

PETITIONER:  
SHEORAM SINGH & ANR.

Vs.

RESPONDENT:  
STATE OF U.P.

DATE OF JUDGMENT 23/08/1972

BENCH:  
KHANNA, HANS RAJ  
BENCH:  
KHANNA, HANS RAJ  
SHELAT, J.M.  
DUA, I.D.

CITATION:  
1972 AIR 2555                      1973 SCR (1) 939  
1973 SCC (3) 110

ACT:  
Indian Penal Code (45 of 1860), s. 34-Circumstances for invocation of.

HEADNOTE:

Seven accused attacked one of the prosecution witnesses who took-refuge inside a house. The deceased and the prosecution witness went to the roof of the house when one of the accused, who was the father of the appellant, asked the deceased to turn out the Prosecution witness as otherwise it would be bad for him also. On his refusal to do so, that accused shot at the deceased with a Run and the deceased died. The appellant, thereafter, fired at the prosecution witness and caused him an injury. All the accused were charged with offences under s.302, s.302 read with s.149, s.307 read with s.149, s.307, s.148 and s.147, I.P.C. The trial court acquitted them. On appeal the High Court held that the death of the deceased took place as a result of the firing by the father of the appellant and convicted him under s.302, I.P.C. The appellant, who injured the prosecution witness by firing a shot at him, was convicted under s.307, I.P.C. The appellant was also convicted under s.302 read with s. 149 in connection with the death of the deceased and also under s.148 for the, offence of rioting with a deadly weapon. As regards the other accused, the High Court held that their common object was to kill the Prosecution witness and not the deceased. 'Therefore, the High Court convicted them of the offence under s.307 read with s.149 I.P.C. and acquitted them of the offence under s.302 read with s.149.

In appeal to this Court,

HELD : (1) The reasons for acquitting the other five accused for the offence under s.302 read with s.149, I.P.C. hold equally good in relation to the appellant also, and hence his conviction for that offence could not be sustained.

[943E-F]

(2) A common intention can develop during the course of an occurrence but there has to be cogent material on the basis of which the Court can arrive at such a finding and hold one accused vicariously liable for the act of another accused by invoking s.34, I.P.C. [944C-D]

In the present case, there is nothing to show that there was any exhortation or encouragement by the appellant to his father to fire at the deceased, The words attributed to the father indicate that he was not willing to spare the deceased if the latter did not turn out the prosecution witness from his house, but it could not be inferred from that that the appellant shared the intention of his father or that the shot was fired by the father at the deceased in furtherance of their common intention. It does not follow from the shot fired by the appellant at the prosecution witness that the shot fired at the deceased by his father was fired in furtherance of the intention of the appellant. [943G-H; 944AC]  
Hence the appellant could not be found guilty under s.302 read with s. 34 I.P.C., also. [944D]

**JUDGMENT:**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 215 of 1969.

Appeal by special leave from the judgment and order dated April 15, 1969 of the Allahabad High Court (Lucknow Bench) in 'Cr. A. No. 957 of 1965.

J. P. Goyal and S. M. Fain, for the appellants.

D. P. Uniyal, V. Mayakrishnan and O. P. Rana, for the respondent.

The Judgment of the Court was delivered by Khanna J Arjun Singh (47), his son Sheoram Singh alias Bhure Singh (27), Jagatpal Singh (29), GangaDeen (29), Ram Nath (39), Sheo Prasad (30) and Jumman (30) were tried in the court of Additional Sessions Judge Unnao for offences under section 302, section 302 read with section 149, section 307, section 307 read with section 149, section 148 and section 147 Indian Penal Code and were acquitted. On appeal by the State of Uttar Pradesh, the Allahabad High Court convicted Arjun Singh under section 302, section 307 read with section 149, and section 148 Indian Penal Code, and sentenced him to undergo imprisonment for life on the first count, rigorous imprisonment for a period of five years on the second count and rigorous imprisonment for a period of two years on the third count. Sheoram Singh was convicted under section 302 read with section 149, section 307 and section 148 Indian Penal Code, and was sentenced to undergo imprisonment for life on the first count, rigorous imprisonment for a period of five years on the second count and rigorous imprisonment for a period of two years on the third count. The remaining accused were convicted under section 307 read with section 149, and section 147 Indian Penal Code, and each of them was sentenced to undergo rigorous imprisonment for a period of five years on the first count and rigorous imprisonment for a period of one year on the second count. The sentences in the case of each of the accused were ordered to run concurrently. Arjun Singh, Sheoram Singh and Jumman thereafter applied to this Court under article 136 of the Constitution for special leave to appeal against the judgment of the High Court. This Court declined to grant leave to Arjun Singh and dismissed the application in so far as it related to him. Sheoram Singh and Jumman were granted leave "limited to the section under which they can be convicted including the applicability of section 34 and 149 Indian Penal Code". The prosecution case is that Arjun Singh, Jumman, Ganga Deen and Shoo Prasad accused were inimical towards Ram Dularey Singh as he was taking interest in a

magisterial enquiry relating to the death in police custody of one Jaineel who had been severely beaten by the aforesaid accused in Sirosi

