



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.440 OF 2013

SANJAY SINGH **... APPELLANT(S)**

VERSUS

**STATE OF MADHYA
PRADESH** **... RESPONDENT(S)**

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. In the present appeal, the prosecution case has its genesis in an incident alleged to have occurred on 12.05.1999 at about 9:30 p.m. in village Sarsi, within the jurisdiction of Police Station Industrial Area, Jaora, District Ratlam. On the same night, at about 10:45 p.m., a First Information Report bearing No.93 of 1999 came to be lodged by Balwant Singh s/o Rai Singh, who is stated to be the brother of the injured

Deshpal Singh. In the said report, allegations were made against several persons, including the present Appellant, to the effect that they had assaulted the injured by use of firearms and other weapons. On the basis of the said report, offences under Sections 307, 147, 148 and 149 of the Indian Penal Code, 1860¹, along with relevant provisions of the Arms Act, 1959 came to be registered.

2. It is the case of the prosecution that immediately after the occurrence, the injured Deshpal Singh was taken for medical treatment. On the same night, i.e., 12.05.1999, at about 10:45 p.m., a statement of the injured, treated as a dying declaration, was recorded by the attending medical officer. The condition of the injured, however, deteriorated and despite medical intervention, he succumbed to his injuries in the early hours of 13.05.1999 at about 5:40 a.m. Upon receipt of information regarding his death, the offence came to be altered from Section 307 IPC to Section 302 IPC.

¹ For short, "IPC".

3. The investigation was thereafter carried out in the usual course. Statements of witnesses were recorded, alleged weapons were seized, and documentary material, including medical papers and post-mortem report was collected. Upon completion of the investigation, a charge-sheet came to be filed against the accused persons, including the present Appellant, for offences punishable under Section 302 IPC and allied provisions. The case was committed to the Court of Session and registered as Sessions Case No. 130 of 1999 before the Second Additional Sessions Judge, Ratlam.
4. During the course of the trial, the prosecution examined several witnesses, including the complainant, persons projected as eyewitnesses, the doctor who recorded the statement of the injured, and the investigating officer. Documentary evidence such as the First Information Report, the alleged dying declaration, post-mortem report and seizure memos were also brought on record. The

defence of the Appellant was one of denial, and it was contended that he had been falsely implicated and that no specific role had been attributed to him in the commission of the offence.

5. By judgment dated 11.07.2001, the Trial Court came to the conclusion that the prosecution had succeeded in establishing its case beyond reasonable doubt. The Trial Court held that the accused persons had acted in furtherance of their common intention and that the death of Deshpal Singh was the result of the acts committed by them. On that basis, the Appellant, along with co-accused Mahendrapal Singh, were convicted under Section 302 read with Section 34 IPC and sentenced to undergo life imprisonment with fine in Sessions Case No. 130 of 1999 by the Second Additional Sessions Judge, Ratlam, while the remaining five co-accused were acquitted of the charges.
6. The Appellant, along with the said co-accused Mahendrapal Singh, carried the matter in

appeal before the High Court of Madhya Pradesh at Indore by filing Criminal Appeal No. 850 of 2001. The High Court, by its judgment dated 08.03.2011, dismissed the appeal and affirmed the findings recorded by the Trial Court. A reading of the impugned judgment would indicate that the High Court concurred with the conclusions of the Trial Court and did not find any ground to interfere with the conviction and sentence.

7. Aggrieved thereby, the Appellant, along with the co-accused Mahendrapal Singh, preferred Special Leave Petition (Criminal) No. 6799 of 2011 before this Court. On 26.08.2011, at the stage of consideration of the said petition, this Court dismissed the Special Leave Petition insofar as the co-accused Mahendrapal Singh is concerned, while issuing notice and entertaining the petition filed by the present Appellant, which has subsequently, on grant of leave, been converted into the present Criminal Appeal.

8. Learned senior counsel appearing on behalf of the Appellant assailed the concurrent findings recorded by the courts below by contending that the conviction of the Appellant under Section 302 read with Section 34 of the IPC is wholly unsustainable in law as well as on the facts. It was submitted that the prosecution has failed to establish any overt act on the part of the Appellant which could connect him with the fatal injury caused to the deceased. Learned counsel urged that the evidence on record itself demonstrates that the Appellant had not inflicted the fatal shot and that his presence at the spot, even if assumed, would not by itself be sufficient to attract the provisions of Section 34 IPC in the absence of proof of any prior meeting of minds or pre-arranged plan.

9. It was further submitted that the prosecution's case suffers from serious infirmities which go to the root of the matter. Learned counsel pointed out that the incident is alleged to have taken place at about 09:30 p.m. in a village where, as

per the prosecution witnesses themselves, there was no electricity, thereby rendering the identification of the accused persons highly doubtful. It was also urged that there is no independent witness who has been examined to corroborate the version of the prosecution, despite the alleged occurrence having taken place in a populated locality. Attention was also drawn to the fact that the alleged dying declaration does not attribute the fatal injury to the Appellant and, to the contrary, indicates that the injury allegedly caused by him was not responsible for the death of the deceased.

