
(2012) 08 CHH CK 0026
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 508 of 2007

Dhruv Lal Chandrakar and Others

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 302, 304, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2012) 4 CGLJ 480

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Uttam Pandey, for the Appellant; Rajendra Tripathi, Panel Lawyer, for the Respondent

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 19th of June, 2007 passed in Special Sessions Case No. 116/2006 by the Special Judge under SC & ST (Prevention of Atrocities) Act, 1989, Raipur. By the impugned judgment, the appellants have been convicted and sentences in following manner with the direction to run the sentences concurrently:--

The facts, briefly stated, are as under:--

On 8.7.2006, at about 4.00 p.m., a quarrel begun between the appellants and the deceased (Deepak Raj) on account of construction of drainage by the Municipal Corporation in front of the shop of appellant No. 1. The disputed land was a Public Land. The deceased was a Social Worker and resident of that area. He was claiming that a garden should be developed on the said land, therefore, he was opposing the construction of drainage by the Corporation. Looking to the above situation, Embai (PW-5 - mother of the deceased) and Bhupatbeer (PW-9 - brother of the deceased) took the deceased to his house. The allegations are that thereafter appellant No. 4 came to the house of the deceased, and called him to

the disputed place. The deceased did not accompany appellant No. 4, however, he went behind her. As soon as the deceased reached to the disputed land, appellant No. 2 came there on a motorcycle with Narendra Singh Yadav (an accused, later on tried, who was the Municipal Corporator) and thereafter put-off his shirt and started assaulting the deceased by hands and fists. The further case of the prosecution is that at that time appellant No. 1 was holding hands of the deceased and appellant No. 4 was holding his hairs and appellant No. 3 & another accused namely-Vijay Singh @ Bijju Thakur, who was also later on tried along with Narendra Singh Yadav, also assaulted the deceased by hands and fists and at that time Narendra Singh Yadav was exhorting them. In the first round, charge-sheet was filed against the 4 appellants (A-1 to A-4) and their case was committed for trial. Later on, after recording the evidence of Embai (PW-5), Ambika Bai (PW-7) and Gaganbeer (PW-8), the learned Special Judge took cognizance against Narendra Singh Yadav and Vijay Singh @ Bijju Thakur u/s 319 Cr.P.C. and they were also made accused along with the appellants (A-1 to A-4) for commission of the aforesaid offences. Since the above 2 accused persons were not traceable, the Special Judge proceeded with the trial of the present appellants (A-1 to A-4) and convicted and sentenced them as aforementioned.

Later on Narendra Singh Yadav and Vijay Singh @ Bijju Thakur were also put to trail by the Special Judge vide Special Sessions Trial No. 106 of 2006, and were acquitted of the charges framed against them vide judgment dated 22nd of March, 2011. Embai (PW-5) had challenged the acquittal of the above 2 additionally added accused persons by filing Acquittal Appeal No. 137 of 2011, which was dismissed at the admission stage by a Division Bench of this Court vide order dated 1st of November, 2011.

The case of the prosecution was based on eye-witness account of Rafiq Ali (PW-1); Hasina Begum (PW-2), Kulsum Begum (PW-3), Damru Yadav (PW-4), Embai (PW-5), Ambika Bai (PW-7) and Gaganbeer (PW-8). Out of above eye-witnesses, PW-1 to PW-4 completely turned hostile and they did not support the case of the prosecution. The learned Special Judge relied on the testimonies of Embai (PW-5), Ambika Bai (PW-7) and Gaganbeer (PW-8) and convicted & sentenced the appellants as above.

2. Mr. Uttam Pandey, learned counsel appearing on behalf of the appellants, has argued that in fact, it was a quarrel between the deceased and appellant No. 2; there is no evidence to show that the other appellants shared common intention with appellant No. 2; there is no reliable evidence to hold that the other appellants, in any manner participated in the assault which was given by appellant No. 2. About appellant No. 2, he argued that in the facts and circumstances of the case, an offence u/s 302 IPC would not be made out and he would be liable for punishment under some lesser Section preferably Part-I or Part-II of Section 304 IPC. For the offence under the Special Act, he has argued that there is no iota of evidence to constitute an offence u/s 3(2)(v) of the

Special Act and all the appellants deserve to be acquitted for the alleged commission of the above offence.

