
(2011) 06 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 720-DB of 2002

Joginder @ Gholu @ Neelu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 207, 302, 34

Citation : (2011) 06 P&H CK 0001

Hon'ble Judges : M.M. Kumar, J;Gurdev Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—The Appellant/accused, Joginder @ Gollu @ Neelu, having been convicted for the offence u/s 302 read with Section 34 of the Indian Penal Code and sentenced to life imprisonment and to pay a fine of Rs. 1,000/-and in default thereof to further undergo rigorous imprisonment for a period six months, has preferred the present appeal for setting aside that conviction and sentence. The complainant/Petitioner, Vedpal Singh, has filed above referred revision for enhancing that fine and for awarding the compensation.

2. The prosecution case, in brief, is that on 25.10.1995 Krishan deceased came to Ved Pal Kadyan complainant PW-6 at his house and disclosed that on that very day he was going to the Gym situated on the backside of NFL, Panipat, when his motor-cycle slightly struck in Narender Verma accused and that under the fear that he would be beaten by that Narender Verma, who is badmash type of boy and two of his companions were standing with him, escaped from that place. He also showed his apprehension that those boys would certainly beat him. On hearing that story of the deceased the complainant thought it fit to talk to Narender Verma and his father, who were already known to him. Thereafter, he accompanied by the deceased and Mahabir PW7 came to NFL Panipat, on the motorcycle. When at about 8.00 PM they reached near the shopping center of

NFL they found Narender Verma and two other boys standing at that place. He stopped the motorcycle at some distance and was told by the deceased that the boys standing with Narender Verma were the same who were present with him at the time of accident. All the three accused came towards them. The companions of Narender Verma told him that the deceased was the same person who escaped from the spot after the accident and that he be taught a lesson. Thereafter, Narender Verma took out a pistol from his pocket and fired at the deceased and the shot so fired hit his face, as a result of which he fell down. The complainant and Mahabir tried to catch hold of the accused, but they managed to escape from that place. As a result of the fire arm injuries so received by the deceased, he died at the spot itself. After leaving Mahabir to guard the dead body, the complainant went to the police station and lodged the FIR Ex.PJ. Badan SI PW9 accompanied by other police officials came to the place of occurrence and after inspecting the same prepared the rough site plan Ex. PM with correct marginal notes. The photographs of the dead body of the deceased Ex.P/1 and Ex.P/2 were taken by Ramesh Chander Head Constable PW1. The SI prepared the inquest report Ex.PF/2 in respect of the dead body and sent the same to the hospital for post mortem examination. He collected the blood stained earth from the spot which was converted into a parcel and was sealed with his seal "BS". The sealed parcel was taken into possession vide memo Ex.PN. Pair of chappals of the deceased was also recovered from the spot which was converted into sealed parcel and that parcel was taken into possession vide memo Ex.PQ. The autopsy on the dead body of the deceased was performed by Dr. K.L. Chopra PW3, who found ante mortem injuries on the same and gave his opinion that the cause of death was due to injury to the brain, which was sufficient to cause the death in the ordinary course of nature. During the post-mortem examination, one bullet was recovered from the dead body, which was converted into a sealed parcel. That sealed parcel and the wearing apparels found on the dead body were handed over to the police. Those wearing apparels were also converted into a sealed parcel. The SI after coming back to the police station deposited the case property with the MHC. On 21.11.1995, he was present in the bus stand of Falheri where he received secret information about the present Appellant/accused. On the receipt of that information he went to his house and arrested him. He asked the accused to muffle his face as he was to join the test identification parade. On 22.11.1995, application Ex.PK was moved before the Judicial Magistrate for issuing direction to the accused to join the test identification parade, but he refused to do so. The sealed parcels containing the blood stained earth, pair of chappals, wearing apparels of the deceased and the bullet were sent to FSL. After examination it was reported by the Senior Scientific Officer of that laboratory vide his reports Ex.PG and PG/1 that the same were stained with human blood. It was reported by the Deputy Director of that laboratory, vide his report Ex.PG/2, that one of the sealed parcel contained the bullet which had been fired from 7.65mm Calibre fire arm. During the course of investigation statements of the witnesses were recorded u/s 161 Code of Criminal Procedure The map on scale Ex.PH of the place from the recovery was

got prepared from Ramesh Chander draftsman PW4. Narender Verma and Varinder Verma-accused could not be arrested and they were declared as proclaimed offenders. After the completion of investigation, the challan was put in before Judicial Magistrate, who committed the same to the Court of Session as the offence u/s 302 was exclusively triable by that Court.

