

THE STATE OF RAJASTHAN

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v.

GURBACHAN SINGH & OTHERS

(Criminal Appeal No. 2201 of 2011)

DECEMBER 07, 2022

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[SANJIV KHANNA AND SUDHANSU DHULIA, JJ.]

Penal Code, 1860 – Murder – Common intention – Dispute w.r.t partition of land– Victim was beaten resulting in his death, PW1 (his brother) also suffered injuries – Respondent convicted along with 5 others – Respondent's appeal partly allowed by High Court, holding that he did not share common intention to cause death of deceased as he only inflicted wounds on his feet with a 'lathi', was directed to be released having suffered the maximum punishment provided for the offence – Conviction of other 3 co-convicts ('DS', 'BS', 'MS'), not challenged herein – Two others ('MK', 'JK') were acquitted, acquittal w.r.t 'MK' has become final – Held: Challenge to the acquittal of 'JK' dismissed – In case of respondent, common intention to inflict injuries and cause the death of deceased can be gathered from his action – PW-1 and his wife-PW-2 saw the deceased coming from a flour mill which was near the Gurudwara when they were going to the Gurudwara in the village – Respondent and the co-convicts accosted the deceased – Respondent had come with 'lathi', while others were seen with an axe, toka and gandasi – They surrounded the deceased – Respondent then struck the feet of the deceased with 'lathi', who fell-down – Thereupon, respondent and the co-convicts had beaten and inflicted injuries and wounds to deceased – Respondent shared common intention to cause injuries with other co-convicts – Crime was committed in furtherance of common intention leading to the death of deceased – Therefore, all of them, including respondent, would be responsible for offence u/s.302, irrespective of the part played by them – Impugned judgment acquitting respondent u/s.302 set aside – Convicted u/s.302 r/w s.34 – Conviction u/s.324 for injuries inflicted on PW-1, maintained – Conviction u/s.149 r/w s.148 not sustainable – Respondent to surrender – Code of Criminal Procedure, 1973 – s.428.

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A *Penal Code, 1860 – s.34 – Application of – Discussed.*

- Penal Code, 1860– s.34 – Common intention – Evidence–Held: Common intention can be formed at the spur of the moment and during the occurrence itself – It is a psychological fact and as such, direct evidence normally will not be available – In most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved – Constructive intention can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention.*

C **Allowing the appeal, the Court**

- HELD:** Challenge to the acquittal of ‘JK’ is dismissed. Respondent was present at the place of the occurrence with ‘BS’, ‘MS’, and ‘DS’ when the violence took place, which resulted in death of deceased. PW-1, the brother of Teja Singh, along with his wife-PW-2, who were going to the Gurudwara in the village, had seen deceased coming from the flour mill, which was near the Gurudwara. Respondent, ‘DS’, ‘BS’, ‘MS’ had then accosted deceased. PW-1 and PW-2 deposed that deceased had come with a ‘lathi’, whereas ‘DS’ were seen with an axe, ‘BS’ with a ‘toka’ and ‘MS’ with a ‘gandas’. They had surrounded deceased. Respondent had then struck the feet of deceased with ‘lathi’, who then fell-down. Thereupon, respondent and the co-convicts had beaten and inflicted injuries and wounds to deceased. ‘BS’ in particular had used a ‘toka’, a sharp-edged weapon, to inflict incised wounds on the head of deceased. The motive and cause was the land dispute between the brothers, and the occurrence at 5 P.M on 06.11.2000, when deceased had objected to respondent and ‘BS’ ploughing the plot of the water works department, and the village meeting where tempers got flared with respondent and ‘BS’ leaving the meeting in anger. Section 34 of the IPC i.e., common intention, is attracted in the case of respondent, whose case cannot be distinguished, so as to exclude him as one who did not share common intention with ‘DS’, ‘BS’, and ‘MS’. Section 34 of the IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 of the IPC to apply, there should be common intention among the co-perpetrators, which means that

