Baljinder Singh @ Ladoo vs The State Of Punjab on 25 September, 2024

Author: Dipankar Datta

Bench: Dipankar Datta

NON-REPORTABLE

2024 INSC 738

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1389 OF 2012

BALJINDER SINGH @ LADOO AND OTHERS ...APPELLANT

VERSUS

STATE OF PUNJAB ...RESPONDENT

JUDGMENT

DIPANKAR DATTA, J.

THE APPEAL

1. This is an appeal, by special leave, by 4 (four) appellants. They call in question the judgment and order dated 04th May, 20111 passed by the High Court of Judicature at Punjab and Haryana2 dismissing a criminal appeal3 under section 374(2) of the Code of Criminal Procedure, 19734. Such appeal was preferred by the appellants, arraigned as “A-1”, “A-2”, “A-3” and “A-4” in the trial, and a co-accused (“A-5”). The judgment of conviction and the impugned judgment, hereafter High Court, hereafter Criminal Appeal No. 454-DB of 2001 Cr. PC, hereafter 1 of 16 order of sentence dated 04th August, 2001, passed by the Additional Sessions Judge, Punjab5 in a sessions case6 registered against A-1, A-2, A- 3, A-4 and A-5 was majorly upheld. While A-5 was acquitted, conviction of A-1, A-2, A-3 and A-4 and the sentence imposed upon them were maintained by the High Court. The Trial Court convicted A-4 under sections 148, 302, 307 of the Indian Penal Code7 and section 27 of the Arms Act, while A-1, A-2 and A-3 as well as A-5 were convicted under sections 148, 302, 307 IPC read with section 34 IPC. All the accused were sentenced to life in prison.

2. The appeal was heard in the presence of learned advocates for the parties on 09th May, 2024. It was submitted in course of such hearing that A-4 might have died during pendency of the appeal and that A-1 and A-3 were juveniles as on the date of the offence, i.e., 12th December, 1997. Learned advocate for the respondent - State of Punjab was directed to obtain appropriate instructions. He confirmed on 23rd July, 2024 that A-4 was indeed no more, having breathed his last on 16th February, 2019; hence, it was recorded by an order passed on that date that the appeal at the instance of A-4 stands abated. Insofar as the claim of juvenility raised by A-1 and A-3 is concerned, the same was overruled by an order passed by us on 23rd July, 2024 itself.

BRIEF RESUME OF FACTS

3. The facts, leading to the present appeal, may be summarised as follows:

> Trial Court, hereafter IPC, hereafter 2 of 16
>
> a) The prosecution case was set in motion when P.W.8 - Inspector Gurbhinder Singh/Investigating Officer, SHO, Police Station Sadar, Taran Tarn, upon receiving information on 12th December, 1997 from P.W.2 – Dr. Brij Mohan of the Civil Hospital, Taran Tarn - reached the hospital and recorded the statement of P.W. 3 – victim Puran Singh @ Bhola. P.W.3 recounted that on the morning of 12th December, 1997 around 9:00 AM, he was standing outside his residence near the chowk, when A-1, son of A-4, came riding a scooter from the direction of the gurudwara and bumped into P.W. 3, causing minor injuries to little and the ring fingers of P.W. 3's right hand. In response, P.W. 3 slapped A-1, who in return hurled pejoratives at P.W. 3.

Indignantly, P.W. 3 again slapped A-1. Upon hearing the commotion, P.W. 4 – victim Jit Singh, deceased victim Karam Singh8, deceased victim Laddi9 and P.W. 5 – victim Jagga @Jagjit Singh intervened and separated P.W. 3 and A-1.

b) Within 15 minutes of such altercation, A-1, A-2 and A-3 (all sons of A-4), armed with dangs and sofas, accompanied by A-4 (who wielded a 12 bore double-barrel gun) and A-5 (armed with a dang) assembled on the street and while raising exhortations (lalkaras) attacked P.W. 3, P.W. 4, P.W. 5, and the deceased nos. 1 and 210. A-1, A-2 and A-3 began brick batting and A- 4, with an intention to kill, fired five shots at the victims, resulting in minor injury to P.W. 3 and serious injuries to P.W.4, P.W. 5 and the victims. deceased no.1, hereafter deceased no.2, hereafter victims, hereafter when referred to collectively 3 of 16

c) First Information Report11 was registered on 12th December, 1997 at about 12:45 PM, for the offences under sections 307 and 148, IPC read with section 149, IPC and section 25 and 27 of the Arms Act. Deceased no. 1 breathed his last on 13th December, 1997 and consequently offence under section 302, IPC was added to the said FIR. Deceased no.2 succumbed to the gunshot injury suffered by him on 10th January, 1998.

d) Charges were framed against A-4 under sections 148, 302, IPC [on two (2) counts], sections 307 [on three (3) counts] and 324, IPC; and against A-1, A-2, A-3 and A-5 under sections 148, 302 read with 149 [on two (2) counts], 307 read with 149 [on three (3) counts] and 324 read with 149, IPC.

e) The Trial Court vide judgment and order dated 04th August, 2001, after finding the appellants and A-5 guilty, convicted them for the offences and sentenced them as enumerated in paragraph 1 of this judgment.

f) The outcome of the appeal carried from the aforesaid conviction and sentence has also been noticed above.

