
(2010) 05 MP CK 0006

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 471 of 2000

Bahadur Singh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 374(2)
Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2010) 5 MPHT 405

Hon'ble Judges : Shyam Sunder Dwevedi, J;S.K. Gangele, J

Bench : Division Bench

Judgement

S.S. Dwivedi, J.—The Appellants have preferred this appeal u/s 374(2) of the Code of Criminal Procedure, aggrieved by the judgment of conviction and sentence dated 14-6-2000 passed by Fourth Additional Sessions Judge, Vidisha, in Sessions Trial No. 103/98 whereby held all the three Appellants guilty for the offence punishable u/s 302 read with Section 34 of Indian Penal Code and sentenced each of them to imprisonment for life and fine of Rs. 500/-. In default of payment of fine, further ordered to suffer imprisonment for one month.

2. Briefly stated the facts of the case are, there was some dispute in respect of some agricultural land in between the Appellant/accused Bahadur Singh and the deceased Harprasad with regard to the partition. On 8-5-98 deceased Ramgopal and Harprasad went to the field with one tractor to plough at about 5.00 p.m. it is alleged that Appellant/accused Bahadur Singh armed with farsa, Appellants/accused Pappu and Prakash armed with axe and acquitted co-accused Sonabai armed with parena came to the field and started abusing the deceased Harprasad and Ramgopal and asked why they are ploughing the field concerned and thereafter it is further alleged that the Appellant/accused Bahadur Singh had caused an injury by means of farsa to the deceased Harprasad on the left leg, due to which Harprasad fell down on the field; thereafter Appellant/accused Prakash had caused injuries by means of axe near the ear, thereafter also caused other injuries on the head; when second deceased Ramgopal tried to intervene,

at that time Appellant/accused Pappu had caused injuries to Ramgopal on the neck by means of axe and thereafter also caused further injuries by the axe. Then Appellant/accused Bahadur Singh put the concerning tractor on fire and also caused damage to the tractor concerned. The incident was seen by Deepchand, who lodged the FIR as well as by witnesses Chhotelal and Ramcharan. Witness Deepchand had lodged FIR (Exh. P-1) at 7.05 p.m. at Police Station Pathari on the same day, on which basis the Police registered the case u/s 302, IPC. The Investigating Officer reached on the spot, prepared the inquest panchnama of both dead-bodies of deceased Harprasad and Ramgopal; sent the dead-bodies for post-mortem examination also prepared spot map, seized bloodstained and plain earth from the spot Dr. P.K. Jain (P.W. 2) performed the post-mortem of the dead body of Harprasad and found near about ten injuries - incised wounds on various parts of his body and, opined that due to excessive haemorrhage from the injuries specially the injury on the head the deceased died due to coma and proved the post-mortem report [Exh. P-2 (A)]. Similarly, he also performed the post-mortem of the dead body of Ramgopal and found near about 13 incised injuries on various parts of his body and opined that due to excessive haemorrhage from the injuries resulting shock and ultimate death of Ramgopal and proved the report [Exh. P-3 (A)]. After due investigation the charge-sheet had been filed against the Appellants/accused.

3. All the three Appellants/accused abjured the guilt and their defence is of false implication in this case. The learned Trial Court after due appreciation of the entire evidence on record by the impugned judgment held all the three Appellants/accused guilty for the offence punishable under Sections 302/34 of IPC and sentenced each of them as stated herein above aggrieved by which the Appellants have preferred this appeal.

4. Having heard the learned Counsel for the Appellants as well as learned Public Prosecutor appearing for the State and perused the record.

5. It is submitted on behalf of the Appellants that the presence of the alleged eye-witness Deepchand (P.W. 1) is Chhotelal (P.W. 4) is found to be doubtful because on seeing the incident they had not tried to intervene in the incident concerned and there are material contradictions in their statement recorded in the Trial Court also and learned Trial Court has wrongly believed the aforesaid statements of the alleged eye-witnesses Deepchand (P.W. 1) and Chhotelal (P.W. 4) and wrongly held the Appellants guilty for the aforesaid offence. It is further submitted that the allegation against the Appellant/accused Bahadur Singh is for causing single injury to the deceased Harprasad on the left leg and thereafter there is no allegation against him that he had caused any further injury to any of the deceased and, in such circumstances, it is not proved that Appellant Bahadur Singh is also having any common intention for causing death of Harprasad and Ramgopal. At the most, he can be held guilty for the offence punishable u/s 324 of IPC for causing a single injury to the deceased Harprasad. Therefore, in the alternative, prayed for the alteration of the conviction of Bahadur Singh from

