

Amar Singh

Vs

State of Haryana

Criminal Appeal No. 30 of 1973

(I.D. Dua, K.K. Mathew JJ)

26.04.1973

JUDGMENT

MATHEW, J. –

1. This is an appeal, by special leave, against the judgment of the High Court of Punjab and Haryana confirming the conviction of the appellant of an offence under Section 302, read with Section 34 of the I.P.C. and imposing the sentence of imprisonment for life for the offence by the Sessions Judge, Hissar.
2. The prosecution cases was as follows. On September 4, 1969, at about 5 p.m. Thandu Ram of village Sabarwas was going out of his house and when he reached near the nauhra of Gopal, he saw Girdhari Hirab and asked him to tell as to when his turn of water would commence. Girdhari replied that he would tell about that shortly and went towards his house. Bhallu and Kurra, having lathis with them came from the back side of Thandu Ram and gave one lathi blow each to him (Thandu Ram). They also tried to drag Thandu Ram but Mool Chand (P.W. 4) came there and saved him. At that time, the appellant and Hari Singh were sitting on the chabutra in front of their house along with Ram Sarup. The appellant was armed with Jaili and Hari Singh with a gun which belonged to Ram Sarup. The appellant and Hari Singh shouted to Bhallu and Kurra to drag Thandu Ram to that place. Kurra and Bhallu dragged Thandu Ram for 2/3 karams. At that time Biru and Bhana reached there. Mool Chand, Biru and Bhana intervened and prevented Kurra and Bhallu from dragging Thandu Ram further. The appellant and Hari Singh, followed by Ram Sarup, came towards Thandu Ram and when they were at a distance of 5/6 karams, the appellant exhorted Hari Singh to shoot at Thandu Ram. Hari Singh thereupon fired at Thandu Ram but by that time Thandu Ram's daughter Mst. Indro came there and the shot hit her. Mst. Indro, on receipt of the shot fell down. The appellant again exhorted Hari Singh to fire at Thandu Ram because the first shot did not hit Thandu Ram and when Hari Singh tried to reload the gun, Mool Chand snatched the gun from him. The appellant aimed his jaili towards Mool Chand but he warded it off by the gun in his hands which was broken as a result of the blow. Ram Sarup tried to snatch the gun from Mool Chand but in the meantime, Ram Chander, son of Thandu Ram came there and gave a lathi blow on the head of Ram Sarup. The appellant, Hari Singh, Ram Sarup, Kurra and Bhallu then went towards the house of appellant. Thandu Ram and other brought Mst. Indro to the house. She was alive at that time. The injuries of Indro were bandaged. No arrangement for the conveyance to take her to the hospital could be made. Indro died at 7.30 p.m.
3. After the death of Mst. Indro, Thandu Ram left for the police station and lodged the first information report at 2 a.m. which was recorded by Rameshar Dass, S.H.O., P.S. Bhuna. The Sub-Inspector accompanied by Thandu Ram came to the spot at 5 a.m. He found the dead body of Mst.

Indro lying at the house of Thandu Ram. He prepared the inquest report and sent the dead body for post-mortem examination. Thandu Ram also produced the gun and the cartridge (empty) before the Sub-Inspector who took them into possession. Rameshar Dass, S.I. arrested the accused on September 12, 1969, from near the village Kumharia, and after the usual investigation, the accused were challaned.

4. On the basis of evidence of the witness, the trial Court found that the following facts were established. Ram Chander (P.W. 10) is the son of Thandu Ram (P.W. 3) and Biru (P.W. 5) is the son of Jot Ram brother of Ram Lal who was the grand-father of Thandu, Mool Chand (P.W. 4) is the greant-grand son of Dilsukh brother of Ram Lal and Jot Ram. About 1 1/2 years prior to the date of the occurrence, Duli Chand and Risal Singh, sons of Thandu Ram who were in army service had purchased land in village Sabarwas for Rs. 35,000/- and at the time of the purchase, the land was under the cultivating possession of Hunta father of Kurra accused. Duli Chand and Risal Singh had made an application for ejectment of Hunta in the revenue Court and this application was pending at the time of the occurrence. On August 26, 1969, the appellant, Hari Singh, Kurra and Bhallu along with Hunta and Chhelu father of Bhallu were challaned under Sections 107 and 150, Cr. P.C. and on the same day Thandu Ram, one Neki and three other persons were challaned under Sections 107 and 150, Cr. P.C. and these cases were pending at the time of the occurrence. Thandu Ram had filed a complaint against the appellant, Hari Singh, Kurra and his father Hunta and Bhallu and his father Chhelu for causing injuries to his son Duli Chand which was also pending. Duli Chand and Ram Chander, sons of Thandu Ram and others were also challaned for causing injuries to the appellant before the occurrence and that case was still pending.

