

Kashmira Singh

Vs

State of Punjab

Criminal Appeal No. 110 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

09.03.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court convicting the appellant under Section 302/34, IPC and sentencing him to life imprisonment. The appellant was also convicted under Section 323, IPC and sentenced to six months' rigorous imprisonment.

2. The facts of the case have been detailed in the judgment of the High Court and that of the Sessions Judge and it is not necessary for us to repeat the same all over again. Appearing in support of the appeal Mr. Anwar Ahmed submitted that on the proved facts, no offence under Section 302/34, has been made out in this case and the Sessions Judge was right in not convicting the appellant under Section 302/34. From the findings of facts, given by the two Courts, it appears that the murder of the deceased Joginder Singh was a pre-planned one in which all the three accused including the appellant participate equally. To begin with, the appellants gave a challenge to Joginder Singh and after returning to their 'house' they re-appeared on the scene variously armed, two of them with guns and the appellant with a gandasi. They remained present at the time when the fatal blow was given to the deceased in the shape of a gun shot injury fired by Tarlok Singh hitting the abdomen. Immediately thereafter, the appellant Kashmira Singh assaulted Mohinder Singh with gandasi. Thereafter, the three accused left together. The circumstances narrated above, clearly disclose that all the three accused were animated by a common intention to kill the deceased. The High Court rightly pointed out that in these tell-tale circumstances, there was no question of the non-applicability of Section 34 of the IPC. The Sessions Judge appears to have committed an error of law in not applying Section 34 mainly because the appellant Kashmira Singh had assaulted Mohinder Singh with the blunt portion of the gandasi. This was a separate and individual act of Kashmira Singh which amounted to an offence under Section 323 for which he has been convicted, and this could not be taken into consideration by the Sessions Judge for the purpose of assessing the intention of Kashmira Singh regarding the gun shot injury given to him by Tarlok Singh. What the learned Sessions Judge missed was that the evidence clearly disclosed that there was a prior meeting of minds between the three accused in which it was decided to kill the deceased Joginder Singh and in pursuance of this pre-concerted plan all the three went away together, armed themselves, arrived at the scene of occurrence together and one of them delivered a gun shot injury. The appellant did not protest against the act of Tarlok Singh but quietly submitted and acquiesced in the same. Thereafter all the three went together. Thus, all the essential conditions for the presence of a common intention were clearly proved in this case and the High Court was right in holding that this was a clear case in which the appellant had shared the common intention to murder the deceased

Joginder Singh with the other accused. The High Court has referred to a number of authorities and decisions of this Court which have explained the applicability of Section 34. We, however, cannot find a clearer case of the applicability of Section 34 than this. In these circumstances, therefore, the contention raised by Mr. Anwar Ahmed, is hereby overruled.

3. It was submitted by Mr. Ahmed that the other two accused, namely Tarlok Singh and Satnam Singh who also had been convicted to imprisonment for life have come out of jail as a substantial part of their sentences has been remitted by the Government. Indeed if this is so then the Government will consider the desirability of remitting the sentence of the appellant also, whose case is in no way different from those of the other accused, whose sentences have been remitted.

4. With these observations, we dismiss the appeal.

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