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before his arrest by the police. On November 4, 1964 at about 4.30 p.m., it is stated, Ram Dularey Singh (PW 4) was sitting in front of his house in village Chilaula,. Rampal Singh (PWI-) and his cousin Chandrapal Singh were sitting, in the courtyard in front of their house beneath a tree. The houses of Rampal Singh and Ram Dularey Singh are close to each other. The seven accused. then came there. Out of them, Arjun Singh and Sheoram Singh were with Runs, while the remaining accused carried lathis. Arjun Singh then shouted to his companions to kill Ram Dularey Singh. Ram Dularey Singh raised alarm and rushed towards the house of Rampal Singh and closed the door from inside, Rampal Singh and Chandrapal Singh tried to pacify the accused and asked them not to quarrel on that day as it was a day of Paraiva which follows Deepawali. The accused then stood at a short distance from the house of Ram Dularey Singh. Har Narain Singh deceased, who was brother of ChaNdrapal Singh, was inside the house at that time. Hai Narain Singh along with Ram Dularey Singh then went to the eastern roof of the house. Har Narain Singh too asked the accused to abstain from abusing Ram Dularey Singh, Arjun Singh then asked Har Narain Singh to turn out Ram Dularey Singh from his house. When Har Narain Singh declined, Arjun Singh shouted that it would be bad for him also. On the instigation of the other accused, Arjun Singh then fired his gun at Har Narain Singh. Sheoram Singh immediately thereafter fired at Ram Dularey Singh. Both Har Narain Singh and Ram Dularey Singh fell down on the roof on receipt of gun shot injuries. The accused then ran away. The occurrence, it is stated, was witnessed by Rampal Singh (PW 1) Raghunandan Pandey (PW 2), Gajodhar Singh (PW 6) and Suraj Bali (PW 8). Rampal Singh after getting the door of his house opened went to the roof. Har Narain Singh was found to be lying dead there, while Ram Dularey Singh was groaning with pain. Rampal Singh then went to police station Kotwali at a distance of six miles from the place of occurrence and lodged report at 8-40 p.m. Sub Inspector Sri Ram Ban Chauhan then came to the place of occurrence and took over the investigation of the case. The Sub Inspector prepared the inquest report relating to the dead body of Har Narain Singh and took into possession various articles. Ram Dularey Singh was got examined from Dr. S. N. Tandon at 12-15 a.m. on November 5, 1964. He was found to have gun shot wounds on the front of the chest, abdomen. right elbow, right forearm and the right palm. Post mortem examination on the dead body of Har Narain Singh was performed by Dr. B. N. De at 3.30 p.m. on November 5, 1964. Gun shot wounds were found in the chest cavity, left shoulder, lower left arm and right arm on the body of Har Narain Singh. A number

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of ribs were found to have been fractured under the gun shot wounds in the chest cavity. Death of Har Narain Singh, in the opinion of the doctor, was due to shock haemorrhage. At the trial the accused denied the prosecution allegation. The plea of Arjun Singh and Sheorain Singh was that on November 4, 1964 Ariun Singh went at 2.00 or 2.45 P.M. to railway station Nagarwara to see off his son Sheoram Singh accused, who had to go to Ferozepur on duty. Sheoram Singh is employed in the army. Sheoram Singh's train left the railway station at 4.10 p.m. and Arjun Singji returned to his house at about sunset. According further to Arjun

Singh, he was asked by the police to come to the police station along with us guns and cartridges. He was thereafter put under arrest. The plea, of the remaining accused was denial simpliciter.

