

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 85 OF 2008

KRISHNAT BHIMRAO SHINDE & ANR. APPELLANTS

VERSUS

STATE OF MAHARASHTRA & ANR. RESPONDENTS

O R D E R

1. This appeal is directed against the concurrent judgments of conviction and sentence of the appellants for having committed an offence under Section 302 read with Section 34 of the Indian Penal Code by two of the four accused, the other two having chosen not to file an appeal in this Court.

2. As per the prosecution story, the deceased Sadashiv Kundalik Sataverkar was residing in village Kakhe along with his wife Rajashri - P.W. 2 and their children Pravin and Suraj. His elder brother P.W. 8 - Mahadev and P.W. 10 - Sunita (sister-in-law of the deceased), her mother-in-law P.W. 9 - Asha were also residing in a nearby lane. Accused Sambhaji Bapu Shinde, Tanaji Bapu Shinde, Krishnat Bhimrao Shinde are

brothers whereas the fourth accused Babu Rao Bapu Shinde was their cousin. As per the prosecution story, the deceased had let out the open space in front of his house to Tanaji Bapu Shinde -A2 for the purpose of running a cycle shop. It appears, however, that A-2 had cast some aspersions on P.W. 2- Rajashri and when this information was conveyed to P.W. 8 - Mahadev and further to the deceased a quarrel had ensued between Mahadev and the deceased on the one hand and A2 on the other and as a consequence A-2 had been asked to vacate the shop. A week prior to the incident in question, A-1 Sambhaji Bapu Shinde had also deliberately dashed his motor cycle against Suraj, the son of the deceased, causing him minor injuries whereupon the deceased had caught him by his collar and given him a few slaps but on the intervention of those who had gathered at the site, they had been separated. A-1 had, however, left threatening the deceased with dire consequences. At about 3:30 p.m. on 25th November, 1999, the deceased and P.W. 2 - Rajashri had gone to Kodoli to the weekly bazaar and after making their purchases they returned to their village Kakhe in a jeep belonging to one Pandurang Shinde. They got down near the bus stand and started walking towards their residence and as they were doing so, P.W. 3, Shivaji who too had a cycle shop called the deceased

for sharing some pan. The deceased then went into the shop while P.W. 2 - Rajashri waited for her husband a short distance ahead by the side of the road. The deceased then left Shivaji's shop to join his wife and as he was on his way Rajshri heard shouts from the rear and on looking that side saw the four accused armed with various weapons attacking her husband. She also noticed that Sambaji Bapu Shinde and Tanaji Bapu Shinde were armed with an axe and sickle respectively whereas the other two Krishnat Bhimrao Shinde and Baburao Bapu Shinde were armed with lathis. The attack was opened on the deceased by A1 and A2 and they caused serious injuries on the neck and head of the deceased with an axe and sickle and after he fell to the ground, some injuries were caused to him by the other two accused as well. P.W. 8 - Mahadev was immediately informed about the incident by one B.R. Patil and he too rushed to the scene of the crime and thereafter accompanied by P.W. 2 - Rajashri, to police station Kodoli and lodged the FIR at 5:30p.m. The police officers reached the place of incident and made the necessary enquiries and sent the dead body for its post mortem examination. A2, A3 and A4 were arrested on 26th November, 1999 whereas A1 was arrested on the 1st of December, 1999. On the completion of the investigation, the accused were charged for an offence punishable

under Section 302/34 of the IPC and as they pleaded innocence, they were brought to trial. In support of its case, the prosecution relied on 17 witnesses, the primary one being P.W. 2 - Rajashri the solitary eye witness whose statement was sought to be corroborated by P.W. 8 - Mahadev, P.W. 9 Asha and P.W. 10 - Sunita who had received the information about the incident from Rajashri. All the other eye witnesses and others relating to the circumstantial evidence were, however, declared hostile at the trial. The trial court and High Court relying on the statement of P.W. 2, P.W. 9 and P.W. 10, as supported by the evidence of P.W. 12 -Dr. Shrikant who had performed the post mortem, held the accused guilty and sentenced them to imprisonment for life under Section 302/34 of the IPC. An appeal taken to the High Court was thereafter dismissed. As already indicated, the present appeal has been filed only at the instance of A3-Krishnat Bhimrao Shinde and A4-Baburao Bapu Shinde, the two accused who are said to have been armed with lathis.

Mr. R. Sundaravardhan, the learned senior counsel for the appellants has raised several arguments during the course of the hearing. He has first and foremost pointed out that the evidence of P.W. 2 - Rajashri, the solitary eye witness and the closest relative of the deceased could not be believed without

adequate corroboration and as all the independent witnesses including some who had witnessed the incident had been declared hostile, it was clear that there was no credible evidence against the appellants. He has further submitted that the reliance of the courts below on the statements of P.W. - 8, P.W. 9 and P.W. 10 as corroborating the statement of P.W. 2 was also not called for as these three had not witnessed the incident and had reached the place soon after the murder had been committed and as they were also closely related to the deceased their evidence was clearly suspect. It has also been submitted by Mr. Sundaravardhan that the eye witness account was not supported by the medical testimony in as much that the injuries said to have been caused with lathis were obviously not lathi injuries as these were abrasions whereas lathis would have caused only contrusions. He has finally pleaded that the main role had been ascribed to A1 and A2, non-appellants and as the present appellants had been armed only with lathis the question of the applicability of Section 34 of the IPC to show their common intention with the main accused had not been proved on record. He has in this connection relied upon Dharam Pal v. State of Haryana (1978) 4 SCC 440, Mohinder Singh & Anr. v. State of Delhi AIR 1975 SC 1506 and Rajender Singh & Ors. v.

