

NON-REPORTABLE

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

CRIMINAL APPEAL NO. 1521 of 2013

STATE OF HARYANA

.....APPELLANT(S)

VERSUS

SATENDER

.....RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS. 1526-1527 OF 2013

CRIMINAL APPEAL NO. 1519 OF 2013

AND

CRIMINAL APPEAL NO. 1528 OF 2013

J U D G M E N T

A.K. SIKRI, J.

Six persons were accused of conspiring with each other and committing murder of one Ramesh Masta with common intention. FIR No. 414 dated November 06, 2004 was registered against these six accused persons at Police Station City Bhiwani, Haryana, under Sections 302, 120-B and 34 of

the Indian Penal Code, 1860 (for short 'IPC'). Charge under Section 25 of the Arms Act, 1959 was also foisted upon them. Names of these accused persons are – Rahul @ Shashi Partap, Satender, Bharat, Karambir, Manjit Singh and Banti @ Yogender Singh. The Court of Additional Sessions Judge, Bhiwani, on the conclusion of the trial, vide judgment dated February 22, 2007 returned the findings to the effect that the prosecution had successfully proved the allegations contained in the charge sheet that accused Rahul @ Shashi Partap, Satender and Bharat, in furtherance of their common intention, committed the murder of Ramesh Masta and thereby committed an offence punishable under Section 302 read with Section 34 of the IPC. It also held that other three accused persons, namely, Karambir, Manjit Singh and Banti @ Yogender Singh, had abetted the aforesaid accused persons in the said offence and thereby committed an offence punishable under Section 109 read with Section 302 of the IPC. It was also held that all the six accused persons, prior to the date of occurrence, hatched the conspiracy in order to commit the murder of Ramesh Masta and thereby committed an offence punishable under Section 120-B of the IPC. Rahul @ Shashi Partap was found guilty of offence punishable

under Section 25 of the Arms Act as well. Different sentences were awarded in respect of each of the offences proved against them, as mentioned above.

2) All the aforesaid six accused persons filed appeals before the High Court. The High Court, vide the impugned judgment dated November 30, 2011, has allowed the appeal of Banti @ Yogender Singh thereby acquitting him of the charges framed against him. However, appeal of Bharat is dismissed maintaining the conviction and sentence as ordered by the trial court. Insofar as the third appeal, which was preferred by the remaining four accused persons is concerned, this was dismissed *qua* Rahul @ Shashi Partap, upholding his conviction and sentence, and allowed *qua* Satender, Karambir and Manjit Singh, acquitting them of the charge of conspiracy and abetment framed under Section 109 and 120-B of IPC respectively.

In essence, conviction of Bharat and Rahul @ Shashi Partap stands as per the judgment of the High Court.

3) Challenging their conviction, these two accused persons have filed petitions for special leave to appeal, which were granted. The appeal of

Bharat is numbered as Criminal Appeal No. 1528 of 2013 and that of Rahul @ Shashi Partap is numbered as Criminal Appeal No. 1519 of 2013. Against the acquittal of other four accused persons, the State of Haryana has preferred special leave petition. Their acquittal is also challenged by the complainant Pawan Kumar Masta, which is number as Criminal Appeal Nos. 1526-1527 of 2013. Thus, all these four appeals arise out of a common judgment of the High Court pertaining to the same trial. That was the reason for hearing all these appeals together, which are being disposed of by this singular judgment.

We may point out at this stage itself that as Karambir died after the pronouncement of the judgment by the High Court, while issuing notice in the special leave petitions filed by the State of Haryana, the aforesaid fact was taken note of and the SLP against him stood abated. Notice was also not issued against Manjit Singh and Banti @ Yogender Singh as the special leave petitions filed *qua* them were also dismissed. Therefore, insofar as the appeals against acquittal are concerned, they relate only to Satender.

4) With this preliminary introduction of the subject matter, we advert to the incident which took place, as projected by the prosecution.

