

(2019) 09 CAL CK 0089

In the Calcutta High Court

Case No : Criminal Appeal (CRA) No. 650 Of 2010

Panchanan Bhagat And Ors

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 143, 149, 302, 448
Code Of Criminal Procedure, 1973 — Section 161, 164, 313

Citation : (2019) 09 CAL CK 0089

Hon'ble Judges : Thottathil B. Radhakrishnan, CJ;Arijit Banerjee, J

Bench : Division Bench

Advocate : Sekhar Kumar Basu, Kaushk Gupta, AnirbanTaraftdar,
ArijitBhusanBagchi, MoinakBakshi, StarupPurokayastha

Final Decision : Dismissed

Judgement

Arijit Banerjee, J

(1) This is an appeal against the judgement and order pronounced on 4 October, 2010 and 5 October, 2010 by the Learned Sessions Judge, Purulia in ST No. 3/2007 arising out of SC No. 194/06. The case was registered against ten accused persons namely Panchanan, Kedar, Pralhad, Dilip, Manoj, Chandi, Debandranath, Hiralal, Indrajit and Rajesh all with surname Bhagat. They were charged for allegedly having committed offences under Sections 149/448/302 read with Section 34 of the Indian Penal Code, 1860 (IPC). The learned Trial Judge found all the accused persons guilty of the charges on all counts excepting accused no. 9 viz. Indrajit who was acquitted. All the nine convicts were sentenced to undergo life imprisonment and to pay fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for six months for the offence under Section 302 IPC. They were further sentenced to pay fine of Rs. 2,000/-, in default, to suffer rigorous imprisonment for six months for offence punishable under Section 149 IPC for being members of an unlawful assembly as provided under Section 143 IPC. They were also sentenced to undergo rigorous imprisonment for six months

and to pay fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for three months for offence committed under Section 448 IPC. The sentences were directed to run concurrently. The present appeal has been filed by the accused nos. 1 to 8 and accused no. 10.

(2) The crux of the prosecution case on the basis of the written complaint dated 13 May, 2002 lodged by Rita Bhagat (PW1), the wife of the victim viz. Ajit Bhagat, essentially, is that on 13 May, 2002, at about 8/8.50 P.M. Ajit came home running from the Suisa Market; upon entering the house he informed his wife Rita that a quarrel took place between him and Panchanan at Suisa Market and Panchanan along with his associates were coming to assault him; Rita immediately bolted the entrance door from inside; soon thereafter the accused persons assembled in front of Ajit's house; being ordered by Deben (accused no. 7) the others broke open the entrance door, entered the house and dragged the victim to the door step; there they assaulted the victim with sharp weapons; he was hit on his head and throat with tangi, farshaetc; this resulted in the victim's throat being slit and he died immediately.

(3) The accused persons pleaded not guilty to the charge.

(4) The prosecution examined 12 witnesses.

(5) The defence did not examine any witness. Each of the accused persons were examined under Section 313 of Cr.P.C. and each of them pleaded innocence.

(6) The learned Trial Judge took great pains to analyse the evidence of the witnesses and came to the conclusion that the offences with which the accused persons were charged stood established beyond reasonable doubt as against all the accused persons excepting the accused no. 9. The sentences that the accused persons were handed down have been indicated above. In this appeal filed by the nine convicts we are called upon to decide the sustainability of the judgement and order under challenge.

(7) Let us briefly note the evidence of some of the key witnesses.

(8) PW1 is the wife of the victim. She deposed that on the night of the incident at about 8/8.30 P.M., when she and her son and daughter were in the house, her husband rushed to the house from Suisa market. On being asked by her as to why he was rushing, he said that there was an altercation between him and Panchanan at Suisa market and that Panchanan and his brothers and other associates were chasing to assault him. Upon the victim entering the room she shut the door from inside. One of the accused persons namely, Deben ordered that the entrance door to the house should be broken down which the accused persons did and they entered the room. They dragged out the victim from the room and started assaulting him with tangi, farsha, lathi, sword and spears etc. She appealed to them not to assault the victim. Pralhad (accused no. 3) assaulted her on her leg with tangi and she sustained bleeding injury. Chandi (accused no.6) assaulted the victim on his head who fell down and cried out for

help. Pralhad then told the victim that he will die and Panchanan struck the victim on his throat with tangi. She had torchlight in her hand and she found Dilip (accused no.4) and Manoj (accused no.5) kicking the victim to try and ascertain as to whether he was dead or not. Thereafter, seeing that the victim was dead, the accused persons left the place.