there should be community of purpose and common design. Common intention can be formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention. Common intention to inflict injuries and cause the death of deceased, can be gathered from the conduct and action of respondent. First, the impugned judgment read with the depositions of PW-1 and PW-2, that respondent had come prepared with 'lathi' along with others who had carried 'toka', axe and 'gandasi'. This is corroborated by the fact that blood-smeared 'lathi' was recovered from the possession of respondent. The evidence establishes the participation of respondent, in commission of the offence with co-participants/co-convicts. Secondly, respondent was the first one to attack and inflict injury on deceased, by hitting him on the feet with a 'lathi', who had then fallen down. Lastly, respondent along with co-convicts, had inflicted 8 incised wounds on head and other injuries on vital and other parts on the person of deceased, as recorded in the post-mortem report (Ex.P.14). The statement of eye witnesses clearly reveal that respondent did not give just one 'lathi' blow, but he continued to give 'lathi' blows to the deceased, even when he fell down. This he did along with the other co-convicts, 'BS', 'MS' and 'DS', who had inflicted injuries with 'toka', axe and 'gandasi'. Respondent had shared the common intention to cause injuries with other co-convicts, and the crime was committed in furtherance of the common intention, which led to the death of deceased. Therefore, all of them, including respondent, would be responsible for the criminal act i.e., the offence under Section 302 of the IPC, irrespective of the part played by them. The impugned judgment passed by the High Court acquitting respondent under Section 302 of the IPC is set aside, and he is convicted for murder of deceased under Section 302 read with Section 34 IPC. Respondent's conviction under Section 324 of the IPC for the injuries inflicted on PW-1 is also maintained. The

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- A **order of sentence passed by the trial court imposing punishment of life imprisonment on respondent, for the offence under Section 302 of the IPC is restored *albeit* read with Section 34 of the IPC, along with a fine of Rs. 1,000/-.** In case of non-payment, he would undergo sentence of simple imprisonment for two months. Benefit of Section 428 of the CrPC, 1973 will be given. However, the conviction under Section 149 read with Section 148 of the IPC cannot be sustained as the requirement of unlawful assembly to attract these provisions of the IPC, is not satisfied. Respondent will surrender. [Paras 1, 9, 11-14][76-G; 79-D-G; 80-B-H; 81-A-F]
- B **conviction under Section 149 read with Section 148 of the IPC cannot be sustained as the requirement of unlawful assembly to attract these provisions of the IPC, is not satisfied. Respondent will surrender. [Paras 1, 9, 11-14][76-G; 79-D-G; 80-B-H; 81-A-F]**
- C CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2201 of 2011.

- D From the Judgment and Order dated 04.04.2008 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 880 of 2001.
- E Dr. Manish Singhvi, Sr. Adv., Arpit Prakash, Vikalp Sharma, Milind Kumar, Advs. for the Appellant.
Shailesh Madiyal, Ms. Asha Upadhyay, Anantha Narayana M. G, Vinayaka Pandit, Tarun Gulia, Sushant Bajaj, Siddharth Relan, M. L. E Gopalakrishna, Venkata Krishna Kunduru, Rajan Parmar, Advs. for the Respondents.

The Judgment of the Court was delivered by

SANJIV KHANNA, J.

- F By the order dated 01.05.2009, notice in the special leave petition was confined to the first respondent - Gurbachan Singh. The special leave petition against other respondents was dismissed. Our attention is drawn to the order dated 17.12.2008, whereby Criminal Miscellaneous Petition No. 19754/2008 preferred against the acquittal of Manjeet Kaur, stands dismissed. The case and evidence relied by the prosecution against G Manjeet Kaur and Jangir Kaur is identical. We are of the opinion and reiterate that the prosecution has not been able to establish its case against Jangir Kaur. Challenge to the acquittal of Jangir Kaur is dismissed.
- H 2. The prosecution's case as per the charge sheet is that Teja Singh along with his brother Harbhajan Singh (PW-1) on one side, and

Gurbachan Singh along with the co-convicts and brothers Darshan Singh, Balvir Singh, and Manjeet Singh, on the other side were embroiled in a dispute regarding partition of land. On 06.11.2000 at about 5 P.M., Gurbachan Singh and Balvir Singh were ploughing the plot which belonged to water works department. Teja Singh had objected to this, post which, a village meeting was held, in which both Gurbachan Singh and Balvir Singh had left for their home in anger. At about 7:30 P.M. on the same day, Harbhajan Singh (PW-1), and Jasveer Kaur (PW-2) were going to the Gurudwara in the village. At that time, Teja Singh was seen coming from the flour mill of Sohan Lal, which was near the Gurudwara. Thereupon, Gurbachan Singh and Balvir Singh, Manjeet Singh, and Darshan Singh, who had come armed with ‘lathi’, ‘toka’, axe, and ‘gandasi’ respectively, had beaten and inflicted injuries on Teja Singh, which resulted in his death on the spot. Harbhajan Singh (PW-1) had also suffered injuries in the incident.

3. First Information Report¹ was filed on the same day, mentions the names of Gurbachan Singh, Darshan Singh, Balvir Singh and Manjit Singh, and also the names of Jangir Kaur and Manjeet Kaur, who were statedly present at the place of occurrence. However, as per the FIR, no specific acts, verbal or physical in nature, were attributed to Jangir Kaur and Manjeet Kaur.

