

tural land is wholly irrelevant. As pointed out earlier, price of the Banjar land had been determined by the Collector,—*vide* award dated April 4, 1972 at Rs. 18,640 per acre. Besides this, 4 acres of land had been acquired by the State Government near to the village Abadi of Halwara at the rate of Rs. 22,000 per acre, for providing house sites to the Harijans of the village. This, to my mind, indicates the price of areas which could be utilised as Abadi areas. Though the above noted award related to an acquisition on June 7, 1974, yet as the evidence stands on record, the entire acquired land was virtually a residential colony or at least was having the potentiality for being utilised in that manner and had the acquisition or Air Force Authorities walked out of this land on the date of the notification under section 4 of the Act, the claimants would have been in a position to sell this land if not at higher rates than at least on the highest of the two rates noted above, i.e., Rs. 22,000 per acre. Thus keeping in view the surroundings and the potentiality of the acquired land, I determine the market price of the acquired land at a flat rate of Rs. 22,000 per acre. Besides this the claimants would also be entitled to the statutory solatium and interest at the rate of 15 per cent and 6 per cent respectively on the enhanced amount of compensation. All this, however, would be subject to the claim made by them and the Court fee paid thereupon.

(12) The net result, therefore, is that all the State appeals fail and are dismissed with no order as to costs and the cross objections filed by the claimants succeed to the extent indicated above and are allowed with proportionate costs.

N. K. S.

Before Harbans Lal and C. S. Tiwana, JJ.
RAJINDER KUMAR and another,—Appellants.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 1138 of 1979.

October 8, 1980.

Indian Penal Code (XLV of 1860)—Sections 34 and 302—Several accused charged for the offence of murder read with section 34—All but one of such accused acquitted—No evidence of complicity of others besides the acquitted accused—The remaining one accused—Whether could be convicted under section 302 read with section 34.

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Held, that in case where a number of accused are tried for the commission of an offence with the aid of section 34 Indian Penal Code 1860 but ultimately all but one accused are acquitted, the conviction of one of the accused alone with the aid of section 34 of the Code is still sustainable if from the prosecution evidence besides the named accused against whom the charge is put forth in the court it is permissible to come to the conclusion that besides the named accused who are acquitted, there were other participants also. However, in the absence of such a situation, a single accused after the acquittal of his co-accused cannot be convicted with the aid of section 34 of the Code. (Para 17).

Appeal from the order of Shri Balwant Singh Teji, Additional Sessions Judge, Jullundur, dated 29th August, 1979, Convicting and sentencing the appellants.

J. N. Kaushal, Senior Advocate with Chatar Singh & V. P. Sharma, Advocates with him).

G. S. Bains A.A.G., Punjab.

JUDGMENT

Harbans Lal, J.

(1) This appeal is directed against the judgment of the learned Additional Sessions Judge, Jullundur, dated August 29, 1979, whereby Rajinder Kumar and Ashok Kumar, appellants, were convicted under section 302 read with section 34, Indian Penal Code, and were awarded life imprisonment and a fine of Rs. 500 each; in default, they were ordered to further undergo rigorous imprisonment for two months' each. Their co-accused Som Nath was, however, acquitted of the charge.

2. According to the prosecution story, Jagdish Lal was found murdered in room No. 7 of the Punjab Hotel, Mandi Road, near Railway Station, Jullundur City, on the morning of January 23, 1979, by Devi Chand, P.W. 7, a bearer of the hotel. At about 10.30 A.M. Manmohan Singh, P.W. 6, the proprietor of the hotel came to the hotel from his residence and was apprised of the said murder by Devi Chand, P.W. Consequently, he went to Police Station, Division No. 3, Jullundur, where first information report, Exhibit PG, was recorded by S. I. Surat Singh, P.W. 20, at 11.15 A.M. on the basis of his statement. According to the prosecution version,

