

.PA
.PL60

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1247 OF 1999@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....J

KHEM CHAND .. APPELLANT

vs.

STATE(NCT) OF DELHI .. RESPONDENT

O R D E R@@
CCCCCCCC

.SP2

This Criminal Appeal is by Khemchand whose role in a murder case is the same as that of the co-accused Raju. Both Raju and Khemchand were convicted under Section 302 read with Section 34 of IPC along with some other accused persons, Raju filed a separate Criminal Appeal No.1755/1996. A Three Judge Bench of this Court considered the role played by Raju and held that it is not sufficient to fasten him with liability with the aid of Section 34 of IPC. Raju was hence acquitted as per judgment dated 7.2.1997.

Learned counsel appointed as Amicus Curiae for arguing in defence of Khemchand submitted that the role attributed by the prosecution to Khemchand is in no way worse or higher than that what was attributed to Raju. In order to check up the correctness of the said stand of the learned counsel we have perused the copy of judgment of the Three Judge Bench of this Court in Criminal Appeal No.1755/1996. That judgment has reproduced the relevant portion of the evidence of the sole eye witness PW8 (Om Shankar). We extract the same portion from his testimony which has been extracted in the aforesaid judgment. It reads thus:

.....L.....I.....T.....T.....T.....T.....J.....

.SP1
.PA

: 2 :

"Then I saw that accused Badri and one another person who is not present today were armed with knives. (The witness pointed towards Badri correctly). They were stabbing Kirpal with knives, while the other two accused (pointed out towards accused Khem Chand and Raju) and stated that they were catching hold Kirpal deceased. I became nervous on seeking this and, therefore, I returned back after raising alarm, saying that "MERE JIJA KO MAR RAHIN HAIN".

.....L.....I.....T.....T.....T.....T.....T.....J.....

.SP2

Learned counsel for the respondent State was not in a position to dispute the correctness of the factual position highlighted by Ms. Shyjatha M.L., learned counsel appearing on behalf of Amicus Curiae. It is

therefore not proper to take a different stand for Khemchand. Hence, we afford the same benefit to the appellant in this case also.

In the result we allow this appeal and set aside the conviction and sentence passed on him as confirmed by the High Court in appeal. We acquit the appellant and direct him to be set free from jail forthwith unless he is required in any other case.

.SP1

.....J.
(K.T. Thomas)

New Delhi
March 13, 2001

.....J.
(R.P. Sethi)