

CASE NO.:
Appeal (crl.) 673 of 1992

PETITIONER:
MITHU SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT: 27/03/2001

BENCH:
R.C. Lahoti & Doraiswamy Raju

JUDGMENT:

R.C. Lahoti, J.
L...I...T.....T.....T.....T.....T.....T.....T..J

Mithu Singh, the accused appellant, and one Bharpur Singh were tried on charge under Section 302/34 I.P.C. for the murder of Gurdial Kaur on 17.8.1985 at Village Bhame Kalan, District Bhatinda. In view of unlicensed pistols having been recovered from each one of them they were also charged under Section 27 of the Arms Act, 1959. On trial the Session Judge, Bhatinda found both the accused persons guilty of the offences charged. Each of them was sentenced to life imprisonment with a fine of Rs.1,000/- under Section 302/34, I.P.C. They were also sentenced to two years rigorous imprisonment each under Section 27 of the Arms Act. Both the accused persons preferred appeals before the High Court of Punjab which have been dismissed. Special leave petitions were filed by both of them before this court. On 19.7.1991 the SLP filed by Bharpur Singh was directed to be dismissed by this court. However, the petition filed by Mithu Singh, the appellant has been entertained and leave granted.

According to the prosecution, Gurdial Kaur, the deceased, is said to have executed a sale deed of a piece of land in favour of late Gurdev Singh, the father of accused Bharpur Singh. Civil litigation for cancellation of the sale deed was pending between Gurdial Kaur and accused Bharpur Singh and his brothers. The enmity so erupted had also resulted in some criminal litigation between the parties. Thus, admittedly, there were strained relations between Bharpur Singh and the deceased, Gurdial Kaur.

On 17.8.1985, at about 2.30 p.m., Gurdial Kaur was sitting on a cot near her house. The two accused persons each armed with a .12 bore pistol came to the house of Gurdial Kaur. They shouted Budhiya Takri Ho Ja. Tu Sanu Bohat Tang Kita Hai (Old lady be strong. You have already

harassed us enough). Bharpur Singh fired a shot with his pistol hitting the deceased on her left flank. She fell down on the cot and died immediately. Mukhtiar Singh, PW.11, who has a house adjoining the house of Gurdial Kaur and one Jagtar Singh saw the incident. They raised an alarm whereupon the two accused persons took to their heels. They were chased by some villagers. On way, they were joined by some police party also. Finding the police and the village people chasing them, the two accused persons turned and started running in directions opposite to each other. However, the party led by Sub Inspector Santokh Singh, PW.12 caught hold of Bharpur Singh. The party led by ASI Gurcharan Singh apprehended Mithu Singh, appellant. From his possession, a pistol, Exhibit P-6 was recovered. Mukhtiar Singh, PW.11, lodged an F.I.R. The usual investigation followed and the accused persons were challaned. In this appeal, we are concerned with the legality or otherwise of the conviction of Mithu Singh, the accused appellant before us, under Section 302/34, I.P.C. and Section 27 of the Arms Act.

The prosecution does not attribute any overt act to the accused appellant Mithu Singh. The totality of the circumstances found against him is that he came to the house with Bharpur Singh, the co-accused, he was also armed with a pistol and after Bharpur Singh fired a single shot which proved to be fatal, both took to their heels. The allegation that Bharpur Singh and Mithu Singh belong to one party faction, is not based on any concrete fact wherefrom such an inference may be drawn by the court and, therefore, does not go beyond being merely a ipse dixit of the witnesses. Therefore, the question arises, whether an inference, as to Mithu Singh having shared a common intention to cause the death of deceased Gurdial Kaur with the co-accused Bharpur Singh, can be drawn?

To substantiate a charge under Section 302 with the aid of Section 34, it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of the both. Common intention has to be distinguished from same or similar intention. It is true that it is difficult, if not impossible, to collect and produce direct evidence in proof of the intention of the accused and mostly an inference as to intention shall have to be drawn from the acts or conduct of the accused or other relevant circumstances, as available. An inference as to common intention shall not be readily drawn; the culpable liability can arise only if such inference can be drawn with a certain degree of assurance. At the worst Mithu Singh, accused appellant, knew that his co-accused Bharpur Singh was armed with a pistol. The knowledge of previous enmity existing between Bharpur Singh and the deceased can also be attributed to Mithu Singh. But there is nothing available on record to draw an inference that the co-accused Bharpur Singh had gone to the house of the deceased with the intention of causing her death and such intention was known to Mithu Singh, much less shared by him. Simply because Mithu Singh was himself armed with a pistol that would not necessarily lead to an inference that he had also reached the house of the deceased or had accompanied the co-accused Bharpur Singh with the intention of causing the death of Gurdial Kaur. In our opinion, an inference as to Mithu Singh accused appellant, having shared with Bharpur Singh a common intention of causing the murder of deceased Gurdial Kaur cannot be drawn.

His conviction under Section 302/34, IPC cannot be sustained and must be set aside.

So far as the offence under Section 27 of Arms Act is concerned, we do not find any reason to doubt the recovery of pistol from his possession when he was apprehended on being chased by the villagers. It is true that ASI Gurcharan Singh has not been examined as he had died before the commencement of trial. However, there is no reason to disbelieve the statement of panch witness Babusingh PW10, who is also a village panch, deposing to the recovery of the pistol from the possession of Mithu Singh. The pistol was fired to scare away the people chasing him to apprehend him. As the pistol is not shown to be licensed, and was also used, his conviction under Section 27 of the Arms Act cannot be found fault with.

The appeal is partly allowed. Conviction of Mithu Singh, the accused appellant, under Section 302/34 IPC is set aside. The amount of fine of Rs.1,000/-, if realised from him, shall be refunded to him. In so far as conviction under Section 27 of the Arms Act and the sentence of two years R.I. is concerned, the same are maintained. The appellant has already served out that sentence. He is on bail. He need not surrender to the bail bonds which shall stand discharged.