
(2011) 10 CHH CK 0014

In the Chhattisgarh High Court

Case No : Criminal Appeal No"s. 1391 and 1392 of 1995

Sidar Kanwar

APPELLANT

Vs

State of M.P. (Now State of Chhattisgarh)

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 134, 27
Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2011) 10 CHH CK 0014

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

Bench : Full Bench

Advocate : Savita Tiwari, for the Appellant; Ajay Dwivedi, Deputy Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sharma, J.—These appeals are directed against the judgment dated 17-8-1994 passed by 2nd Additional Sessions Judge, Raigarh in Sessions Trial No. 193/1993. By the impugned judgment, accused persons/appellants Sidar Kanwar and Lalkumar have been convicted under sections 302/34 IPC and sentenced to undergo imprisonment for life. Case of the prosecution, in brief, is as under:

On the fateful day, i.e., 11-4-1993, at about 11 a.m., deceased Bhagatram and his wife Bundkunwar (PW-1) had gone to Barjhorkhi Deepa of Village Kerakhol to pluck Char fruit. The appellants, their wives and mother had also come there to pluck Char fruit. The appellants asked the deceased and his wife Bundkunwar (PW-1) not to pluck Char fruit. Appellant Lalkumar chased the deceased and caught him. Wives and mother of the appellants caused the deceased to fall down and committed Marpeet with him. Appellant Sidar Kanwar gave Tangi blows on forehead, wrist and left hand of the deceased. The incident was witnessed by Mehtar (PW-3), one Chamara Chouhan (who died during the trial before his

examination) and Ajamil (PW-2). There was a dispute between the father of the appellants and the deceased regarding partition of a land for last 4-5 years. The deceased succumbed to the injuries. His wife Bundkunwar (PW-1) lodged First Information Report (Ex. P-13) in Police Station Gharghoda. Merg Intimation (Ex. P-12) was also recorded in Police Station Gharghoda. The Investigating Officer reached the place of occurrence and prepared inquest (Ex. P-11) on the body of the deceased. Dead body of the deceased was sent for postmortem examination to Community Health Centre, Gharghoda vide Ex. P-7. The post-mortem was conducted by Dr. Rajeev Shrivastava (PW-7), who gave his report Ex. P-8. He found (i) incised wound extending from forehead upto nose, 3" x " x 3/4" x ", cutting through the bone, (ii) incised wound on right wrist extending throughout the width and thickness of the forearm cutting through both the bones radius and ulna, (iii) lacerated wound on left arm above the elbow, Dshaped 1" x 3/4" x muscle deep, (iv) contusion all around and over the left eye, 2" diameter, (v) three contusions on right cheek, " x " each, (vi) two contusions on right shoulder, 1" x 1" each, (vii) multiple contusions on back and both hips, 1" x 3" and (viii) contusion below the left knee, 1" x 1". He opined that the cause of death was syncope due to shock caused by excessive blood loss from the injuries on face and wrist and the death was homicidal in nature.

In further investigation, plain earth and blood stained earth were seized vide Ex. P-5. Memorandum statement (Ex. P-3) of appellant Sidar Kanwar was recorded u/s 27 of the Evidence Act on 12-4-1993 and at his instance, an Axe (Tangi) was seized vide Ex. P-4. Patwari Indra Kumar Singh (PW-10) prepared spot-map vide Ex. P-6. The Investigation Officer Dilip Pandey (PW-11) also prepared spot-map vide Ex. P-14. The seized articles were sent for chemical examination to Director, Forensic Science Laboratory, Sagar vide Ex. P-17. Report (Ex. P-19) was received therefrom. In the FSL Report (Ex. P-19), article A, i.e., Tangi was found stained with blood. Serological Report (Ex. P-20) was also received. In Serological Report (Ex. P-20), Articles 38, 40 and 41 were found stained with human blood. Blood stains on Article 39, i.e., Axe (Tangi) were disintegrated and not sufficient for test.

After completion of the investigation, charge-sheet was filed against the appellants in the Court of Chief Judicial Magistrate, Raigarh, who, in turn, committed the case to the Court of Session, where from 2nd Additional Sessions Judge, Raigarh received the case on transfer and conducted the trial and convicted and sentenced the appellants as mentioned above.

2. Smt. Savita Tiwari, learned counsel for the appellants Sidar Kanwar and Lalkumar argued that there is no independent eye-witness. Bundkunwar (PW-1) is widow of the deceased. She is relative and highly interested witness. There is contradiction in the First Information Report (Ex. P-13) lodged by her and in her evidence before the Court. The prosecution failed in proving sharing of common intention by both the appellants. She further argued that the prosecution did not lead any evidence against appellant Lalkumar. Mere presence of appellant Lalkumar at the place of occurrence is not sufficient to draw an inference against

him about sharing of the common intention to commit murder of the deceased. The prosecution utterly failed to prove the case beyond reasonable doubt. Therefore, she claimed that the appellants deserve to be acquitted of the charges framed against them.