3. While complying with the provisions of Section 207, copies of the documents relied upon by the prosecution and sent along with the police report were supplied to the accused. From the perusal of those documents and after hearing P.P for the State and the accused, the learned trial Court found sufficient grounds for presuming that he committed offence punishable u/s 302 read with Section 34 IPC. He was charged accordingly, to which he pleaded not guilty and claimed trial.

4. To prove the guilt of the accused, the prosecution examined Head Constable Ramesh Chander PW1, Kuldeep photographer PW2, Dr. K.L. Chopra PW3, Ramesh Kumar Draftsman PW4, Sh.R.C. Godara PW5, Ved Pal Kadyan PW6, Mahabir PW7, Ashok Kumar PW8 and Badan Singh Inspector PW9.

5. After the close of the prosecution evidence the accused was examined by the trial Court and his statement was recorded u/s 313 Code of Criminal Procedure All the incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his innocence and false implication. He stated that he had no link with Narender Verma and Varinder Verma. He was called upon to enter on his defence. He examined Jain Singh Sub Inspector Crime and Intelligence DW1, Sh. Ashok Kumar DW2, Ved Parkash DW3 and Rattan Singh DW4 in his defence evidence.

We have heard learned Counsel for both the sides.

6. According to learned Counsel for the Appellant/accused the conviction and sentence so recorded by the trial Court cannot be sustained. The alleged eye-witnesses are related to the deceased and as such are interested witnesses. There is no corroboration to their statements by some independent witnesses, though according to the prosecution the occurrence took place in full public view. It cannot be held that the identification of the accused stands established. He was not named in the FIR and it is very much doubtful whether he was named as such by Mahabir PW7 during the investigation. He also tried to assert that the accused could not have been convicted by invoking Section 34 IPC as from the evidence produced by the prosecution, even if believed to be true, it does not stands established that he was sharing a common intention with Narender Verma to cause the death of the deceased as he never asked that accused to commit his murder and had only told him to teach a lesson and as such the common intention, if any, shared by him with that accused was that of thrashing the deceased and not to cause his death. Therefore, he could not have been convicted for the offence u/s 302 IPC with the help of Section 34 IPC.

7. On the other hand, it is the contention of the learned State counsel that there is no bar under the law to record the conviction on the basis of the statements of the related witnesses. Moreover, the statements of Ved Pal Kadyan PW6 and Mahabir PW7 are corroborated by the statement of Ashok Kumar PW8, who saw the accused running away from the spot. The ocular evidence so furnished by these witnesses has been fully corroborated by the medical evidence. Though the present Appellant/accused was not named by the complainant in the FIR yet he was duly named by Mahabir PW7, whose statement was recorded u/s 161 Cr.P.C, immediately after the recording of the FIR. He was duly identified by both these witnesses in the Court and there is nothing in their statement to disbelieve them. His identification duly stands established from the evidence produced by the prosecution. From the series of events proved on the record, it can easily be inferred that the Appellant/accused was sharing a common intention with Narender Verma to cause the death of the deceased. He was with the other accused when the motorcycle was struck by the deceased in Narender Verma and continued to be with him till the occurrence and from the circumstances his having knowledge that Narender Verma was having a pistol with him is to be inferred.

