SURINDER SINGH

v.

THE STATE OF PUNJAB

AUGUST 8, 2003

[DORAISWAMY RAJU AND H.K. SEMA, JJ.]

Criminal Trial: Murder—Five persons allegedly involved—Main accused eluded arrest—Declared Proclaimed Offender—Trial in the absence of main accused—Conviction of two accused u/s 302 r/w Section 34 and acquittal of remaining two accused—Main accused apprehended, tried separately and acquitted—No appeal preferred—However, appeal preferred by the convicted accused—Held, acquittal of main accused, even though wrongly, does not ipso facto *impede the conviction of other accused and vice versa—Fatal injuries on the body of the deceased inflicted by the main accused after appellant released the hands of the deceased and thus not facilitating the main accused—In absence of any concrete evidence to prove any intention/pre-meditation to commit murder and also on the ground of acquittal of main accused, appellant entitled to benefit of doubt and thus exonerated—Penal Code, 1860; Ss. 34, 201 and 511/Code of Criminal Procedure, 1973; Section 313.*

According to the prosecution, on the fateful night when the deceased, in a drunken condition, abused accused and others in filthy language, accused, also in a drunken condition, had beaten him. PW7 and others intervened and got them separated. Later, one of the accused dragged the deceased to the house of another accused, the main accused. On hearing the cry of the deceased, PW7 and others went inside the house of the main accused and saw him sitting on the chest of the deceased and throttling him whereas the accused-appellant, brother of the deceased, was holding the deceased from his arms and other accused gave fist blows to the deceased. PW7 also noticed that the main accused had given kick blows on the testicles of the deceased. The deceased died on the next day. An FIR was lodged against appellant and four others for having allegedly committed the murder of the deceased. The main accused, eluded arrest, and was declared a Proclaimed Offender (PO). Trial Court, in the absence of the P.O., tried other accused and found only two of them, including appellant, guilty of having committed offences u/s 302 r/w Section 34 IPC; convicted and sentenced them accordingly and acquitted other two

A accused.

Later, the P.O. was also arrested and tried for offences under Sections 302 and 34 IPC; however, prosecution witnesses turned hostile in the trial. Hence, he was acquitted by the Trial Court. State did not prefer any appeal. The other accused unsuccessfully preferred an appeal
B against their conviction before the High Court. Hence the present appeal preferred by the two accused. Since one of them died, his name was deleted.

It was contended for the appellant that when the main accused gave
C fatal blows on the testicles of the deceased and he was acquitted, conviction of the appellant for offences u/s 302 r/w Section 34 IPC was not justified, particularly in the absence of any premeditated scheme/design to kill the deceased.

Allowing the appeal, the Court

D

HELD: 1.1. In a criminal act, where several persons are engaged or concerned in the commission of it, they may be guilty of different offences by means of their own acts. No doubt when such criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him
E alone. If an offence is committed by any member of an "unlawful assembly" in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committing of that object, every person who at the time of committing of that offence, is a member of the same assembly, is guilty of that offence. The fact that
F any one of them may at times even stood wrongly acquitted and no appeal was preferred by the State against such acquittal does not *ipso facto* impede the conviction of the other accused. Equally the conviction of one such does not automatically result in the conviction of every one involved in the occurrence, even *de hors* their actual role, the general and basic principle of criminal liability being that only that person, who commits
G the crime, would be held guilty and punished, except in cases where the concept of vicarious liability is recognized under law - to that extent and that too subject to the conditions therefor being strictly shown to exist in a given case. [368-D, E, F, G]

H 1.2. In the instant case, accused Nos. 1 and 2 since dead, were convicted under Section 302 r/w Section 34 for causing the death of the

brother of accused No. 1, the deceased. The positive evidence firmly stated by PW7 and PW8 regarding the role of the appellant that he was holding the hands of the deceased, when he was found lying down and the main accused, proclaimed offender, sat on the chest of the deceased and was trying to throttle him. PW7 pushed the main accused away from the chest of the deceased and the appellant also seemed to have released the hands of the deceased. It was at that stage the main accused had given 3-5 kicks on the testicles of the deceased. The death does not seem to have been instantaneous as the occurrence was at 8-9 p.m., but the death occurred late in the night. Main accused only was said to have played the major role and caused primarily the fatal injuries on the testicles and even the injury found on the neck or on the chest. The kicks given on the testicles were after he was pushed away by PW7 from the chest and after the present appellant also released his hands, which the appellant was initially seen to be holding. [368-H; 369-A-D]

