

PIPAL SINGH ETC.

A

v.

STATE OF PUNJAB

DECEMBER 12, 2000

[S. RAJENDRA BABU AND D.P. MOHAPATRA, JJ.]

B

*Penal Code, 1860*

*Section 302 r/w Section 34--Conviction under- Acquittal of other accused- Held, even in view of the acquittal conviction by involving Section 34 In the facts of the case justified Conviction cannot be altered to under Section 304 Part II.*

C

*Section 34--Common intention--Determination of -To determine the common intention, the nature of injuries, background of the incident and the nature of weapon used to cause the injuries besides other factors are needed to be considered.*

D

**Appellants along with several others were charged with offence under Section 302/34 and 323/34. Trial Court convicted the appellants along with some others for the offences, while others were acquitted. In appeal, High Court held that the appellants had common intention to cause murder of the deceased and confirmed the conviction on finding that two injuries were caused by the appellants which were fatal in the ordinary course of nature. In appeal to this Court, the appellants contended that they could not be convicted under Section 302 by involving Section 34 in view of acquittal of other accused and that they could be convicted only under Section 304 Part II.**

E

F

**Dismissing the appeals, the Court**

**HELD : 1. Even where some out of several accused are acquitted, it is open to the Court to consider whether remaining accused were guilty of an offence by involving Section 34 IPC by reason of having committed the offence along with others acquitted. With a view to determine the common intention, the nature of injuries, background of the incident and the nature of weapon used to cause the injuries besides other factors are needed to be considered. There is no principle in law which prevents from adopting this course.**

G

[547-C]

H

**A** 2. In view of the evidence alleged against the accused, and the manner in which they have committed the same, it is clear that Section 304 Part II would not arise. [547-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 432 of 1999.

**B**

From the Judgment and Order dated 11.8.97 of the Punjab and Haryana High Court in CrI. A. No. 406 of 1994.

WITH

**C** Criminal Appeal No. 433 of 1999.

K. Sarda Devi for the Appellants.

Ms. Rupinder Wasu and Rajiv Dutta for the Respondent.

**D** The Judgment of the Court was delivered by :

**E** **RAJENDRA BABU, J.** Pipal Singh, appellant in Criminal Appeal No. 432 of 1999 and Mukhtiar Singh, appellant in Criminal Appeal No. 433 of 1999, were accused along with several others for having caused the death of Sardara Ram and injuries to Sukhdev Raj when they were entering their own land. The learned Sessions Judge sentenced the appellants along with certain others to undergo life imprisonment and to pay a fine of Rs. 5000 each or in default of payment of fine to further undergo rigorous imprisonment for one year under Section 302 IPC read with Section 34 IPC for murder and further sentence to undergo rigorous imprisonment for six months for simple hurt under Section 323 IPC read with Section 34 IPC and both the sentences to run concurrently. On appeal the High Court reappraised the evidence adduced before the trial court and came to the conclusion that the appellants had a common cause and had come together duly armed at a place which was in possession of the deceased with the common intention to commit the crime and they left the scene of the occurrence also together with their respective weapons. The High Court recorded the two injuries found on the dead body of the deceased, viz., (i) T-shaped incised wound 15 cms x 2 cms by 10 x 2 cms on right parietal region, underlying bone, scalp and brain were cut, and (ii) incised wound 5 x 1.5 cms, 5 cms behind injury No. 1 and that injury No. (ii) was bone deep and the doctor opined that injuries Nos. (i) and (ii) were fatal in the ordinary course of nature. The evidence put forth before the court was that while Pipal Singh caused the first injury, injury No. 2 was said to

**H**

have been caused by *Mukhtiar Singh*. That evidence had been believed by the High Court. A

The learned counsel for the appellants put forth two contentions, namely, (1) the effect of acquittal of other accused in the case on sentencing accused under Section 302 IPC by involving Section 34 IPC, and (2) as regards the offence stated to have been committed by each of them. B

Even where some out of several accused are acquitted it is open to the court to consider whether remaining accused were guilty of an offence by involving Section 34 IPC by reason of having committed the offence along with others acquitted. With a view to determine the common intention, the nature of injuries, background of the incident and the nature of weapon used to cause the injuries besides other factors are needed to be considered. There is no principle in law which prevents from adopting that course set out above by us. In the circumstances arising in the case the High Court has done the necessary exercise in finding out whether the accused needed to be convicted under Section 302 IPC read with Section 34 IPC. We find no infirmity in the same. C D

So far as the evidence alleged against the accused is concerned and the manner in which they have committed the same, it is clear that Section 304 Part II would not arise as rightly held by the High Court. So neither of the contentions raised by the learned counsel for the appellants can survive close scrutiny and stand rejected. E

The appeals are dismissed.

K.K.T.

Appeals dismissed.

F