

CASE NO.:
Appeal (crl.) 1029 of 2000

PETITIONER:
RAMJI SINGH & ANR.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 12/10/2001

BENCH:
R.C. Lahoti & Ashok Bhan

JUDGMENT:

ASHOK BHAN, J.

Unresolved dispute over property led to the murder of Indradeo Singh at the hands of his brother Ramji Singh, appellant No. 1 and his two sons Ved Prakash Singh, appellant No. 2 and Bhanu Singh. Incident took place on 28th September, 1983 at 7.00 A.M. near the place of Bachcha Pandey towards the west of house of the deceased.

The first informant is the Rajpati Devi, PW 4, wife of the deceased and first information report was recorded by S.I. Gopal Prasad, Investigating Officer, of P.S. Kopa, Distt. Saran at her house on the same day at 10.00 A.M.. The concerned Police Station is at Kopa which is at the distance of 5 to 6 Kms from the place where the occurrence took place. It was reported by her that in the morning her husband Indradeo Singh had gone to field for easing out. While she was brooming her house, she heard the shouts of her daughter, hearing which, she came out of her house and saw that towards the West, in front of door of Bachcha Pandey, Bhanu Singh and Ramji Singh had caught hold of waist of her husband and threw him down and began to assault him with lathis. Ved Prakash Singh also brought a lathi. He had a chura as well in his hand. Bhanu Singh and Ved Prakash started assaulting the deceased and their father Ramji Singh kept on shouting Jo Hoga Dekh lenge [whatever happens we will see]. When she tried to rescue him then Bhanu Singh and Ved Prakash Singh assaulted her by lathis. Her husband died on the spot. All the three accused persons were brandishing lathies. The accused persons did not allow anybody to go near the dead body of Indradeo Singh. After the death all three persons fled away but before fleeing they washed the blood which had fallen on the earth. The motive for murder was stated to be some earlier family dispute. The occurrence were witnessed by Dular Chand Rai, PW 6, Hira Lal Singh, PW 11 and Kabutari Devi, PW 8. It was further stated by her that all the three accused persons together murdered her husband.

The accused persons were arrested and put to trial. They denied their involvement in the crime. No specific defence was taken but from the trend of cross-examination the defence seems to be that the accused were innocent and they were falsely implicated. It was suggested that Rajpati Devi, PW 4, informed the Police on 1st June, 1985 that Inderdeo was caught while doing bad act in field at which

place he was assaulted. The suggestion was denied by Rajpati Devi, PW 4. It was stated that she did not know about any such fact.

The prosecutions case rests on the ocular testimony of eye witnesses and the medical evidences. PW 1, Hira Lal Rai son of PW 6; PW 2, Radha Kumari, aged 14 years, daughter of deceased; PW 3 Mira Kumari, aged 8 years (tendered) daughter of deceased; PW 4, Rajpati Devi, wife of the deceased; PW 6, Dularchand Rai; PW 8, Kabutari Devi; PW 9, Arjun Kumar Singh, aged 12 years, nephew of deceased; PW 10 Lal Mohar Rai S/o Dularchand Rai; and PW 11, Hira Lal Singh were produced as the eye witnesses. Medical evidence consisted of PW 5, Doctor Suresh Prasad and PW 7, Doctor Nawal Kishore Prasad Seh. PW 12 is the formal witness who proved police case diary, inquest report and FIR. The investigating officer was not produced.

The Trial Court discarded the evidence of PW 6, Dular Chand Rai being inimical. The testimony of his two sons, namely, Hira Lal Rai, PW 1 and Lal Mohan Rai, PW 10 was also discarded as they were sons of Dular Chand Rai, PW 6, who was inimical towards the accused. Testimony of PW 2, Radha Kumari, daughter of deceased was also discarded, as her presence at the time of occurrence was doubtful. Testimony of PW 3, Mira Kumari, the other daughter of deceased, was also discarded as she was a tendered witness. The trial court relied upon the testimony of PW 4, Kabutari Devi; PW 9, Arjun Singh and PW 11, Hira Lal Singh.

In all the deceased received 11 injuries out of them injury No. I and injury no. IX reproduced below were found to be grievous.

(i) Lacerated wound 1 x $\frac{1}{4}$ bone deep over left side of forehead with surrounding swelling and under lying clinical fracture. On dissection there was fracture tissue and haemotoma.

(ix) Lacerated wound $\frac{1}{4}$ x $\frac{1}{4}$ x 1 with compound fracture and dislocation of right ankle.

