
(2005) 05 MP CK 0001

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 408 of 2005

Wakil Khan and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 02-05-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304I, 323, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(10), 3(2)(5)

Citation : (2005) CriLJ 3410 : (2006) 2 MPJR 276 : (2006) 1 MPLJ 259

Hon'ble Judges : S.L. Kochar, J; Ashok Kumar Tiwari, J

Bench : Division Bench

Advocate : Jaisingh and Vivek Singh, for the Appellant; G. Desai, Dy. A.G., for the Respondent

Judgement

S.L. Kochar, J

The appellants called in question the legality of Judgment of conviction and sentence passed by the learned Special Judge, Shajapur in Special Sessions Trial No. 111/2004 thereby convicting the appellant Wakil Khan u/s 302 of the IPC and appellants Tajuddin and Bhuru Khan Under Section. 302/34 of IPC, sentencing each of the appellants to suffer R. I. for life and fine of Rs. 1000/-, in default of fine, each of them to suffer further three months R.I.

The prosecution case as put forth before the trial Court in short is that on 5-7-2004, Amrli Bus was going from Sonkatch to Khuravar, which was driven by driver Babusingh. The bus was full of passengers and some passengers were standing. When bus reached at village Aagkhedi, deceased Mahesh, Rambabu (P.W. 2), Jagdish (P.W. 5) and one Ram Singh also boarded the bus. In this bus, the appellants were already travelling and they were standing. When bus proceeded from village Aagkhedi, appellant Wakil Khan asked deceased Mahesh to go some step ahead and on this, verbal dispute commenced between them. The appellant Wakil Khan abused the deceased Mahesh in the name of caste.

Thereafter appellant Tajuddin gave a slap and appellant Bhuru Khan caught the hands of deceased. It is further said that in the mean while appellant Wakil Khan took out knife and started assaulting deceased by knife. The appellant Wakil Khan caused as many as five blows on the person of deceased Mahesh. The bus was got stopped near village Khokharkala where all the appellants got down from the bus and fled away. Witnesses Dinesh and Rambabu lifted Mahesh outside from the bus and boarded another bus going towards Kalapipal. The said bus was being driven by driver Sheikh Mukim. Near village Aagkhedi, Badrilal, the father of deceased Mahesh also joined them in the bus and bus proceeded to Kalapipal hospital, but injured Mahesh succumbed to the injuries on the way. The FIR was lodged in the Police Station Kalapipal by Dinesh (P.W. 1). Report is Ex. P.I. On the basis of this report, Crime No. 202/2004 was registered against all the three appellants Under Sections. 323, 302/34 of IPC and Under Section. 3(I)(10) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act. The dead body was sent for post-mortem and post-mortem was performed by Dr. G. S. Saxena (P.W. 11). After investigation, the appellants were charge-sheeted.

The appellants have pleaded not guilty and contended that they were falsely implicated. They have not examined any witness in defence whereas prosecution has examined 14 witnesses and got proved total 26 documents, including Forensic Science Laboratory Report. The learned trial Court, relying on the eye-witnesses account of Dinesh (P.W. 1), Rambabu (P.W. 2) and Jagdish (P.W. 5) and medical evidence of Dr. G. S. Saxena (P.W. 11) as well as other corroborative piece of evidence. Convicted the appellants as mentioned above. The appellants have been acquitted from the charges Under Section. 3(2)(5) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act. Hence this appeal.

The learned counsel for appellants have submitted that even if the complete prosecution case is accepted, the offence against all the appellants punishable Under Section. 302/34 of IPC is not made out because there is no evidence of previous enmity or ill-will between the deceased and the appellants. The prosecution has led only evidence that prior to three days, there was some sort of verbal altercations on account of spitting of chewed betel between deceased and appellant Wakil Khan. In the bus, dispute arose on a spur of moment when deceased Mahesh was asked to go ahead so that proper space may be available for the appellants and other passengers to stand. The appellants and deceased and his companions were all standing inside the bus. There was no space to sit in the bus. When appellants asked Mahesh to go ahead inside the bus, there was verbal altercation between them and during that appellant Tajuddin gave a slap to deceased Mahesh. Appellant Bhuru Khan caught him and it is said that appellant Wakil Khan caused injury by Knife. The learned counsel for appellants has taken us through the complete statements of eye-witnesses Dinesh (P.W. 1), Rambabu (P.W. 2) and Jagdish (P.W. 5) and pointed out paragraph 11 of statement of Jagdish (P.W. 5) in which he has deposed that appellants were not having knife openly in their hand. The appellant Wakil Khan was also not brandishing the knife in his hand. Appellant Wakil Khan took out knife after

commencement of quarrel. He has also took us through the statement of Rambabu (P.W. 2), paragraph 10, in which he has said that when deceased Mahesh was given slap by Tajuddin, at that point of time, Bhuru Khan left one hand of the deceased Mahesh and when appellant Wakil Khan dealt the first knife blow, the deceased fell on the floor of the bus. There is no allegation that when knife blows were dealt continuously by Wakil Khan, appellant Ajuddin and Bhuru Khan were holding the deceased and making exhortation. The learned counsel has submitted that there is no evidence for convicting the appellants Tajuddin and Bhuru Khan with the aid of Section 34 of the IPC. The learned counsel has also submitted that the Doctor has not opined that the injury was sufficient in ordinary course of nature to cause death. Therefore, offence against appellant Wakil Khan would be short of murder.

