

APPELLATE CRIMINAL.

*Before Bhide and Currie JJ.*INDAR SINGH (CONVICT) *Appellant**versus*

THE CROWN—Respondent.

Criminal Appeal No 393 of 1933.

Indian Penal Code, Act XLV of 1860, Sections 34, 302: Several persons acting in furtherance of common intention to commit a robbery—one of them shooting a man dead—whether others guilty of the crime, though temporarily absent.

Four persons went armed with guns to the house of K.S. to commit a robbery. K. S. being absent, S. S. and another of the robbers got the minor son of K.S. to take them to the field where K.S. was working. During their absence the other two robbers remained at the house, one of them I.S. taking his stand near the main door which he closed. Two grown-up sons of K.S., who were at their shop close by, having had their suspicions aroused, then came to the house and pushed open the main door, whereupon I.S. fired at them and killed Kehr Singh, one of the brothers. I. S. was convicted under section 302 and S.S. under sections 302/34. It was contended that section 34 was not applicable as S.S. was absent at the time of the murder and could, therefore, not have participated in the crime.

Held, that the contention must be overruled. All that section 34 of the Penal Code requires is that the accused is one of the participators in the joint criminal action in the course of which the murder is committed, and in the present case the accused S.S., though temporarily absent, was participating in the joint criminal action in the course of which the murder was committed.

Barendra Kumar Ghosh v. Emperor (1), overruling *Emperor v. Nirmal Kanta Roy* (2) followed.

Harnam Singh v. Crown (3), dissented from.

Appeal from the order of Sardar Teja Singh, Additional Sessions Judge, Ferozepore, dated the 24th December, 1932, convicting the appellant.

(1) (1925) I.L.R. 52 Cal. 197 (P.C.) (2) (1914) I.L.R. 41 Cal. 1072.

(3) 21 P. R. (Cr.) 1919.

1933

June 1.

NAZIR AHMAD, for Appellant.

1933

V. N. SETHI, for the Government Advocate, for
Crown.

INDAR SINGH
v.
THE CROWN.

BHIDE J.

BHIDE J.—On the 3rd May 1932 a daring robbery was committed in the house of Kishen Singh, a *Jat* of Chak Jaimalwala in the Ferozepore district. A little before sunset four persons went to his house, armed with double barrellled guns. The adult male members of the family were out. Two of them asked Sant Ram, son of Kishen Singh (a boy aged about 8) to take them to the field where Kishen Singh was working. One of the other two persons took his stand on the roof while the fourth took his stand near the main door and closed it. Kehr Singh and Chanan Singh, sons of Kishen Singh, who were working at their shop close by saw Sant Ram being taken by two armed men towards Kishen Singh's field and suspecting foul play went to their own house. They pushed open the door while the culprit, who was standing on guard behind it, fired and shot Kehr Singh dead. Chanan Singh was also slightly injured and fell down but soon afterwards was able to run away. Shortly thereafter Kishen Singh was brought to the house by the two dacoits who had gone to fetch him and under threat of being shot was compelled to surrender the keys of his safe. The robbers then opened the safe and took the cash, currency notes, and gold and silver ornaments lying inside. Some other wooden boxes were also broken and some jewellery found therefrom was taken. The women were stripped of their jewellery. Kishen Singh, his wife *Mussammat* Gulabi, his son Sher Singh and Sher Singh's wife *Mussammat* Harnam Kaur were beaten and subjected to torture by putting burning clothes on their heads, etc. in order to compel them to disclose in-

1933

INDAR SINGH

v.

THE CROWN.

BHIDE J.

formation about other valuables, which the robbers believed to be hidden in the house. But no such information having been obtained the culprits eventually departed with their booty. The matter was promptly reported to the police the same night at about 1-15 A.M. Soon afterwards the police received information about the robbery of a horse from two persons named Abdullah and Hakim Ali and of a mare and a camel from a *haveli* at Dhab Khushal, committed on the same night by four armed persons and from the account given these offences also appeared to have been committed by the same culprits. Investigation proceeded and suspicion fell upon the present appellants and two other persons named Nazar Singh and Kehr Singh. Indar Singh and Kehr Singh were traced to a village in the Faridkot State. There was an encounter between these men and the Faridkot police, in the course of which Kehr Singh was shot dead while Indar Singh was wounded in the arm. Sardara Singh and Nazar Singh were arrested later. Indar Singh, Sardara Singh and Nazar Singh were identified as the culprits who committed the robbery at Chak Jaimalwala by a large number of witnesses at identification parades held in the presence of Magistrates and were eventually challaned. Nazar Singh was given the benefit of doubt and acquitted by the learned Sessions Judge but the present appellants Indar Singh and Sardar Singh were convicted under sections 392, 452 and 302, read with section 34, Indian Penal Code. Under the last section they were sentenced to death while under the first two sections they were sentenced to imprisonment for seven years and to transportation for life, respectively.