8. The prosecution story in the Court was unfolded by Ved Pal Kadyan complainant PW6. He deposed about all the facts which constitute the prosecution version and are detailed in para No. 2 of this judgment. He stated that on 25.10.1995, he was present in village Siwah when his cousin Krishan deceased came to him and disclosed that his motorcycle was struck in Narender Verma and that he was apprehending danger at the hands of that Narender Verma and two of his companions, who were present with him at that time. Narinder Verma was known to him and he asked the deceased that he would have talk with that accused and his father to settle the dispute. At about 8.00 PM, he along with the deceased and Mahabir went to the shopping center of NFL on the motorcycle and found Narender Verma along with two boys, standing in front of that shopping center. According to him one of those boys was Joginder. He also stated that he was told by the deceased that those two boys were the same who were present with Narender Verma at that time of accident. Those boys asked Narender Verma that the deceased was the same person, who had escaped after the accident and he be taught a lesson. It was on the asking of his companions that Narender Verma took out a pistol from the pocket of his trousers and fired a shot at his face, as a result of which he fell down. This statement of the complainant has been corroborated on each and every aspect by Mahabir PW7.

9. It has come out during the cross-examination of the complainant that he himself and Mahabir are related to the deceased as first cousins. That relationship cannot be equated with interestedness and cannot be made a ground for discarding their statements outrightly. It was held by Hon''ble Supreme Court in State of Rajasthan v. Hanuman 2000 (2) ACJ 646 that the evidence of eye-witnesses cannot be discarded merely on the ground that they

are relatives of the deceased. Normally close relations of the deceased are not likely to falsely implicate a person in the incident leading to the death of their relation unless there are very strong and cogent reasons to accept such a decision. A dictate was laid down in *Ranjit Singh v. State of M.P* 2011 (1) CCC 1 that the Courts are required to examine the evidence of the related witnesses with care and caution.

10. Therefore, the statements of the complainant PW6 and Mahabir PW7 are to be scrutinize very minutely before placing reliance thereon. But if on that scrutiny they are found to be trustworthy and reliable the conviction of the accused can certainly be sustained on the basis of those statements. After minute scrutiny of their statements we have come to the conclusion that they have made consistent statements inter se and have stood the test of judicial scrutiny. There are normal and natural discrepancies in their statements, which go a long way to show that they are natural and truthful witnesses and not tutored one. In these circumstances, full reliance is to be placed upon their testimony.

11. It was rightly pointed out by learned State counsel that the statements of these witnesses find corroboration from the statement of Ashok Kumar PW8, who is an independent witness. He has stated that on 25.10.1995, he was going to his village from Vikas Nagar via NFL. When at about 8.00 PM he was just at a distance of 30 feet from the shopping centre, he heard the noise of fire arm and then Narender Verma @ Pappu, Varinder Verma @ Anu and Joginder @ Gholu @ Neelu accused came running towards him and crossed him. At that time Narender Verma was having a pistol in his hand. He raised an alarm and chased them. One Maruti car bearing No. HRW 2480 was lying parked in front of Narender Verma's house and all the accused sat in that car and fled away towards Vikas Nagar. When he returned to the shopping center he found Krishan lying dead on that place and Mahabir was present near that dead body.

12. Nothing could be elicited by the accused during the cross-examination of this witness on the basis of which it may be held that he has not come out with the truthful version in the Court or that he has any animus to depose against the accused or in favour of the complainant-party. The statement made by him in the Court inspires full confidence and he appears to be truthful witness. According to him all the three accused were already known to him as they used to come to the same gym in which he had been going for doing the exercise. The statement of this witness inspires further confidence in the statement of the said two eye-witnesses.

13. No doubt only the name of Narender Verma accused was disclosed in the FIR by the complainant, but the names of the present Appellant/accused and Varinder Verma were disclosed by Mahabir PW7, when his statement was recorded u/s 161 Cr.P.C immediately after the recording of the FIR. In such a short span of time there was no possibility nor any occasion with that witness to falsely named the accused. He duly identified the present Appellant/accused as

one of those two boys who were with Narender Verma -accused. It cannot be said that he identified the accused in the Court for the first time as it has come out during his cross-examination that all the accused were known to him previously also as he had been coming to NFL to sell the milk. The identity of the accused is further established from the statement of Ashok Kumar PW8. The prosecution has been able to prove successfully that the Appellant/accused was with the other accused when the deceased was fired at by Narender Verma.

