

PETITIONER:
BRATHI ALIAS SUKHDEV SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 31/10/1990

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
FATHIMA BEEVI, M. (J)

CITATION:
1991 AIR 318 1990 SCR Supl. (2) 503
1991 SCC (1) 519 JT 1991 (5) 217
1990 SCALE (2) 918
CITATOR INFO :
F 1991 SC1853 (16)

ACT:

Indian Penal Code--Sections 34 and 302--Criminal liability--Primarily attaches to person who actually commits the offence--Several persons alleged to have committed offence in furtherance of common intention--All except one acquitted--Open to appellate court to reappraise evidence.

HEADNOTE:

The appellant and his uncle Teja Singh were tried for an offence under Section 302/34 I.P.C. for committing the murder of one Sucha Singh. The case of the prosecution was that the appellant and Teja Singh in furtherance of their common intention attacked the deceased Sucha Singh on 1st January 1975 when he was returning home from his field accompanied by his daughter and son (PWs 8 and 9). It was alleged that the appellant attacked the deceased with Kirpan, which blow was warded off by the deceased and then Teja Singh delivered a blow with Kirpan on the deceased's head whereupon he fell down and both the appellant and Teja Singh then dealt one blow each causing injuries to the deceased. Sucha Singh died at the hospital. The fatal injury was attributed to Teja Singh and he was charged under section 302 I.P.C., and the appellant who was alleged to have caused the minor injuries was charged under section 302/34 I.P.C. The trial court acquitted Teja Singh and convicted the appellant for the offence under section 302. I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000. The State did not appeal against the order of acquittal passed in respect of Teja Singh, with the result that order became final. The appellant appealed to the High Court contending that when the Sessions Judge had rejected the prosecution evidence against Teja Singh, his conviction on the same evidence was not sustainable. It was further contended on behalf of the appellant that in view of the acquittal of Teja Singh, who was alleged to have delivered the fatal blow the appellant could not be convicted under S.302 IPC or with the aid of section 34 I.P.C. and that at best the offence fell under section 326 I.P.C. The High Court while maintaining the sentence of life imprison-

ment imposed on the appellant, altered his conviction to one under sec. 302 read with section 34, I.P.C. The High Court while assessing the credibility of the prosecution evidence incidentally considered the

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case against Teja Singh and after reviewing the evidence recorded a finding that the order acquitting Teja Singh was erroneous. The appellant has filed this appeal against the order of the High Court after obtaining special leave.

Before this Court it has been inter alia contended that the High Court erred in recording the conviction under sec. 302/34 IPC, as with the acquittal of Teja Singh element of sharing common intention has disappeared, (ii) that the High Court misdirected itself in appreciating the evidence and (iii) that the individual acts of the appellant could at best constitute only a minor offence, and in the absence of any independent evidence, the appellant could not be convicted.

Dismissing the appeal, this Court,

HELD: The powers of the appellate Court in dealing with an appeal against an order of conviction are defined under Sec. 386(1)(b) of the Code of Criminal Procedure 1973 corresponding to Section 423(i)(b) of the Code of 1898. In the matter of appreciation of the evidence the powers of the appellate Court are as wide as that of the trial court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. [509C-E]

The general principle of criminal liability is that it primarily attached to the person who actually commits an offence and it is only such person that can be held guilty and punished for the offence. [509H]

When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the appellate court to find on appraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the absence of an appeal by the State Government. [509F-G]

The effect of such a finding is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality. [509G]

Where the evidence examined by the appellate court unmistakably proves that the appellant was guilty under section 34 having shared a common intention with the other accused who were acquitted and that

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the acquittal was bad, there is nothing to prevent the appellate court from expressing that view and giving the finding and determining the guilt of the appellant before it on the basis of that finding. [515H; 516A]

The appeal before the High Court against the conviction is not a subsequent proceeding against the acquitted person, [516E]

Sunder Singh and Ors. v. State of Punjab, AIR 1962 SC 1211; Harshad Singh v. State of Gujarat, AIR 1977 SC 710; 1. G. Singhleton v. King Emperor, AIR 1925 Cal. 501; Bimbadhar Pradhan v. The State of Orissa, [1956] SCR 206; Kapildeo Singh v. The King, AIR 1950 FC 80; Dalip Singh and Ors. v. State of Punjab, [1954] SCR 145; Marachalil Pakku v. State of Madras, AIR 1954 SC 648; Sukh Ram v. State Of U.P., [1974] 2 SCR 518; Karan Singh v. State of Madhya Pradesh,

[1965] 2 SCR 1, referred to

Prabhu Babaji Navle v. State of Bombay, AIR 1956 SC 51; Krishna Govind Patii v. State of Madras, [1964] 1 SCR 678; Baul v. State of U.P., [1968] 2 SCR 454; Maina Singh v. State of Rajasthan, [1976] 3 SCR 651; Karnail Singh v. State of Punjab, AIR 1977 SC 893 and Piara Singh v. State of Punjab, [1980] 2 SCC 401, distinguished.

JUDGMENT:

JUDIS