State of Bihar (2000) 4 SCC 298.

Mr. Ravindra Kumar Adsure, the learned counsel for the State of Maharashtra has, however, pointed out that the FIR had been lodged within two hours of the incident in which all details pertaining to what had happened earlier and on the day in question had been spelt out and the promptness of the FIR pointed towards the truthfulness of the prosecution story. It has also been pleaded that a perusal of the evidence of P.W. 2 as supported by the evidence of P.Ws. 8,9 and 10 clearly proved the case of the prosecution and merely because they happened to be closely related to the deceased was not a ground to disbelieve them more particularly so as the bitterness between the families had existed for sometime on account of the slander that the accused had been spreading about Rajashri - P.W.2. He has also pointed out that all the accused had come fully armed to the place of incident and as Sambaji Bapu Shinde -A1 the prime mover in the incident and who had been beaten by the deceased on account of the accident involving Suraj had held out a threat that he would kill him one day and as all the accused were closely related to each other, three of them being brothers, and the fourth one being a cousin, had come to the place of incident with weapons, the common intention on the part of the accused to commit murder

was writ large.

We have heard the learned counsel for the parties and gone through the record very carefully.

P.W. 2 undoubtedly is the only eye witness of the incident, the others having been declared hostile. We, however, find absolutely no reason to disbelieve her statement. We notice that the story which she maintained even at the trial had been given by her in the FIR lodged within two hours of the incident. We also find from the record that she had conveyed the information about the murder to P.Ws. 8, 9 and 10 almost immediately and they too have supported the prosecution story in its entirety. It is true, as contended by Mr. Sundaravardhan, that all these witnesses are closely related to each other. To our mind, however, in the face of the fact that independent witnesses are reluctant to come forward and this hard truth is exemplified by the facts of this very case itself, we find absolutely no reason in disbelieving the relation witnesses. On the contrary, such witnesses would be loathe to leave out the true assailants and to rope in innocent ones.

We also find from the record that at least two different types of weapons had been used, cutting weapons and those causing blunt injuries. As per the statement of P.W. 2, A1 and A2 had been armed with

weapons which could cause the incised wounds i.e. an axe and a sickle whereas the appellants before us had been armed with lathis which could cause abrasions which are blunt weapon injuries. Mr. Sundaravardhan has, however, dwelt on the ambivalence on the part of P.W. 12 the doctor, with regard to the weapons used. He has referred us to his statement that ordinarily injuries with a lathi would cause contrusions. When further questioned, however, the doctor reiterated that abrasions could be caused with a blunt weapon as well.

Mr. Sundaravardhan has, however, placed special emphasis on his submission that the facts did not reveal the common intention amongst the accused. This argument would have to be examined in the peculiar facts of this case. It bears reiteration that all the accused were very closely related to each other and the quarrel had taken place between the two families on two occasions prior to the murder incident and as a consequence the cycle shop which had been opened in the plot belonging to the deceased had been got vacated. Likewise, the second incident with A1 deliberately dashing his motor cycle against Suraj, the son of the deceased, on which the deceased had beaten A-1 who had in turn threatened the deceased with death was a precursor to the murder. It is in this background that the common intention of the accused would have to be

gathered. It is true that some of the observations relied upon by Mr. Sundaravardhan in the judgments cited by him do support the views expressed by him but it is also to be borne in mind that in criminal matters the broad principles of law cannot be applied de hors the facts of the case. In Dharam Pal's case (supra) the accused had come armed with various weapons including a gun (which Dharam Pal the main accused was carrying) and this weapon was used to cause the fatal injury whereas the conventional weapons carried by the other two accused were, used to cause injuries to the witnesses alone. It is in this situation that this Court observed that a conviction under Section 302/34 IPC against these two accused could not be sustained. Likewise, in Mahinder Singh's case (supra) this Court disbelieved the story projected by the prosecution that a threat had been held out against all of the accused to kill the deceased. Rajender Singh's case too is based on its own facts, and cannot be mechanically applied.

We find in the case before us that the story with regard to the earlier two incidents between the complainant party and the accused party have to be proved on record and these incidents had catalysed the circumstances and led to the fatal attack on the deceased. We are, therefore, are of the opinion that

the matter has to be examined on its own facts and no universal yard stick as to whether the common intention has been made out or not can ever be applied or attempted.

We find no merit in the appeal which is, accordingly, dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
NOVEMBER 10, 2009.



JUDGMENT