SUBMISSIONS

4. The argument advanced by learned counsel for the appellants is primarily directed against what he contended to be an apparent error of judgment in convicting the appellants. According to him, the following points deserve deliberation:

> a) firstly, the High Court did not dwell upon the dissimilitude between common object and common intention, while transmuting appellants' conviction FIR, hereafter 4 of 16 under section 302 IPC read with section 149 IPC to section 302 IPC read with section 34 IPC.

b) secondly, the absence of brick bat injuries on the bodies of the P.W.3, P.W.4, P.W.5 and the victims, substantiate that A-1, A-2 and A-3 were not present at the crime scene.

c) thirdly, in criminal cases, it is the propensity of a human being to undermine his role while exaggerating the role of the assailant.

d) fourthly, Bir Singh, uncle of P.W.3, was inimical towards the appellants as an FIR was registered against his son by the daughter of A-4.

e) fifthly, the case of exceeding the right of private defence can be made against A-4 for firing in retaliation; when he was chased and attacked by victims and no case against the other appellants has been made out. Names of A-1, A-2, and A-3 were included in the FIR with an intention to implicate all the members of the family.

f) sixthly, the genesis of the entire crime, that is the injury caused on the fingers of P.W.3 by the collision between P.W.3 and A-1, was not found on the fingers of P.W.3; hence, deposition by P.W.3, P.W.4 and P.W.5 appears incredulous.

g) finally, no independent witness has been examined, despite the crime scene, as enumerated by prosecution, being adjoined by several shops and residential houses.

5. Learned counsel for the appellants, called into question “the legality of the impugned order”, on merits, by underlining inconsistencies in deposition(s) and has, therefore, prayed for the acquittal of the appellants by setting 5 of 16 aside the judgment of conviction and order of sentence passed by the Trial Court, as affirmed by the High Court.

6. Per contra, learned counsel for the respondent, by denying the grounds taken by appellants in the instant appeal, supported the judgment of conviction and order of sentence passed by the Trial Court, which has been affirmed by the High Court.

ANALYSIS

7. We have heard the parties and considered the evidence led by them before the Trial Court. We have also read the trial and appellate judgment and order.

8. The sole issue that we are tasked to decide is, whether the conviction of A-

1, A-2 and A-3 and the sentence imposed on them warrant interdiction.

9. Prosecution in order to substantiate its case adduced evidence, both ocular and documentary, before the Trial Court. The genesis of the crime is the collision of the scooter driven by A-1 with P.W.3, whereupon P.W.3 slapped A-1 followed by abuses hurled at P.W. 3 by A-1 and retaliation of P.W.3 by again slapping A-1. A-1 was 18 years of age while P.W. 3 was double his age. An elderly man slapping a young boy was considered credible by the High Court. This incident was witnessed by P.W.3, P.W.4, P.W.5 and the victims, who were already present on the spot; and, this has been proved by the unanimous and coherent ocular versions, as narrated by P.W.3, P.W.4 and P.W.5 in their depositions.

10. The learned counsel for the appellants, however, questioned the integrity of the genesis of the case by highlighting the absence of any reference to a 6 of 16 finger injury in the medical records of P.W.3. Additionally, the learned counsel for the appellants contended that during cross-examination, P.W.4 and P.W.5 had testified that blood was oozing from P.W.3's fingers. This argument aimed to challenge the reliability of the ocular testimonies of P.W.3, P.W.4, and P.W.5.

11. In the context of the case, it is pertinent to emphasize that the incident involving A-1’s scooter bumping into P.W.3, and the subsequent altercation in which P.W.3 slapped A-1, is of greater significance for establishing motive than the minor finger injury sustained by P.W.3. This sequence of events has been unequivocally testified to by P.W.3, P.W.4, and P.W.5. Furthermore, P.W.3 has testified that the injury to the finger was minor, which may account for the absence of any mention of this injury in P.W.3’s medical records.