On the other hand, the learned counsel for State has supported the judgment and finding of the trial Court.

In the case of AIR 1945 118 (Privy Council) My Lord Justice Shri Madavan Nair speaking for the Full Bench defined Section 34 of IPC in the following words :-

"Common intention within the meaning of Section 34 implies a pre-arranged plan. To convict the accused of an offence applying Section 34 it should be proved that, the criminal act was done in concert pursuant to the prearranged plan. It is no doubt difficult if not impossible to procure direct evidence to prove the intention of an individual; it has to be inferred from his act or conduct or other relevant circumstances of the case. Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice. The inference of common intention within the meaning of the term in Section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case".

We can also conveniently refer Chikkarange Gowda and Others Vs. State of Mysore, ; Hardev Singh and Another Vs. The State of Punjab, , Jaspal Singh and Another Vs. State of Haryana, ; Parasa Raja Manikyala Rao and Another Vs. State of A.P., (Parasa Raja Manikyala Rao v. State of A. P.) Janak Singh and Another Vs. State of Uttar Pradesh, and Ramesh Singh @ Photti Vs. State of A.P., .

Having heard the learned counsel for appellants and for the State as also after perusing the entire evidence on record and considering the law of common intention on the basis of the above mentioned Apex Court pronouncements, it emerged that the incident occurred all of a sudden on a spur of moment when deceased Mahesh was asked by the appellants to go some step ahead inside the bus. At that juncture, deceased Mahesh denied to go ahead because there was no space in front of him. During this period, some verbal hot talk took place between the appellants and deceased and appellant Wakil Khan took out knife from his pocket and caused as many as five blows in quick succession on the

person of deceased. Even if all the evidences of eye witnesses are accepted, the appellant Tajuddin and Bhuru Khan cannot be convicted for the offence Under Section. 302, 34 of IPC because there is absolutely no evidence that the appellants were having pre-meeting of mind, premeditation and pre-plan for committing murder of deceased Mahesh and in furtherance of the common intention appellant Wakil Khan caused injuries by knife. There is also no evidence on record that while causing five knife blows by appellant Wakil Khan, the deceased was held or caught hold of continuously by appellant Bhuru Khan. Admittedly, appellants were not having any previous enmity with the deceased and they were also not having any prior information about travelling of deceased Mahesh in the bus. Appellants Bhuru Khan and Tajuddin were not having any weapon in their possession. Therefore, we are of the considered view that no case is made out for convicting the appellants Bhuru Khan and Tajuddin Under Section. 302/34 of IPC.

We are not agreeing with the submission of the learned counsel for appellants that against the appellant Wakil Khan, the offence Under Section. 304I of the IPC would be made out in absence of the medical opinion about the injury being sufficient in ordinary course of nature to cause death. It is true that Dr. G. S. Saxena (P.W. 11) has not opined specifically while giving opinion about death that injuries sustained by the deceased Mahesh were sufficient in ordinary course of nature to cause death but on the basis of the presence of external injuries noted by the autopsy surgeon and corresponding internal injury, this Court can come to the conclusion that the injuries were sufficient in ordinary course of nature to cause death. The five external injuries caused by sharp edged weapon like knife has damaged left fourth rib, left third rib, throat, wind pipe, serious damage to the right lung and heart. These internal damages to vital organs are sufficient to form opinion that injuries sustained by deceased and caused by appellant Wakil Khan were sufficient in ordinary course of nature to cause death. The Doctor has given opinion in paragraph seven that deceased met homicidal death and cause of death was shock due to injury to heart and lung.

In the result, the appeal of the appellants Tajuddin and Bhuru Khan is allowed. The conviction and sentence of the appellants Tajuddin and Bhuru Khan Under Section. 302/34 of IPC are hereby set aside. They are in jail; therefore, the learned trial Court is directed to release them forthwith if not required in any other case. The conviction and sentence of the appellant Wakil Khan are hereby maintained Under Section. 302 of IPC, and he is sentenced to R.I. for life with fine of Rs. 1000/- and in default of payment of fine, to undergo further R.I. for three months.

Office is directed to send copy of the judgment along with the record to the trial Court immediately.