

(2018) 08 MP CK 0037
In the Madhya Pradesh High Court
Case No : Criminal Appeal No.2119/2009

Halkai Kushwaha And Another

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 04-08-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 34, 302, 323

Citation : (2018) 08 MP CK 0037

Hon'ble Judges : Nandita Dubey, J;Vijay Kumar Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Conviction,Sentence

Under Section

302/34 of IPC","R.I. for life and fine of

Rs.500/-,in default of

payment of fine, further

R.I. for 1 year.

Conviction,Sentence

Under Section 302 of

IPC","R.I. for life and fine of

Rs.500/-,in default of

payment of fine, further

R.I. for 1 year.

her husband, Halkai had given axe blows on her hand and thigh and thereafter

both had run away from the spot. PW-4 Khushbu, who is aged about 5-",

6 years is a child witness. She was examined as PW-4. The court before recording her statement, made queries in the form of questions and answers",

to satisfy that whether the witness is capable of understanding questions and answers. The court after recording satisfaction that she is competent to,

give evidence, the witness was allowed to lead the evidence. In para-1 of her statement, she has stated that her uncle Halkai and Mulli had come on",

the field armed with axe and they had killed them with the help of axe. She stated that her uncle Halkai had asked her to call her father Sulle.,

8. The witness PW-2, who is an injured witness was examined by Dr. Dilip Tripathi (PW-11. His MLC is Ex.P-19. He had found injuries on the left",

wrist $\hat{A}\frac{1}{2} \times \hat{A}\frac{1}{2}$ cm. and one scratch. He has also examined Suresh and his MLC is Ex.P-20. He has found two injuries, one on the face $\hat{A}\frac{1}{2} \times \hat{A}\frac{1}{2}$ ",

cm.scratch and other on the neck $\hat{A}\frac{1}{2} \times 1\hat{A}\frac{1}{2}$ cm. scratch. PW-2 Laxmi Bai is a stamp witness being injured witness, her presence on the place of",

occurrence cannot be dislodged. Further there is no cross-examination to the effect that there was any reason for false implication of the appellants.,

Further child witness PW-4 Khushbu has also made categorical statement that appellant no.1 Halkai had asked her to call father deceased Sulle and,

both appellants were armed with axe. She also stated that she had seen these two persons causing injuries with the help of axe.,

9. The autopsy of the deceased was done by PW-3 Dr. A.K.Sharma. He has stated that there were 20 injuries on the person of the deceased and all,

these injuries were caused by sharp edged weapon. The postmortem report is Ex.P-4. He has given his opinion that the death of the deceased is,

homicidal and cause of death is multiple vital injuries and head injuries.,

10. Learned counsel for the appellants submitted that as per the testimony of PW-2 Laxmi and PW-4 Ku.Khushbu, the injuries were caused to the",

deceased by appellant Mulli Kushwah and not by Halkai Kushwaha. He had caused injuries to Laxmi Bai and Suresh and therefore, his conviction is",

not sustainable. We do not find any merit in the said contention. On consideration of the testimony of PW-2 Laxmi and PW-4 Ku.Khushbu, it is",

established that both the appellants came armed with axe in the field of the deceased. Appellant Halkai asked PW-4 Khushbu daughter of the,

deceased to call her father. When all the four persons reached at the spot,

appellant Halkai was abusing the deceased and he ensured that nobody",
would come forward to rescue the deceased. When PW-2 Laxmi and her son Suresh tried to rescue the deceased he caused injuries to them. Thus,"
there is active participation by appellant Halkai as well . It is established that they have shared common intention to commit murder of Sulle alias,
Mukundi Kushwaha. The deceased has received 22 injuries. The presence of appellant Halkai with axe has been established by the prosecution.,
11. Section 34 has been enacted on the principle of joint liability in the commission of criminal act. The liability of one person for an offence committed,
by another in the course of criminal act perpetrated by several persons arises under section 34, if such criminal act is done in furtherance of a",
common intention of the persons who join in committing the crime. As discussed, by the evidence of PW-2 Laxmi and P-4 Ku.Khushbu, the",
prosecution has established that appellant no.1 Halkai had also shared the common intention.,
12. In view of the aforesaid discussions and assimilation of facts and evidence, we do not find any error in the order of conviction and sentence.",
13. Accordingly, the appeal stands dismissed.",
14. Before parting, we must put on record our unreserved appreciation for the valuable assistance rendered by the learned amicus curiae. The High",
Court Legal Services Authority shall remit fee of Rs.4000/- (Rs. four thousand) to the amicus curiae who assisted this court.,