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**KARAN SINGH**

v.

**STATE OF MADHYA PRADESH**

*November 4, 1964*

B

[A. K. SARKAR, N. RAJAGOPALA AYYANGAR AND  
R. S. BACHAWAT, JJ.]

C

*Murder—Common intention—Separate trials of actual murderer and accomplice—Former acquitted while latter convicted on the basis of having common intention with former—Conviction whether justified—Indian Penal Code, 1860 (Act 45 of 1860), s. 34.*

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R shot at two persons and in consequence one died while the other did not. The appellant who himself carried a gun was present at the spot along with six others variously armed. R absconded, and the appellant along with the six other persons mentioned above was tried for offences under ss. 302 and 307 read with ss. 148 and 149 of the Indian Penal Code. The Sessions Judge convicted only the appellant giving benefit of doubt to others. The appellant filed an appeal before the High Court. After his conviction but before his appeal was heard, R was arrested, put up for trial on the same charges, and acquitted. The appellant's appeal before the High Court was dismissed but his conviction was altered and instead of ss. 302 and 307 Indian Penal Code read with ss. 148 and 149 he was convicted for offences under ss. 302 and 307 of the Code read with s. 34. The appellant came to this Court in further appeal.

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It was contended that in view of the acquittal of R by the Sessions Judge, from which there had been no appeal, it was not open to the High Court to hold that the appellant was guilty of murder and attempt to murder under ss. 302 and 307 read with s. 34, by finding that R who shared a common intention with him shot the deceased dead and attempted to murder another.

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**HELD:** In spite of the acquittal of a person in one case, it is open to the court in another case, to proceed on the basis—if the evidence warrants it—that the acquitted person was guilty of the offence of which he had been tried in the other case, and to find in the later case that the person tried in it was guilty of an offence under s. 34 by virtue of having committed the offence along with the acquitted person. Each case has to be decided on the evidence led in it and this irrespective of any view of the same act that might have been taken on different evidence led in another case. [4E—G]

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*Marachalil Pakku v. State of Madras*, A.I.R. 1954 S.C. 648, *Bombadhar Pradhan v. State of Orissa* and *Sunder Singh v. State of Punjab*, A.I.R. 1962 S.C. 1211, relied upon.

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*Pritam Singh v. State of Punjab* A.I.R. 1956 S.C. 415, *Sambasivam v. Public Prosecutor, Federation of Malaya* L.R. [1950] A.C. 458 and *Krishna Govind Patil v. State of Maharashtra*, distinguished.

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 55 of 1963.**

Appeal by special leave from the judgment and order, dated August 27, 1962, of the Madhya Pradesh High Court (Gwalior Bench) at Gwalior in Criminal Appeal No. 18 of 1961. A

*B. C. Misra*, for the appellant.

*M. S. K. Sastri* and *I. N. Shroff*, for the respondent.

The Judgment of the Court was delivered by B

**Sarkar J.** The appellant, Ramhans, and six other persons were alleged to have committed the murder of Gabde and to have attempted to murder Ramchandra. The deceased and Ramchandra are said to have belonged to one party while the alleged assailants belonged to another, and between these two parties there had been great enmity for some time past. It was said that about midnight of November 18, 1959, while the deceased and Ramchandra and certain other persons were sleeping on a Tiwaria (terrace), the assailants entered the place and Ramhans shot Gabde dead with a gun and fired two shots at Ramchandra with intent to kill him but only succeeded in injuring him and that all this time the appellant was standing there armed with a gun and the other persons were also there armed variously and that all had entered the place with the common intention of committing the offences. C  
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Ramhans had absconded and so the appellant and the other six alleged assailants were put up for trial for offences under ss. 302 and 307 read with ss. 148 and 149 of the Indian Penal Code for the murder of Gabde and the attempt to murder Ramchandra. The learned Sessions Judge convicted the appellant of these offences but acquitted the other six persons tried along with him, giving them the benefit of doubt. The appellant preferred an appeal to the High Court of Madhya Pradesh. After the conviction of the appellant by the learned Sessions Judge but before his appeal could be heard, Ramhans had been arrested, put up for trial on the same charges and acquitted. E  
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Before the High Court the appellant contended that Ramhans having been acquitted the appellant could not be held constructively liable for the offences with the aid of s. 149 of the Code. The High Court rejected this contention relying upon the judgments of this Court in *Marachalil Pakku v. The State of Madras*,<sup>(1)</sup> *Bombadhar Pradhan v. State of Orissa*<sup>(2)</sup> and *Sunder Singh v. State of Punjab*<sup>(3)</sup>. The following observation appears in the judgment G  
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(1) A.I.R. 1954 S.C. 648:

(2) [1956] S.C.R. 206.

