

**Sukh Lal and ors. Vs. the State**

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**Court :** Punjab and Haryana

**Decided On :** Feb-04-1953

**Reported in :** AIR1953P& H262

**Judge :** Khosla and; Kapur, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 299, 300, 302 and 304

**Appeal No. :** Criminal Appeal No. 353 of 1952

**Appellant :** Sukh Lal and ors.

**Respondent :** The State

**Advocate for Def. :** K.S. Chawla, Assistant Adv. General

**Advocate for Pet/Ap. :** J.G. Sethi, Adv.

**Judgement :**

**Khosla, J.**

1. The appellants Shukh Lal, his brother Amin Lal, Sheo Chand and Goni were tried by the learned Sessions Judge of Karnal upon a charge of murder under Section 302 read with 34, Penal Code. The learned Sessions Judge convicted all of them and sentenced each of them to death. The convicts have appealed to this Court and their case is also before us for the confirmation of the death penalty under Section

2. The charge against the appellants was that they murdered Shrimati Ginao at noon on 2-3-1952. The story for the prosecution briefly is that the deceased who was a widow and in possession of her deceased husband's land fell out with the appellants who are the collaterals of her deceased husband. Of the appellants Sukh Lal and Amin Lal are the next heirs of Ginao's husband and would therefore take her land after her death. Sheo Chand and Goni are also her collaterals although their degree of relationship is a little remoter. The collaterals wanted to have say in the matter of leasing out the land to tenants and it appears that Shrimati Ginao was not quite agreeable to their wishes. Section 107, Criminal P. C. proceedings took place between the parties but these cases were compromised on 27-2-1952 i.e., three or four days before the occurrence. It was agreed that the deceased should give her land for cultivation to Dalip Singh and Jagir Singh.

On the morning of the day of occurrence another quarrel took place between deceased and the collaterals including the four appellants. The deceased said that as the collaterals were getting quarrelsome she would go and seek the assistance of the police. She accordingly left her house for this purpose. She was followed by the four appellants of whom Goni was armed with a hatchet and the others with dungs. She had hardly gone a few yards from her house when the four appellants fell upon her and beat her with their respective weapons. The incident was witnessed by Kanihya P. W. 2, Lachhman P. W. 3 and Dalip Singh P.W.4. Kanihya is an uncle of Lachhman P. W. 3. His story is that he was returning home from Narwal when he saw the assault upon the deceased. Lachhman is a servant of Ginao and had been living with her. A suggestion was made at the trial that there was an illicit liaison between Lachhman and the deceased, but whether that be so or not it is admitted on all sides that Lachhman was living with Ginao and was working for her. He was present when the quarrel between her and the collaterals took place. When Ginao left for the police station Lachhman and Dalip Singh to whom the land was to be given, according to the agreement arrived at between the parties, left by another route. Lachhman says that he intended to see Dalip Singh off and Lachhman and Dalip Singh arrived at the spot where the incident took place and they were also able to see the assault upon Ginao.

3. The assailants after killing Giano picked up her dead body and carried it to a well a few yards away. They threw the dead body into this well and then ran away.

4. The report of the occurrence was made by Kanihya P.W.2 at a police station five miles away at 2 P.M. In this report Kanihya stated that he had seen the assault with his own eyes and that Giano had been carried and thrown into a well by the four appellants. Immediately after the report was recorded Sukh Lal appellant arrived at the police station. The Sub-Inspector says that he and Kanihya were just leaving the police station & had come out of the building when Sukh Lal arrived. Sukh Lal asked the Sub-Inspector to hear him before taking any further steps. Sukh Lal's statement was that Lachhman had murdered Giano and then thrown her dead body into a well. The Sub Inspector examined Sukh Lal's person and found that there were some stains of blood upon his Dhoti. He did not believe Sukh Lal's statement and took him into custody at once. The Dhoti was in due course sent for examination and it was found that there were stains of human blood upon it. The Sub-Inspector proceeded to the village and after investigation sent up the four appellants to stand their trial with the result indicated above.

5. At the trial the appellants pleaded not guilty and in defence Sukh Lal pleaded that the murder was actually committed by Lachhman and his men.

