

CASE NO.:
Appeal (crl.) 903 of 2006

PETITIONER:
Surinder Singh alias Chhinda and Anr.

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 31/08/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.729 of 2006)

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the appeal filed by the appellants and thereby confirming the judgment of conviction and sentence passed by learned Sessions Judge, Rupnagar. The appellants were convicted for offences punishable under Section 302/323 read with Section 34 of Indian Penal Code, 1860 (in short the 'IPC'). Accused \026appellant-Narinder Singh was sentenced to undergo imprisonment for life for commission of offence punishable under Section 302 IPC with a fine of Rs.5,000/- with default stipulation. He was, further sentenced to undergo rigorous imprisonment for six months in terms of Section 323 read with Section 34 IPC and to pay a fine of Rs.200/- with default stipulation. Accused-appellant, Amarjit Singh was sentenced to undergo imprisonment for life for commission of offence punishable under Section 302 read with Section 34 IPC and to pay a fine of Rs.2,500/- with default stipulation. He was further sentenced to undergo rigorous imprisonment for six months in terms of Section 323 IPC and to pay a fine of Rs.200/- with default stipulation.

Prosecution case as unfolded during trial is as follows:

Statement was given by Inderjit (PW 8) to ASI Sukhjit Singh in Civil Hospital, Morinda on 10.4.1996 at 11.50 P.M. Inderjit stated that he along with his son Pawan Kumar (hereinafter referred to as 'deceased'), Amarjit Singh son of Ram Singh and Ved Parkash were coming from their house and going towards the market for some domestic work. When they reached near the house of one Khushal Singh, at about 9.00 P.M., accused Narinder Singh @ Nita armed with a knife like a dagger, Amarjit Singh @ Amba armed with a lathi, Surinder Singh @ Chhinda and Raja Singh son of Gurmukh Singh who were not armed met them. Accused persons stopped them and stated that they wanted to talk to them. As complainant Inderjit went forward, accused Amarjit Singh gave a lathi blow on his head. Pawan Kumar, the son of the

complainant, came forward to rescue him. Raja Singh and Surinder Singh caught hold of Pawan Kumar and Narinder Singh @ Nita thrust a knife in the chest of deceased who fell down. On this, Inderjit fell upon his son to save him. Thereafter, accused Raja Singh, Surinder Singh and Amarjit Singh gave fist and slap blows to the complainant. Complainant raised a hue and cry. Accused persons fled away from there. Amarjit Singh son of Ram Singh, Ved Parkash and the complainant then took deceased to Civil Hospital, Morinda, but his life could not be saved.

The motive for the commission of the offence was that some days earlier, Narinder Singh @ Nita had teased the complainant's daughter Nirmla Devi. Complainant had reprimanded him and hot words were exchanged between them. Due to this, appellants committed the murder of the deceased. On the basis of this statement, formal FIR, Ex. PJ, was registered on 11.4.1996 at 12.05 A.M. in Police Station Morinda. Special report reached the Additional Chief Judicial Magistrate, Rup Nagar on 11.4.1996 at 3.00 A.M.

In order to further its case, prosecution examined thirteen witnesses. PWs 8 and 9 were stated to be eye-witnesses. Though PW-9 partially departed from his statement made during investigation, the residue was considered relevant. The trial Court on analysis of the evidence found the accused guilty and convicted the accused persons and sentenced them.

Accused persons filed appeal before the High Court and questioned correctness of trial Court's judgment.

The High Court did not find any substance in the appeal and dismissed the same. Stand before the High Court was that there is no material to find the accused guilty.

Accused Amarjit and Narinder have not preferred any appeal against High Court's judgment. This appeal is by Surinder and Raja.

Learned counsel for the appellants submitted that Section 34 has no application so far as the appellants are concerned. The prosecution has not brought any cogent evidence to show that the appellants had shared any common intention for the murder of the deceased.

Learned counsel for the respondent-State, on the other hand supported the judgment of the courts below. With reference to the FIR registered in Police station, Rup Nagar it was submitted that same clearly discloses that the presence of the accused persons at the time of assault has been established.

Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to

bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v. State of Punjab* (AIR 1977 SC 109), the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

As it originally stood the Section 34 was in the following terms:

"When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone."

In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each", so as to make the object of Section 34 clear. This position was noted in *Mahbub Shah v. Emperor* (AIR 1945 Privy Council 118).

Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed in *Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh* (AIR 1993 SC 1899), Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused. These aspects have been highlighted in *Harbans Kaur v. State of Haryana* [2005 (9) SCC 195].

When the factual scenario is seen the application of Section 34 of the IPC appears to be inappropriate so far murder of the deceased is concerned. In addition, the appellants were not armed. But the evidence is clear that they restrained movement of the deceased when there was a quarrel. There is, however, no definite evidence that the common intention was murder. But the fact that two co-accused were armed with knife and lathi is of relevance and significance. They came together and left together. That being so, the conviction is altered applying the principle set out above. Appropriate conviction will be under Section 304 Part II IPC read with Section 34 IPC. Custodial sentence of seven

years would meet the ends of justice.

Appeal is allowed to the aforesaid extent.

JUDIS