(3) A.I.R. 1962 S.C. 1211.

A of the High Court : "Relying on Ramchandra's direct testimony as supported by Dwarka, Matadin and Maharajsingh, I would hold that Gabde's murder was committed by Ramhans by firing a gun at him and that Ramhans also fired two shots from his gun at Ramchandra in order to kill him. Karan Singh was at this time standing armed with a gun by the side of Ramhans. . . . . I

B would, therefore, hold that the offence of Gabde's murder and attempt to commit the murder of Ramchandra were committed by Ramhans in furtherance of the common intention of both himself and the present appellant Karan Singh. The case for the prosecution had at all stages been that both Ramhans and Karan Singh had gone inside the Tiwaria armed with guns and that Karan

C Singh throughout the incident standing by the side of Ramhans armed with a gun. On these facts s. 34 I.P.C. would clearly apply to the case against the present appellant Karan Singh." In this view of the matter the High Court convicted the appellant Karan Singh under ss. 302 and 307 both read with s. 34 of the Code instead of the earlier sections read with ss. 148 and 149 as had

D been done by the learned Sessions Judge. The appellant has come to this Court in further appeal.

The only question argued in this appeal is whether in view of the acquittal of Ramhans by the learned Sessions Judge from which there had been no appeal, it was open to the High Court to hold

E that the appellant was guilty of murder under s. 302 read with s. 34 by finding on the evidence that Ramhans who shared a common intention with him, shot the deceased dead and attempted to murder Ramchandra. In the High Court reliance had been placed on behalf of the appellant on the judgment of this Court in *Pritam Singh v. State of Punjab*<sup>(1)</sup>. That case referred with approval to the judgment of the Judicial Committee in *Sambasivam v. Public Prosecutor, Federation of Malaya*<sup>(2)</sup> where it was observed that

F "the effect of a verdict of acquittal. . . . is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties

G to the adjudication." As the High Court pointed out, that observation has no application to the present case as here the acquittal of Ramhans was not in any proceeding to which the appellant was a party. Clearly, the decision in each case has to turn on the evidence led in it; Ramhans's case depended on the evidence led there while the appellant's case had to be decided only on the evidence led in it. The evidence led in Ramhans's case and the decision there

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(1) A.I.R. 1956 S.C. 415.

(2) L.R. [1952] A.C. 458, 479.

arrived at on that evidence would be wholly irrelevant in considering the merits of the appellant's case. We may add here that Mr. Misra appearing for the appellant did not in this Court rely on *Pritam Singh's*<sup>(1)</sup> case.

Mr. Misra contended that the decision of this Court in *Krishna Govind Patil v. State of Maharashtra*<sup>(1)</sup> showed that the High Court was wrong in ignoring the fact of the acquittal of Ramhans. We are unable to accept that contention. The point there considered really was whether when four persons had been charged with the commission of an offence of murder read with s. 34 and the trial Court had acquitted three of them, it was legal to convict the remaining accused of the offence of murder read with s. 34. The High Court had held that that could be done. This Court set aside the judgment of the High Court mainly on the ground that such a decision would result in conflicting findings. It was observed, "while it (the High Court) acquitted accused 1, 3 and 4 under s. 302 read with section 34 of the Indian Penal Code, it convicted accused 2 under s. 302 read with s. 34, of the said Code, for having committed the offence jointly with the acquitted persons. This is a legally impossible position." That case no doubt discussed various situations where it is possible after acquitting certain persons to hold that the conviction of other or others was justified under s. 34 on the ground that the evidence showed that there were other unknown persons who were associated with those convicted though the charge did not mention them. With this aspect of the matter we are not concerned in this case and neither was the case of *Krishna Govind Patil*<sup>(1)</sup>.

We are, therefore, of opinion that the judgment in *Krishna Govind Patil's*<sup>(1)</sup> case does not assist the appellant at all. On the other hand we think that the judgments earlier referred to on which the High Court relied, clearly justify the view that in spite of the acquittal of a person in one case it is open to the Court in another case to proceed on the basis—of course if the evidence warrants it—that the acquitted person was guilty of the offence of which he had been tried in the other case and to find in the later case that the person tried in it was guilty of an offence under s. 34 by virtue of having committed the offence along with the acquitted person. There is nothing in principle to prevent this being done. The principle of *Sambasivam's*<sup>(2)</sup> case has no application here because the two cases we are concerned with are against two different persons though for the commission of the same offence.

(1) [1964] 1 S. C. R. 678.

(2) L. R. [1952] A.C. 458, 479.

**A** Furthermore, as we have already said, each case has to be decided on the evidence led in it and this irrespective of any view of the same act that might have been taken on different evidence led in another case.

In the result the appeal fails and is dismissed.

**B**

*Appeal dismissed.*