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BISHAN DAYAL AND ORS.

v.

STATE OF DELHI (ADMN.)

DECEMBER 20, 1991

B

[KULDIP SINGH, P. B. SAWANT AND N. M. KASLIWAL, JJ.]

*Indian Penal Code, 1860 :*

C

*Sections 34, 302 and 394—Committing robbery and voluntarily causing hurt—Leading to death of victim—Common intention—Nature of injuries—Victim walking quite some distance after the injuries—Common intention to commit murder—Whether established.*

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There was a high way robbery committed by five persons. As a result of the injury inflicted by the accused, one person died. Charge sheet was filed. The Sessions Court convicted and sentenced all the five persons under Sections 302, 395, 396, 397, 143 and 149 IPC.

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All the accused preferred appeals before the High Court. The High Court acquitted one of the five accused and held that the remaining accused committed the offences. It also held that as there were only four accused, conviction under Section 149 cannot be maintained, but they could be convicted for murder with the help of Section 34 IPC as there was common intention of robbery and committing murder of the deceased. Accordingly, the High Court convicted the four accused under Section 302/34 and 394 IPC, and sentenced them to imprisonment for life. Their conviction under other sections was set aside.

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Aggrieved against the High Court's decision, all the four accused preferred appeals before this Court.

Disposing of the appeals, this Court,

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**HELD :** 1. The High Court has itself arrived at the conclusion that all the accused appellants had committed robbery, but so far as inflicting injuries on the deceased is concerned, it was not possible to say as to which of the appellants inflicted the stab blows. Apart from the two injuries inflicted on non-vital parts of the body, it is clearly borne out from the record that after receiving the stab injuries the deceased had travelled a

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distance of approximately 116 paces from the place of stabbing. The High

Court after considering the statements of eye witnesses observed that it could not overlook the fact that none of these witnesses suspected that the injuries suffered by the deceased could be fatal especially when he was found in a position to walk. In view of the above circumstances and the nature of injuries, the High Court was wrong in holding that the accused-appellants had a common intention to commit murder of the deceased so as to bring their case within the purview of Section 34 IPC. Thus the conviction of the appellants cannot be maintained under Section 302 read with Section 34 IPC. [551-F, 552-B, C]

2. The High Court was right in holding that as there were only four persons the conviction under Section 149 IPC cannot be maintained.

[551-A, 552-A]

3. The accused-appellants are guilty of offence under Section 394 IPC. The High Court has already found the accused-appellants guilty under Section 394 IPC apart from Sections 302/34 IPC. The conviction and sentence of all the accused-appellants under Section 302 read with Section 34 IPC is set aside. The conviction of all the accused-appellants under Section 394 IPC is upheld but the sentence is reduced from imprisonment for life to ten years' rigorous imprisonment. Each one of the accused persons is also sentenced to pay a fine of Rs. 500 under Section 394 IPC; in default of payment of fine to further undergo rigorous imprisonment for a period of two months. [552-D-G]

4. The appellant in Criminal Appeal No. 57 of 1980 having died, the appeal preferred by him abates. [550-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 401 of 1979.

From the Judgment and Order dated 28.8.1978 of the Delhi High Court in Criminal Appeal No. 430 of 1977.

WITH

Criminal Appeal Nos. 602/79, 57/80 and 267/82.

R.K. Jain, R.P. Singh, K.V. Venkataramani, K.R. Nagaraja and Ashok Bhan for Ms. A. Subhashini for the appearing parties.

The Judgment of the Court was delivered by :

- A **KASLIWAL, J.** All the above four appeals relate to the same incident and are directed against the same Judgment of Delhi High Court dated 26.8.1978 as such they are disposed of by one single order. It may be mentioned that so far as Appeal No. 57 of 1980 is concerned, the accused appellant Amar Singh Solanki having died, his legal representatives have filed an application for permitting them to continue the appeal, but as we are
- B maintaining the conviction, it is unnecessary to bring the legal representatives on record and we dismiss this appeal as having abated.

- C We do not consider it necessary to mention the facts in detail as we are upholding the findings of the High Court as regards the participation of the accused appellants in the crime. The only question to be considered by us is regarding the offence committed by the appellants and the sentence to be awarded in the facts and circumstances of the case.

- D The incident relates to a highway robbery committed on 20th April, 1975 at 7.30 p.m. in which one Naresh Chand resident of house No. 1/2 Ram Kishore Road, Civil Lines, Delhi died on account of injury inflicted by accused persons. The police challaned five persons, namely, Subhash, Jagmal Singh, Bishan Dayal, Suraj Bhan and Amar Singh for dacoity and murder. The learned Additional Sessions Judge, Delhi convicted and sentenced all the five persons in the following manner :

- E (1) Subhash-convicted under Sections 302/396 IPC and sentenced to death-convicted under Section 143 IPC and sentenced to rigorous imprisonment for six months-also convicted under Sections 395/397 and sentenced to rigorous imprisonment for ten years.
- F (2) Jagmal Singh, Bishan Dayal, Suraj Bhan and Amar Singh Solanki-all these four accused persons convicted under Sections 302/149 as well as under Sections 395/396 IPC and sentenced to imprisonment for life. All these persons were also convicted under Section 143 IPC and sentenced to rigorous imprisonment for six months.

