

CASE NO.:
Appeal (crl.) 827-829 of 2000

PETITIONER:
JHAPSA KABARI & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 04/12/2001

BENCH:
U.C. Banerjee & Y.K. Sabharwal

JUDGMENT:

[With Criminal Appeal No.873 of 2000]
J U D G M E N T

Y.K. Sabharwal, J.

This case relates to murder of three persons in a faction ridden village which had seen several murders. On the date of occurrence at about 10 a.m. there was murder of Naseeb Kabari. According to the case of the prosecution, the accused persons were part of an unlawful assembly of about 50 persons and were armed with deadly weapons like gun, bhala, farsa and garasa. In prosecution of their common object, they caused death of Shital Singh and Ram Sewak Singh, who along with one Khattar Singh was believed by the unlawful assembly to be responsible for murder of Naseem Kabari.

Ram Sewak Singh and Shital Singh are cousin brothers. According to the prosecution, they were both assaulted by means of farsa by accused Bhikhar Raut. Accused Deep Narayan Singh cut the neck of Ram Sewak Singh while accused Israil Kabari assaulted with the bhala on the abdomen of Shital Singh. Both died instantaneously. Thereafter the unlawful assembly went to the house of Khattar Singh and, according to the prosecution, accused Tarni Prasad Singh, Bhikhar Raut and Tahir Kabari snatched his son Santosh Kumar Singh aged about three years from the lap of the wife of Khattar Singh. He was taken away and on the next day, Santosh Kumar Singh was found murdered and his dead body was found buried in a paddy field from where it was recovered by the Investigating Officer.

Seventeen persons were placed on trial having been charged under Sections 302/34 and 148 of the Indian Penal Code ('IPC' for short) for intentionally and knowingly causing the death of Ram Sewak Singh, Shital Singh and Santosh Kumar Singh in furtherance of their common intention. They were also further charged under Sections 449 and 380 IPC. Accused Israil Kabari was separately charged under Section 302 IPC simpliciter for murder of Shital Singh.

Deepan Singh @ Deep Narayan Singh was also separately charged for murder of Ram Sewak Singh. Bhikhar Raut, Tahir Kabari and Tarni Prasad Singh were also charged under Section 302/34 IPC for murder of Santosh Kumar Singh.

Out of 17 accused, two, namely, Jahuri Raut and Hakim Kabari were acquitted by the Sessions Court. Deepan Singh @ Deep Narayan Singh died when the appeal was pending in the High Court and so also the accused Nirsu Narayan Singh. Bhulla Bind did not challenge conviction and sentence imposed on him by the Sessions Court. The plea of alibi of accused Mod Narayan Singh was accepted by the High Court resulting in his acquittal. The remaining accused are appellants in these appeals.

Except the two accused, who were acquitted, the rest were convicted for offence under Section 302/34 IPC for causing death of Ram Sewak Singh and Shital Singh. Bhikhar Raut, Tahir Kabari and Tarni Prasad Singh were also convicted for offence under Section 364 IPC. They were, however, not found guilty of offence under Section 302/34 IPC for the murder of the child Santosh Kumar Singh on the finding that nobody has actually seen them committing

his murder. As already stated, dead body of Santosh Kumar Singh was found in a paddy field on the next day. The Sessions Court found that the child had been kidnapped from the lap of his mother for which these three were found guilty. All, except those who were acquitted, were also convicted for offence under Sections 148 and 149 IPC. All the accused persons were acquitted of the charge under Section 380 IPC. Those found guilty of offence under Section 302/34 IPC were directed to undergo imprisonment for life and rigorous imprisonment for three years for offence under Section 148 IPC and 10 years for offence under Section 449 IPC.

Bhikhar Raut, Tahir Kabari and Tarni Prasad Singh were also sentenced to undergo rigorous imprisonment for 10 years for offence under Section 364 IPC.

The Sessions Court based the conviction mainly on the evidence of PW-1 and PW-8. PW-1, Deopari Devi is widow of Ram Sewak Singh and PW-8, Ramadhar Singh who was aged about 14 years at the time of occurrence is son of Shital Singh. PW-2 is the mother of Santosh Kumar Singh from whose lap, the three accused took away the child. The Sessions Court based the conviction for offence under Section 364 mainly upon the testimony of PW-2 Pawan Devi, PW-4 Nandini Devi and PW-5 Ramashish Singh.