as disclosed therein, three persons went to the said hotel on the night of January 22, 1979 at about 9 P.M. and room No. 7 was booked in the name of Jagdish Lal (deceased) the entry regarding which was made in the register at serial No. 94 in English, in the handwriting of Jagdish Lal (deceased). Therein, he had given his address as Jugdish Lal son of Hans Raj, resident of Dulwan, Post Office Sanglal, District Ludhiana. Below the said address the name of Rajinder Kumar had also been mentioned. The purpose of the visit had been mentioned as "rest and purchase". According to the entries in the other columns against this serial No. they had come from Ferozepur, and had to go back to Ferozepur. Devi Chand, P.W., under the instructions of the proprietor, took all the three persons to room No. 7 where beds were supplied to them. At about 11 P.M. Manmohan Singh, P.W., went to his house situated at Phagwara Gate for the night. He returned to the hotel the next day at about 10 or 10.30 A.M. It was then that he was informed by Devi Chand, P.W., that one person who had made the entry in the register as "Jugdish Lal" did not wake up in the morning. When Devi Chand opened the door, he found the said person, namely, Jagdish Lal lying dead on the cot and a handkerchief tied around his neck. According to the further version in the first information report, the description of the two other companions was also given. They were described to be aged 22 to 23 years and 24 to 25 years, respectively with height as 5 feet $\frac{4}{5}$ inches and 5 feet 7 to $7\frac{1}{2}$ inches. Both were also described to have small moustaches, otherwise, clean shaven. They were speaking Panjabi. It was disclosed that these two persons could be identified by the informant and his bearer Devi Chand, P.W.

3. After the registration of the case under section 302, Indian Penal Code, the said S.I. alongwith some members of the Police, went to the spot and after preparing the inquest report, sent the dead body for post-mortem examination. According to the endorsement of the doctor, the inquest report and other relevant papers reached the hospital at 4.35 P.M. on January 23, 1979.

4. Autopsy on the dead body of Jugdish Lal was performed by Dr. C. S. Naik, P.W. 1, in the Civil Hospital, Jullundur, on January 24, 1979. According to the same, there was a ligature mark on the neck and a linear pink structure mark around the

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front of the neck. Besides, there were 8 abrasions on the right side of the neck on the cricoid cartilage, right cheek, left thigh, lateral aspect of the right knee right medial epicondyle of the right elbow joint. There was also swelling on the left side of mandible. On dissection big haematoma below the cricoid cartilage was also found. On further dissection of the trachea brown froth with marked congestion of the tracheal mucosal was found. In the opinion of the doctor, the cause of death was asphyxia due to throttling. Time between the injuries and the death was opined to be between 10 to 20 minutes and the duration between the death and the post-mortem examination was opined to be 48 hours.

5. After investigation, Rajinder Kumar, aged 18 years and his brother Ashok Kumar, aged 21 years, both residents of Ferozepur City as well as Som Nath, aged 20 years, resident of Ferozepur Cantonment, were put up for trial.

6. According to the prosecution case, as disclosed in the statement of Kanta Devi, P.W. 5, Jagdish Lal (deceased) had developed illicit relations with Neelam, the mother of Rajinder Kumar and Ashok Kumar, accused. This served as a motive for the commission of the murder.

7. Ashok Kumar, accused, was arrested on March 5, 1979, and was identified by Sain Dass, P.W. 8, in the identification parade held by the Magistrate on March 12, 1979. However, Som Nath and Rajinder Kumar, accused, on their arrest on February 22, 1979 and February 19, 1979, respectively, and production in the Court, refused to sit in the identification parade on the ground that they had been already shown to the witnesses. The accused, in their statements under section 313, Code of Criminal Procedure, pleaded innocence and alleged false implication.

8. Som Nath, accused, was acquitted by the trial Court. The statement of Darh Darshan Dial, P.W. 14, regarding the extrajudicial confession alleged to have been made to him by Som Nath, accused, was not believed nor was the recovery of the bag from his possession, which according to the prosecution, belonged to the deceased. It was also held that Som Nath, accused, was not related to the other two accused and possibly had no motive to join in the

commission of the offence. The prosecution case, however, was held to be proved against the two appellants who were convicted under section 302 read with section 34, Indian Penal Code, and awarded life imprisonment, as stated above.

9. It has been vehemently urged by Mr. Kaushal, the learned counsel for the appellants, that no case was made out against any of the appellants and the prosecution evidence against them was of a very shaky character.

10. The prosecution evidence, to bring home the guilt against the two appellants, comprises of the statements of Manmohan Singh, P.W. 6, proprietor of the hotel, Devi Chand, P.W. 7 and Sain Dass, P.W. 8, who were working as a bearer and a cook, respectively, at the said hotel. The ocular account is sought to be corroborated from the entry in the register.