12. Also, it is worth indicating that P.W.3, P.W.4, and P.W.5 are “injured witnesses” or “injured eye-witnesses” in this case. The sworn testimonies provided by injured witnesses generally carry significant evidentiary weight. Such testimonies cannot be dismissed as unreliable unless there are pellucid and substantial discrepancies or contradictions that undermine their credibility. If there is

any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded; however, it does not warrant the rejection of the entire evidence. Therefore, the suspicion raised by the appellants regarding the genesis of the case is rendered unfounded.

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13. The abovementioned conclusion stands fortified with reference to paragraph 26 of the decision of this Court in Balu Sudam Khalde and Anr. vs. State of Maharashtra12. The relevant passage is reproduced as under:

> "26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:
>
> (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
>
> (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
>
> (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
>
> (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
>
> (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.
>
> (f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded." (emphasis supplied)
>
> 14. Furthermore, A-1 returned to the street within 15 minutes, accompanied by A-2, A-3, and A-4, all armed with various weapons, viz. a 12 bore double-

barrel gun, dangs, and lathis. They launched an attack on the victims, wherein A-1, A-2, A-3 threw brick bats and A-4 opened fire at the victims. This account is corroborated by testimonies of P.W.3, P.W.4 and P.W.5, which also stood the test of cross-examination and no glaring discrepancies can be found. P.W.8 (I.O.) deposed that three (3) empties of 12 (twelve) bore double barrel gun were recovered from the crime spot, and the gun was 2023 SCC OnLine SC 355 8 of 16 recovered with 2 (two) live cartridges after the disclosure statement was made by A-4. Additionally, the serious/fatal

injuries sustained by the victims have been substantiated by medico-legal evidence provided by witnesses from the medical field, who have also testified under oath. The severe nature of the attack by A-4, assisted by A-1, A-2 and A-3, inflicting serious/fatal injuries upon the victims leads to the inference that the appellants came with an intention to kill in retaliation of a previous altercation. Hence, the prosecution version is indeed reliable.

15. Per contra, the learned counsel for the appellants contended that A-4 was alone at the time of the alleged offence. He asserted that A-4 used to read sehra in weddings and en route to the Sarpanch's son's wedding, where he was supposed to read sehra, he was ridiculed by P.W.3, P.W.4, P.W.5, and the victims for carrying what they claimed was a dummy gun. In response to the mockery, A-4 verbally retorted, which led to an attack on him with brickbats. According to the appellants, A-4 fired in self-defence during this confrontation. They further claim that A-4, along with A-1, A-2, and A-3, have been falsely implicated in this case as retaliation for an FIR filed by A- 4's daughter against the son of Bir Singh, who is the uncle of P.W.1. However, P.W1, P.W.2 and P.W.3 in unison have deposed that they were oblivious of the case registered against the son of Bir Singh by the daughter of A-4.

16. While the depositions of D.W.1 and P.W.5 establish that A-4's daughter filed an FIR against the son of Bir Singh and that A-4 was known for reading sehra at weddings, the burden of proving an assertion that A-4 was on his way to the Sarpanch's son's wedding lay upon A-4, which would have been 9 of 16 more credibly substantiated by the testimony of the Sarpanch himself, as rightly noted in the High Court's judgment. In the absence of testimonies from the Sarpanch and the daughter of A-4, the appellants' claim of being falsely implicated remains unsubstantiated and, therefore, deemed unreliable.

17. Regarding the question of common intention, capable of being formed within 15 minutes', profitable reference may be made to paragraph 26 of the decision of this Court in Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka13. Paragraph 26 being relevant is quoted hereunder:

> "26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co- perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-

> assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as (2022) 7 SCC 521 10 of 16 the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts.

Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants." (emphasis supplied)

18. Section 34, IPC underlines that when a criminal act is done by two or more persons in furtherance of common intention, each of them is liable for the act done as if it were done by him alone.

19. We are of the view that there cannot be a fixed timeframe for formation of common intention. It is not essential for the perpetrators to have had prior meetings to conspire or make preparations for the crime. Common intention to commit murder can arise even moments before the commission of the act. Since common intention is a mental state of the perpetrators, it is inherently challenging to substantiate directly. Instead, it can be inferred from the conduct of the perpetrators immediately before, during, and after the commission of the act.

20. In the present case, the appellants, who are related by blood, arrived at the crime scene armed with a 12 bore double-barrel gun, dangs, and lathis within 15 minutes of the initial altercation, and subsequently attacked P.W.3, P.W.4, P.W.5, and the victims. During this attack, A-4, the father of A-1, raged by the incident of P.W.3 slapping his adult son A-1 and the pursuant altercation, fired with his gun at P.W.3, P.W.4, P.W.5 and the victims. Thereafter, all the appellants fled together carrying their weapons. In view of such conduct of the appellants as mentioned above and in the light of interpretation of Section 34, IPC in Krishnamurthy alias Gunodu (supra), it is evident that the appellants acted with a common intention to kill, seeking to avenge the slapping incident.