3. On the other hand, Mr. Rajendra Tripathi, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Special Court.

4. We have heard learned counsel for the parties at length and have also perused the records of the special sessions case.

5. Firstly we shall consider the conviction of appellants 1, 3 & 4 with the aid of Section 34 IPC.

6. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises u/s 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provisions (Vide- Anil Sharma and Others Vs. State of Jharkhand, The Supreme Court further clarified that in 1870, Section 34 was amended by insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each", so as to make the object of section 34 clear. The section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted u/s 302 read with section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish

between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them.

7. In *Dani Singh and Others Vs. State of Bihar*, it was held that to constitute common intention, it is necessary that intention of each one of the accused be known to the rest and shared by them. Undoubtedly, it is difficult to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In most cases, it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view the facts involved. Whether an act is in furtherance of the common intention is an incident of fact and not of law.

8. Therefore, it is clear that a person merely because he or she was present at or near the scene of occurrence without doing anything more, without even carrying a weapon and without even marching along with the other assailants could not be convicted with the aid of Section 34 IPC for the offence committed by the other accused.

9. Embai (PW-5) is mother of the deceased. She deposed that on 8.7.2006 at about 2.00 p.m. foundation was being dug by labours of the Corporation for construction of drain at the disputed place. Her son (deceased) went there and inquired from appellant No. 1 about the above work. It was a public (Government) land and her son wanted to develop a garden on that land, for which he had given an application to the Municipal Corporator. Thereafter she brought her son to her house. After sometime, Prem Lata Chandrakar (A-4) who is wife of Dhruv Lal Chandrakar (A-1), came to her house. She was standing at the gate. She called her inside, but Prem Lata did not enter their house. In formality, she (PW-5) opened the gate, but Prem Lata (A-4) returned towards her house. Deepak Raj (deceased) followed Prem Lata (A-4). She (Embai-PW-5) then saw that from the opposite direction Lokesh Chandrakar (A-2) brought Municipal Corporator-Narendra Singh Yadav on a motorcycle. Narendra Singh, seeing her son (deceased), started saying that "Maro sale ko" as he (deceased) always opposes him. On this, Lokesh Chandrakar (A-2) put-off his shirt and threw it on the ground and thereafter the appellants caught her son and assaulted him by hands and fists. She further added that Prem Lata (A-4) had caught the hairs of her son and the other accused persons were assaulting him. Bijju Thakur was present there. She had prayed to Narendra Singh and Bijju for protecting her son, but they did nothing. Then many persons gathered there. The deceased then became unconscious. He was taken to Ravikrishan Hospital, where he was declared dead.

10. Ambika Bai (PW-7) is another eye-witness. The deceased was her step-son. She had also witnessed the entire incident. She deposed that on the date of incident, Deepak Raj (deceased) went to the place of occurrence and asked the labours as to how they are digging foundation. Labours told him to ask to the shopkeeper (A-1). Thereafter Deepak Raj (deceased) went to the shop of Dhruv Lal Chandrakar (A-1) and asked about the work. Dhruv Lal Chandrakar (A-1) said that the work was being done on his instance. Deepak Raj (deceased) said that the land is near the temple, therefore, a garden has to be developed. He said to stop the work. Hearing the hot exchanges between Dhruv Lal Chandrakar (A-1) and the deceased, she took the deceased to her house and closed the door. Prem Lata Chandrakar (A-4) then came to their house. Deepak Raj (deceased) said that "anti has come and you have closed the door". Then the door was opened. Prem Lata (A-4) called Deepak Raj. Then Prem Lata went towards her house. Deepak Raj also followed her. Lokesh Chandrakar (A-2) then had gone to call the Corporator. Thereafter Lokesh (A-2) came with the Corporator. Lokesh (A-2) is son of Dhruv, Lal Chandrakar (A-1) and Prem Lata Chandrakar (A-4) is wife of Dhruv Lal Chandrakar (A-1). When Lokesh Chandrakar (A-2) came with the Corporator-Narendra Singh Yadav, Lokesh Chandrakar (A-2) got down from his motorcycle and put-off his shirt, threw it on the ground and started assaulting Deepak Raj (deceased). At that time Narendra Singh was exhorting him saying that he (deceased) always creates problem. Lokesh Chandrakar (A-2) was assaulting the deceased by hands. Golu Chandrakar (A-3), Dhruv Lal Chandrakar (A-1) and Prem Lata Chandrakar (A-4) were also present there. All were assaulting the deceased.