11. According to Manmohan Singh, P.W., three persons, namely, Jagdish Lal (deceased) Rajinder Kumar and Som Nath came to his hotel on January 22, 1979, at about 9 P.M. and on their request, room No. 7, was allotted to them where they were taken by Devi Chand, P.W., and provided beds. In the first information report, he had disclosed in detail the address of Jagdish Lal (deceased) and also the name of Rajinder Kumar, accused, as a resident of Ferozepur on the basis of entry made by Jagdish Lal in the register of the hotel meant for booking. Therein, some description in relation to the age, height and complexion of the two persons accompanying Jagdish Lal had also been given. At the trial, these two persons were named by the witness as Rajinder Kumar and Som Nath. According to the prosecution evidence, both of them had refused to sit in the identification parade which was sought to be held by the Magistrate at the instance of the Police,—*vide* Exhibits PMO/3 and PMO/4. A close perusal of his statement makes it evident that after the deceased and his two companions had been allotted room No. 7 in his hotel, he had left the place at 11 P.M. and returned only on the next day at about 10 A.M. It was on his return that Devi Chand, P.W., had informed him of Jagdish Lal lying dead in room No. 7. On this, he himself verified the fact and thereafter went to the Police Station to get the case registered. The register, Exhibit P. 1, in which entry at serial No. 94 had been

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purportedly made by Jagdish Lal, (deceased) as admitted by the witness did not have regular paging and there was also cutting of the digit from 3 to 4 in serial No. 94. According to his further version, the dead body was despatched for post-mortem at about 2 P.M. By that time, Sain Dass, P.W., had reached the hotel and was interrogated by the Sub-Inspector. Thus, his version was that the inquest report was completed after the arrival of Sain Dass, P.W., in the hotel and his interrogation by the police.

12. According to Devi Chand, P.W., three persons came to the hotel at 9.15 P.M. on the relevant date and after the entry had been made by Jagdish Lal (deceased), they were taken to room No. 7 and supplied the beds by him. Sain Dass, P.W., according to him, as an employee of the hotel, used to look after the persons staying therein during the night time. At about 11 P.M., he went to sleep in the hotel, as he was feeling indifferent and had asked Sain Dass, P.W., to look after the occupants of room No. 7. However, it was further stated by him that during the night, he got up at one time to urinate and found the two companions of Jagdish Lal, whom he described as Soma and Rajinder Kumar at the trial, leaving the hotel. It was on the next morning, on the arrival of Manmohan Singh, P.W., the proprietor of the hotel, and at his instance, to ask the occupants of room No. 7 to have breakfast, that he went to room No. 7 and found Jagdish Lal dead with a handkerchief tied around his neck. However, it is clear from a perusal of his statement that in his statement to the Police during investigation, Exhibit DA, he had not made any reference to Sain Dass, P.W., having been asked by him to look after the occupants of room No. 7 in his absence. According to his further version, he came to know about the names of Som Nath and Rajinder Kumar, accused, from one Prem Chand on the next day. At another stage he also stated that he had come to know of the name of Som Nath, accused, after seven or eight days after the arrest of Rajinder Kumar and his brother. According to him, Sain Dass, P.W., was a cook in the hotel and he performed his duties from 8 A.M. to 9 A.M., but sometimes, he stayed in the hotel for the night also. However, it was conceded by him that the main duty of Sain Dass, P.W., was in the kitchen of the hotel.

13. According to Sain Dass, P.W., he was working as a cook in the hotel and his duty was from 8 P.M. to 6 A.M. According to his

deposition, the two accused accompanying the deceased went out of the hotel at about 10 P.M., but again returned at about 11 P.M. He named them as Som Nath and Rajinder Kumar. Ashok Kumar, accused, is stated to have come to the hotel later and met his companions in room No. 7. He even stated to have prepared three cups of tea at the instance of Jagdish Lal which was served to them. According to his further version at about 1 A.M. Som Nath and Rajinder Kumar, accused, came down and went out of the hotel. After about 15 or 20 minutes, Ashok Kumar, accused, also left the hotel. The witness himself had left the hotel in the morning at about 6 A.M. and was called from his house by the Police to the hotel at about 1 P.M. According to him, the dead body had been already despatched before his arrival in the hotel.

