

Malkhan Singh and Another

Vs.

State of Uttar Pradesh

Criminal Appeal No. 219 of 1970

(H. R. Khanna, V. R. Krishna Iyer JJ)

28.02.1974.

JUDGMENT

H. R. KHANNA,

1. Malkhan Singh (18) and Munshi Lal (22) were convicted by learned Additional Sessions Judge Aligarh for an offence under Section 307 read with Section 34 Indian Penal Code and were sentenced each to undergo rigorous imprisonment for a period of seven years. On appeal the Allahabad High court altered the conviction of the two accused to that under Section 324 read with Section 34 Indian Penal Code and reduced the sentence to rigorous imprisonment for a period of two years. The two accused have now approached this Court in, appeal by special leave. 2. The prosecution case is that on January 26, 1967 at about 7 p.m., PW Jai Narain Sharma, an employee in the Sales Tax Office Hathras was going on cycle from Sasni to his village Dirra. It was a night of full moon. Near a place called Qila, shots were fired from behind Jai Narain in his back. Jai Narain looked back and he saw the two accused coming on a cycle. Malkhan Singh was on the saddle of the cycle, while Munshi Lal was sitting behind. Munshi Lal was holding a pistol at that time. The two accused then went ahead of Jai Narain. Jai Narain also followed them on his cycle. At a distance of about three or three or three and a half furlongs from the place of occurrence is a factory known as Shyam Glass Factory. Jai Narain raised alarm, whereupon the two accused leaving their cycle, went inside an arhar field. Persons present outside the factory including Radhey Shyam (PW 2), who had seen the accused in the electric light, then went towards the field but did not go forward out of fear. The cycle left by the accused was taken into possession. Jai Narain was then taken to the Police Station Sasni where he made a report regarding the incident. Jai Narain was examined by Dr. Ishwar Chandra Bhuttan, the same evening at 8 p.m. The doctor found multiple gun-shot wounds each 1/8" x 1/8" on the lower part of the back of Jai Narain in an area of 5 1/2" x 5". Some of the injuries were 1/8" deep, while other were superficial. The injuries were declared by the doctor to be simple in nature. 3. The two accused surrendered on July 7, 1967. An identification parade of the two accused was held by Shri Bindraban, Sub-Divisional Magistrate on July 29, 1967. The two accused were correctly identified by Jai Narain and Radhey Shyam PWs at the identification parade. 4. At the trial the plea of the two accused was denial simpliciter. The trial Court held that it was Munshi Lal who fired the shot at Jai Narain and, as such, caused him injuries. Malkhan Singh was convicted under Section 307 read with Section 34 Indian Penal Code, because the trial Court was of the view that the injuries were caused to Jai Narain in furtherance of the common intention of the two accused. 5. The High Court in appeal came to the conclusion, in view of the nature of the injuries, that the case against the accused fell under Section 324, read with Section 34 Indian Penal Code. 6. In this Court, Mr. Kohli has challenged the conviction of the two appellants and has argued that the evidence adduced in this case is not sufficient to warrant the conviction of the accused and to establish their complicity. As against that, Mr. Rana on behalf of the State has canvassed for the correctness of the

view taken by the High Court. In this connection we find that so far as Munshi Lal's case is concerned, Jai Narain (PW 1) has deposed that when he was shot at in his back, he looked behind and saw Munshi Lal holding a pistol in his hand. Jai Narain did not know Munshi Lal and we find no particular reason as to why Jai Narain should falsely depose against Munshi Lal. It is difficult to believe that an injured person would spare his real assailant and falsely involve another person as one responsible for causing him injury. The fact that Munshi Lal was seen holding a pistol in his hand by Jai Narain immediately after being shot at goes to show that it was Munshi Lal who had fired the shot at Jai Narain. Munshi Lal was also identified near the glass works by Radhey Shyam when Jai Narain raised an alarm. The conduct of Munshi Lal in then running away to arhar field lends further assurance to the inference of his complicity. In the circumstances, we find no sufficient ground to interfere with the conviction of Munshi Lal. 7. As regards Malkhan Singh, however, question arises whether the shot was fired by Munshi Lal in furtherance of the common intention of Munshi Lal and Malkhan Singh. There is no evidence to show that Malkhan Singh had in any way instigated Munshi Lal to fire at Jai Narain. Malkhan Singh and Jai Narain were not known to each other and there was no previous enmity between them. Malkhan Singh as such had no motive for the assault on Jai Narain. There is also no other material which might indicate that Munshi Lal fired the shot in furtherance of the common intention which he shared with Malkhan Singh. The fact that Malkhan Singh continued to pedal the cycle after the incident and that he too ran away with Munshi Lal, would not necessarily go to show that the shot had been fired by Munshi Lal in furtherance of the common intention of the two accused. It is not difficult to conceive of cases wherein innocent companions of the actual culprit have also tried to escape along with him after an incident. Looking to all the facts of the case, we are of opinion that no vicarious liability can be fastened on Malkhan Singh for the shot fired by Munshi Lal and that the offence under Section 324 read with Section 34 Indian Penal Code has not been brought home to Malkhan Singh. 8. We accordingly accept the appeal of Malkhan Singh, set aside his conviction and acquit him. The appeal of Munshi Lal fails and is dismissed. Munshi Lal, who is on bail, shall surrender to his bail bond.

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