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SANJEEV

versus

STATE

CRL.A. 542/2001

KAMAL

versus

STATE

CRL.A. 544/2001

SANT RAM

versus

STATE

Through: Mr. M.N.Dudeja, Advocate

CRL.A. 545/2001

DHAN PAL

..... Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate
with Mr. Anurag Jain, Mr. Sindhu
Sinha, Mr. Nikhil Bhalla and
Mr. Mohit Bakshi, Advocates

versus

STATE

..... Respondent

Through: Mr. M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. The appellants have been convicted with the aid of Section 34 IPC for the offence of murder of Ajay and have been sentenced to undergo imprisonment for life.
2. The appellants are related to each other as under:-
 - a. Appellant Kamal is the son of appellant Dhanpal @ Dhannu.
 - b. Appellant Dhanpal @ Dhannu and appellant Sant Ram @ Santu are brothers.

c. Appellant Sanjeev Kumar is the son-in-law of appellant Dhanpal @ Dhannu. Thus, he is the brother-in-law of appellant Kamal.

3. The complainant side and the deceased Ajay are also related to each other as under:-

a. Complainant Sanjay Sharma PW-1 is the brother of the deceased Ajay.

b. Narender Kumar Sharma PW-3 is the paternal uncle (chacha) of the deceased and Ajay Kumar Sharma.

c. Shobha Ram PW-4 is the maternal uncle (mausa) of Sanjay Sharma and the deceased Ajay.

4. It is not in dispute that Ajay was fatally stabbed outside his house on the public street at around 6:50 PM on 9.8.1996 and information thereof was recorded at PS Bhajan Pura vide DD No.61B Ex.PW-19/A. Copy of DD No.61B was handed over to SI Surender Kumar PW-19 for investigation. He left the police station in the company of Const.Ramphal PW-8 and Const.Pradeep Kumar PW-6. He reached the place where Ajay was stabbed and learnt that Ajay had been removed to GTB Hospital. Const.Pradeep remained stationed at the spot to guard the same. SI Surender Kumar and Const.Ramphal went to GTB Hospital and collected the MLC Ex.PW-16/A of Ajay which recorded that Ajay was brought dead. They met Sanjay Sharma PW-1 at the hospital. SI Surender Kumar

recorded the statement Ex.PW-1/A of Sanjay Sharma and after making the endorsement Ex.PW-19/B sent Const.Ramphal for FIR to be registered. As recorded in the endorsement Ex.PW-19/B the statement of Sanjay Sharma was dispatched from the hospital at 9:00 PM i.e. within 2 hours and 10 minutes of registration of DD No.61B.

5. Sanjay Sharma implicated the appellants of having murdered Ajay. As per him, on 9.8.1996 i.e. the day of the occurrence, at 6:15 PM his handcart was outside his house when accused Sanjeev came on a two-wheeler scooter which struck his handcart. Accused Sanjeev abused him and a verbal altercation ensued. His uncle Shoba and Narender Kumar separated them. Sanjeev left and returned after a few minutes with the other accused and on the exhortation of appellant Dhannu: *"Leh lo gaadi wale ko bach ke jaane na pai"* appellant Sanjeev and Santu as also Dhannu caught hold of Ajay and Kamal inflicted knife blows on his buttock, abdomen and chest.

6. SI Surender Kumar seized the body and sent it to the mortuary for post-mortem and returned to the spot. He summoned a photographer to take photographs of the spot. He prepared the site plan Ex.PW-19/C and lifted blood and earth control from the spot as recorded in the memo Ex.PW-3/A.

7. At the mortuary, post-mortem of the deceased was conducted by Dr.Anil Kohli who prepared the post-mortem Ex.PW-14/A noting thereon 7 injuries on the persons of Ajay, being as under:-

“1. Incised stab wound measuring 1.6 cm x 0.3 cm x 4 cm present over right side of buttock, going upwards, medially and anteriorly. It is spindle shaped with clean cut margins and are angle of the wound is more acute than the other. No major blood vessels cut. It is placed 7.5 cm to the right of gluteal cleft.

2. Incised stab wound 2 cm x 0.3 cm, present over midline of front of chest, placed 15 cm below the sternal notch. It is spindle shaped with clean cut margins and are angle of the wound is more acute than the other. On dissection the track of the wound is cutting the sternum, entering the pericardial sac, passing through and through the right ventricle of heart and terminated on cutting the lower lobe of right lung. Its direction is going downwards laterally and posterially and depth is 9 cm.

3. Incised stab wounds, 2 cm x 0.4 cm, present over midline of front of abdomen 8.5 cm below the xiphoid process. It is spindle shaped with clean cut margin and are angle of the wound is more acute than the other. On dissection the track of the wound is going subcutaneously, upwards and anteriorly and terminated on cutting the sternum. No major blood vessel or organ cut. Length of track is 8 cm.