6-10. The case against the appellants is proved by the evidence of three eye-witnesses whose names have already been mentioned. There can be no doubt that there was very bitter enmity between the appellants and the deceased. (After discussion of the evidence His Lordship proceeded: -

11. From the evidence produced in this case, I am satisfied beyond all reasonable doubt that the appellants attacked the deceased and caused fatal injuries to her. The only point which requires consideration now is whether the appellants can be said to be guilty of murder. None of the injuries according to the doctor was individually fatal. Indeed technically speaking all the injuries were simple in nature and death was due to shock and intracranial haemorrhage. Mr. Sethi argued on the basis of this circumstance that the appellants did not intend to cause fatal injuries to the deceased and certainly did not intend to kill her. He also drew our attention to the fact that Goni was armed with a hatchet which he did not use from

the sharp side. It seems to me that the intention of the appellants was not to kill the deceased. They gave her a number of injuries of which eight were found upon her head, and although they must have realised that these injuries might have serious consequences they could not have had the intention of killing her for, had that been the case, they would have used more violence and caused injuries which would have been more obviously fatal. In the circumstances it appears to me that the appellants cannot be said to have committed the offence of murder. Their case seems to fall more appropriately under the fourth alternative mentioned in Section 299, Penal Code, namely 'doing an act ..... with the knowledge that he is likely by such act to cause death', and that being so the offence of the appellants is covered by the second part of Section 304, Indian Penal Code.

12. Mr. Sethi has, however, raised another point that Section 34 cannot be applied to an offence punishable under Section 304, Part 2. He contends that since there was no intention on the part of the appellants to cause death there can be no question of common intention as contemplated by Section 34. He has drawn our attention to a number of cases in which it was held that Section 34 cannot be applied to the provisions of the second part of Section 304, Penal Code. Different views on this point have, however, been taken but it seems to me logically wrong to hold that Section 34 can never be applied to a case under the second part of Section 304. A person commits an offence under Section 304 when he intends to cause an injury which is not necessarily fatal but which he knows is likely to prove fatal. The intention to do something is present although not the intention to commit murder. The intention in so far as it relates to the causing of injuries may be shared by other persons. The knowledge that an injury is likely to prove fatal may also be shared and if that be so then a person can be held vicariously liable under the second part of Section 304. Let us take a hypothetical example. A and B agree among themselves to break every bone in the body of their enemy X. They do not intend to cause his death but they do share a common intention to break all bones in his body. They must both know individually and jointly that the breaking of so many bones in X's body will be liable to cause his death and so if they jointly attack X and break so many bones in his body that X dies both A and B are guilty of committing culpable homicide punishable under the second part of Section 304, Penal Code.

13. The matter was considered by a Division Bench of the Calcutta High Court in --Adam Ali v. Emperor', AIR 1927 Cal 324 (A) and the learned Judges observed :

'Mr. Taluqdar argues that to apply section 34 there must be a common intention and that as there was no common intention to cause death or such bodily injury as is likely to cause death because the definition of Section 304, Part 2, excludes such intention, Section 34 cannot apply. The simple answer to this contention is this : that although to constitute an offence under Section 304 Part 2, there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though without the intention of causing death. Each of the assailants may know that the act they are jointly doing is one that is likely to cause death but have no intention of causing death, yet they may certainly have the common intention to do that act. No one will dispute that such an act is a criminal act. Clearly Section 34 can apply to a case under Section 304 Part 2.'

14. A reference may also be made in this connection to --'45 Cal LJ 131: (AIR 1927 Cal 324) (A)', and --'Ram Prasad v. Emperor', AIR 1947 All 434 (B), I cannot therefore hold the view that Section 34 can never be applied to an offence punishable under the second part of Section 304, Indian Penal Code. All the four appellants in the present case followed the deceased together. They were acting in pursuance of a common intention and they beat her in a most reckless manner causing as many as seventeen injuries upon her person. They then picked her up and carried her dead body to a well nearby and threw it in. There could be no clearer case of a common intention governing the conduct of all four persons from the beginning to end.

15. In the result therefore I would acquit the appellants of the offence of murder but convict them of offence of culpable homicide as punishable under Section 304, Part 2, Penal Code, and I would sentence each of them to seven years' rigorous imprisonment for this offence.

**Kapur, J.**

16. I agree.

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