

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).2449/2012

(From the judgement and order dated 30/12/2011 in CRLA  
No.91/2003 of The HIGH COURT OF H.P AT SHIMLA)

KASHMIR SINGH & ANR Petitioner(s)

VERSUS

STATE OF H.P. Respondent(s)

(With appln(s) for ex-Parte stay,exemption from filing O.T.)

Date: 03/04/2012 This Petition was mentioned for hearing today.

CORAM :  
HON'BLE MR. JUSTICE AFTAB ALAM  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Petitioner(s) Mr. Harish Pandey,Adv.

For Respondent(s)

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

Taken on board.

The two petitioners along with another accused,  
namely, Sunil Kumar, were put up on trial on the charge  
under Section 302 read with Section 34 of the Penal Code.

The trial court acquitted the two petitioners but  
convicted Sunil Kumar under Section 304 Part-I of the  
Penal Code and sentenced him to undergo rigorous  
imprisonment for five years besides a fine of Rs.10,000/-  
with the default clause.

Against the judgment and order passed by the trial  
court, both the State of Himachal Pradesh and the  
convicted accused Sunil Kumar preferred appeals before  
the High Court.

The High Court disposed of both the appeals by a  
common judgment against which the present special leave  
petition is filed.

By the impugned judgment, the High Court modified  
the conviction of Sunil Kumar from Section 304 Part-I to

Section 325 of the Penal Code and reduced his sentence of imprisonment to the period already undergone by him but enhanced the amount of fine to Rs.1,00,000/- (Rupees One Lac only) with the default sentence of two years rigorous imprisonment. It also convicted the two petitioners under the same Section with the aid of Section 34 of the Penal Code and sentenced them to the period of imprisonment already undergone by them (as under-trials) besides fine of Rs.75,000/- each with the default sentence of two years rigorous imprisonment.

Counsel for the petitioner submits that in the facts of the case, Section 34 of the Penal Code had no application and there is absolutely no evidence that the two petitioners shared the common intention with Sunil Kumar to assault the deceased.

We look at the case slightly differently. If the case of the petitioners, as contended on their behalf, does not attract Section 34 of the Penal Code, that would be the end of the matter. But, in case the materials on record warrant an application of Section 34 of the Penal Code, then we fail to see why the substantive offence should not come under Section 302 or in any event under Section 304 of the Penal Code.

Hence, while issuing notice to the respondent-State in this case, we also put the petitioners on notice to show cause why in case their conviction is sustained with the aid of Section 34 of the Penal Code, they may not be convicted and sentenced not for merely causing grievous hurt but for the far graver offence of murder or culpable homicide not amounting to murder.

The payment of fine imposed by the High Court shall be subject to the final outcome of the special leave petition.

(Neetu Khajuria)  
Sr. P.A.

(Sneh Bala Mehra)  
Court Master