

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1039 OF 2015

OM PARKASH SINGH

APPELLANT(S)

VERSUS

THE STATE OF PUNJAB

RESPONDENT(S)

O R D E R

The appellant stands convicted under Sections 302,34, IPC for an occurrence which took place on 08.06.1999. The first accused has been convicted under Section 302 IPC. The two accused were fighting amongst themselves while playing cricket in the morning of the fateful day. The deceased tried to intervene to pacify. The same night at about 10:00 p.m. the deceased is said to have been assaulted with a kirpan by the first accused while the appellant held the deceased.

Shri Rishi Malhotra, learned counsel appearing on behalf of the appellant, submits that his conviction under Sections 302,34 IPC is not justified as there is no evidence of any common intention to commit the assault. There cannot be an inference of common intention merely because the appellant was present or that he held the deceased. PW-5 and PW-6 deposed that the appellant had only stated that the deceased should be taught a lesson. There was no exhortation by the appellant to kill the deceased. The appellant only intended and meant that the deceased should be thrashed. The

appellant was unaware that the first accused was carrying a kirpan. In any event a kirpan is not a weapon of assault, but is carried on person by individuals of a specific community as part of a religious belief. The murderous assault by the first accused was his individual act for which he has been singularly held liable. The appellant cannot be attributed either knowledge or intention, much less to have shared a common intention. Reliance is placed on *Ajay Sharma vs. State of Rajasthan* [1999 (1) SCC 174] and *Matadin vs. State of Maharashtra* [1998 (7) SCC 216]. At best the appellant may be liable to be convicted under Section 324 read with Section 110 of the Indian Penal Code.

Ms. Jaspreet Gogia, learned counsel appearing on behalf of the State, submits that the judgment sought to be relied upon are distinguishable on facts. A fracas had taken place in the morning. The two accused then came looking for the deceased near his fields at about 10:00 p.m. This shows a premeditated design which is nothing but evidence of having a common intention. The appellant held the deceased while the co-accused stabbed. If the appellant had not held the deceased, he could have possibly run away to save his life.

We have considered the submissions made on behalf of the parties.

The appellant and the co-accused undoubtedly came together looking for the deceased at 10:00 p.m. in the night. According to PW-6, the appellant gave an extortion to teach a lesson to the deceased because he stopped their game in the morning. It is at this juncture that the co-accused who was carrying a Kirpan used it

as a weapon of assault upon the deceased and injured PW-6 also.

It has rightly been urged on behalf of the appellant, that a kirpan is normally carried on person by members of a specific community as part of religious belief. The fact that it can also be used as a weapon of offence, does not *ipso facto* make it a weapon of offence. In any event there is no evidence that the appellant was aware that the co-accused was a carrying a kirpan and intended to use it for assault.

The facts of the present case bear a marked similarity to the cases of *Ajay Sharma and Matadin (supra)*. The assault lasted barely two to three minutes. The exhortation by the appellant to teach the deceased a lesson was made with reference to the morning fracas during playing cricket as deposed by PW-6. It leaves us in no doubt that even if the appellant held the deceased, it was only in order to ensure that the deceased was thrashed properly so that in future he would remain cowed down. It is not possible to draw any inference that by his utterances the appellant intended a murderous assault on the deceased and held him to facilitate the same. If the co-accused suddenly pulled out his kirpan and assaulted the deceased that was his individual act for which he has been convicted under Section 302 IPC.

We have therefore no hesitation in holding that the appellant did not have the intention much less any common intention to kill the deceased.

Presumably because the co-accused alone had assaulted the deceased and PW-6, the conviction of the appellant under Section 324 was set aside by the High Court. However, in the facts and

circumstances of the present case and for the reasons discussed by us, we hold that the conviction of the appellant under Section 302/34 IPC is not sustainable because existence of a common intention to kill the deceased has not been established. We therefore, alter his conviction to under Sections 324, 110 IPC and sentence him to the period undergone.

The appeal is allowed to the extent indicated.

Pending applications, if any, shall stand disposed of.

.....J.
(NAVIN SINHA)

.....J.
(R. SUBHASH REDDY)

New Delhi;
5th August, 2021.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1039/2015

OM PARKASH SINGH

Appellant(s)

VERSUS

THE STATE OF PUNJAB

Respondent(s)

(IA No. 12130/2021 - GRANT OF BAIL)

Date : 05-08-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Appellant(s) Mr. Rishi Malhotra, AOR

For Respondent(s) Ms. Jaspreet Gogia, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of signed order.

Pending applications, if any, shall stand disposed of.

(NEETA SAPRA)
COURT MASTER(DIPTI KHURANA)
COURT MASTER

(Signed order is placed on the file)