5) FIR No. 414 dated November 06, 2004 was registered on the complaint of Pawan Kumar Masta, who stated in his evidence that on November 05, 2004 at about 7.30 p.m., he was sitting near the Panwari Wala Mandir near Police Station City Bhiwani along with his elder brother Ramesh Masta, Dinesh Kumar and Sonu Masta. They were all talking to each other. Ramesh Masta was President of City Congress of District Bhiwani. Ramesh Masta received a phone call on his Mobile No. 9812027194 and he started attending to the same after moving away from his accomplices to a distance of about 4-5 paces. In the meantime, three young boys came on a motorcycle of a silver colour without bearing any number plate. Rahul @ Shashi Partap fired a shot on the head of Ramesh Masta with his pistol. Rahul @ Shashi Partap was accompanied with a thin boy, who was wearing a blue check shirt, aged 22-24 years and was of wheatish complexion. The boy, who had kept the motorcycle in a running condition, was having a normal body and was aged about 22-24 years. He could identify the other two persons along with Sonu and Dinesh, if they were brought before them. All the three persons after firing the shot had sped away on the motorcycle.

The cause of grudge was that

Ramesh Masta was running a private school at Bawari Gate,

Bhiwani. Karambir wanted to get the illegal possession of the said school. In this regard, they had done some firing in the school and in the said incident, Ramesh Masta had escaped uninjured. On February 09, 2004, Ramesh Masta was again attacked and he suffered a fire shot. A criminal case was registered on the basis of the statement of Ramesh Masta. A writ petition had been filed in this Court by Ramesh Masta seeking proper investigation of the case from another agency.

6)As is clear from the above, as per the prosecution, three persons took active part in killing Ramesh Masta, who had come at the place of occurrence on a motorcycle. Specific role is attributed to Rahul @ Shashi Partap, who had fired the shot from his pistol, which hit on the head of Ramesh Masta. The motorcycle was being driven by Bharat. As per the prosecution, Satender had also fired a shot from his pistol, though it did not hit the victim (as noted hereinafter, this act attributed to him has not been proved). Insofar as other three accused persons, namely, Karambir, Manjit Singh and Banti @ Yogender Singh, are concerned, charge against them was of conspiracy and abetment.

7)The prosecution, in order to prove its case, examined twenty witnesses. Thereafter, statements of all the accused persons were recorded under Section 313 of the Code of Criminal Procedure, 1973 and the trial court found all of them guilty of the charges levelled against each of them.

8)Insofar as injuries suffered by the deceased and the medical evidence are concerned, three witnesses, namely, Dr. S.S. Malik (PW-6), Dr. Rajender Rai (PW-12) and Dr. Ritu Kaura (PW-14), were examined. Dr. Rai was in the emergency ward of General Hospital, Bhiwani when Ramesh Masta was brought to him in an injured condition. He deposed this fact and also stated that there was history of gunshot head injury and the patient was not fit to make a statement. After giving first aid, Ramesh Masta was referred to PGIMS, Rohtak and *ruqa* to this effect was sent by Dr. Rai to the Police Post of General Hospital, Bhiwani.

Dr. S.S. Malik (PW-6) was on duty in the emergency ward of PGIMS, Rohtak, when Ramesh Masta was brought to the said hospital on November 05, 2004. He stated that there were gunshot injuries on his head and he expired at 9.55 p.m. in spite of treatment given to him. He sent *ruqa* to this effect to the In-charge of Police Post, PGIMS, Rohtak at 10.00 p.m.

Post-mortem of the aforesaid body of Ramesh Masta was conducted by Dr. Ritu Kaura (PW-14). On the basis of the said examination, she found the following injuries on his person:

(a) Stitched wound 7 cm horizontal was present in the lower part occipital 3 cm below occipital protuberance. On further dissection, subcutaneous tissue blackened in the middle. Skull bone fractured. Brain matter was coming out. Ecchymosis was present.