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21. Be that as it may, the determination of common intention or common object should primarily be within the domain of the trial courts, and at the most the high courts. It should not be the role of this Court to directly adjudicate issues of common intention and common object. This Court has, in a catena of decisions, elaborated on the differences between section 149 and section 34, IPC; the overlapping nature of section 149 and section 34, IPC; and when can the offence under section 302 read with section 149, IPC be changed to section 302 read with section 34, IPC. Such decisions do provide suitable guidance for the lower courts to draw from, to reach their conclusions.

22. In this connection, we may refer to paragraph 14 of the decision of this Court in Chittarmal vs. State of Rajasthan14. The relevant excerpt from such decision reads:

> "14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus, they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be (2003) 2 SCC 266 12 of 16 permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. [See Barendra Kumar Ghosh v.

King Emperor, AIR 1925 PC 1, Mannam Venkatadari v. State of A.P., (1971) 3 SCC 254, Nethala Pothuraju v. State of □□, (1992) 1 SCC 49, Ram Tahal v. State of U.P., (1972) 1 SCC 136]." (emphasis supplied)

23. In paragraph 17 of the decision of this Court in Chandra Pratap Singh vs. State of M.P.15, while dealing with conversion of charge from section 302 read with section 149, IPC to section 302 read with section 34 thereof, the above passage has been quoted with approval.

24. It would be relevant at this juncture to consider section 464 of the Cr. PC.

On its plain terms, sub-section (1) of section 464 clearly indicates that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in an appeal, confirmation or revision, a claim of "failure of justice" has been substantiated.

25. Law is well-settled that in order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for

which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. (2023) 10 SCC 181 13 of 16 Reference in this connection may be made to the decision in Dalbir Singh vs. State of Uttar Pradesh16.

26. Also, it is beyond any cavil of doubt that the burden to show that in fact a failure of justice has been occasioned is on the accused. The decision in State of Uttar Pradesh vs. Paras Nath Singh17 can profitably be referred to in this regard.

27. We have no hesitation to hold that based on the above parameters, the appellants have fairly and squarely failed in their pursuit to demonstrate any failure of justice, which would impel us to exercise power of the nature contemplated in sub-section (2) of section 464, Cr. PC. We, therefore, see no reason to uphold the contention advanced on behalf of the appellants to the contrary.

28. Next, in order to impeach the oral evidence of P.W.3, P.W.4 and P.W.5, the appellants asserted that there is no testimony of any independent witness, despite the place of crime as per the case of prosecution being surrounded by shops and residential houses.

29. It is also settled law that examination of independent witness is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court, unless other witnesses' testimonies and evidences are scant to establish the guilt of the accused. Reference is made to paragraph 24 of the (2004) 5 SCC 334 (2009) 6 SCC 372 14 of 16 decision of this court in Guru Dutt Pathak vs. State of U.P.18, where it was ruled as follows:

> "24. One another ground given by the learned trial court while acquitting the accused was that no independent witness has been examined. The High Court has rightly observed that where there is clinching evidence of eyewitnesses, mere non-examination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution. 24.1. In Manjit Singh vs. State of Punjab19, it is observed and held by this Court that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.
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> 24.2. In the recent decision in Surinder Kumar vs. State of Punjab20, it is observed and held by this Court that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated.
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> 24.3. In Rizwan Khan vs. State of Chhattisgarh21, after referring to the decision of this Court in State of H.P. vs. Pardeep Kumar22, it is observed and held by this Court that the examination of the independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case." (emphasis supplied)

30. It has been rightly pointed out by the Trial Court that the prosecution's case is not that people from the surrounding locality gathered at the time of the incident. In the light of the aforenoted decisions of this Court and upon careful examination of the testimonies of P.W.3, P.W.4, and P.W.5, along with the relevant other evidence on record, the prosecution's case cannot be dismissed solely on the ground of the absence of independent witness.

(2021) 6 SCC 116 (2019) 8 SCC 529 (2020) 2 SCC 563 (2020) 9 SCC 627 (2018) 13 SCC 808 15 of 16

31. Having regard to the foregoing discussion, the High Court's decision finding A-1, A-2, and A-3 guilty of offences under sections 148, 302, and 307, IPC read with section 34 thereof is affirmed as correct and upheld.

32. The sole issue is, thus, answered in the negative. CONCLUSION

33. The appeal is bereft of any merit and, therefore, stands dismissed.

..... J.

(DIPANKAR DATTA) ..... J.

(AUGUSTINE GEORGE MASIH) NEW DELHI;

SEPTEMBER 25, 2024.

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