1.3. It could not be held that the appellant by holding the hands of the deceased facilitated the main accused to inflict any of the fatal injuries since kicks on the testicles were said to have given and could normally be possible only after the main accused was pushed away from the chest of the deceased by PW7, when it is stated by the witnesses that simultaneously the hands of the deceased also came to be released by the appellant. The acquittal of the main accused has attained finality in the absence of any appeal by the State against his acquittal. The appellant cannot, therefore, be indicted as having in any manner been responsible or having rendered it possible for the other accused to inflict the fatal injuries. Section 34 IPC seems to have been resorted to mechanically and merely because, the assault was by the accused in a group, in the manner spoken to by the witnesses and not on account of any other circumstance indicative of any common intention or presumption to commit such an act. In the teeth of the acquittal of the main accused, and in the absence of any concrete evidence to prove common intention to kill, the appellant is entitled to be extended the benefit of doubt and exonerated. [369-E-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 819 of 1996.

From the Judgment and Order dated 28.9.87 of the Punjab and Haryana High Court in Crl A. No. 330-DB of 1986

U.R. Lalit, K.B. Rohtagi, Mahesh Kasana and Ms. Aparna Rohtagi Jain

A for the Appellant.

Bimal Roy Jad and Ms. Sunita Pandit for the Respondent.

The Judgment of the Court was delivered by

B **D. RAJU, J.** The appellant-accused No.1 and four others stood charged for offences under Section 302 read with Sections 34, 201 and 511 of the Indian Penal Code (for short 'IPC') for having allegedly committed the murder of one Santokh Singh alias Sokha on 28.11.1985 at about 8-9 p.m. One of them, by name Darshan Singh said to be the Sarpanch of the village, could not be apprehended and eluded arrest, necessitating in his being declared a C Proclaimed Offender [for short "P.O."], resulting in the trial before the learned Additional Sessions Judge, Jalandhar, being effectively proceeded in Sessions Case No.8 of 1996 - Sessions Trial No.11 of 1986 only as against the appellant and three others. The learned Trial Judge acquitted Bhajan Singh (A-3) and Baksha (A-4) on the ground that there is no evidence against them for having D played any role in the occurrence, having regard to the evidence let in by the prosecution. Though the appellant and one Tarsem Singh (A-2) were convicted for the offence under Section 302 read with Section 34, IPC, and sentenced to life imprisonment, in addition to the payment of Rs.500 as fine and jointly filed the appeal in this Court having lost their appeal before the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.399-DB of E 1986. The second accused appears to have died and on recording the same, his name was deleted from the array of appellants by an order dated 10.05.1996, leaving the above appellant as the sole appellant to pursue this appeal. The necessary and relevant facts, as projected by the prosecution, are as hereunder:-

F

On 28.11.1986 at about 8.00 p.m., Harcharan Singh (PW-7) along with Rattan Singh, Jhalman Singh and Avtar Singh were said to be present in the chowk of Gurudwara, making arrangements for Bhog Ceremony of Gurudwara Granth Sahib, which was to take place on 29.11.1985, when the deceased Santokh Singh appears to have come from the side of Tubewell in a drunken G condition. He was said to have proceeded towards the street leading to the house of Darshan Singh (P.O.). At that time, the appellant, Tarsem Singh and Darshan Singh (P.O.) also seem to have come in a drunken condition. The deceased appears to have abused them in the name of sisters and remarked that the accused had disturbed his family life and subsequently they wanted H to grab his land also. On hearing the same, the accused gave pushes to the deceased and PW-7 and others seem to have intervened and made the accused