3. On the contrary, Shri Ajay Dwivedi, learned Deputy Government Advocate for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded by the learned Additional Session Judge do not warrant any interference by this Court.

4. We have heard learned counsel for the parties at length and have perused the impugned judgment as also the record of the session case. The conviction of the appellants under sections 302/34 IPC is based on the evidence of Bundkunwar (PW-1) and Mehtar (PW-3). Chamara Chouhan was one of the eyewitnesses of the incident, but due to his death, the prosecution could not examine him. Ajamil (PW-2) was also examined by the prosecution as an eye-witness, but he turned hostile and did not support its case.

5. In *Namdeo Vs. State of Maharashtra*, the Hon'ble Supreme Court held that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. It is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be a particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction.

6. In *Dharnidhar Vs. State of U.P. and Others*, the Hon'ble Supreme Court held as follows:

12. There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In *Jayabalan Vs. U.T. of Pondicherry*, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim.....

13. Similar view was taken by this Court in *Ram Bharosey Vs. State of U.P.*, where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before

accepting the same.

7. In *Brahm Swaroop and Another Vs. State of U.P.*, the Hon''ble Supreme Court held as follows:

21. Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that effects the credibility of a witness, moreso, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence.....

8. It is not disputed that Bundkunwar (PW-1) is widow of the deceased. It is not the law that the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the Courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the Court is satisfied that the evidence of the interested witness has a ring of truth, such evidence could be relied upon even without corroboration. The fact of being a relative cannot by itself discredit the evidence. When the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope-in innocent persons. In the instant case, the prosecution examined Mehtar (PW-3) as an eye-witness. He is an independent eye-witness. The prosecution also examined Ajamil (PW-2) as an eye-witness, but he turned hostile and did not support its case.

9. In *Waman and Others Vs. State of Maharashtra*, the Hon''ble Supreme Court held as follows:

17. In *Balraje @ Trimbak Vs. State of Maharashtra*, this Court held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically and the court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused.....

19. "29. The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives" evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the court has to analyse the

evidence of related witnesses carefully to find out whether it is cogent and credible. (Vide Jarnail Singh and Others Vs. State of Punjab, , Balraje @ Trimbak Vs. State of Maharashtra,

10. Bundkunwar (PW-1) deposed that on the fateful day, at about 9-10 a.m., she and her husband (the deceased) had gone to pluck Char fruit. The appellants, their wives and mother were also present there. When she and her husband started to pluck Char fruit, the appellants prevented them to pluck Char fruit. Appellant Lalkumar assaulted the deceased with Chiyar. He gave Chiyar blow on right shoulder of the deceased. Thereafter, appellant Sidar Kanwar gave Tangi blow on the head of the deceased. Thereafter, appellant Lalkumar assaulted the deceased with a Lathi, which caused injuries on his back and shoulder. She further deposed that the incident was witnessed by Mehtar (PW-3) and another person who died later on.

11. Mehtar (PW-3) deposed that on the fateful day, at about 10 a.m., he saw that appellant Lalkumar had caught hold of the deceased and appellant Sidar Kanwar was assaulting the deceased with Tangi. The deceased sustained injuries on his head. Both the appellants had threatened him of his life. Chamara Chouhan also witnessed the incident. Thereafter, he went to the house of brother of the deceased, namely, Jagatram (PW-5) to narrate him the incident. Jagatram (PW-5) deposed that Mehtar (PW-3) had come to his house and narrated him the incident. Thereafter, he had gone to the place of occurrence. He saw that the deceased was lying on the earth and blood was oozing out of his wrist and head. On being asked, Bundkunwar (PW-1), who was present there, told him that the appellants assaulted the deceased. Thereafter, he rushed to police station for lodging First Information Report.

12. Bundkunwar (PW-1) deposed that she had gone to police station and lodged First Information Report. Dilip Pandey (PW-11) deposed that on lodging the report by Bundkunwar (PW-1), he registered Crime No. 49/93 vide Ex. P-13 and he also recorded Merg Intimation vide Ex. P-12. There are some discrepancies in the FIR (Ex. P-13) lodged by Bundkunwar (PW-1), her evidence before the Court and the evidence of Mehtar (PW-3) and his police statement. Minor contradictions are bound to appear when ignorant and illiterate persons are giving evidence. Even in case of educated person, memory sometimes plays false and this would be much more so in case of an ignorant and rustic woman. It must also be remembered that the evidence given by a witness would very much depend upon his power of observation and it is possible that some aspects of an incident may be observed by one witness while they may not be witnessed by another though both were present at the scene of offence. In the instant case, Bundkunwar (PW-1) is an illiterate and rustic woman and Mehtar (PW-3) is also a rustic villager. Occurring of discrepancies in their evidence is natural. Bundkunwar (PW-1) and Mehtar (PW-3) deposed that the deceased sustained injuries on his head, back and shoulder. Dr. Rajeev Shrivastava (PW-7) also deposed that he found incised wound on the head and wrist and contusion on the

back and shoulder of the deceased. From the above evidence, it appears that the deceased was assaulted with a sharp edged weapon and a hard and blunt object. Therefore, their evidence cannot be discarded and can be based for conviction.