14. The ocular evidence produced by the prosecution that the deceased was fired at from a pistol, stands corroborated by the medical evidence furnished by the statement of Dr. K.L. Chopra PW3, who conducted the post mortem examination on the dead body of the deceased. According to him one of the injury found on the dead body was the result of fire arm and the death of the deceased took place immediately after the receipt of the injuries.

15. The only question which remains to be determined is, whether it can be said that the Appellant/accused was sharing a common intention with Narender Verma, to cause the death of the deceased, so as to attract the vicarious liability? As already said above the complainant PW6 made a categorical statement in the Court that the present accused and the other boy with Narender Verma had told him that the deceased was the same person, who had escaped after the accident and that he be taught a lesson. According to that complainant it was on the asking of his companions that Narender Verma had taken out the pistol out of the pocket of his trousers and fired at the deceased. Similar statement was made by Mahabir PW7.

16. In order to appreciate the arguments raised by learned defence counsel it is necessary to discuss the law regarding the common intention. In order to attract the provisions of Section 34 IPC, it is necessary on the part of the prosecution to establish that each one of the accused shared the common intention which must be prior in time to the actual assault and any of them had done the act in furtherance of the same common intention. A common intention cannot be equated with similar intention or same intention and there is a clear distinction between the three. This common intention can be proved either by direct evidence or is to be inferred from the facts or other attending circumstances of the case and the conduct of the parties. It was held by Hon"ble Supreme Court in Suresh Chauhan v. State of M.P 2000 (2) ACJ 495 that u/s 34 IPC, a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation in criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. The existence of common intention can be inferred from attending circumstances of the case and conduct of the parties. No

direct evidence of common intention is necessary. For the purposes of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even in the course of an occurrence.

17. Reverting to the facts of the present case. From the statements of the complainant PW6 and Mahabir PW7, it can easily be inferred that the Appellant/accused was sharing a common intention with Narender Verma to cause the death of the deceased. He was with him when motorcycle was struck by the deceased and who had escaped from the spot after striking that motorcycle in Narender Verma. After seeing the deceased in front of the shopping center all the three accused advanced towards him and it was only after Narender Verma was asked by his companions that the deceased was the same person, who had escaped after causing the accident and that he be taught a lesson, that Narender Verma, took out the pistol from his pocket and fired at the deceased. It cannot be said that the Appellant/accused and Varinder Verma had no knowledge that Narender Verma was having a pistol with him. All of them had been going to the same gym for doing the exercise. When they had been moving about together it can easily be inferred that the Appellant/accused and Varindre Verma had the knowledge that Narender Verma had been carrying a pistol on his person. That knowledge is also to be attributed from the fact that the prosecution was able to prove on the record that Narender Verma was notorious person. He was wanted in the case in State of UP. From the very fact that Narender Verma was asked by the Appellant/accused and Varinder Verma to teach a lesson to the deceased, it is to be inferred that they wanted that Narender Verma should cause such a harm to the deceased by using the fire arm with him. From the evidence produced by the prosecution, we conclude that the Appellant/accused was sharing a common intention with Narender Verma to cause the death of the deceased.

18. In view of the above discussion we conclude that the prosecution has proved the guilt of the accused beyond a reasonable doubt. There is no merit in this appeal and the same is hereby dismissed. The conviction and sentence of the Appellant/accused is upheld.

19. The Appellant/accused was not the main accused. We do not find any ground for enhancing the fine so imposed upon him by the trial Court. The complainant is not entitled to any such compensation as it is not his case that he is the legal heir of that deceased. Only the legal heirs of the deceased are entitled to compensation regarding his death and they have an independent remedy also under the Fatal Accidents Act, 1855.

20. The revision petition is dismissed accordingly.

21. This order be certified to the trial Court for taking appropriate action.