let the deceased go free. As per the further version of the prosecution, all the accused thereafter dragged the deceased to the house of Darshan Singh (P.O.) and after some time they heard the raula of 'Mar Ditta, Mar Ditta' from the house of Darshan Singh (P.O.). Since the outer door of the said house was open, PW-7 along with Rattan Singh, Avtar Singh and Jhalman Singh went there and saw that Darshan Singh (P.O.) was sitting on the chest of the deceased, who was lying on the ground in supine position and Darshan Singh was in the act of throttling the deceased, while the appellant, Surinder Singh, was said to be holding the deceased from his arms. Tarsem Singh, the other accused, was found to be giving fist blows to the deceased. Harcharan Singh and others were said to have pushed Darshan Singh away from the chest of deceased and the appellant also released the deceased from his arms. In the process at that stage, Darshan Singh (P.O.) appears to have given 2-3 kick blows on the testicles of the deceased stating that the deceased used to abuse daily and the matter was to be settled once for all. The appellant appears to have asked the others to go out of the house of Darshan Singh as the matter was between the brothers. The appellant is said to be the real brother of the deceased and they had one more brother by name Mohinder Singh, who was also said to be living with the brothers in their house where the father of the deceased and the appellant by name Darshan Singh was said to be also living with his wife. Thereafter, they seem to have dispersed and on the next day it appears they came to know that Santokh Singh died. PW-7 and others seem to have discussed the matter among themselves and thereafter PW-7 went to Police Station at Banga and gave a Statement (Ext.P.2) before the Police, on the basis of which a formal FIR (Ext. P.1) was said to have been recorded.

During the course of investigation, inquest was said to have been conducted and the body sent to post mortem. Blood stained earth was also said to have been lifted from the place of occurrence and a sketch of the place of occurrence was also said to have been prepared. After inquiring and recording Statements from all concerned and arresting the accused and after receiving the post mortem report in which it was stated by PW-1, the Doctor who conducted the post mortem examination, that the death was due to Injury No.4 on the testicles of the deceased resulting in neurogenic shock cardiac arrest, combined with asphyxia due to injury to the neck by Injury No.1; that those injuries were sufficient to cause death in the ordinary course of nature. Thereupon, the charge was laid as noticed supra and in the absence of Darshan Singh, the Sarpanch, who was declared to be a Proclaimed Offender, the trial was continued and completed against the other accused.

A The learned Trial Judge was convinced of the case of the prosecution so far as Accused Nos.1 and 2 are concerned and convicted them, as noticed earlier, but acquitted the remaining two, A-3 and A-4. Aggrieved, A-1 and A-2 pursued the matter on appeal before the High Court. The Division Bench of the High Court concurred with the conclusions and findings recorded by the B learned Trial Judge and found no substantial merit in the challenge made to the same, resulting in the dismissal of the appeal. Hence, this appeal.

While matter stood thus, it appears that Darshan Singh, who could not be initially traced, arrested and brought to trial along with the other four, was arrested, interrogated and challaned before the Trial Judge to face trial under C Section 302, IPC, in Sessions Case No.98 of 1989 with reference to the original FIR No.365 dated 29.11.1985. During the course of this trial against Darshan Singh, the said accused pleaded not guilty. The prosecution seems to have examined the Doctor, who conducted the post mortem, as PW-1 as in the case of the earlier trial, and one Avtar Singh (PW-2), Rattan Singh (PW-3), Harcharan Singh (PW-4) (who was PW-7 during the earlier trial), D Madan Lal Sharda (PW-5) and Sub-Inspector Jasbir Singh (PW-6). The Doctor (PW-1) seems to have spoken in the same manner as he did on the earlier occasion in the other trial. Avtar Singh (PW-2) and Rattan Singh (PW-3), who were alleged to be also the eyewitnesses to the occurrence along with PW-4, have not supported the prosecution story to any extent whatsoever E since they seem to have stated that they do not know who committed the murder of Santokh Singh alias Sokha. It is useful to point out at this stage that Avtar Singh and Rattan Singh, who were examined in the subsequent trial as PWs-2 and 3, were given up by the prosecution in the earlier trial as having been won over by the accused. Harcharan Singh, who was examined as PW-4 in the subsequent trial, seems to have asserted that Darshan Singh, F Ex-Sarpanch, who was one of the accused and in whose house the occurrence was said to have taken place, was a person different from Darshan Singh, who is facing the second trial. On that premise of his, he appears to have stated in the second trial that he never stated that the accused, then facing the second trial as Darshan Singh, has caused the murder of Santokh Singh alias G Sokha. All the said three private witnesses examined as P.Ws were got declared as hostile and were cross-examined by the prosecution, with no favourable response whatsoever to support the case of the prosecution. Jhalman Singh, who was said to be one of the eyewitnesses to the occurrence and was examined as PW-8 in the earlier trial, appears to have been given up by the H prosecution in the second trial as having been won over by the accused. In