- G Aggrieved against the Judgment of the Additional Sessions Judge, all the accused persons filed appeals in the High Court. The High Court allowed the appeal of Jagmal Singh and acquitted him of all the charges. As a result of acquittal of Jagmal Singh, the High Court held that only four accused persons remained involved in the incident. The High Court held that the prosecution had named only five persons who jointly robbed and murdered Naresh Chand but now with the acquittal of Jagmal Singh the number was reduced to four and
- H the presumption, therefore, had to be that only four persons committed the

offences. The High Court further held that as there were only four persons the conviction under Section 149 cannot be maintained, but the appellants can be convicted for murder with the help of Section 34 IPC, if common intention of the appellants to commit murder was held proved. The High Court while discussing the question of common intention held as under :-

"The facts discussed above show that the four appellants were travelling in a scooter-rickshaw at the time of the incident; the registration number of the rickshaw could not be seen since some mud had been splashed on a part of its number plate; the rickshaw suddenly stopped near Naresh Chand who was walking on the road; first two of the offenders jumped out of the rickshaw and stabbed Naresh and then two more got down from the rickshaw and all the four robbed Naresh Chand; engine of the scooter-rickshaw was kept running during this interval; when a hue and cry was raised by Shanti Lal and Rajinder Singh P.Ws, the four assailants jumped back into the rickshaw which was driven away from the place of incident. We have absolutely no doubt that the offenders had the common object of robbing and committing murder of Naresh Chand. It is true that we do not know which of the appellants gave the stab blow".

The High Court after arriving at the above conclusion convicted all the accused appellants under Sections 302/34 and 394 IPC. Their conviction under other Sections was set aside. The High Court sentenced all the accused appellants to imprisonment for life both under Sections 302/34 as well as 394 IPC.

We have gone through the record and have heard learned counsel for both the parties. The High Court has itself arrived at the conclusion that all the accused appellants had committed robbery, but so far as the inflicting the injuries on Naresh Chand is concerned, it was not possible to say as to which of the appellants inflicted the stab blows. It is proved from the statement of Dr. A.K. Ghosh who conducted the autopsy of the dead body of Naresh Chand that there was one incised wound over the upper back part of left arm and another transverse incised punctured wound over the back of upper part of left thigh. In the opinion of Dr. A.K. Ghosh the death of Naresh was due to haemorrhage and shock as a result of the stab injuries on the left arm caused by a sharp edged penetrating weapon. In his opinion injury No. 1 was sufficient to cause death in the ordinary course of nature.

The High Court rightly held that as there were only four persons the

- A conviction under Section 149 IPC cannot be maintained but again while considering the question of common intention it fell into error in holding that the offenders had the common object of committing murder of Naresh Chand.

B Apart from the two injuries inflicted on non vital parts of the body, it is clearly born out from the record that after receiving the stab injuries Naresh Chand had travelled a distance of approximately 116 paces from the place of stabbing. The High Court after considering the statements of P.W. 11 Shanti Lal and P.W. 12 Rajender Singh-eye witnesses of the incident observed "we cannot overlook the fact that none of these witnesses suspected that the injuries suffered by Naresh could be fatal especially when he was found in a position to walk". From a persual of the above circumstances coupled with the nature of injuries we are clearly of the view that the High Court was wrong in holding that the accused appellants had a common intention to commit murder of Naresh Chand so as to bring their case within the purview of Section 34 IPC. Under these circumstances the conviction of the appellants cannot be maintained under Section 302 read with Section 34 IPC.

- D We have now to consider as to what offence has been committed by the accused-appellants and what sentence can be imposed on them. In our view the accused-appellants are guilty of offence under Sec. 394 IPC according to which if any person, in committing robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing such robbery is guilty of such offence and the punishment provided is imprisonment for life, or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. The High Court has already found the accused-appellants guilty for offence under Section 394 IPC apart from section 302/34 IPC. In the facts and circumstances of the case we allow Criminal Appeal Nos. 401/79, 602/79 and 267/82 in part, set aside the conviction and sentence of all the accused-appellants under Section 302 read with Sec. 34 IPC. We uphold the conviction of all the accused appellants under Section 394 IPC, but reduce the sentence from imprisonment for life to ten years' rigorous imprisonment. Each one of the accused persons is also sentenced to pay a fine of Rs. 500 under Sec. 394 IPC. In default of payment of fine to further undergo rigorous imprisonment for a period of two months. The accused appellants would surrender to the bail bonds and serve out the remaining part of sentence and pay the fine imposed.
- G In case the accused appellants do not surrender within a pereiod of two months, the Chief Metropolitan Magistrate, Delhi shall take proper steps for arresting the accused appellants to serve out the remaining sentence.

G.N

Appeals disposed of.