(b) Stitched wound of size 7 cm present in right parietal region obliquely placed. Front end 6 cm right to middle line and 7 cm above the middle of right eyebrow. Posterior end 8 cm from the midline. On further dissection skull bone fractured. Brain matter was coming out. Ecchymosis were present.

She also opined that cause of death was due to haemorrhage and shock and injury to vital organ, i.e. brain, which is sufficient to cause death in normal course of nature and further that the injuries were ante-mortem in nature.

9)As pointed out above, the High Court has acquitted the accused persons of the charge of conspiracy, which resulted in acquittal of

Satender, Karambir and Manjit Singh. Since Karambir has died and the special leave petition against Manjit Singh was also dismissed, in the appeal filed by the State as well as the complainant Pawan Kumar Masta, we are concerned with the validity of the acquittal order passed in respect of Satender, which depends upon the issue as to whether charge of common intention has been proved or not as there is no overt act on his part except that he was also on the motorcycle along with the two convicts/ appellants.

10) No doubt, charge of conspiracy was also levelled against Satender. But it was in respect of all others and other three against whom only charge of conspiracy under Section 120-B IPC was framed they have been acquitted of this charge. Still we have gone through the judgment of the High Court and evidence on this charge. The only witness examined in respect of this charge was Ghanshayam Dass (PW-3). He deposed that he was a neighbour of Ramesh Masta as well as of Karambir's family. He knew both the families. Two days prior to the death of Ramesh Masta, he had gone to the house of Karambir along with Satish. They heard the talk through window of the house of Karambir. Karambir was telling Bharat, Rahul, Satender, Banti and Manjit that he was having old enmity with Ramesh Masta, who had been saved in previous two

incidents but this time, he should not be able to go alive. Karambir told Banti and Manjit to supply weapons to Rahul, Satender and Bharat and said that the rest would be done by the said accused. Then they entered the house of Karambir and talked about their work with him but Karambir said that he was busy with his guests and they should come again. They narrated the facts to the Police on January 30, 2005 as earlier they were scared from the accused persons.

11)The High Court, after critical analysis of the testimony of PW-3, declined to believe the truthfulness of his version. Reasons given by the High Court in coming to this conclusion are as follows:

“So far as the evidence led by the prosecution qua conspiracy is concerned, the statement of PW-3 Ghanshayam Dass fails to inspire confidence. The said witness had gone to the house of appellant Karambir a couple of days prior to the death of Ramesh Masta. Ramesh Masta had died on 5.11.2004 at 9.55 p.m. However, the statement of PW-3 was recorded by the police on 30.1.2005 for the first time. The said witness in his cross-examination deposed that he had never met the police prior to recording of his statement. The Investigating Officer had also not met him. He had not been called by the Police. The said witness resides near the houses of Karambir and the deceased. He further deposed that he had gone to the hospital to enquire about the health of injured Ramesh Masta but had not attended the cremation of deceased Ramesh Masta nor had gone to his house to offer condolence. He was joined by the police during investigation of the previous incident. Thus, from the statement of PW-3, it is evident that he did not disclose the talk heard by him to anybody prior to recording of his

statement on 30.1.2005. Surprisingly, the name of the said witness was duly mentioned in the list of witnesses in the final report prepared by the investigating officer on 6.1.2005. The said report is available on record as Ex.DA/1. A perusal of the same reveals that the names of Satish Kumar and Ghanshayam Dass are mentioned at serial Nos. 9 and 10 in the list of witnesses (Ex.DC). Since PW Ghanshayam Dass had not met the police prior to recording of his statement on 30.1.2005, then how his name could be mentioned in the list of witnesses in the final report prepared on 6.1.2005. Learned State counsel, who is assisted by the learned senior counsel for the complainant, has failed to reconcile the said discrepancy. In these circumstances, the statement of PW-3 Ghanshayam Dass fails to inspire confidence. It appears that the said witness has been introduced by the prosecution to involve appellants Karambir, Manjit Singh and Banti in this case. Hence, appellants Karambir, Manjit Singh and Banti are liable to be acquitted.”