(9) PW2 is the brother of the victim. He deposed that on the day of the incident at about 8/8.30 P.M. he was going to a betel shop. He found the victim rushing towards his house from the market side. He also found that Panchanan and others were chasing the victim. He found them approaching the door of the house where the victim lived. He asked Panchanan as to what had happened. The said persons then broke open the door and entered Ajit's house. They assaulted the victim and dragged him out of the room. A lantern was burning in the room where the children were reading and in the light of the lantern he saw the aforesaid persons. Chandi assaulted the victim on his head. Panchanan struck the victim with a tangi on his throat causing the throat to slit. As a result, the victim expired. The incident took place in front of the victim's door. Dilip, Manoj and Panchanan inspected the victim's body with the help of torchlight and having seen him dead they left the place along with others. He also stated in cross-examination that he only saw what happened outside the door. He knows nothing about what happened inside the room.

(10) PW3 is the daughter of the deceased. She stated that on the day of the incident at about 8/8.30 P.M. she and her brother Sandip and sister Puja were reading in a room in the victim's house. At that time their father came to the house running. On being asked by her mother, her father said that there was an altercation with Panchanan at Suisa market. Her mother closed the door from inside. Then the accused persons came to their house and broke open the door as per the order of Deben. Thereafter, they dragged out her father from the room. Her mother told Pralhad to 'relieve' her father and requested them that the matter could be settled in the morning. Pralhad pushed her mother down. Thereafter, Chandi assaulted her father on his head. Her father fell down. Pralhad ordered to assault her father. Then Panchanan assaulted him on his throat by a tangi. Dilip and Manoj inspected her father by focusing torchlight as to whether or not he was dead and seeing him dead they left the house. The Police took her and her brother Sandip to Court where they were examined by the Magistrate and their statements were recorded which were read over and explained to them.

(11) PW5 is the doctor who conducted autopsy on the victim's dead body. It was his specific opinion that the death was caused due to severe shock and hemorrhage as a result of the injuries sustained. He noted the following injuries on the body of the deceased.

"(a) Incised wound at the anterior part of the neck about 2"x1" dividing all the structure of the neck and the head was seen suspended only by a skin tag at the posterior part of the neck; on dissection survival spine was injured. There was fracture of second and third survival vertebrae, muscles, vessels, nerves were

seen divided. Trachea, oesophagus divided.

(b) Incised wound at the occipital region of head measuring about 2 ½ "x 2" bone deep. On further dissection blood clot was seen over the brain surface."

(12) He opined that any of the two injuries in the ordinary course of things may cause death. He further stated that in the present case death was caused by sharp cutting weapon namely, tangi, farsha etc. and the death was ante-mortem and homicidal in nature. He proved the post-mortem report and tendered the same in evidence.

(13) PW7 was the Investigating Officer (I.O.) of the case. According to him, once the case was allotted to him, he went to the place of occurrence and prepared the sketch map. He held inquest on the dead body of the deceased. He seized some materials namely, one old slipper, a broken wooden bar, some blood stained earth, some controlled earth, one blood stained full pant of the deceased, one piece of wooden door and one blood stained gangi (vest) of orange colour. It was he who collected the post-mortem report on 3 July, 2002. He also arrested two of the accused persons, Rajesh and Dilip and produced them in Court. It was he who took the two children of the deceased to the Magistrate's Court for recording their statements under Section 164 of the Criminal Procedure Code.

(14) On a conjoint reading and analysis of the evidence of the aforesaid witnesses, there seems to be little doubt as to what happened on the day of the incident. The victim had a quarrel with Panchanan at Suisa market between 8 and 9 P.M. The victim appears to have been threatened with assault by Panchanan and his brothers and/or associates. This prompted the victim to run back home. The convicts/appellants started chasing him. The victim entered his house and told his wife that there was an altercation with Panchanan who was coming with his brothers/associates to assault him. The wife bolted the door of the room from inside. The appellants gathered in front of the victim's house. Finding the door locked from inside, they broke open the door and dragged the victim to the door step. Just outside the door he was assaulted with blows on the head and on the throat. The injuries sustained as corroborated by the post-mortem report speaks of blood clot outside the brain and a slit throat. The victim died on the spot.