Other nine injuries were simple some of which were on non-vital parts. According to Doctor these two injuries were sufficient in the ordinary course of nature to cause death. In the opinion of Dr. Suresh Prasad, PW 5, the death was due to shock and haemorrhages. The time elapsed between the death and the postmortem was 12 hours. The Doctor also proved the postmortem report marked Ex. P1 which indicates in columns 21, 22 and 23 that the stomach was empty and that the small intestines and large intestines contained gas and faeces. PW 7, Dr. Nawal Kishore Prasad, had examined PW 4, Rajpati Devi, she had number of injuries but none of them were grievous.

Relying upon the testimony of the three eye witnesses the trial court convicted all the three accused persons under Section 302, IPC for the murder of Indradeo Singh. Bhanu Singh and Ved Prakash were separately convicted under sections 323 and 324 respectively for causing hurt to Rajpati Devi. All the three convicts were sentenced to life imprisonment under Section 302 IPC. Ved Prakash Singh was further sentenced to one year R.I. and three years R.I. under Sections 323 and 324 IPC respectively and Bhanu Singh was further sentenced to one year R.I. under Section 323 IPC. However, the sentences were to run concurrently.

Against their conviction and sentence all the three accused filed the appeal before the High Court at Patna. Without any elaboration and arriving at independent findings on reappraisal of evidence the High Court after referring to the entire evidence on the record concurred with the findings arrived at by the trial Court by observing

thus:

I have examined the evidence in the light of the finding of the trial court. In my opinion, there appears no valid reason to differ from the opinion of the learned trial Judge. The very fact that Rajpati had received injuries in the occurrence in the manner as alleged she must be held to be a trustworthy witness. There may be some minor contradiction in the evidence which can be ignored.

The next question for consideration is whether the appellants are guilty of murder under section 302/34 IPC or culpable homicide not amounting to murder. As many as 12 injuries were found on the deceased. Injury nos. 1 and 11 were the cause of the death. These injuries were sufficient to cause of death in ordinary course. The conviction of the appellants under section 302/34 appears to be valid.

Aggrieved by the judgment and order of the High Court the two accused persons, namely, Ramji Singh and Ved Prakash Singh have filed the instant appeal. Bhanu Singh, the third accused has not preferred the appeal.

Counsel for the appellants argued that the High Court in an appeal directed against the order of conviction is required to arrive at independent conclusion on reappraisal of the entire evidence which it failed to do. We do agree with the contention raised by the counsel for the appellants that the High Court, being the first Appellate Court, should have recorded its independent findings on reappraisal of the evidence. On perusal of the order we find that the High Court after referring to the evidence piece by piece agreed with the findings recorded by the trial court for conviction and summed up the conclusion in the manner narrated in paragraphs 22 and 23 reproduced above. The order of the High Court leaves much to be desired, but instead of remitting the case back for recording of fresh finding we have analysed the evidence on the record ourselves with the assistance of the learned counsel for the parties as this case pertains to the year 1983. The remittance of the case would cause unnecessary harassment and cost to the parties. Though this Court generally does not reappraise evidence which has been considered by the two courts below but in the peculiar facts and circumstances of this case this recourse is being adopted.

We have gone through the entire evidence. Even if we discard the evidence which has been discarded by the trial court we find that PW 4 in her testimony categorically stated that on hearing the screams of her daughter that her father was being assaulted, she ran out of her house and watched all the three accused causing injuries to the deceased. Although she has not attributed the specific injuries caused by each of the accused, she has named all the three accused and stated that all of them caused injuries. Submission for the learned counsel for the appellants that no reliance could be placed on the testimony of Rajpati Devi, PW 4 as she being the wife of the deceased and there being a family dispute within the family, was an interested witness cannot be accepted. As the incident had taken place just near the house of the deceased and PW 4 was present at the house, she was the natural witness to the occurrence. She had also received injuries in the same occurrence and this fact was duly corroborated by the injury record and the evidence of PW 7, Dr. Nawal Kishore who examined her soon after the incident. She being the wife of the deceased there was no reason for her to leave the real culprits and implicate the accused persons

falsely. The suggestions made in the cross-examination that the place of occurrence was different than the one which has been shown by the prosecution cannot be accepted. The suggestion put to PW 4 her husband was caught while committing immoral act in the field is far-fetched and imaginary. There is nothing on the record to indicate that the occurrence did not take place at the place where it is alleged to have been placed.