12)After hearing the counsel for the parties, we are in agreement with the aforesaid approach of the High Court, which rightly discarded the statement of PW-3 as untrustworthy because of various discrepancies pointed out in this statement and his conduct which is unnatural. The High Court is, therefore, right in holding that there was a possibility that he has been introduced by the prosecution to involve the other three persons in this case.

With this, stage is now ripe for dealing with each appeal.

CRIMINAL APPEAL NO. 1519 of 2013

13)As already noticed, main role in the killing of Ramesh Masta is attributed to Rahul @ Shashi Partap, who had fired the gunshot resulting into the head injuries, which became the cause of this death. He has been convicted by the trial court and his conviction has been upheld by the High Court as well. We find from the record that complainant – Pawan Kumar Masta appeared as PW-1 and deposed as per the contents of the FIR. He, thus, is an eye witness to the whole episode. He not only identified Rahul @ Shashi Partap, but also identified Bharat as driver of the motorcycle and Satender as pillion rider. Another eye witness is Mr. Dinesh, who appeared as PW-2 and corroborated the statement of PW-1 narrating the incident in identical manner. Other main witnesses are those who were involved in the investigation, including PW-13 Sub-Inspector Satyavir Singh, PW-18 Inspector Darshan Lal, PW-19 Inspector Ram Avtar, PW-8 Inspector Dharampal, PW-7 Mr. Rameshwar Dhariwal, Divisional Engineer at Mobile Switching Centre, Panipat and Shri J.B. Gupta, Chief Judicial Magistrate, who appeared as PW-11 and deposed to the effect that Satender and Bharat were produced before him with their faces covered in mufflers along with an application for holding a Test

Identification Parade, but the accused persons have declined to join the same.

14) It is not necessary to describe in detail the deposition of the Police officials named above, who had appeared as witnesses, inasmuch as, learned counsel appearing for Rahul @ Shashi Partap, even for that matter learned counsel appearing for Bharat, the other convict, did not make any submissions pointing out any irregularities or infirmities in the investigation carried out by these officers. The only argument of the learned counsel appearing for Rahul @ Shashi Partap, was that he was falsely implicated by the complainant and he was innocent. However, he could not point out any defect in the findings of fact recorded by the two courts below accepting testimonies of PW-1 and 2, the two eye witnesses, as reliable, unimpeachable and trustworthy. After going through the record again, including their depositions, we are of the opinion that the two courts below have rightly found the statements of the two eye witnesses worthy of credence. Based thereupon, under no circumstances, Rahul @ Shashi Partap, who had fired the gunshot, which hit the head of the victim, can escape his liability. Moreover, the evidence of the eye witnesses is corroborated by the medical evidence available on the record. In addition, there was also recovery of country made pistol of Rahul @ Shashi Partap

along with the motorcycle, which was used for the crime, vide Recovery Memo Exhibit P-G, from Rahul @ Shashi Partap on the basis of the disclosure statement made by him. Thus, the prosecution established, beyond reasonable doubt, the involvement of Rahul @ Shashi Partap in commission of the crime with cogent, relevant and direct evidence. It would be worthwhile to note that in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973, apart from stating that he is innocent and it was a blind murder case, his only defence was that there was a revenue litigation between his father Karambir and the deceased Ramesh Masta and that Karambir and Ramesh Masta had contested elections of Municipal Corporation, Bhiwani against each other and because of these reasons, Ramesh Masta and his family members were nursing grudge against Rahul @ Shashi Partap and his family members. Once the *actus reus* is established, motive has been provided by Rahul @ Shashi Partap himself in his statement under Section 313 of the Code of Criminal Procedure, 1973. We, thus, are of the opinion that the trial court rightly held Rahul @ Shashi Partap guilty of murder under Section 302 IPC as well as in possession of illegal arms thereby convicting him under Section 25 of the Arms Act.