The Additional Sessions Judge acquitted the accused because he was of the view that the evidence adduced by the prosecution was of a partisan character. It was also held that the investigation of the case was tainted. On appeal the High Court considered the evidence of Rampal Singh (PW 1), Ram Dularey Singh (PW 4) and Gajodhar Singh (PW 6) to be free from blemish. The ocular evidence adduced by the prosecution was accepted. The High Court, however, found the evidence regarding the exhortation by the other accused to Arjun Singh to kill Har Narain Singh and Ram Dularey Singh to be not very convincing. It was held by the High Court that the death of Har Narain Singh took place as a result of firing by Arjun Singh. Arjun Singh was convicted under section 302 Indian Penal Code. He was also found to be guilty of the offences under section 307 read with section 149 and section 148 Indian Penal Code. Sheo-ram Singh, who was alleged to have injured Ram Dularey Singh PW by firing a shot at him, was convicted on that account under section 307 Indian Penal Code. Sheoram Singh was further convicted under section 302 read with section 149 Indian Penal Code in connection with the death of Har Narain Singh and also under section 148 Indian Penal Code for the offence rioting with deadly weapon. Regarding the other accused, the High Court was of the view that they were guilty under section 147 Indian Penal Code for the offence of rioting while being members of an unlawful assembly. Their common object, in the opinion of the High Court, was to kill Ram Dularey Singh. As such, they were also found to be guilty of the offence under section 307 read with section 149 Indian Penal Code. It was not the object of the unlawful assembly, in the opinion of the High Court, to cause the death of Har Narain Singh. The case under section 302 read with section 149 Indian Penal Code against these accused was held to have not been proved.

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Mr. Goyal on behalf of the appellants has not challenged before us the conviction of Jumman appellant for the offences under section 307 read with section 149 and section 147 Indian Penal Code. Learned counsel has further not challenged the conviction of Sheoram Singh appellant for offences under sections 307 and 148 Indian Penal Code. The only contention which has been advanced by Mr. Goyal before us is that the conviction of Sheoram Singh appellant for the offence under section 302 read with section 149 Indian Penal Code is not well founded. There is, in our opinion, considerable force in this contention. It would appear from the resume of facts given above that the common object of the unlawful assembly, of which Sheoram Singh and other accused were members, was to cause the death of Ram Dularey Singh. None of them had any enmity with Har Narain Singh or any motive to kill him. Har Narain Singh, no doubt was killed as a result of the shot fired by Arjun Singh, but there is nothing on the record to show that Arjun Singh fired the shot at Har Narain Singh in prosecution of the common object of the unlawful assembly. The High Court has acquitted the accused, other than Arjun Singh and Sheoram Singh, for the offence under section 302 read with section 149 Indian Penal Code.

ON the ground that the murder of Har Narain Singh was not the initial object of the unlawful assembly and the firing at him was the result of developments which could not

have been anticipated. If the other five accused were acquitted and not found guilty of the offence under section 302 read with section 149 Indian Penal Code in connection with the death of Har Narain Singh, it is not clear as to how the conviction of Sheorain Singh for the said offence could be sustained. The reasons which led to the acquittal of the other five accused for the offence under section 302 read with section 149 Indian Penal Code held equally good for the acquittal for that offence of Sheoram Singh.

Mr. Uniyal on behalf of the State has argued that even if the conviction of Sheoram Singh for the offence under section 302 read with section '149 Indian Penal Code cannot be sustained, he is guilty of the offence under section 302 read with section 34 Indian Penal Code because the circumstances of the case show that Arjun Singh fired the shot at Har Narain Singh in furtherance of the common intention of Arjun Singh and Sheoram Singh. This submission, in our opinion, is not well founded. There is nothing to show that there was any exhortation by Sheoram Singh to Arjun Singh to fire at Har Narain Singh. Indeed, the High Court has not accepted the evidence of exhortation to Arjun Singh by any of the other accused before Arjun Singh fired at Har Narain Singh. The prosecution has, no doubt, led evidence to show that Arjun Singh before firing the shot at Har Narain Singh told him that if he did not turn

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out Ram Dularey Singh from his house, it would be bad for him (Har Narain Singh) also. These words, undoubtedly, indicate the attitude of Arjun Singh and show that he was not willing to spare Har Narain Singh if the latter was not prepared to turn out from his house Ram Dularey Singh. It is, however, difficult to infer from that exclamation of Arjun Singh that Sheoram shared the intention of Arjun Singh and that the shot was fired by Arjun Singh at Har Narain Singh in furtherance of the common intention of Arjun Singh and Sheoram Singh. There is, indeed, nothing on the record to indicate that Sheoram Singh in any way encouraged his father Arjun Singh to kill Har Narain Singh. Sheorain Singh, no doubt, fired a shot at Ram Dularey Singh and for that he has been convicted under section, 307 Indian Penal Code. but it does not follow from that the shot at Har Narain Singh by Arjun Singh was also fired in furtherance of the intention of Sheoram Singh. It is undeniable that common intention can develop during the course of an occurrence, but there has to be cogent material on the basis of which the court can arrive at that finding and hold an accused vicariously liable for the act of the other accused by involving section 34 of the Indian Penal Code.

As a result of the above, we accept the appeal of Sheorain Singh to the extent of setting aside his conviction and sentence for the offence under section 302 read with section 149 Indian Penal Code. In other respects the appeal of Sheoram Singh is dismissed. The appeal regarding Jurnman has not been pressed and is dismissed.

V.P.S.

Appeal dismissed

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