10. Learned counsel for the Appellant further submitted that the prosecution has not been able to establish any nexus between the weapons allegedly recovered and the injuries sustained by the deceased, inasmuch as the expert opinion does not conclusively link the two. It was also urged that the evidence on record itself indicates that the Appellant had reached the place of occurrence subsequent to the arrival of the principal accused and had

approached the spot from a different direction, thereby negating any possibility of a prior concert or common intention. It was, therefore, contended that the invocation of Section 34 IPC is wholly misconceived and that the Appellant cannot be held vicariously liable for the act of the principal accused.

11. On the other hand, learned counsel appearing for the State supported the impugned judgment and submitted that the findings recorded by the Trial Court, as affirmed by the High Court, do not warrant interference. It was contended that the evidence on record clearly establish the presence of the Appellant at the scene of occurrence and his participation in the incident. According to the learned counsel, the circumstances brought on record are sufficient to establish that the Appellant was acting in furtherance of the common intention of the accused persons and, therefore, the conviction under Section 302 read with Section 34 IPC has been rightly recorded.

12. We have given our thoughtful consideration to the rival submissions and have carefully gone through the evidence on record as well as the judgments rendered by the courts below.
13. In the facts and circumstances of the case in hand, it would be necessary to consider whether, in the absence of any specific role attributed to the Appellant in causing the fatal injury to the deceased, conviction under Section 302 IPC can be sustained, and/or whether having regard to the evidence on record, keeping the nature of the act attributed to the Appellant would require alteration of the offence and consequently the sentence.
14. The conviction of the Appellant under Section 302 IPC rests upon the applicability and aid of Section 34 of the IPC. The essential question, which arises is, whether the prosecution has been able to establish that the Appellant shared a common intention with the principal accused to commit the murder of the deceased and that the act resulting in death was done in

furtherance of such common intention. It is well settled that Section 34 does not create a substantive offence, but embodies a principle of joint liability, and its application necessarily requires proof of a pre-arranged plan or prior meeting of minds, which may be formed even at the spur of the moment, but must nonetheless be clearly discernible from the material on record.

15. The law in this regard is no longer res integra. In ***Mahbub Shah v. King-Emperor***², it was held that common intention implies a pre-arranged plan and prior meeting of minds. This principle has been consistently reiterated by this Court in ***Pandurang and Others v. State of Hyderabad***³, wherein it was observed that though such intention may develop on the spot, there must be clear evidence to indicate a meeting of minds and participation in furtherance thereof. Paragraph 30 of ***Pandurang*** (supra) reads as follows:

² 1945 SCC OnLine PC 5

³ (1954) 2 SCC 826

“30. Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all : Mahbub Shah v. King Emperor [Mahbub Shah v. King Emperor, 1945 SCC OnLine PC 5], IA pp. 153-54. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case : Barendra Kumar Ghosh v. King Emperor [1924 SCC OnLine PC 49] (at p. 49) and Mahbub Shah v. King Emperor [1945 SCC OnLine PC 5]. As their Lordships say in the latter case: (IA p. 154)

‘... the partition which divides ‘their bounds’ is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice.’ ”

16. More recently, in ***Krishnamurthy alias Gunodu and Others v. State of Karnataka***⁴, this Court has reiterated that common intention is essentially a psychological fact and must be inferred from conduct and surrounding circumstances, but such inference must be based on credible material and not on conjecture or assumption.
17. In the present case, the prosecution's evidence, when examined in its entirety, does not disclose any material from which such a common intention can be safely inferred. The role attributed to the Appellant is not that of having caused the fatal injury to the deceased. The evidence of the prosecution witnesses does not consistently or unequivocally establish that the Appellant fired at the deceased or that any injury caused by him resulted in the death of Deshpal Singh.
18. What further emerges from the record is that the Appellant had not reached the place of

⁴ (2022) 7 SCC 521

occurrence along with the principal accused. The evidence indicates that he arrived at the spot subsequent to the commencement and after the incident of shot having being fired and hit the deceased at the instance of the co-accused had occurred. Further, the Appellant had approached the site of occurrence from a different direction. This circumstance, when read with the absence of any other evidence suggesting prior concert, clearly negates the existence of a pre-arranged plan.

19. At this stage, it would be apposite to examine the evidentiary worth of the dying declaration of the deceased, recorded shortly after the occurrence, as well as the testimony of PW-6, who is an injured witness. The dying declaration, though admissible and relevant, primarily establishes the presence of the Appellant at the scene of occurrence. However, a close and careful reading of the same does not attribute to the Appellant the act of causing the injury much less the fatal injury to the deceased. The role ascribed to him therein is

limited and does not indicate that he had fired at the deceased so as to cause the injury which ultimately proved fatal.