14. From a close perusal of the statement of Manmohan Singh, P.W., the proprietor of the hotel, it is clear that Sain Dass, P.W., had been subjected to interrogation before the inquest report had been completed, but strangely enough, his version regarding the arrival of Ashok Kumar, accused, at about 11 P.M. in the night and leaving the hotel at about 1 A.M. does not find mention in the version given in the inquest report, Exhibit PB, in the testimony of Devi Chand, P.W., or in the statement of the latter made before the Police during investigation. Besides, Sain Dass, P.W., was employed as a cook and generally it was none of his duties to perform any duty in the hotel during the night regarding the looking after of the occupants in the hotel. It appears that Sain Dass, P.W., was introduced as a witness to include Ashok Kumar as one of the accused at a later stage who had been arrested as late as on March 5, 1979, that is, after about one and a half month of the occurrence. Consequently, the prosecution story regarding Ashok Kumar having come to the hotel and remaining in the company of the deceased for some time during the night and having left the hotel at about 1 A.M. is not credible and his conviction as co-accused in the commission of the heinous crime is not sustainable. The prosecution case against him is highly doubtful.

15. However, so far as Rajinder Kumar, accused, is concerned, the prosecution version that he accompanied Jagdish Lal (deceased) to the hotel at about 9 P.M. and went to room No. 7 and stayed there for the night, stands established from the statements of both Manmohan Singh and Devi Chand, P.Ws. This fact also stands

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corroborated by entry in the register, Exhibit P. 1, where the name of Rajinder Kumar, accused, is mentioned along with that of Jagdish Lal (deceased) at serial No. 94 of the register. The prosecution case admits of no doubt that the dead body of Jagdish Lal was found in room No. 7 lying on a cot on the morning of January 23, 1979, by Devi Chand, P.W., and thereafter by Manmohan Singh, P.W. According to the post-mortem report, he had a number of injuries on his person and had died of throttling and the cause of his death was asphyxia. According to the learned Assistant Advocate-General, though Som Nath, accused, had been acquitted and the prosecution case against Ashok Kumar may be doubtful, yet there is a fool proof case against Rajinder Kumar, accused. If Rajinder Kumar and Jagdish Lal had both slept in room No. 7 during the night and the former had left some time during the night, in suspicious circumstances, the guilt can be attributed to him. As against this, the submission of the learned counsel for the appellants is, that Rajinder Kumar, accused, was convicted and sentenced not under section 302, Indian Penal Code, simpliciter, but with the aid of section 34, Indian Penal Code. The case against Ashok Kumar having been not proved, he has to be treated as acquitted for the purpose of assessing the guilt of Rajinder Kumar, accused. Som Nath, accused, has already been acquitted by the trial Court. Thus, according to the settled law it has to be assumed that neither Som Nath, nor Ashok Kumar, accused, had participated in the occurrence. In this situation, Rajinder Kumar, accused, having been charged under section 302 read with section 34, Indian Penal Code, cannot be convicted and sentenced under section 302, Indian Penal Code. Reliance in support of this proposition was placed on *Sawal Das v. State of Bihar*, (1), wherein in somewhat similar circumstances, it was held,—

“In a trial of the appellant, his father and his mother under section 302 read with section 34, for the murder of appellant's wife, when the father and mother are acquitted, the liability of the appellant has to be established individually and not conjointly upon him before he is convicted under section 302 simpliciter. Such liability should

be fixed on him conclusively and not by conjectures or presumptions only.”

16. The learned Assistant Advocate-General, on the other hand, has relied upon *State of Andhra Pradesh v. K. Venkata Reddy and others*, (2), and has canvassed that even after the acquittal of the two out of the three accused, the appellant alone can be convicted and sentenced under section 302 read with section 34, Indian Penal Code, as already charged. In the said case, the prosecution case in the first information report was that 8 named persons and ten unnamed persons who were not known to the informant had conjointly committed the crime. According to one eye-witness at the trial, the number of participants in the murder was 20. The charge-sheet by the Police was submitted against 13 named persons including the accused who alone stood convicted under section 302 read with section 34, Indian Penal Code, after the acquittal of the remaining 12 accused. In view of the prosecution evidence on the record, it was held by their Lordships of the Supreme Court, that in addition to the 13 who were charged by the Magistrate, the convicted accused was acting jointly with at least four or seven more persons. It was thus held,—

“This evidence on the record is thus sufficient to base a firm finding that apart from the accused named in the charge, there were at least one or more unidentified persons who participated in the criminal action against the deceased conjointly with A. 7. While the precise number of those unidentified persons, other than the 13 named in the charge cannot be ascertained with certitude, it can safely be said that apart from 13 named in the charge there were some more confederates of A-7 and all of them participated in the fatal assault on the deceased in the manner alleged by the prosecution. A-7 can therefore be safely convicted under section 302 read with section 34, Penal Code. Accordingly, we allow this appeal against A-7, reverse his acquittal, convict him under section 302 read with section 34, Penal Code and sentence him to imprisonment for life.”