15)For the foregoing reasons, this appeal is liable to be dismissed and is, accordingly, dismissed.

CRIMINAL APPEAL NO. 1528 OF 2013

16)Insofar as this appeal filed by Bharat is concerned, argument of learned counsel appearing for him was that he has not played any active role. The allegation against him was that he was riding the motorcycle. However, this motorcycle did not belong to him and was not even recovered from him. Learned counsel made a passionate plea to the effect that the prosecution had failed to prove common intention and also that Bharat even had any knowledge that Rahul @ Shashi Partap was going to shoot Ramesh Masta. He also submitted that Bharat was not even named in the FIR. He was not associated with Rahul @ Shashi Partap and it was Rahul who had a grudge against the deceased. He further argued that in the Arrest Memo (Exhibit DZ), the date was changed from 07.11.2004 to 09.11.2004, which throws doubt upon the involvement of Bharat, who was unnecessarily roped in at a later stage. Pleading that in such circumstances Bharat also should have been acquitted by the Court, as was done in the case of Satender by the High Court, who was also a pillion rider, he referred to the judgments of this Court in **Abdul**

Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259 and **Ram Nath**

@ Mamaji @ Jiwanlal v. State of Madhya Pradesh, AIR 1953 SC 420.

17) In **Abdul Sayeed** (supra), this Court observed as under:

“49. Section 34 IPC carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others if he has the “common intention” to commit the offence. The phrase “common intention” implies a prearranged plan and acting in concert pursuant to the plan. Thus, the common intention must be there prior to the commission of the offence in point of time. The common intention to bring about a particular result may also well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances existing thereto. The common intention under Section 34 IPC is to be understood in a different sense from the “same intention” or “similar intention” or “common object”. The persons having similar intention which is not the result of the prearranged plan cannot be held guilty of the criminal act with the aid of Section 34 IPC. (See *Mohan Singh v. State of Punjab*, AIR 1963 SC 174).”

18) In **Ram Nath @ Mamaji @ Jiwanlal** (supra), the relevant discussion for our purposes, is as follows:

“18. The further contention of Dr. Tek Chand that the High Court was in error in holding that the provisions of Section 34 were attracted to the facts of the case is also well founded. There is no evidence whatsoever of any premeditation or of a prearranged plan by the assailants of murdering Sunder. The conclusions of the High Court in para. 53 of its judgment seem to be based more on conjectures than on admissible material. No act or conduct on the part of the accused has been proved from which an inference of a prearranged plan to murder Sunder could be raised.

Even if it is held proved that all the appellants were seen at that spot at the time of firing this fact by itself could not be held enough to prove a common intention of the appellants to murder Sunder. It can well be that these four persons were standing together and one of them suddenly seeing Sunder fired at him. This possibility has not been eliminated by any evidence on the record. In such a situation when it would not be known who fired the fatal shot, none of such persons could be convicted of murder under Section 302, I. P. C. It seems to us that in this case the High Court failed to appreciate the true effect of the decision of the Privy Council in--'Mahbub Shah v. Emperor', AIR 1945 PC 118 (A), and its judgment in regard to the applicability of Section 34, I. P. C. has to be reversed."

19) We are unable to chew any of the aforesaid submissions of the learned counsel. Argument of the learned counsel that Bharat was not named in the FIR would hardly be of any consequence. In the FIR, the complainant categorically stated that three young aged boys came upon the motorcycle of silver colour without number plate. Clear description of Rahul @ Shashi Partap with parentage and residential address is given. It is further stated in the FIR that along with Rahul there was another boy who was riding the motorcycle and had kept the motorcycle in start mode. He was having normal body and his age was about 22-24 years. Thus, not only the complainant gave the physical description and age of Bharat, he even identified him in the Court. More pertinently, when Bharat was