20. Equally significant is the testimony of PW-6, an injured witness, whose presence at the spot cannot be doubted. While the said witness does state that the Appellant was present and was carrying a firearm, he has deposed that the Appellant was carrying a firearm and that, in the course of the incident, PW-6 intervened and lifted the barrel of the said firearm, as a result of which the gun was directed upwards. This aspect of the evidence assumes significance, as it does not support the prosecution case to the extent of establishing that the Appellant had used the firearm against the deceased or had caused any injury contributing to his death. Rather, it reinforces the position that the role of the Appellant was not of the same nature or degree as that of the principal accused apart from the lack of evidence indicating common intention as mentioned earlier.

21. When the aforesaid pieces of evidence are considered conjointly, it becomes difficult to sustain the conclusion drawn by the courts below that the Appellant shared a common intention with the principal accused to commit the murder of the deceased. The evidence on record falls short of establishing either a prior meeting of minds or any active participation on the part of the Appellant in the infliction of the fatal injury. At the same time, the presence of the Appellant at the scene, coupled with the fact that he was armed with a firearm, cannot be ignored and does indicate a degree of involvement in the occurrence.
22. The significance of such absence of prior meeting of minds has been emphasised by this Court in ***Munni Lal v. State of Madhya Pradesh***⁵, wherein it was held that mere presence of an accused without proof of participation or shared intention is insufficient to sustain a conviction with the aid of Section 34 IPC.

⁵ (2009) 11 SCC 395

23. The prosecution has also not been able to establish any conduct on the part of the Appellant which would indicate participation in furtherance of a common intention to commit murder. There is no material to show that the Appellant facilitated, encouraged, or aided the principal accused in the commission of the fatal act. Mere presence cannot be elevated to proof of common intention.
24. In this context, it would also be apposite to refer to **Constable 907 Surendra Singh and Another v. State of Uttarakhand**⁶, wherein this Court has held that presence at the scene of offence, without anything more, cannot be a ground to invoke Section 34 IPC. The prosecution must establish that the accused shared a common intention and acted in furtherance thereof. In paragraph 30, it is stated as follows:

“30. By now it is a settled principle of law that for convicting the accused with the aid of Section 34 IPC the prosecution must establish prior meetings of minds. It must be

⁶ (2025) 5 SCC 433

established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of:

- (i) Ezajhussain Sabdarhussain v. State of Gujarat [(2019) 14 SCC 339];
- (ii) Jasdeep Singh v. State of Punjab [(2022) 2 SCC 545];
- (iii) Gadadhar Chandra v. State of W.B. [(2022) 6 SCC 576]; and
- (iv) Madhusudan v. State of M.P. [(2024) 15 SCC]”

25. When the aforesaid circumstances are considered cumulatively, it becomes difficult to sustain the finding that the Appellant shared a common intention with the principal accused. The essential ingredients of Section 34 IPC are thus not satisfied.

26. In our considered view, therefore, while the evidence does not justify the conviction of the Appellant for the offence of murder with the aid of Section 34 IPC, it does establish that he was

present at the scene, armed with a firearm, and was aware of the nature of the occurrence and the likelihood of its consequences. The nature of the incident, involving the use of firearms, clearly indicates that the act was of a serious nature and cannot be treated as inconsequential.

27. In such circumstances, while the conviction under Section 302 IPC cannot be sustained, the material on record would justify the conviction of the Appellant under Section 307 IPC. The distinction between Sections 302 and 307 IPC is well settled, inasmuch as where the intention to cause death is not established but the act is done with the knowledge that it is likely to cause death, the offence would appropriately fall within the ambit of Section 307 IPC.

28. We are, therefore, of the considered view that the conviction of the Appellant under Section 302 read with Section 34 IPC is liable to be set aside and substituted with conviction under Section 307 IPC.

29. As regards the sentence, it is not in dispute that the Appellant has already undergone a substantial period of incarceration, being about 9 years and 09 months without remission. It is also relevant to note that the matter pertains to the year 1999 and the Appellant is presently aged about 46 years. Section 307 IPC being punishable with imprisonment up to ten years and having regard to the facts and circumstances of the case, the ends of justice would be met by limiting the sentence to the period already undergone.
30. It is noted that the Appellant was enlarged on bail during the pendency of the appeal. In view of the present judgment and having regard to the period of custody already undergone by the Appellant, he shall not be required to surrender, provided he is not required in any other case.
31. The appeal is accordingly partly allowed. The conviction under Section 302 read with Section 34 IPC is set aside. The Appellant is convicted

under Section 307 IPC and sentenced to the period already undergone.

.....**J.**
[SANJAY KAROL]

.....**J.**
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
MAY 08, 2026.