The testimony of PW 4 is duly corroborated by PW 9, Arjun Singh, a boy of aged 12 years. His presence at the place of occurrence is also natural. He is the nephew of the deceased. He has given full account of occurrence implicating the accused persons of the said incident. In the testimony he says that he was inside his house and on hearing the shouts from outside of his house he came out and saw that Bhanu Singh and Ramji armed with lathi and Ved Prakash with Churra giving injuries to the deceased. When deceased asked for water then the accused persons said that he was not to be given any water. When he reached the place of occurrence he did not hear any sound from the mouth of the deceased. This witness also corroborated with PW 4 that accused persons washed the blood from the place of occurrence. Similarly, PW 11, has duly supported the evidence of PW 4. He has stated that on hearing the shouts he went to the darwaja of Bachcha Pandey and saw that the accused persons armed with lathi were giving blows to the Inderdeo Singh. Ved Prakash has a chura as well. He has corroborated with the testimony of PW 4 on all the material particulars. On going through the evidence of PWs 4, 9 and 11 carefully, we are of the firm view that the occurrence took place in the manner suggested by the prosecution. All the three witnesses were natural witnesses. They were living in nearby houses. There was no reason for them to implicate the accused falsely by leaving out the real culprits. The counsel for the appellants failed to point out any cogent or acceptable reason to disbelieve their testimony.

Counsel for the appellants then pointed out that the appellants had been charged under Section 302 IPC whereas no charge had been framed under Section 34 of the IPC. The trial court convicted all the three accused under Section 302. The High Court in appeal convicted the appellants under Section 302 read with Section 34. It was argued with vehemence that it was not possible to ascertain who gave the fatal blow and therefore the common intention could not be inferred. That in the absence of the charge read with Section 34 the appellants were deprived of their right to defend themselves. He referred to Mohan Singh Vs. State of Punjab, 1962 Supp (3) SCR 848; Ninaji Raoji Boudha & Anr. Vs. State of Maharashtra, 1976 (2) SCC 117; Pandurang, Tukia and Bhillia Vs. The State of Hyderabad, 1955 SCR 1083; Lal Mandi Vs. State of W.B., 1995 (3) SCC 603; and Dukhmochan Pandey & Ors. Vs. State of Bihar, 1997 (8) SCC 404 to canvass the point that in the absence of pre-concert of minds the common intention could not be inferred though the intention may be the same.

Legal position as to whether in the absence of charge under Section 34 conviction could be maintained under Section 34 was cleared by the Constitution Bench in Wille Slaney Vs. State of M.P., AIR 1956 SC 116, where this Court observed at para 86:

Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made

constructively liable.

In such a situation, the absence of a charge under one or other of the various head of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant.

This was reiterated by the Supreme Court a number of times. We may refer to Dhanna Vs. State of Madhya Pradesh, AIR 1996 SC 2478, where this position is reiterated after referring to the other cases. It held:

It is, therefore, open to the Court to take recourse to Section 34 of IPC even if the said section was not specifically mentioned in the charge and instead Section 149, IPC has been included. Of course a finding that the assailant concerned had a common intention with the other accused is necessary for resorting to such a course. This view was followed by this Court in later decisions also. (Amar Singh v. State of Haryana, AIR 1973 SC 221; Bhoor Singh v. State of Punjab, AIR 1974 SC 1256. The first submission of the learned counsel for the appellant has no merit.

Accordingly it is held that even in the absence of the charge under Section 34 the conviction could be maintained by the courts below.

The counsel for the appellants could not show that any prejudice was caused to either of the accused persons because of the non-framing of charge under Section 34.

It is true that the two injuries which proved to be fatal were not specifically attributed to either of the accused. The common intention can be formed at the spot. At times it is difficult to get direct evidence of pre-concert of minds. The common intention can be gathered from the circumstances and the manner in which assault is carried out. The manner in which assault was carried out leaves no manner of doubt in our mind that the appellants had come with the intention to kill the deceased. Their intention was not to cause injuries alone. All had come to the house of the accused. Finding him near the house of Bachcha Pandey all three of them started causing injuries. When PW 4 intervened and requested them not to cause the injuries to deceased they continued to cause the injuries. Even when PW 4 threw herself on the deceased to protect her husband the accused persons did not stop from causing further injuries to the deceased. Instead they caused injuries to Rajpati Devi, PW 4, as well. When deceased asked for water rather than giving the water they shouted they would kill him. All these show their pre-determined mind to kill the deceased. Had their intention been to cause injuries they would have stopped when PW 4 intervened to protect her husband or when deceased asked for water. The continuance of causing of injuries in spite of the intervention of PW 4 and refusal to give water when the deceased asked for it, as stated above, shows the pre-determined mind of the accused that they had come with the intention to kill. It is true that there is no evidence of prior meeting of minds. But the sequence of

events which unfolded during the course of occurrence clearly indicate the pre-determined minds of the accused persons to kill the deceased.

For the reasons stated above, we do not find any merit in this appeal, accordingly, the appeal is dismissed.

.J.
(R.C. Lahoti)

.J.
(Ashok Bhan)

October 12, 2001

JUDIS