The High Court has confirmed the conviction and sentence awarded by the Sessions court except that of Mod Narayan Singh, as already stated. The judgment of the High Court is based primarily on the testimony of PW-1 insofar as the conviction of the accused for the murder of Ram Sewak Singh and Shital Singh is concerned. In respect of PW-8, the High Court expressed doubts about his presence in the house on the ground that he being a school student and it having not been proved that he was not in school and also that PW-1 had not deposed about his presence and he did not mention the name of PW-1 in his fardbayan. The conviction for offence under Section 364 IPC was confirmed as a result of the acceptance of the testimony of the mother of the child and also other witnesses as noticed hereinbefore.

Learned counsel for the appellants contends that there is no evidence whatsoever for conviction of the appellants and the High Court having found the presence of PW-8 doubtful ought to have acquitted all the appellants instead of confirming their conviction on the solitary statement of PW-1.

PW-1 is widow of the deceased Ram Sewak Singh. She has given graphic account of the occurrence. Ram Sewak Singh and Shital Singh had common courtyard. She was cooking food in her kitchen at about 11 a.m. when the incident happened. She saw them going to the courtyard of Sarjug Singh which was contiguous. She gave detailed account of how Israil Kabari pierced bhala in the abdomen of Shital Singh and how Bhikhar Raut assaulted both of them with farsa and how Deepan Singh @ Deep Narayan Singh had cut the neck of her husband. Deepan Singh is already dead. She is a natural, trustworthy, reliable and competent witness. She saw the occurrence. Her deposition is consistent with the course of events and conduct natural with that of a wife. It is true that if the presence of PW-8 is doubtful, it becomes a case of conviction based on the testimony of a solitary witness. There is, however, no bar in basing conviction on the testimony of solitary witness so long as the said witness is reliable and trustworthy. The Sessions Court and the High Court examined the testimony of PW-1 and found no reason to disbelieve it. We have also gone through the testimony of PW-1. We are also of the view that her deposition is most natural, reliable and trustworthy. She could not be shaken in the cross-examination. Simply because 14 years' old boy did not name her in the fardbayan, in the facts of the case, is of no consequence and does not require her evidence to be rejected. He must have been under a mental tension on account of the murder of his father and uncle. In our view, there is no infirmity in the conviction and sentence of Bhikhar Raut and Israil Kabari for offence under Section 302/34 IPC.

Insofar as other appellants are concerned, the finding of the High Court is that there is no specific allegations against them. There is no evidence whatsoever to establish that any criminal act was done by them in furtherance of a common intention. As above noticed, there were about 50 persons. Nothing was shown before the Sessions Court or the High Court or even before us to establish common intention of the remaining accused. The common intention is different than the common object. The charge against them is not under Section 149 IPC. Even otherwise, it was not shown that the ingredients of Section 149 had been established. There is total absence of evidence both in respect of Section 34 as well as Section 149 IPC. Therefore, it is not possible to confirm the conviction of the appellants other than Bhikhar Raut and Israil Kabari.

With regard to the incident of kidnapping of Santosh Kumar Singh, we find that on appreciation of evidence, the three persons abovenamed were rightly convicted under Section 364 IPC. Their conviction was rightly maintained by the High Court. It is based on the testimony of the mother of Santosh Kumar Singh from whose lap the child was kidnapped and also the testimony of other witnesses (PWs-4 and 5). We find no merit in the contention that three persons could not have been convicted for kidnapping of a three year old child. Bhikhar Raut, Tahir Kabari and Tarni Prasad Singh have been rightly convicted and sentenced for offence under Section 364 IPC.

For the foregoing reasons, we partly allow the appeals and set aside the conviction of the appellants other than Bhikhar Raut and Israil Kabari for offence under Section 302/34 IPC. The appeals of Bhikhar Raut and Israil Kabari are, however, dismissed. The conviction of Bhikhar Raut, Tahir Kabari and Tarni Prasad Singh under Section 364 IPC is maintained and their appeals challenging that conviction are dismissed. All the appeals stand disposed of in the above terms.

.....J.
[U.C. Banerjee]

.....J.
[Y.K. Sabharwal]

December 4, 2001

JUDIS