 1 and 2 which brought about the death of the deceased. The evidence only established that the appellant fired the first shot and as a result thereof, the deceased fell on the ground and that Inder Singh fired the second shot which also injured him. There was nothing, however, to show which injuries were inflicted by the respective shots of the appellant and Inder Singh. Under these circumstances, it could not be said that it was the appellant, who was responsible for the injuries of 1 and 2 and was, therefore, guilty of the offence of murder. It was only with the aid of S. 34 Penal Code that the charge of murder was brought home to the appellant and both the appellant and Inder Singh were held guilty of having caused the murder of Sohan Singh.

8. The learned counsel for the appellant under these circumstances urged that S. 34 Penal Code could not be brought to aid by the prosecution for the simple reason that even though a person be held guilty of the offence with which he has been charged by reason of an individual act of his own by bringing his offence within the ambit of S. 301 Penal Code he cannot be held constructively liable for such offence where it is not possible to predicate that he was responsible for the particular act which constituted the offence. It was, therefore, urged that, in this case, if it could not be predicated of the appellant that he was responsible for the injuries 1 and 2 which brought about the death of the deceased, he could not be constructively held liable for the murder of Sohan Singh merely because he entertained along with Inder Singh the common intention to kill Bishan Singh but happened to kill Sohan Singh in the execution of that common intention.

In other words, it was urged that the common intention to kill Bishan Singh could not by virtue of S. 302, Penal Code be transferred so as to operate in the matter of the murder of Sohan Singh, there being at no time any common intention entertained between the appellant and Inder Singh to commit the murder of Sohan Singh.

9. This contention raises a very interesting argument as to the applicability of S. 34 to cases falling under S. 301, Penal Code. The result of accepting the contention of the learned counsel for the appellant, however, would not make any substantial difference to the position because in the present case, the act of the appellant would certainly fall within S. 326, Penal Code, which would involve the penalty of transportation for life which would be the appropriate punishment to award to the appellant in the circumstances of the case, even though he was ultimately convicted of having committed the offence under S. 326, Penal Code. The same result could also follow even if the conviction of the appellant under S. 302 read with S. 34, Penal Code were maintained because on the evidence on record we do not find anything which would necessarily lead to the conclusion that it was the appellant who was responsible for inflicting injuries 1 and 2 on the deceased. If it is doubtful as to who out of the two was responsible for these fatal injuries, there is nothing to choose between the appellant on the one hand and Inder Singh on the other. Both of them were equally the henchmen of Harbans Singh and took part in this dastardly crime and both were equally culpable for the same.

If Inder Singh was awarded the lesser penalty of transportation for life, there is equally good reason why the appellant should also have been awarded the same penalty. Under the circumstances, therefore, we feel that there was no justification for confirming the death sentence which was awarded to the appellant by the learned Sessions Judge. The High Court should not have distinguished the case of the appellant and that of Inder Singh and should also have awarded the appellant the lesser sentence of transportation for life.

10. Under the circumstance, we allow the appeal to this extent that the sentence of death which is awarded to the appellant by the learned Sessions Judge and has been confirmed by the High Court will be converted to one of transportation for life. The conviction of the appellant under S. 302 read with S. 34, Penal Code will of course stand.

Sentence reduced.

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