Section 302 to Section 324 of IPC because of the fact that he is not having any common intention for causing the death of Harprasad and Ramgopal. It is further submitted that there is also evidence on record that the dispute in between the parties was with regard to the agricultural land and the complainant party, namely, the deceased Harprasad and Ramgopal were ploughing the field, which is in dispute and if that being so, the Appellants are having right of private defence of properly for the alleged encroachment by the complainant party and, in such circumstances also the learned Trial Court has wrongly held the Appellants guilty for the aforesaid offence. The learned Counsel for the Appellants also placed reliance on the decisions of the Apex Court with regard to the common intention of the accused persons in *Namdeo Daulata Dhayagude and Others Vs. State of Maharashtra*, *Vaijayanti Vs. State of Maharashtra*, and *Bhupendra Singh and Others Vs. State of U.P.*, wherein the Hon'ble Apex Court laid down under what circumstances the co-accused can be held guilty with the aid of Section 34 of IPC. Hence, on the aforesaid ground prayed for setting aside of the impugned judgment of conviction passed by the Trial Court.

6. Per contra, learned Public Prosecutor for the State supported the impugned judgment and submits that as per the statement of eye-witness Deepchand (P.W. 1) and Chhotelal (P.W. 4), it is proved that all the three accused persons armed with sharp edged weapon like farsa and axe came on the spot having common intention to cause injuries to the complainant party and in furtherance of the common intention caused injuries to the deceased Harprasad and Ramgopal. This has got further corroboration by the statement of Autopsy Surgeon Dr. P.K. Jain (P.W. 2), who proved the fact that deceased Harprasad sustained 10 injuries and all the ten injuries are caused by sharp edged weapon. Similarly, second deceased Ramgopal also sustained 13 injuries and all the injuries except injury Nos. 5 and 9 are caused by sharp edged weapon as deposed by the alleged eye-witnesses and, in such circumstances, it is proved by the prosecution that all the three accused persons are having common intention for causing death of deceased Harprasad and Ramgopal and, in such circumstances, learned Trial Court has rightly held the Appellants/accused guilty for the aforesaid offence and no grounds are available for any interference in the impugned judgment. Hence, prayed for dismissal of the appeal.

7. To bring home the charge as levelled against the Appellants, the prosecution had examined Deepchand Sahu (P.W. 1) as eye-witness, who clearly stated that at the time of incident deceased Harprasad and Ramgopal were ploughing the field since 2.30 p.m. in the afternoon at that time Appellant/accused Bahadur Singh armed with farsa and accused Prakash and Pappu armed with axe came on the spot and started abusing Harprasad why he is ploughing the field. Harprasad replied that this field is in his possession at that time accused Bahadur Singh caused an injury by means of farsa on the left leg of Harprasad; thereafter remaining accused Pappu and Prakash started causing injuries by axe to Harprasad. When Ramgopal tried to intervene then they also caused injuries to Ramgopal. Firstly, accused Pappu caused injuries to Ramgopal by means of axe

on the neck and neck was cut down and thereafter he again caused injuries to Ramgopal. After causing aforesaid injuries to Harprasad and Ramgopal all the three accused persons put the tractor on fire, which was standing on the field and due to this fire the tractor also got damaged and all the accused persons ran away from the spot. In detailed cross-examination some minor contradictions were brought in the statement of this eye-witness Deepchand with regard to the presence of the other eye-witness Chhotelal, which is not mentioned in the earlier statement recorded u/s 161, Cr.PC. Similarly, some contradiction is with regard to starting of the incident when Harprasad was coming down from the tractor, at that time accused Bahadur Singh had caused injury to him by farsa on the left leg. These contradictions are happened to be probable and natural in the detailed cross-examination by the defence and it is the settled principle that every detail of the incident is not required to be deposed in the FIR as well as in the statement recorded u/s 161, Cr.PC and we are of the considered opinion that the aforesaid contradictions and omissions are not found to be so material on which basis the entire statement of the eye-witness Deepchand (P.W. 1) can be thrown out.