11. Gaganbeer (PW-8) is brother of the deceased. He is also an eyewitness. He deposed that on the fateful day Prem Lata Chandrakar (A-4) had called his brother. At that time Lokesh Chandrakar (A-2) brought the Municipal Corporator. All of a sudden Lokesh Chandrakar (A-2) put-off his cloth and started marpit. The Corporator, Narendra Singh Yadav, was saying "Maro sale ko". Bijju Thakur was also present there. His brother had died. He was taken to the hospital and then his post-mortem examination was conducted.

12. In appreciation of evidence of above eye-witnesses, we find that though Prem Lata Chandrakar (A-4) came to the house of the deceased to call him, but the deceased did not accompany her. The deceased, saying that anti has come, however followed Prem Lata and reached to the place of occurrence. The evidence of all the eye-witnesses is uniform on the fact that at that time, Lokesh Chandrakar (A-2) and Narendra Singh Yadav (Corporator) came at the place of occurrence on a motorcycle from a different direction. Lokesh Chandrakar (A-2), then got down from the motorcycle and put-off his shirt and started quarrelling and assaulting the deceased by hands and fists. The case of the prosecution is that at that time Dhruv Lal Chandrakar (A-1) was holding the hands of the deceased and Prem Lata Chandrakar (A-4) was holding his hairs. We find that there is contradiction in the evidence of 3 witnesses relating to the quarrel. Embai (PW-5) only deposed that Prem Lata Chandrakar (A-4) was holding the

hairs of the deceased and she (PW-5) gave omnibus statement that all the appellants were assaulting him, whereas Ambika Bai (PW-7), who also saw the entire incident, did not depose that Dhruv Lal Chandrakar (A-1) was holding the hands of the deceased or Prem Lata Chandrakar (A-4) was holding the hairs of the deceased. But, she also, in a general manner, deposed that all were assaulting the deceased. Gaganbeer (PW-8) is the 3rd eye-witness. He had also seen the entire incident. He deposed in categorical words that Lokesh Chandrakar (A-2), all of a sudden, put-off his shirt and had started marpit with the deceased. He did not depose about participation of any other appellant in assaulting the deceased by Lokesh Chandrakar (A-2). Even he did not attribute any overt act to the other appellants which may show an element of common intention shared by them with Lokesh Chandrakar (A-2) for assaulting the deceased. Though all the eye-witnesses deposed that at that time Narendra Singh Yadav was exhorting saying "Maro sale ko" but, he has been acquitted by the Special Judge in the subsequent Sessions Trial, and the appeal filed against acquittal has been dismissed in admission stage. How there can be a common intention when all accused persons had gathered at the place of occurrence one-after-another from different directions. There is absolutely no evidence to show their meeting of mind. On due consideration of the entire material available on record, we do not find present to be a case in which it can be held that Dhruv Lal Chandrakar (A-1), Ravi Shankar Chandrakar @ Golu (A-3) and Prem Lata Chandrakar (A-4) had shared common intention with Lokesh Chandrakar (A-2) for causing the death of the deceased or for assaulting him. Therefore, conviction of appellants-Dhruv Lal Chandrakar (A-1), Ravi Shankar Chandrakar @ Golu (A-3) and Prem Lata Chandrakar (A-4) with the aid of Section 34 IPC cannot be sustained.

13. Now we shall consider the case of appellant-Lokesh Chandrakar (A-2).

14. Mr. Pandey has argued that on account of construction of drainage a quarrel took place between the neighbours and in a sudden quarrel, Lokesh Chandrakar (A-2) assaulted the deceased with hands and fists, therefore, an offence u/s 302 IPC would not be made out.