(15) The aforesaid is supported fully by at least two eye-witnesses namely, PW1 and PW3. The evidence of PW1 and of PW3 corroborate each other.

(16) It was argued on behalf of the appellants that there was no electric light at or near the place of occurrence and as such, identification of the accused persons by PW1 to PW3 is a matter in issue. We are not impressed with this argument. It is not in issue that a lantern was burning in the room where the victim's children were reading and from where the victim was dragged out and assaulted. Further, PW1 stated that she had torchlight in her hand. The accused persons were local people and were obviously known to the family members of the victim.

(17) Learned counsel for the appellants then attempted to point out certain contradictions and inconsistencies between the evidence of PW2 and that of PW7. PW7 stated in his evidence that certain statements that PW2 claimed to have made to PW7 were, in fact, not made. We have carefully compared the depositions of PW2 and PW7. We are of the opinion that there are no such major inconsistencies between the evidence of the said two witnesses as would affect the credibility of either of them.

(18) It was further argued on behalf of the appellants that PW3 was not examined under Section 161 of Cr.P.C. but was only examined under Section 164 of Cr.P.C..In the course of her deposing before the Court, she was confronted with her Section 164 statement and there are certain discrepancies between her Section 164 statement and the deposition recorded as PW3. It was submitted that the only evidence on the basis of which the conviction could be made is that of PW1. To base conviction on the evidence of a solitary witness, such witness must be wholly reliable. In this connection, learned senior counsel relied on the decision of the Hon'ble Supreme Court in the case of V. Thevar -vs- State of Madras AIR 1957 SC 614. We cannot have any quarrel with the proposition laid down in the said decision and indeed we are bound by the principle of law laid down by the Supreme Court. However, in the present fact scenario we do not find any reason to disbelieve PW1 to any extent or to hold that she is not a wholly reliable witness. As is established law, merely because an eye-witness is related to the deceased, even if contradictions are found in his/her evidence, the same cannot be discarded if his/her credibility is unshaken (see: State of Madhya Pradesh -vs- Chhaakki Lal &Anr., AIR 2019 SC 381) . In the present case, PW1 has stood by her case as recorded in the written complaint and her credibility has not been shaken in cross-examination

(19) We should also keep in mind that the learned Trial Judge had the opportunity to observe the demeanour of the witnesses and assess their credibility. An Appellate Court does not have that advantage. Hence, appreciation of evidence by the learned Trial Judge should not be interfered with by the Appellate Court unless the same is vitiated by a serious error. We do not find any such error or infirmity in the present case.

(20) We have also carefully considered the judgment and order impugned before us. We find that the learned Trial Judge has analysed and assessed the evidence on record meticulously and has applied the correct principles of law in so far as the conviction of the accused nos. 1 and 6 (appellant nos. 1 and 6) are concerned. There is cogent unimpeached evidence that the appellant no. 6 struck the victim on the head which resulted in incised wound and blood clot was found upon post-mortem. The accused no. 1 slit the throat of the victim with a sharp weapon. In our view their conviction for offence under Sections 302, 149 and 448 of the Indian Penal Code must be affirmed.

(21) The other question that it arises is whether the charging sections of the IPC are attracted as far as the other appellants are concerned.

(22) The other appellants have also been convicted for commission of the offences they were charged with. There is not much scope for doubt in view of the evidence on record that the other appellants also committed the offences of criminal trespass (Section 448 IPC) and also of the offence of being members of an unlawful assembly in prosecution of the common object of that assembly (Section 149 IPC). There is abundant evidence on record (especially those of PW1, PW2 and PW3) to establish that all the appellants gathered in front of the house of the victim as members of the unlawful assembly with the common object of killing the victim or of inflicting such physical harm as was likely to cause the death of the victim. It is also established that having found the entrance door of the victim's room to be bolted from inside, the appellants broke open the door and assaulted the victim resulting in his instantaneous death.