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Reliance was also placed on the following principle of law as enunciated in *K. Venkata Reddy's case* (supra),—

“It would thus appear that even if in a given case, the charge discloses only the named persons as co-accused and the prosecution witnesses confine their testimony to them, even then it would be permissible to come to the conclusion that others named or unnamed, besides those mentioned in the charge or the evidence of the prosecution witnesses, acted conjointly with one of the charged accused if there was other evidence to lead to the conclusion, but not otherwise.

17. I have closely perused both the judgments of their Lordships of the Supreme Court above referred to. In my considered opinion, the principle of law settled therein is that in case where a number of accused are tried for the commission of an offence with the aid of section 34, Indian Penal Code, but ultimately all but one accused, are acquitted, the conviction of one of the accused alone with the aid of section 34, Indian Penal Code, is still sustainable if from the prosecution evidence besides the named accused against whom the charge is put forth in the Court it is permissible to come to the conclusion that besides the named accused who are acquitted, there were other participants also. However, in the absence of such a situation, a single accused after the acquittal of his co-accused, cannot be convicted with the aid of section 34, Indian Penal Code.

18. So far as the present case is concerned, according to the evidence of Manmohan Singh, P.W. 6 and Devi Chand, P.W. 7, only two persons including Rajinder Kumar, accused, had accompanied Jagdish Lal (deceased) for spending the night in the hotel. According to Sain Dass, P.W., besides these two, Ashok Kumar, accused, had also joined them. For the murder of Jugdish Lal all the three accused were put to trial out of which Som Nath, accused, was acquitted by the trial Court and Ashok Kumar, accused, stands acquitted according to our conclusions as discussed above. This conclusion is not possible from any part of the prosecution evidence that besides Rajinder Kumar, accused, there was any other person present in room No. 7 of the hotel besides Jagdish Lal (deceased).

In view of this admitted position, Rajinder Kumar, accused, cannot be convicted and sentenced with the aid of section 34, Indian Penal Code.

19. Faced with this situation, the learned Assistant Advocate-General, has argued that the prosecution case for the murder of Jagdish Lal is proved beyond doubt against Rajinder Kumar, accused, alone because in the absence of Ashok Kumar or Som Nath, accused, it can be safely assumed that it was Rajinder Kumar, accused, who had slept in room No. 7 along with Jagdish Lal (deceased). Jagdish Lal having been found murdered as a result of throttling in the morning, the prosecution case can be held to be fully proved beyond doubt that it was Rajinder Kumar, accused, who must have committed the murder. This submission is, however, untenable in view of the medical evidence. According to the post-mortem report and the statement of Dr. C. S. Naik, P.W., Jagdish Lal (deceased) had sustained as many as 10 injuries. Besides the injuries on the neck, injuries had also been caused on the thigh, cheek and the right knee and the elbow joint. In the opinion of the doctor, multiple abrasions on the cheek, knee and elbow joint proved that there must have been struggle between the assailant and the victim. In view of this, it is not possible to come to the conclusion beyond reasonable doubt that these injuries could be caused and Jagdish Lal could be throttled, in spite of struggle, by Rajinder Kumar, accused, alone. In fact, it was in view of this position that effort was made by the prosecution to include two other persons as accused along with Rajinder Kumar. In these circumstances, it has to be held that the prosecution case against Rajinder Kumar, accused, for having committed the murder of Jagdish Lal by himself, is not proved beyond doubt and in view of the acquittal of two of his co-accused, his conviction under section 302 read with section 34, Indian Penal Code, also cannot be sustained. This conclusion is reached after acquitting Ashok Kumar, accused, of the charge of murder.

20. For the reasons mentioned above, the appeal, is allowed and both the appellants are acquitted of the charge.

N. K. S.