* * * * *

After carefully considering the evidence referred to above I have no hesitation in agreeing with the

learned Sessions Judge in holding that both the appellants took part in the robbery committed in Kishen Singh's house on the evening of the 3rd May 1932. The convictions under sections 452 and 394, Indian Penal Code, must therefore be maintained. As regards Indar Singh, the witnesses are unanimous that it was he who fired the shot at Kehr Singh which resulted in his death. His conviction under section 302, Indian Penal Code, must, therefore, stand and the sentence of death passed on him confirmed, as there are no extenuating circumstances whatever in his case. As regards Sardara Singh, it was urged that as he was one of the two dacoits who had gone to fetch Kishen Singh and was not present when Kehr Singh was shot he cannot be held liable for the murder of Kehr Singh. It was contended that section 34, Indian Penal Code, would not apply as Sardara Singh was absent at the time of the murder and cannot, therefore, be said to have participated in the crime. This contention appears to me to be clearly untenable in view of the interpretation placed upon that section by their Lordships of the Privy Council in *Barendra Kumar Ghosh v. Emperor* (1). Their Lordships observed as follows:—

“ Section 34 deals with the doing of separate acts similar or diverse, by several persons: if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for ‘ that act ’ and ‘ the act ’ in the latter part of the section must include the whole action covered by a criminal act in the first part because they refer to it.”

In the present instance, the common intention of the culprits was obviously to commit robbery and in

1933

INDAR SINGH

v.

THE CROWN.

BHIDE J.

1933
 INDAR SINGH
 v.
 THE CROWN.
 BHIDE J.

furtherance of that intention different acts were committed by different persons. Sardara Singh had gone to fetch Kishen Singh for carrying out that common intention while Indar Singh shot down Kehr Singh in furtherance of the same. The decision to shoot Kehr Singh was taken by Indar Singh alone but there can be no doubt that it was taken in furtherance of the common intention. The object of Indar Singh apparently was to strike terror and disarm all opposition and in this he succeeded : for there was no attempt to offer any effective resistance to the robbers thereafter. I can find nothing in the wording of section 34 or in the judgment of their Lordships in *Barendra Kumar Ghosh v. Emperor* (1) to justify the contention of the learned counsel that the actual presence at the time of murder of a person charged with that offence in circumstances such as those of the present case is essential. All that the section seems to require is that he is one of the participators in the joint criminal action in the course of which the murder is committed. In the present instance there can be no doubt that Sardara Singh, though temporarily absent, was participating in the joint criminal action in the course of which the murder was committed. *Harnam Singh v. Crown* (2) on which the learned counsel relied, must, I think, be held to be overruled in view of the above decision of their Lordships of the Privy Council, in *Barendra Kumar Ghosh v. Emperor* (1). The learned Judges who decided *Harnam Singh v. Crown* (2) take the same view of section 34 as was taken in *Emperor v. Nirmal Kanta Roy* (3), but the latter ruling was definitely overruled by the decision of their Lordships in *Barendra Kumar Ghosh v. Emperor* (1). I must

(1) (1925) I. L. R. 52 Cal. 197 (P. C.). (2) 21 P. R. (Cr.) 1919.

(3) (1914) I. L. R. 41 Cal. 1072.

accordingly hold that Sardara Singh was rightly convicted of murder by virtue of the provisions of section 34, Indian Penal Code. As regards the sentences, although Sardara Singh has been held constructively liable, the fact that all the four culprits were armed with guns shows that they all intended to use them, when necessary, in furtherance of their common object. The offence was of a very serious character and there are no extenuating circumstances as already stated. I see no adequate ground for not confirming the sentence of death.

I would accordingly dismiss both the appeals and confirm the sentences of death passed on the appellants.

CURRIE J.—I agree.

A. N. C.

Appeal dismissed.

1933

INDAR SINGH

v.

THE CROWN.

BEIDE J.

CURRIE J.