8. Similar is the statement of another eye-witness Chhotelal (P.W. 4), who also clearly stated that firstly accused Bahadur Singh had caused injury by means of farsa to Harprasad and thereafter Prakash and Pappu caused injuries to Harprasad and Ramgopal by means of axe. When Deepchand tried to intervene then accused Bahadur Singh threatened him not to come here otherwise they will kill him also, then accused Bahadur Singh also put the tractor to fire, due to which the tractor also got damaged. In detailed cross-examination of this witness also some minor omissions in the previous statement (Exh. P-2) had been brought, on which basis it is vehemently submitted that the presence of this witness appears to be doubtful but we are not much impressed by the aforesaid submission. The presence of the aforesaid witness Chhotelal (P.W. 4) is also clearly mentioned in the FIR (Exh. P-1) and by Deepchand and, in such circumstances, his presence on the spot cannot be found doubtful.

9. The prosecution had also examined third eye-witness Prahlad Singh (P.W. 3) but the learned Trial Court has disbelieved his statement because his presence is not mentioned in the FIR. Even if the statement of Prahlad Singh (P.W. 3) is ignored then also on the basis of the statement of Deepchand (P.W. 1) and Chhotelal (P.W. 4) the prosecution has successfully proved the fact that It is all the three Appellants who caused injuries by means of sharp edged weapon to deceased Harprasad and Ramgopal, due to which they died on the spot itself.

10. The statement of the aforesaid eye-witness has got further support by the medical evidence - statement of Dr. P.K. Jain (P.W. 2), who performed the post-mortem of the dead-bodies of deceased Harprasad and Ramgopal and on examination of dead- body of Harprasad found the following injuries:

(1) Incised wound size 2" x 1" x bone deep, left thigh lower lateral with fracture of femur bone with cutting muscles;

- (2) Incised wound size 3" x 1" x deep to vertebra with cutting it in mid of back between scapula;
- (3) Incised wound size 1-1/2" x 1/4" x 1/4" right back lower part;
- (4) Incised wound size 1" x 1/2" x 1/2" right back in middle;
- (5) Incised wound right side of neck 2" x 1" x 1- 1/2" cutting muscle and vessels;
- (6) Incised wound right face below ear cutting mandible, muscle and blood vessel and lower part of ear;
- (7) Incised wound size 3" x 1/2" x bone deep on occipital region cutting bone and brain;
- (8) Incised wound size 2" x 1" cutting bone and brain left parietal region;
- (9) Incised wound right parietal region 2" x 1/2" bone deep;
- (10) Incised wound left parietal-bone of scalp size 2" x 1/2" cutting brain & bone.

Similarly, on examination of dead body of Ramgopal found the following injuries:

- (1) Incised wound size 1-1/2" x 1/2" x bone deep on right arm;
- (2) Incised wound size 3" x 1" x 1/4" anterior of right arm;
- (3) Incised wound size x" x 1" x 1-1/2" right shoulder upper part;
- (4) Incised wound size 3" x 1/2" x 3" anterior of neck upper part cutting skin muscles trachea oesophagus & blood vessel;
- (5) Lacerated wound size 1" x 1" x 1/4" with fracture of tibia & fibula, left leg lower part;
- (6) Fracture of right tibia & Fibula in middle;
- (7) Incised wound size 1" x 1/4" x 1/4" anterior of right knee;
- (8) Stab wound size 2" x 2" x 3" right upper hip to bone deep;
- (9) Lacerated wound size 2" x 1" bone deep left scalp with depressed fracture of frontal bone 3" x 3" and injury to brain;
- (10) Incised wound 1" x 1/4" x bone deep cutting left parietal & frontal bone;
- (11) Incised wound 1" x 1/2" x bone deep left temporal area of scalp;
- (12) Incised wound on left ear in middle size 1" x 1/4" x 1/2";
- (13) Incised wound right frontal bone 2" x 1/4" x bone deep.

11. The concerning Autopsy Surgeon opined that both the deceased died due to excessive haemorrhage resulting shock and death is homicidal in nature and proved the post-mortem reports [Exh. P-2 (A) and Exh. P-3 (A)].

12. In view of the aforesaid statement of Autopsy Surgeon Dr. P.K. Jain, it is amply proved that the deceased Harprasad sustained ten injuries by sharp edged weapon and Ramgopal sustained eleven injuries by sharp edged weapon. Thus, the involvement of all the three Appellants as stated by the alleged eye-witnesses Deepchand (P.W. 1) and Chhotelal (P.W. 4) is fully supported by the aforesaid statement and number of injuries sustained to the deceased persons.