(23) The only question that remains is as to whether or not the other appellants, apart from Panchanan and Chandi could be held guilty of committing the offence of murdering the victim in view of Section 34 of the IPC, which reads as follows :-

"Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

(24) No overt act could be attributed to the other appellants. However, if common intention is proved, even if no overt act is attributable to the appellants, in our view, Section 34 IPC will be attracted as essentially it involves vicarious liability. What is necessary is a pre-arranged plan and the prior meeting of minds [See:Suresh SakharamNangre- vs- State of Maharashtra, (2012) 9 JT 116].Common intention has been explained to mean a pre-oriented plan and acting in pursuance of such plan [See:Shyamal Ghosh-vs-State of West Bengal, AIR 2012 SC 3539]. In order to convict a person vicariously liable under Section 34 or Section 149 of IPC, it is not necessary to prove that each and every one of them had indulged in overt acts [Rambilas Singh- vs- State of Bihar, AIR 1989 SC 1593]. In order to bring a case under Section 34 IPC, it is not necessary that there must be a prior conspiracy or premeditative; the common intention can be formed in course of occurrence [Hari Om &Ors. -vs-State of U.P., (1993) 1 Crimes 294(SC)].The principle of law that is essentially enshrined in Section 34 of IPC is that if some act is done by an accused person in furtherance of common intention of his co-accused, he is equally liable like his co-accused. If a group of persons gather together with the common intention of committing an offence, notwithstanding that one or two persons in that group commits the actus reus , the others will be treated as partners in crime and will be equally liable for commission of the offence even if they merely stand by and do not indulge in any overt act. Each member of such a group shall have to take full responsibility for the criminal act committed in furtherance of the common intention.

(25) Applying the above principles of law as enunciated by the Hon'ble Supreme Court and the High Courts, in the facts of the present case we find that all the

appellants gathered in front of the victim's house with the common intention of harming him. Intention is something abstract that lies deep within the human mind. It can't be seen. It cannot be identified like any material object. It has to be necessarily inferred from the facts and circumstances of a case.

(26) In the facts of the present case, the common intention of the appellants was to kill the victim or to cause him such grievous hurt that was likely to result in the victim's death. This is eloquently spelt out from the materials on record. Pursuant to the altercation between Panchanan and the victim, Panchanan and his brothers/associates chased the victim with the common intention of harming him and not for any laudatory or noble purpose. The victim ran for his life, reached his home, entered the house, told his wife that Panchanan and his associates were chasing him to assault him, his wife out of fear bolted the door from inside, the appellants reached the victim's house, found the door locked from inside, broke open the door, dragged the victim to the door step and while Panchanan and Chandi actually committed assault on the victim, the others stood by watching the incident with obvious tacit approval. Some of the appellants (Dilip and Manoj) according to PW1 and also Panchanan according to PW2 inspected the body of the victim and upon being sure that the victim was dead, they left the place of occurrence. Under those circumstances, can it be said that it is only Panchanan and Chandi who are guilty of having committed an offence under Section 302 of IPC? We think not. All the appellants are equally liable. There can hardly be a clearer case to which Section 34 of IPC would apply. All the appellants were partners in crime and were parties to execution of the plan to murder the victim.

(27) That common intention is to be inferred from the circumstances of a case and particularly the part played by the accused was observed in so many words by the Hon'ble Apex Court in *Kashmira Singh vs. State of Punjab*, 1995 Supp. (4) SCC 558. The other illustrative case is *Hari Chand & Anr. vs. State of Delhi*, (1996) 9 SC 112. In that case, the accused persons armed with lathis entered the room of the victim to facilitate the other accused persons to attack the victim. However, no eye-witness could attribute any positive act on the part of the accused in giving a lathi blow to the victim who died. The Hon'ble Supreme Court while upholding the sentence of the accused persons observed that it is easy to visualise that they would have come together sharing common intention to liquidate the victim and would not have come just for the sake of socialising.

(28) In view of the aforesaid, we affirm the judgment of the learned Trial Judge holding all the appellant's guilty of the charges brought against them. We uphold the conviction of the appellants. We are also of the view that the sentence imposed by the learned Judge is entirely proportional and commensurate with the gravity of the heinous and ghastly crime committed by the appellants and the same calls for no interference.

(29) The appeal accordingly fails and is dismissed.

(30) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.