13. Dr. Rajeev Shrivastava (PW-7) deposed that on post-mortem examination of the deceased he found 8 injuries on the body of the deceased. Out of them, one incised wound was found on the forehead and another incised wound on the right wrist extending throughout the width and thickness of the forearm cutting through both the bones. Bundkunwar (PW-1) also deposed that appellant Sidar Kanwar assaulted the deceased on the head with the Axe (Tangi). Mehtar (PW-3) also deposed in same fashion. Jagatram (PW-5) deposed that he saw injuries on right wrist and forehead of the deceased and blood was oozing out of the injuries.

14. We shall now consider whether there was any common intention on the part of the appellants and in furtherance thereof, they committed murder of the deceased.

15. It is well known that to establish the common intention of several persons so to attract the mischief of section 34 IPC, the following two fundamental facts have to be established: (i) common intention to commit an offence and (ii) participation of the accused in commission of the offence. To attract section 34 IPC, it is not necessary that each one of the accused must assault the deceased. It is enough if it is shown that they shared common intention to commit the offence in furtherance thereof and each one played his assigned role by doing separate acts, similar or diverse. Section 34 IPC is applicable even if no injury has been caused by the particular accused himself. For applying section 34 IPC, it is not necessary to show some overt act on the part of the accused.

16. In Rangnath Sharma Vs. Satendra Sharma and Others, , the Hon"ble Supreme Court observed thus:

21. 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 concept of the section is 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 pervading amongst all accused in order to attract the provision. Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying section 34, it is not necessary to show some specific overt act on the part of the accused, when it is shown that there was common

intention and meeting of mind.

22. In *Ram Tahal and Others Vs. The State of U.P.*, it has been laid down as under: (SCC p. 140, para 5)

5. ... There is no doubt that a common intention should be anterior in time to the commission of the crime showing a prearranged plan and prior concert, and though, it is difficult in most cases to prove the intention of an individual it has to be inferred from the act or conduct or other relevant circumstances of the case. This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries, caused by one or some of them, the acts done by others to assist those causing the injuries the concerted conduct subsequent to the commission of the offence for instance that all of them had left the scene of the incident together and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted. This Court had in *Krishna Govind Patil Vs. State of Maharashtra*, already referred to earlier, held that the prearranged plan may develop on the spot during the course of the commission of the offence but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so before a court convicts a person u/s 302 or 304, read with section 34, IPC, it should come to a definite conclusion that the said person had a prior concert with one or more persons named or unnamed for committing the offence.

17. In the instant case, the date and time of the incident are 11-4-1993 at about 11 a.m. The distance of police station from the village is 12 kilometres. According to Jagatram (PW-5), on narrating him the incident by Mehtar (PW-3), he rushed the place of occurrence. Thereafter, the FIR (Ex. P-13) was lodged by Bundkunwar (PW-1), who is an illiterate and rustic woman. It is mentioned in the FIR (Ex. P-13) that when Bundkunwar (PW-1) and the deceased were plucking Char fruit, appellant Lalkumar chased the deceased and caught him. Thereafter, he caused him to fall down. Mehtar (PW-3) also deposed that appellant Lalkumar caught hands of the deceased and assaulted him. The incident was witnessed by Chamara Chouhan also. The FIR (Ex. P-13) was lodged within 10 hours of the incident and statement of Mehtar (PW-3) u/s 161 Cr.P.C. was recorded by the Investigating Officer without delay on the next day of the incident. There was no material contradiction in the evidence of Mehtar (PW-3) before the Court and his statement u/s 161 Cr.P.C.

18. The role played by appellant Lalkumar in chasing, catching, causing to fall down and assaulting the deceased is eloquent in the case. The role played by him is with a view to achieve the ultimate objective of killing the deceased. Appellant Sidar Kanwar assaulted the deceased with the Axe (Tangi) and the deceased sustained head injuries and succumbed to the injuries. From the

above, it is apparent that both the appellants shared common intention of committing murder of the deceased.

19. Evidence of Bundkunwar (PW-1) and Mehtar (PW-3) is corroborated by medical evidence. We have perused their evidence with utmost circumspection. Their evidence is cogent, clinching and trustworthy. The autopsy surgeon opined that the cause of death was syncope due to shock caused by excessive blood loss from the injuries on face and wrist and the death was homicidal in nature. For the foregoing reasons, the appeals have no merit; they deserve to be and are accordingly dismissed.