5. These circumstances, according to the trial Court, proved that there was enmity between Thandu Ram and the accused.

6. As regards the occurrence, the findings of the trial Court were : Hari Singh and the appellant were sitting in front of their house when Kurra and Bhallu gave one lathi blow each to Thandu Ram. They shouted to them to drag Thandu Ram towards them and apparently, the intention of both of them was to given him further blows. Since Thandu Ram was not allowed to be dragged Mool Chand, Biru and Bhana, both Amar Singh, the appellant and Hari Singh came followed by Ram Sarup in that direction. At that time Hari Singh was armed with a gun which belonged to Ram Sarup and the appellant with a Jaili. The appellant shouted to Hari Singh that he should fire at Thandu Ram. Hari Singh fired the gun which unluckily hit Indro who happened to come there on hearing the shout. The appellant did not stop there. He again incited Hari Singh to make another shot at Thandu Ram. But before Hari Singh could shoot, the gun was snatched away from the hand of Ram Singh by Mool Chand. Then the appellant aimed his Jaili towards Mool Chand but he warded it off by the gun which was broken as a result of the blow.

7. The High Court, in appeal, after discussing the evidence, confirmed these findings.

8. Counsel for the appellant contended that all material witnesses examined in the case were either related to Thandu Ram or interested in him and the disinterested neighbours who had seen the occurrence were not examined. There is no evidence that any person other than P.Ws. 3, 4 and 5 saw the occurrence. P.Ws. 3, 4 and 5 have been believed by the trial Court as well as by the High Court. We see no force in the contention that because neighbours residing near the place of occurrence have not been examined therefore these witnesses should not have been believed.

9. In this connection it may be noted that Hari Singh filed a petition for leave to appeal to this

Court. That was dismissed. It would be incongruous if the Court were to come to the conclusion that the occurrence did not take place as stated by prosecution witnesses.

10. The acts of the appellant spoken to by P.Ws 3, 4 and 5 would clearly show that he had common intention with Hari Singh to commit the murder of Thandu Ram with whom they were on inimical terms. If his appellant had only shouted lalkar, probably it would have been difficult to sustain the conviction. But the part played by him in the incident as found by the High Court would clearly indicate that he was guilty of the offence under Section 302, read with Section 34.

11. Counsel for the appellant submitted that the charge against the appellant was under Section 302, read with Section 149 and therefore, his conviction under Section 302, read with Section 34 was illegal. We do not think that there is any substance in this contention.

12. In *Karnail Singh and Another v. The State of Punjab*, (1954 SCR 904 : AIR 1954 SC 204 : 1954 SCJ 269) Venkatarama Ayyar, J., speaking for the Court, held :

"..... it is true that there is substantial difference between the two sections but they also to some extent overlap and it is question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. If the common object which is the subject-matter of the charge under Section 149 does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result prejudice to the accused and ought not therefore be permitted. But if the facts to be proved and the evidence to be adduced with reference to the charge under Section 149 would be the same if the charge were under Section 34, then the failure to charge the accused under Section 34 could not result in any prejudice and in such cases the substitution of Section 34 for Section 149 must be held to be a formal matter. There is no such broad proposition of law that there can be no recourse to Section 34 when the charge is only under Section 149.

Whether such recourse can be had or not must depend on the facts of each case."

13. The finding of the trial Court as confirmed by the High Court would clearly show that the appellant had the common intention. The facts proved and the evidence adduced would have been the same if the appellant had been charged under Section 302, read with Section 34 and we do not see how the appellant was prejudiced.

14. We have no hesitation in holding that the High Court was right in its conclusion that, as the appellant had common intention with Hari Singh to murder Thandu Ram, there was no illegality in convicting him under Section 302, read with Section 34.

15. The appeal is dismissed.

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