13. Learned Counsel for the Appellants stressed upon the fact that the allegation against the Appellant Bahadur Singh is that he had caused a single injury to Harprasad on the left leg, therefore, his intention for causing death cannot be inferred and at the most he can be held guilty u/s 324 of IPC only. We are not much impressed by the aforesaid submission of the learned Counsel for the Appellants. The circumstances indicating the fact that all the three Appellants came on the spot armed with farsa and axe, beating had been started by Bahadur Singh by causing injury on left leg of Harprasad and thereafter remaining two accused started beating Harprasad and Ramgopal by means of axe. Therefore, the overt act of accused Bahadur Singh is fully proved, which clearly indicates the common intention of all the three accused persons and number of injuries sustained to the deceased persons, which are 10 and 13 in number, indicates their common intention for causing death of Harprasad and Ramgopal and, in such circumstances, no other evidence is required to prove the common intention of all the accused persons when specific overt act of all the three accused persons is proved by the prosecution on the basis of the evidence on record.

14. On perusal of the case law cited on behalf of the Appellants we find that the facts of the concerning cases are different to the facts of the present case. As discussed in detail hereinabove, the overt act of all the three accused persons is clearly proved by the prosecution, therefore, there is no ambiguity with respect to common intention of all the three accused persons and, thus we are of the considered opinion that if the common intention of all the three accused persons is proved and their overt act is also proved then certainly one of the accused cannot escape from the liability of common intention because of the fact that he had caused only single injury. For this proposition reliance can be placed in the case of Paramjit Singh @ Mithu Singh Vs. State of Punjab Through Secretary (Home), wherein the Hon"ble Apex Court in Paragraph 24 has held as under:

24. The learned Counsel for the Appellants further submitted that the injuries inflicted by the Appellant were not sufficient to cause the death of the victim and, therefore, the common intention to kill is not evident and therefore, he cannot be convicted for the offence punishable u/s 302 read with Section 34, IPC. We are unable to agree. The evidence of P. Ws. 3 and 4, the direct witnesses is consistent and they had deposed that the Appellant inflicted injuries with gandasa to kill the deceased. The fact that the Appellant inflicted injuries with the deadly weapon itself shows that he had also shared the common intention. In order to convict the person vicariously u/s 34, it is not necessary to prove that

each and every one of them had indulged in such overt act inflicting deadly injuries. It is enough if the material available on record discloses that the overt act of one or more of the accused was or were done in furtherance of common intention. The common intention shared by the Appellant is evident from the fact that he was armed with deadly weapon and inflicted two injuries on the victim. All the accused attacked the deceased and caused injuries in furtherance of the common intention to murder the deceased. In such a situation the nature of injuries inflicted by the Appellant on the victim and whether those injuries were sufficient in the ordinary course to cause death pales into insignificance. The Appellant was not a curious onlooker and had not accompanied the assailant who gave a deadly blow out of any ideal curiosity. Each one of them is liable for that act of murder as if the act of murder was done by each one of them.

15. The other witnesses examined by the prosecution are, Chetram (P.W. 5) panch witness, before whom the weapons had been seized by the police from the possession of the accused persons; Raghuveer Prasad (P.W. 6) proved the fact about damage by fire to the tractor concerned as per memo (Exh. P-13); Avadhnarayan (P.W. 7) proved the seizure memos (Exhs. P-16, P-17 and P-18), by which the bloodstained clothes were seized; Munnalal Sahu (P.W. 8) proved the fact that he saw injured Harprasad and Ramgopal lying in the field and, Rajendra Singh (P.W. 9) is the Investigating Officer, who proved the lodging of FIR (Exh. P-1) by Deepchand, preparation of the inquest Panchnama and recording of the statements, preparation of the damage Panchnama of the tractor concerned and also proved the arrest of the accused persons and seizure of the weapons from their possession.

16. Thus, on overall re-appreciation of the entire evidence on record, we are of the considered opinion that the learned Trial Court has rightly held all the three Appellants guilty for the offence punishable u/s 302/34 of IPC and no grounds are available for any interference in the impugned judgment of conviction and sentence passed by the Trial Court.

17. Consequently, the appeal preferred by the Appellants being devoid of any merits is dismissed accordingly and the impugned judgment of conviction and sentence passed by the Trial Court is hereby affirmed. Appellants Prakash and Pappu are serving the jail sentence. Appellant Bahadur Singh is on bail, he shall surrender immediately before the Trial Court and Trial Court will send him to jail for serving the remaining part of the jail sentence awarded by the impugned judgment. His bail bonds shall stand cancelled.