the light of such turn of events and total lack of legally acceptable evidence to implicate Darshan Singh during the second trial, the learned Additional Sessions Judge, Jalandhar, by his judgment dated 4.3.1991, acquitted the said Darshan Singh. A

Materials have been placed on record, with the leave granted on 10.5.1996 to the counsel for the appellant to ascertain information about the filing of any appeal as against the acquittal of the co-accused Darshan Singh, in the form of a communication dated 17.6.1996 said to have been received from the office of the Advocate General of Punjab at Chandigarh that according to the record maintained in that office the State of Punjab had not filed any appeal against the accused Darshan Singh in the case noticed in the subject read in the said letter as *State* v. *Darshan Singh* as FIR No.365 dated 29.11.1985 under Section 302/34, IPC, decided by the learned Additional Sessions Judge, Jalandhar, on 4.3.1991. B C

Before adverting to the relevant contentions of the parties, it is useful as well as necessary to refer to the relevant summary of the evidence tendered by the prosecution in the earlier trial, which resulted in the conviction of the appellant and another. As noticed earlier, PW-1 was the Doctor, who conducted the post mortem examination. He broadly spoke with certain essential details as to the condition of the body when it was received for post mortem examination, the nature of injuries found on external examination and after internal examination and the reasonable cause, in his opinion, for the death of Santokh Singh, as disclosed in the post mortem report (Ext. P.21). Out of those who were said to have witnessed the occurrence, Harcharan Singh and Jhalman Singh were examined as PWs-7 and 8 and it is their evidence that become not only relevant but gains importance, as alleged eyewitnesses to the occurrence. The other witnesses, PWs-2 to 6, were merely witnesses for various steps taken in the course of investigation and PWs 10 and 11 were respectively the ASI and SI, who conducted the investigation. PW-7, as could be seen from the evidence given by him, stated that he and the others, as noticed earlier, were standing when the deceased came that side abusing the accused and about their separating the deceased and the accused thereafter dragging them inside the house of Darshan Singh and further as to what they saw inside the house. So far as the appellant was concerned when the deceased was lying down with Darshan Singh sitting on his chest trying to throttle, he was said to be holding the deceased from his arms. Neither this witness nor PW-8 attributed any other overt act of either beating the deceased or causing D E F G H

