

SUPREME COURT OF INDIA

Virender

Vs.

State of Haryana

CrI.A.No.1339 of 2010

(Mohan M.Shantanagoudar and K.M.Joseph,JJ.,)

16.12.2019

JUDGMENT

Mohan M.Shantanagoudar,J.,

1. This appeal is presented questioning the judgment dated 28.07.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 168-DB of 2001, confirming the judgment of the Sessions Court, Narnaul dated 16.02.2001 passed in Sessions Case No. 5 of 2000, convicting the appellant/accused along with two other ttused for the offence under Section 302 read with Section 34 of the Indian Penal Code (hereinafter "IPC").

2.The case of the prosecution in brief is that on the intervening night between 6/7.11.1999, the first informant, Suresh Kumar, and his brother Krishan Kumar (the deceased), had gone to their field, which they had taken on Batai, for irrigation purposes; at about 1:30/2:00 AM on 07.11.1999, the informant sent Krishan Kumar to verify the water flow in the channel which passed through the 'Dol' of the field of Accused No.3 Hawa Singh; when Krishan Kumar was near his tubewell (situated near the middle of Hawa Singh's field), the first informant heard noises of abuses, and on reaching the said place he saw Hawa Singh armed with a kulhari (axe), Accused No.1 Satpal armed with a dantali (sickle), and Accused No.2 Virender, the appellant herein, armed with a lathi; and Hawa Singh raised a cry exhorting that the deceased should be taught a lesson. Thereafter, Hawa Singh gave an axe blow to the deceased on the right shoulder, Satpal aimed two sickle blows on the head of the deceased which, however, fell on his left arm, and the appellant gave a lathi blow on the left knee of the deceased, who fell to the ground. At that point of time, Hawa Singh gave the deceased an axe blow on his chest, and Satpal gave him a sickle blow on the left knee. When the first informant raised a hue and cry, the uncle of the first informant, Jugal Kishore, came to the spot, and also witnessed the incident. Thereafter, the accused ran away from the scene. The first information report was lodged on the morning of 07.11.1999. As mentioned supra, both the Courts convicted all the three accused for the offence punishable under Section 302 read with Section 34 of the IPC.

3. The other two accused, namely Hawa Singh and Satpal, seem to have not filed appeals against the same, accepting the judgment passed by the High Court. It is brought to our notice that those accused have already undergone their sentence, and have been released from custody. The appellant herein was released on bail by this Court on 26.07.2010.

4. Heard Mr. Naresh Kaushik, learned counsel appearing on behalf of the appellant, and Mr. Anish Kumar Gupta, learned Additional Advocate General appearing for the respondent-State.

5. The case of the prosecution mainly rests on the evidence of PWs 14 and 15, who were the eye-witnesses of the incident. PW-14, the first informant, is the brother of the deceased, and PW-15 is their uncle, who had arrived at the scene after hearing the cries of the first informant.

6. The appellant herein was convicted for the offence punishable under Section 302, IPC with the aid of Section 34, IPC, inasmuch as both the Courts concluded that the appellant had shared the common intention to murder the deceased with the other two accused.

7. It has been shown that Accused No.3, Hawa Singh had a motive to commit the murder of the deceased, inasmuch as he was eyeing the property which was being cultivated by the deceased on a Batai basis, and though Hawa Singh had requested the landlord to give the land on Batai basis to him, the deceased had secured the land instead. It was in this context that the murder was committed through the overt acts of the two accused other than the appellant. The moot question, however, is whether the appellant herein also participated in the offence, especially since he has not been shown to be a friend or relative of the other accused, or to have any specific motive for murdering the deceased.

8. In this regard, we would first like to turn our attention to the nature of injuries suffered by the deceased. As mentioned supra, the appellant was supposed to have assaulted the deceased with a lathi, while the other two accused assaulted the deceased with sharp cutting weapons such as an axe and sickle. The evidence of the doctor and the post-mortem report disclose that the deceased had sustained seven injuries, out of which five were incised injuries. The other two were, firstly, an abrasion of size 2 x 1 cm on the left frontoparietal region, and secondly, a lacerated wound of size 6.5 x 1.5 cm on the right knee joint. The death was opined to have occurred on account of the incised injuries numbered 2, 5 and 7 in the post-mortem report, though even Injury No. 5, an incised wound measuring 18 x 6 cm on the chest and abdomen, was stated to be individually sufficient to cause death. The wound, which started in the middle of the sternum, extended up to the abdomen, ending 6 cm above the umbilicus. Parts of the small and large intestines were also found lying outside the wound.

