

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-1821-SB-2005
Decided on : 20.09.2019

Ravinder Kumar

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Harkirat Singh Randhawa, Advocate
amicus curiae for the appellant.

Mr. S.S.Pannu, DAG, Haryana.

Manjari Nehru Kaul, J.

The instant appeal has been preferred against the impugned judgment of conviction and order of sentence dated 06.09.2005 passed by Addl. Sessions Judge, Panipat vide which the accused-appellant was convicted under Section 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/- and in default to further undergo rigorous imprisonment for 2½ years.

2. Prosecution case in brief as set up during the trial is that on 28.06.2004 at about 5.30 pm complainant Ravinder Kumar @ Bittu (PW-1) along with Ravinder Kumar @ Dumpy (PW-2) were sitting at the Nanda Pehalwan Transport, Panipat and were talking amongst themselves. In the meanwhile, accused Har Bhagwan @ Pappu along with co-accused-appellant Ravinder Kumar came to the spot. Accused Har Bhagwan took

out a pistol from the right side pocket of his trouser and fired shots upon Ravinder Kumar @ Dumpy, which hit him on his chest, stomach, thigh and hand. The complainant Ravinder Kumar @ Bittu(PW-1) cried for help, which attracted a number of people to the spot. Thereafter, both the accused fled away from the spot by proclaiming that they had executed their work. The injured Ravinder Kumar @ Dumpy was removed to Prem Hospital, Panipat. Complainant Ravinder Kumar @ Bittu(PW-1) got recorded his statement Ex.PA, which led to the registration of the formal FIR Ex.PA/2. The police on receipt of the medical rukka Ex.PH reached the hospital and sought opinion of the doctor about the fitness of the injured to make a statement. However, the injured was declared unfit to make a statement and was declared fit only on 30.06.2004 vide endorsement Ex.PK/1, which led to the recording of his statement Ex.DA. The accused Har Bhagwan was arrested on the day of occurrence itself and the weapon of offence along with its license used in the crime was recovered from him, which was taken into possession vide seizure memo Ex.PD. Accused-appellant Ravinder Kumar was arrested on 29.06.2004.

3. On completion of the investigation, the accused-appellant was charged for offence under Section 307 read with Section 34 IPC and 27 of Arms Act, 1959 to which he pleaded not guilty and claimed trial.

4. In support of their case, prosecution examined as many as nine witnesses including Ravinder Kumar, complainant as PW-1, Ravinder Kumar @ Dumpy, injured as PW-2 besides seven other official witnesses and tendered into evidence the reports of Forensic Science Laboratory, Madhuban.

5. After the conclusion of prosecution evidence, all the incriminating circumstances appearing against him in evidence were put to the appellant-accused under Section 313 Cr.PC to which he pleaded false implication. Accused-appellant Ravinder Kumar stated that he had no dealings or concern whatsoever with co-accused Har Bhagwan. In his defence, he examined two witnesses besides tendering other relevant documents.

6. After analyzing and perusing the evidence available on record, the trial Court convicted the accused and sentenced him as already detailed above.

7. Learned counsel for the appellant has strenuously argued that while convicting the appellant under Section 307 with the aid of Section 34 IPC, learned trial court has failed to appreciate that the appellant did not share any common intention with the co-accused Har Bhagwan and the motive, if any, to cause injury to the injured was with the main accused Har Bhagwan, who had some money dispute with the father of the injured. The only role even as per the FIR attributed to the appellant is that he was present at the spot when the main accused fired shots at the injured. He has not even been attributed any role much less any lalkara at the time of occurrence. Further, no recovery was effected from the appellant. Hence, in this factual matrix the trial court was in error in recording a finding of conviction against the appellant Ravinder Kumar.

8. Learned State counsel, on the other hand, has argued that no doubt the appellant Ravinder Kumar has not been attributed any injury much less any role in the entire occurrence but the fact remains that he was

present at the time of occurrence when Har Bhagwan fired at the injured and after a hue and cry was raised, the appellant Ravinder Kumar ran away from the spot along with the main accused Har Bhagwan. Hence, the trial court was right in convicting him for sharing a common intention with the main accused and prayed for dismissal of the appeal.

9. I have heard learned counsel for the parties besides going through the evidence and other material available on record.

10. It is an admitted case of the prosecution that it was accused Har Bhagwan, who took out the fire arm from the right side pocket of his trouser and fired at the injured. It is also the admitted case of the prosecution that no injury was caused to the injured witness by the appellant Ravinder Kumar. It is not the case of the prosecution that the appellant Ravinder Kumar exhorted co-accused to fire at the injured. It has come in evidence that the money dispute, which led to the occurrence in question, was between the accused Har Bhagwan and the father of the injured Ravinder Kumar @ Dumpy. Hence, in this background, the only evidence and role attributed to the appellant Ravinder Kumar is that he was present at the spot at the time of occurrence and he fled away along with the main accused after the firing.

11. The question thus, which would arise is whether the appellant Ravinder Kumar could be held liable for the act of co-accused Har Bhagwan?

To attract the application of Section 34 IPC three conditions must be in existence:

i) A common motive or enmity or ill-will, which should be

shared by all the accused

- ii) There must be a common intention of all the persons to commit that criminal act
- iii) All the persons must have participated in the commission of offence in furtherance of that common intention.

Common intention is a state of mind, which has to be inferred from the conduct of an accused as displayed by him during the course of commission of crime and the subsequent attending circumstances. No doubt common intention can develop on the spur of moment but for that all the attending circumstances leading to the occurrence have to be appreciated and taken into account. Thus, to be liable under Section 34 IPC, the participation of the accused is a condition precedent in order to fix joint liability.

12. No doubt, the injured witness Ravinder Kumar @ Dumpy as well as complainant Ravinder Kumar @ Bittu have supported the case of the prosecution but even in their deposition, no specific overt act or role has been attributed to the appellant Ravinder Kumar. Mere presence of the appellant on the spot when the occurrence took place would not be sufficient to hold that he had shared a common intention with the main accused to commit an offence attracting the provisions of Section 307 IPC. Particularly, when it has come in evidence that the motive, if any, lay only with the co-accused Har Bhagwan. There is no clear and acceptable evidence on record from which it can be discerned that there was any previous concert between both the accused to carry out the act. It is not the case of the prosecution that the accused Har Bhagwan came to the spot

along with the appellant brandishing the weapon. Admittedly, the weapon was concealed by the accused Har Bhagwan in the pocket of his trouser. Hence, in this background, a doubt does arise whether the appellant could have had any knowledge of the co-accused Har Bhagwan being in possession of the weapon. Once the factum of knowledge itself is not proved then the question of the appellant sharing an intention to commit the crime also does not arise.

14. As a sequel to the above discussion, the appellant deserves the benefit of doubt. Consequently, the present appeal is allowed and the impugned judgment and order of conviction dated 06.09.2005 is hereby set aside. The appellant Ravinder Kumar is consequently acquitted of the charges against him. He is on bail and accordingly, his bail bonds stand discharged.

September 20, 2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No