4. The trial court, vide judgment dated 07.11.2001 had tried and convicted Gurbachan Singh along with others namely, Balvir Singh, Manjeet Singh, Darshan Singh, and Jangir Kaur under the following provisions of the Indian Penal Code, 1860²:

- (a) Section 302 read with Section 149 of the IPC- Life imprisonment and fine of Rs. 1000/- each, with default stipulation of 2 months simple imprisonment;
- (b) Section 324 read with Section 149 of the IPC- One and half years’ rigorous imprisonment and fine of Rs.500/- each, with default stipulation of one-month simple imprisonment;
- (c) Section 323 read with Section 149 of the IPC- 3 months rigorous imprisonment and fine of Rs. 100, with default stipulation of 7 days simple imprisonment; and

¹ For short, “FIR”

² For short, “IPC”.

- A (d) Section 148 of the IPC - one year rigorous imprisonment and fine of Rs.100/- each, with default stipulation of 7 days simple imprisonment.

Manjeet Kaur was tried separately in the year 2004, as she had absconded. She was convicted by the trial court, which conviction was set aside by the High Court. The judgment of acquittal in her case has become final.

5. On appeal preferred by Gurbachan Singh, Balvir Singh, Manjeet Singh, Darshan Singh, and Jangir Kaur, the Division Bench of High Court of Judicature for Rajasthan at Jodhpur, vide judgment dated 04.04.2008, allowed the appeal filed by Jangir Kaur and has acquitted her. The appeal of Gurbachan Singh was partly allowed as his conviction under Section 302 read with 149, Section 147, Section 148, Section 324 read with 149, and Section 323 read with 149 of the IPC was set aside, and he has been convicted under Section 323 of the IPC for the injuries caused to Teja Singh, and was directed to be released, as he had suffered the maximum punishment provided for the offence. Conviction of Balvir Singh, Manjeet Singh and Darshan Singh under Sections 149 and 148 of the IPC was set aside, albeit, their conviction under Section 302 was maintained with the aid of Section 34 of the IPC. Their conviction and sentence under Section 324 read with Section 34 of the IPC for injuries caused to Harbhajan Singh (PW-1) was maintained.

6. It appears that Balvir Singh, Manjeet Singh, and Darshan Singh have not challenged their conviction and sentence imposed, which has attained finality.

7. As such, the question before us, in this appeal by the State of Rajasthan is whether the High Court was justified in setting aside the conviction and sentence awarded to Gurbachan Singh under Section 302 read with other provisions of the IPC, by convicting him only under Section 323 of the IPC, in view of the finding that he did not share common intention with Balvir Singh, Manjeet Singh, and Darshan Singh to cause the death of Teja Singh, as he only inflicted wounds on his feet with a 'lathi'.

8. Pertinently, the High Court while partly accepting the appeal preferred by Gurbachan Singh, has held as under:

- H "Now the question remains about accused Gurbachan who as per ocular testimony was armed with 'lathi' and the same was

recovered also. After he gave an information through Ex. P/41 and the same was covered through Ex.P/23 and the same was also smeared with human blood. Harbhajan Singh himself is injured whose injury report Ex. P/15 was prepared by Dr. Mohan Lal Gupta. As per injury report he has received as many as eight injuries on his person, out of which one is from sharp edged weapon and as per statement of Harbhajan Singh said injury was inflicted by accused Balvir Singh with ‘toka’, when he reached on the spot to save his brother. Gurbachan Singh gave ‘lathi’ blows on his person. From the testimony of ocular witnesses it can safely be inferred that accused Gurbachan Singh was not sharing the common intention as he was armed only with ‘lathi’ and whatever injuries on the person of the deceased which were given on vital part of the body of the deceased.”

9. The aforesaid reasoning, accepts and in our opinion rightly that Gurbachan Singh was present at the place of the occurrence with Balvir Singh, Manjeet Singh, and Darshan Singh when the violence took place, which resulted in death of Teja Singh on 06.11.2000 at about 7:30 P.M. Harbhajan Singh (PW-1), the brother of Teja Singh, along with his wife, Jasveer Kaur (PW-2), who were going to the Gurudwara in the village, had seen Teja Singh coming from the flour mill of Sohan Lal, which was near the Gurudwara. Gurbachan Singh, Darshan Singh, Balvir Singh, and Manjit Singh had then accosted Teja Singh. Harbhajan Singh (PW-1) and his wife Jasveer Kaur (PW-2) have deposed that Gurbachan Singh had come with a ‘lathi’, whereas Darshan Singh were seen with an axe, Balvir Singh with a ‘toka’ and Manjeet Singh with a ‘gandasi’. They had surrounded Teja Singh. Gurbachan Singh had then struck the feet of Teja Singh with ‘lathi’, who then fell-down. Thereupon, Gurbachan Singh and the co-convicts had beaten and inflicted injuries and wounds to Teja Singh. Balvir Singh in particular had used a ‘toka’, a sharp-edged weapon, to inflict incised wounds on the head of Teja Singh. The motive and cause was the land dispute between the brothers, and the occurrence at 5 P.M on 06.11.2000, when Teja Singh had objected to Gurbachan Singh and Balvir Singh ploughing the plot of the water works department, and the village meeting where tempers got flared with Gurbachan Singh and Balvir Singh leaving the meeting in anger. It is pertinent that Harbhajan Singh (PW-1) was also injured during the violence.