9. Thus, from the post-mortem report and the evidence of the doctor, it is amply clear that the death was caused due to incised injuries, of such a nature which could have been caused by the axe and sickle carried by the other two accused. On the other hand, the other two injuries, being a laceration and an abrasion, which could possibly be attributed to the

appellant, may even have been a result of the deceased falling to the ground, since injuries such as bruises, abrasions and lacerations may very well be sustained as a result of a fall. Thus, there does not appear to be strong evidence of the active participation of the appellant in the offence.

10. A perusal of the evidence of PWs 14 and 15 raises further suspicion in the mind of the Court about the complicity of the appellant herein in the offence in question. Though in their examination-in-chief, these witnesses deposed that the appellant herein assaulted the deceased with a lathi on his knee and head, it was proved in the cross-examination that these statements made before the Court were "improvements". If these improvements are excluded from consideration from the evidence of PWs 14 and 15, it can be safely said that the prosecution has not proved its case beyond reasonable doubt about the active involvement of the appellant in the offence in question through any overt act.

11. Proceeding on the basis that the appellant was present on the spot of the offence, we do not find that the commission of the offence of murder stands proved as against the appellant with the help of Section 34, IPC, either. In order to invoke the principle of joint liability in the commission of a criminal act as laid down in Section 34, the prosecution should show that the criminal act in question was done by one of the accused persons in furtherance of the common intention of all. If this is shown, the liability for the offence may be imposed on any one of the persons in the same manner as if the act was done by him alone. It may be difficult to procure direct evidence to prove the intention of an individual, and in most cases it has to be inferred from the facts and relevant circumstances of the case. The common intention may be through a pre-arranged plan, or it may be generated just prior to the incident. Just as a combination of persons sharing the same common object is one of the features of an unlawful assembly, so is the existence of a combination of persons sharing the same common intention one of the features of Section 34.

12. As held by the Constitution Bench of this Court in *Mohan Singh v. State of Punjab*¹, common intention denotes action in concert, and a prior meeting of minds—the acts may be different, and may vary in their character, but they are all actuated by the same common intention. However, prior concert in the sense of a distinct previous plan is not necessary to be proved. As mentioned supra, the common intention to bring about a particular result may well develop on the spot as between a number of persons. Thus, the question as to whether there is any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused persons had the common intention to commit the offence with which they could be convicted.

13. The instant case must be assessed in terms of the above legal position. Looking to the facts and circumstances at hand, i.e. that the appellant herein had no specific motive to participate in the commission of the offence, did not have any rivalry with the deceased or his family, and has not been shown to be a friend, relative or hireling of the other two accused, we are of the considered opinion that the prosecution has failed to prove any

common intention on the appellant's part, inasmuch as there is no hint of any motive or reason for him to have either participated in pre-planning the murder of the deceased, or to develop the common intention to do so while present at the spot of the offence. We are of the opinion that both the Courts have concluded against the appellant merely on assumptions and conjectures and not on reliable evidence, in spite of the prosecution having failed to discharge its burden to prove the case against the appellant beyond reasonable doubt.

14. It has been brought to our notice that the appellant has already suffered more than five years of imprisonment. Be that as it may, since we find that the evidence against the appellant is shaky and insufficient to bring home guilt against him, we are of the opinion that the benefit of doubt must enure to him. Hence, the judgment of conviction passed by the Trial Court and confirmed by the High Court as against the appellant stands set aside. The appellant is acquitted from the charges levelled against him. Since he is already on bail, he need not be arrested in connection with the crime in question. The bail bonds, if any, executed by him stand discharged. The appeal is allowed accordingly.

Judgment Referred.

¹*AIR 1963 SC 0174*