A any injury of any kind on any part of the body. The witness spoke about the PWs pushing the accused Darshan Singh away from the chest of the deceased and the appellant not only releasing the deceased from his arms, but also asking the others to leave the place since it was a matter purely between the brothers. This witness spoke very categorically that Darshan Singh was not
B only stating that the deceased used to abuse daily and the matter was to be settled once for all, but apart from his sitting on the chest and trying to throttle the deceased, gave 2-3 kick blows when he was released from the chest of the deceased. It appears that this witness is not that well deposed towards Darshan Singh as could be seen from some of the suggestions made in the cross-examination, but that does not by itself indicate that he was
C talking any falsehood. PW-8, the other witness to the occurrence, though broadly concurred with the version spoken by PW-7, stated that Santokh Singh came from the side of the Tubewell leading towards the house of Darshan Singh, the accused, and when Darshan Singh and others came from the opposite direction the deceased abused them and then all the three accused
D caught hold of the deceased; that those, who were present including the witnesses, released the deceased from the accused and that it is the deceased who thereafter entered the house of Darshan Singh following the other accused. As to what transpired inside the house also, this witness affirmed the version of PW-7 about the appellant catching the deceased from his arms and Tarsem
E Singh, the other accused, since dead, was found giving fist blows to the deceased. All these persons were said to have pushed Darshan Singh from the chest of the deceased and at that time the said Darshan Singh seems to have given 4-5 kick blows on the testicles of the deceased. This witness also deposed that on the next day on coming to know the death of Santokh Singh during the night, the others including this witness deputed PW-7 to report the
F matter to the Police. It is in the light of such evidence the learned Trial Judge, after concluding the earlier trial and after examining the accused under Section 313, Cr. P.C., analysed the materials on record and came to the conclusion that the occurrence took place inside the house of Darshan Singh (P.O.); that even after separation of the deceased and the accused, when they quarreled
G outside, the accused took the deceased inside the house of Darshan Singh and that, at any rate, the deceased was found equally to have abused the others as deposed by these witnesses. The learned Trial Judge further, in the concluding portion after noticing the evidence of PWs-7 and 8, has held as follows :-

H "23. The learned counsel submitted that Surinder Singh accused was

only holding the arms of the deceased and that he be held guilty u/ A
s 323 IPC whereas Tarsem Singh was giving fist blows to the deceased which resulted in fractures and that he would be responsible u/s 325 IPC. It was injury No.4 on the testicles, which resulted in neurogenic shock, cardiac arrest, combined with asphyxia due to injury to the neck. I agree with the contention of the learned counsel that since B
Darshan Singh (PO) is not facing trial in this Court. To any allegations alleged to him are not to be adjudged at present. In the opinion of the doctor, the injury to the testicles combined with asphyxia due to injury to the neck corresponding to injury No.1 was collectively sufficient to cause death and injury No.4 could be sufficient to cause death and other injury are contributory. But the earlier statement of C
the doctor shows that this injury No.4 on the testicles as also injury No.1, which caused asphyxia had caused the death of Santokh Singh. I hold Tarsem Singh and Surinder Singh, accused guilty u/s 302/34 IPC and convict them accordingly."

The consideration by the learned Trial Judge seems hardly to be an D
objective one judiciously made before indicting a person guilty charged with a serious offence of murder.

The learned Judges of the Division Bench, after observing that they have closely perused the evidence on record and the judgment recorded by the Trial Court, were of the view that for the reasons stated in the judgment E
of the Trial Court, the prosecution was able to establish the motive for the grouse against the deceased and since, in their view, PWs-7 and 8 gave a consistent account as to what happened at the time of occurrence, their evidence taken together with the medical evidence supported the case of the prosecution and inasmuch as on the totality of the facts, the inference of common intention F
was found irresistible, conviction under Section 302 read with Section 34, IPC, was justified.

The learned Senior Counsel for the appellant strenuously contended that the action of the appellant in holding the arms of the deceased when he was lying down with Darshan Singh sitting on his chest, could not justify any G
conviction against him and, at any rate, conviction under Section 302 read with Section 34, IPC. The further submission very strongly made on behalf of the appellant was that when the principal offender as could be seen to be, namely Darshan Singh (P.O.), even as per the evidence of PWs-7 and 8 in the present trial, which was earlier in point of time, who was attributed with H

A all overt acts of attempts to throttle as well as giving ultimately 3-5 kick blows on the testicles of the deceased himself, came to be acquitted, it would not only be unjust but contradiction in terms to convict the appellant for an offence under Section 302 read with Section 34, IPC. Argued the learned counsel further that there cannot be two contradictory and inconsistent findings in respect of the same occurrence to somehow convict the appellant, unmindful B of the insignificant role that was attributed to the appellant, particularly in the absence of any premeditated scheme or design to kill the deceased. Inviting our attention to the nature of evidence actually let in, it was finally contended on behalf of the appellant that the appellant could not be convicted for any offence and ought to have been acquitted, in toto.