10. The post-mortem report marked as exhibit P-14 proved by Dr. Mohan Lal Gupta, (PW-9) had referred to 8 bone-deep injuries of

- A different sizes on the head of Teja Singh. He had also deposed that these injuries could have been caused by sharp- edged weapons such as axe, ‘toka’, ‘gandasi’, ‘lathi’, and, etc., which were sufficient to cause death in ordinary course.

11. Given the aforesaid position, we are of the view that Section 34 of the IPC i.e., common intention, is clearly attracted in the case of Gurbachan Singh, whose case cannot be distinguished, so as to exclude him as one who did not share common intention with Darshan Singh, Balvir Singh, and Manjit Singh. Section 34 of the IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 of the IPC to apply, there should be common intention among the co-perpetrators, which means that there should be community of purpose and common design. Common intention can be formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention, can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention.
12. The impugned judgment observes that common intention cannot be inferred from the conduct of Gurbachan Singh, as he was only armed with ‘lathi’ and had struck only on the feet of Teja Singh. However, we are of the opinion that common intention to inflict injuries and cause the death of Teja Singh, can be gathered from the conduct and action of Gurbachan Singh. First, it is deductible from the quoted paragraph of the impugned judgment read with the depositions of Harbhajan Singh (PW-1) and Jasveer Kaur (PW-2), that Gurbachan Singh had come prepared with ‘lathi’ along with others who had carried ‘toka’, axe and ‘gandasi’. This is corroborated by the fact that blood-smeared ‘lathi’ was recovered from the possession of Gurbachan Singh. The evidence establishes the participation of Gurbachan Singh, in commission of the offence with co-participants/co-convicts. Secondly, Gurbachan Singh, was the first one to attack and inflict injury on Teja Singh, by hitting him on the feet with a ‘lathi’, who had then fallen down. Lastly, Gurbachan Singh along with co-convicts, had inflicted 8 incised wounds on head and other injuries on vital and other parts on the person of Teja Singh, as

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recorded in the post-mortem report (Ex.P.14). The statement of eye witnesses clearly reveal that Gurbachan Singh did not give just one 'lathi' blow, as it is being said by the defence, but he continued to give 'lathi' blows to the deceased, even when he fell down. This he did along with the other co-convicts, Balvir Singh, Manjeet Singh and Darshan Singh, who had inflicted injuries with 'toka', axe and 'gandasi'. These facts establish that Gurbachan Singh had shared the common intention to cause injuries with other co-convicts, and the crime was committed in furtherance of the common intention, which led to the death of Teja Singh. Therefore, all of them, including Gurbachan Singh, would be responsible for the criminal act i.e., the offence under Section 302 of the IPC, irrespective of the part played by them.

13. Recording the aforesaid, we set aside the impugned judgment passed by the High Court acquitting Gurbachan Singh under Section 302 of the IPC, and he is convicted for murder of Teja Singh under Section 302 read with Section 34 IPC. Gurbachan Singh's conviction under Section 324 of the IPC for the injuries inflicted on Harbhajan Singh (PW-1) is also maintained. We restore the order of sentence passed by the trial court imposing punishment of life imprisonment on Gurbachan Singh, for the offence under Section 302 of the IPC albeit read with Section 34 of the IPC, along with a fine of Rs. 1,000/-, with the stipulation that in case of non-payment, he would undergo sentence of simple imprisonment for a period of two months. Benefit of Section 428 of the Code of Criminal Procedure, 1973 will be given. We, however, accept the view taken by the High Court that the conviction under Section 149 read with Section 148 of the IPC cannot be sustained as the requirement of unlawful assembly to attract these provisions of the IPC, is not satisfied.

14. Gurbachan Singh will surrender within 21 days to undergo the remaining sentence. In case, Gurbachan Singh does not surrender within the said period, the authorities/court will take action in accordance with law to detain Gurbachan Singh, so as to undergo remaining sentence.

15. The appeal is allowed in the aforesaid terms.

16. Pending application(s), if any, shall stand disposed of.