produced by the Police after his arrest before PW-11 Mr. J.B. Gupta, Chief Judicial Magistrate, along with an application for holding Test Identification Parade, Bharat refused to join the same. Further, his conduct of not only riding the motorcycle, but stopping the same at the spot where the deceased was standing and keeping the engine of the motorcycle running clearly leads to the conclusion that he was well aware of the plans of Rahul @ Shashi Partap and was a party in executing the same. The purpose of keeping the motorcycle in a running condition was to escape from the place as soon as Rahul @ Shashi Partap fires the shot. Rahul, who had alighted from the motorcycle along with Satender, came back and Bharat eloped with them while riding the motorcycle. It would also be relevant to mention that the motorcycle was recovered from Rahul @ Shashi Partap on the disclosure statement made by Bharat. Merely because Bharat was not the owner of the motorcycle is neither here nor there as it is totally irrelevant. Fact is that he was riding the motorcycle and had gone with Rahul @ Shashi Partap to commit the murder of Ramesh. The conduct, behaviour and active role of Bharat, along with Rahul, clearly depicts his knowledge as well as common intention of two of them to commit the crime. On these facts, Bharat cannot take help of the judgments cited by the learned counsel. Once common intention is

proved establishing the ingredients of Section 34 IPC, Bharat becomes vicariously liable to the same magnitude as Rahul, who actually shot the victim.

20) Insofar as change of date in the Arrest Memo is concerned, it is also not of any avail to Bharat simply because of the reason that this Arrest Memo was produced on record by Inspector Ram Avtar (PW-19) who had arrested Bharat. However, no question about this date was put to him in the cross-examination so as to give an opportunity to PW-19 to explain the same.

21) Having regard to the aforesaid facts, the judgments relied upon by the learned counsel appearing for Bharat have no application in the present case. Accordingly, Criminal Appeal No. 1528 of 2013 filed by Bharat is dismissed.

CRIMINAL APPEAL NO. 1521 OF 2013
CRIMINAL APPEAL NOS. 1526-1527 OF 2013

22) This leaves us to the case of Satender, who has been acquitted by the High Court and challenging his acquittal appeals are preferred by the

State as well as the complainant. He had also gone along with Rahul @ Shashi Partap and Bharat and was a pillion rider. However, the reason for acquittal of Satender was that no overt act had been attributed to him by any of the eye witnesses. It was only during investigation the prosecution tried to portray that he had also fired a shot from his pistol, which he was carrying, but it had missed the target. This act of attribution, namely, he had fired the shot but it had missed, could not be proved by the prosecution during trial. Even the eye witnesses did not depose that Satender was armed with any weapon. From this the High Court drew the inference that during investigation and with a view to strengthen its case against Satender, the investigating agency had tried to build up the said story. The High Court was of the view that since no overt act had been attributed to Satender by the eye witnesses and there was no such allegation in the FIR also, the possibility that he had been falsely involved in this case cannot be ruled out. He was not even identified by the complainant at the first instance. Nothing could be shown which could prove that he also had common intention, along with the two convicts, to kill the deceased or had knowledge about the designs of the other two persons with whom he had allegedly gone on motorcycle. Therefore, judgment in **Ram Nath @ Mamaji @ Jiwanlal** (supra) becomes

applicable in his case. Thus, prosecution case *qua* him has been found doubtful for the aforesaid reasons.

23) We are of the view that sufficient reasons are given by the High Court in order to come to a conclusion that case against Satender has not been proved beyond reasonable doubt. Once such a benefit of doubt is given after sifting and analysing the evidence and the findings are not perverse, it would not be appropriate to reverse that finding in these proceedings under Article 136 of the Constitution of India. The appeal of State as well as the one filed by the complainant against the acquittal of Satender are, accordingly, dismissed.

.....J.
(DR. B.S. CHAUHAN)

JUDGMENT

.....J.
(A.K. SIKRI)

**NEW DELHI;
MAY 23, 2014.**

SUPREME COURT OF INDIA



JUDGMENT