C

The learned counsel for the respondent-State also invited our attention to the relevant portions of the evidence and the judgments rendered by the High Court in the present case and those rendered by the learned Additional Sessions Judge, Jalandhar, both in the present case and the one after the subsequent trial, in respect of Darshan Singh.

D

We have carefully considered the submissions of the learned counsel appearing on either side. That in a criminal act, where several persons are engaged or concerned in the commission of it, they may be guilty of different offences by means of their own acts. No doubt when such criminal act is done by several persons in furtherance of the common intention of all, each E of such persons is liable for that act in the same manner as if it were done by him alone. If an offence is committed by any member of an "unlawful assembly" in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, F is a member of the same assembly, is guilty of that offence. The fact that any one of them may at times even stood wrongly acquitted and no appeal was filed by the State against such acquittal does not ipso facto impede the conviction of the other(s) accused. Equally the conviction of one such does not automatically result in the conviction of every one said to be involved in the occurrence, even dehors their actual role, the general and basic principle G of criminal liability being that only that person, who commits the crime, would be held guilty and punished, except in cases where the concept of vicarious liability is recognized under law - to that extent and that too subject to the conditions therefor being strictly shown to exist in a given case.

H So far as the case on hand is concerned, Surinder Singh (Accused

No.1) and Tarsem Singh (Accused No.2), since dead, were convicted under Section 302 with the assistance of Section 34 for causing the death of Santokh Singh @ Sokha - the brother of Accused No.1. The positive evidence firmly stated by PW-7 and PW-8 regarding the role of the appellant is that he was holding the hands of the deceased, when he was found lying down and Darshan Singh, Sarpanch, who was proclaimed offender, sat on the chest of the deceased and was said to be trying to throttle him. PW-7 was said to have pushed Darshan Singh away from the chest of the deceased and the appellant also seemed to have released the hands held by him. It was at that stage Darshan Singh was said to have given 3-5 kicks on the testicles of the deceased. The death does not seem to have been instantaneous and the evidence on record is that the occurrence was at 8-9 p.m., but the death occurred late in the night in his house. As per the evidence on record, accused Darshan Singh only was said to have played the major role and caused primarily the fatal injuries on the testicles and even the injury found on the neck or on the chest. The kicks given on the testicles were after he was pushed away by PW-7 from the chest and after the present appellant also released his hands, which the appellant was initially seen to be holding. The said Darshan Singh was a proclaimed offender during the first trial with which we are directly concerned, and in the second trial of Darshan Singh after he was apprehended, the court acquitted him, in spite of examining the very witnesses PW-7 and PW-8, in addition to Avtar Singh and Rattan Singh who were stated to be the other eye witnesses to the occurrence. So far as the appellant is concerned, it could not be held that his holding the hands of the deceased facilitated Darshan Singh to inflict any of the fatal injuries and kicks on the testicles were said to have given and could normally be possible also to be given only after Darshan Singh was pushed away from the chest of the deceased by PW-7, when it is stated by the witnesses that simultaneously the hands of the deceased also came to be released by the appellant. The acquittal of Darshan Singh has attained finality in the absence of any appeal by the State against his acquittal. The appellant cannot, therefore, be indicted as having in any manner been responsible or having rendered it possible for Darshan Singh to inflict the fatal injuries. Section 34, IPC, seems to have been resorted to in case mechanically and merely because, the assault was by the accused in a group, in the manner spoken to by the witnesses and not on account of any other circumstance indicative of any common intention or premeditation to commit such an act. In the teeth of the acquittal of Darshan Singh, the main accused, and in the absence of any concrete evidence to prove common intention to kill, the appellant is entitled to be extended the benefit of doubt

A B C D E F G H

A and exonerated.

For the foregoing reasons, we set aside the conviction of the appellant, accused No.1. The appeal in so far as he is concerned shall stand allowed. The bail bonds shall stand discharged.

B S.K.S. Appeals allowed.