

Kashmira Singh

Vs

State of Punjab

Criminal Appeal No. 159 of 1982

(K. Jayachandra Reddy, G.N.Ray JJ)

21.10.1992

JUDGMENT

1. The appellant Kashmira Singh was tried along with two others William and Sukhchain Singh for an offence punishable u/ S. 302 read with Section 34, IPC. It is alleged that the three original accused were pick pocketers and that on 30-5-79 Sukhbinder Singh the deceased in this case and his brother PW 4 and uncle PW 5 had gone to Amritsar to get the tractor repaired and it is alleged that the appellant tried to put his hands in the shirt pocket of. PW 5 who questioned him as to what he was doing. Thereupon PW 5 called the deceased and the deceased tried to catch hold of the appellant but in the process the appellant and his co-accused Sukhchain Singh caught held the deceased. William who happened to be there picked out a knife from his pant pocket and gave one single blow to the deceased at the neck. Thereupon the deceased fell down and the accused ran away. The doctor who conducted the post-mortem found the single injury but that proved to be fatal. The inquest was held and the accused was arrested and tried. The prosecution mainly relied upon the evidence of PWs 4 and 5. The learned Sessions Judge convicted William under Section 302, IPC and sentenced him to undergo imprisonment for life but acquitted the appellant and Sukhchain Singh. William, the convicted accused preferred an appeal and the State filed an appeal against acquittal of Sukhchain Singh and. Kashmira Singh, the appellant before us. The High Court while dismissing the appeal filed by William interfered in the acquittal of the other two accused and convicted them also under Section 302 read with Section 34, IPC. Only Kashmira Singh has preferred this appeal.

2. The learned counsel Shri Harjinder Singh submits that even if the prosecution case is to be accepted as a whole, the common intention to commit the murder on the part of the appellant is not made out. According to the learned counsel when the deceased tried to catch hold of the appellant, he in turn was caught hold by the appellant and his co-accused Sukhchain Singh and it is just a sudden act on the part of William who took out a knife from his pocket and inflicted a single injury and therefore the common intention cannot be made out. We may point out at this stage that the High Court having dismissed the appeal of William in the end of the judgment considered the case against the appellant and accused Sukhchain Singh. The High Court observed that these two accused caught held of the deceased by his arm and thereby facilitated the crime by William and consequently they were constructively liable for the offence. Incidentally the High Court also observed that if they had not caught hold of the deceased, William could not have succeeded in causing the knife blow. The High Court further observed that they were all pick pocketers. These are some of the grounds given by the High Court in holding that Section 302 read with Section 34, IPC has been attracted against the appellant as well as the other accused.

3. Common intention is to be inferred from the circumstances particularly the part played by the

accused and the surrounding circumstances namely nature of the weapon used and the injury inflicted as well as the meeting of the minds among the accused who are being held constructively liable. The facts stated above would reveal that the appellant tried to pick the pocket of PW 5 who called the deceased and the deceased tried to catch held of the appellant and it was a sudden act on the part of the William who picked out a knife from his pocket and inflicted a single injury on the deceased. Under those circumstances it cannot be held that the appellant and Sukhchain Singh had prior knowledge that William was armed with a knife and the part played by William cannot be said to be a conjoint act so as to attract the element of common intention on the part of the appellant as well as Sukhchain Singh. We also find that the High Court has not examined the reasons given by the Sessions Court for acquitting the appellant and Sukhchain Singh. It may be that two views are possible but the view taken by the trial Court in the instant case cannot be said to unsound. In this view of the matter we set aside the conviction and sentence awarded by the High Court and confirm the order of acquittal of the Sessions Court. In our view benefit of this order should also go to Sukhchain Singh who is not before us. In the view we have taken we acquit Sukhchain Singh also and direct that he shall be act at liberty if he is in jail. The appeal is accordingly allowed and the appellant shall be act at liberty. If he is on bail, the bonds shall be cancelled. Appeal allowed.

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