15. Dr. Ulhas Gonnade (PW-6) had performed autopsy on the dead body of the deceased. He noticed that there were no external injuries on the person of the deceased. However the cloths of the deceased were having dust and pieces of bricks. All external organs were healthy. On internal examination, he found that there was sub-dural haemorrhage on the skull. He further found that there was haemorrhage at the place of left 6th rib and there were fractures over 5th, 6th, 7th & 8th left ribs. He also noticed some haemorrhage in the intestinal membrane. The Autopsy Surgeon opined that the cause of death was shock and haemorrhage as a result of head injury and the injuries were caused by hard and blunt object. The autopsy report is Ex.-P/19.

16. It was not a case in which Lokesh Chandrakar (A-2) had used any weapon against the deceased. All the witnesses have deposed that Lokesh Chandrakar

(A-2) assaulted the deceased by hands and fists. There were no external injuries on the person of the deceased. The deceased was assaulted by Lokesh Chandrakar (A-2) in the second round of quarrel. It appears that after the first round of altercation between Dhruv Lal Chandrakar (A-1) and the deceased on account of construction of drainage by Municipal Corporation, Dhruv Lal Chandrakar (A-1) sent his son Lokesh Chandrakar to call Municipal Corporator, Narendra Singh Yadav, who came there on a motorcycle with Lokesh Chandrakar (A-2) and seeing the quarrel between the deceased and other appellants, Lokesh Chandrakar (A-2), all of a sudden, came down from the motorcycle, put-off his shirt and assaulted the deceased by hands and fists. This shows that there was no preparation or premeditation on the part of Lokesh Chandrakar (A-2) to assault the deceased and assault was given, all of a sudden, in a sudden quarrel, between two groups of the locality, as one wanted that a drainage should be constructed on the public land and the other wanted that a garden should be developed on that land. We are of the view that in the above facts and circumstances of the case, it can not be held that Lokesh Chandrakar (A-2) was having intention to commit murder of the deceased. However it can well be held that he was having knowledge that his such act was likely to commit death of the deceased or it was likely to commit such bodily injuries to the deceased which were likely to cause his death. We are of the view, that in the above facts and circumstances of the case, an offence u/s 302 IPC would not be made out and appellant-Lokesh Chandrakar (A-2) would be liable for punishment under Part-II of Section 304 IPC.

17. Now we shall consider the conviction of the appellants u/s 3(2)(v) of the Special Act.

18. Section 3(2)(v) of the Special Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. Except that the deceased was a member of scheduled tribe, there is absolutely no evidence on record to hold that an offence u/s 3(2)(v) is also made out. There is absolutely no evidence to show that the deceased was assaulted on the ground that he was a member of scheduled tribe. It is a case in which an assault took place in a general manner in which the deceased, by chance, happened to be a member of scheduled tribe. It appears that the conviction has been awarded only on the ground that the deceased belongs to a scheduled tribe. The words like "on the ground that such person is a member of Scheduled Caste or Scheduled Tribe" used in Section 3(2)(v) are of great significance. If the evidence is not sufficient for attracting the above ingredient which is an essential ingredient of the Section, merely on the ground that the deceased was belonging to a scheduled tribe, an offence u/s 3(2)(v) would not be made out. We find support from Ramdas and Others Vs. State of Maharashtra, . We are of the view that the learned Special

Judge has completely lost sight of above provisions and has awarded the conviction u/s 3(2)(v) of Special Act which cannot be sustained.

19. For the foregoing reasons, the appeal is partly allowed. The conviction and sentences awarded to the appellants u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are set-aside. They are acquitted of the aforesaid charges framed against them. Conviction and sentences awarded to appellants-Dhruv Lal Chandrakar (A-1), Ravi Shankar Chandrakar @ Golu (A-3) and Prem Lata Chandrakar (A-4) u/s 302/34 IPC are also set-aside. They are acquitted of the above charges also. The conviction and sentences awarded to appellant-Lokesh Chandrakar (A-2) u/s 302 /34 IPC are also set-aside. Instead thereof, he is convicted u/s 304 Part-II IPC and sentenced to undergo R.I. for 7 years. He shall be entitled to set-off the period already undergone.