4. Incised stab wound 1.6 x 0.2 cm present over right side of chest in the mid axillary line, placed 12 cm to the right of right nipple and 8 cm below the axillary fold. It is spindle shaped with clean cut margins and are angle of the wound is more acute than the other. On dissection the track of the wound is going subcutaneously upwards, posteriorly to medially for a length of 6.8 cm. No major blood vessel or organ was cut.

5. Incised wound 1.5 cm x 0.2 cm x 0.1 cm present in midline over front of abdomen placed 5 cm below the umbilicus.

6. Red abrasion 2 cm x 0.6 cm present over back of left forearm 2 cm elbow jt.

7. Linear scratch 4 cm x 0.1 cm present over left side front of neck started from midline and going obliquely 3 cm below the angle of mandible."

8. Eschewing reference to the recoveries got effected from the accused, since learned counsel for the parties agreed that the fate of the appeals hinges upon the testimony of PW-1, PW-3 and PW-4, the three eye-witnesses, we proceed to straight away note the testimony of the three witnesses.

9. Sanjay Sharma PW-1 deposed in harmony with his statement Ex.PW-1/A pursuant where to the FIR was registered. He deposed the facts as noted in para 5 above. Suffice would it be to note that while deposing in Court and as stated in Ex.PW-1/A Kamal took out a knife at the spur of the moment and attacked Ajay.

10. Narender Kumar Sharma PW-3 deposed in harmony with the testimony of Sanjay Sharma, with the exception he quoted the exhortation of Dhannu as "*Leh lo daadi wale ko bach ke jaane na pai*".

11. Shoba Ram PW-4 deposed substantially the same as deposed by PW-1 save and except assigned no roles as to

who caught and who stabbed. He simply stated that all the accused attacked Ajay.

12. There are, thus, discrepancies in the evidence and far from being surprised at the discrepancies, we would rather be surprised if there were none. Witnesses do not have photogenic memories and as long as in the core and in the substance they narrate, in their own language, the relevant facts, it can safely be said that the witnesses have corroborated each other. When many people participate in the commission of an offence and many persons witness the same, due to lapse of memory, it may happen that a particular witness may assign an incorrect role to a particular accused.

13. From the testimony of the three eye-witnesses it is apparent that PW-1 and PW-3 have categorically stated that accused Kamal had inflicted the knife blows. Both of them have stated that accused Dhannu gave the exhortation. Both of them categorically say that Dhannu, Sanjeev and Sant Ram caught the deceased. The variation is with respect to the exact words spoken by Dhannu when he gave the exhortation. Of course, PW-4, as noted above has deposed in an omnibus manner. The variation in the language of exhortation as deposed to by the three witnesses relates to the word '*gaadi*' and '*daadi*'. We need not expound. The phonetic similarity of the two words is the likely cause of confusion.

14. We are satisfied that the three witness have deposed truthfully and being residents of the house outside where the deceased was killed are natural witnesses keeping into account that the incident took place between 6:15 and 6:30 PM, a time when people return home after work.

15. Sanjay's presence with the deceased is independently established by the fact that the MLC of the deceased shows that Sanjay had brought Ajay to the hospital. His statement Ex.PW-1/A has been recorded within about two hours of the incident giving him hardly any time to cook up a version.

16. The only point worthy of consideration in the appeals is whether Dhannu, Sanjeev and Santu can be painted with the same taint as Kamal, who must face the consequence of his acts. The injuries caused by him, as noted in para 7 above, show that injuries No.2 to 5 are directed towards the chest and the abdomen and have gone very deep inside. Qua him, intention to cause the injuries inflicted by him is proved through the testimony of PW-1 and PW-3 who have deposed that Kamal struck blows on the chest and the abdomen as also on the buttock of the deceased. It is apparent that Kamal intended to strike and succeeded in striking four blows on the chest and the abdomen. He struck lethally. The acts

committed by him clearly attract the third limb of Section 300 IPC.

17. Pertaining to the other three co-accused, we proceed to analyze the evidence by recreating what had happened. A verbal quarrel took place on a trivial issue between Sanjay PW-1 and appellant Sanjeev. With the intervention of the family elders of Sanjay, peace was restored. Sanjeev left and returned within a few minutes with Kamal, Sant Ram and Dhanpal. Kamal was carrying a knife hidden somewhere, most probably in his pant pocket. In any case he was not having a knife in his hand. The three co-accused were unaware that Kamal was carrying a knife. It is apparent that the accused returned to the spot to resume the quarrel. Now, it is apparent that the accused must have thought of an action plan which the prosecution could not unearth. It does become difficult to bring on record evidence of prior concert, especially when the retaliation is within minutes. But one thing is certain. The accused returned with an intention of doing something. On reaching the spot, appellant Dhannu gave an exhortation which evidences that the intention of the appellants was to physically take on Sanjay or may be Ajay. Of course, ordinarily, Sanjay should be the target. But, Ajay, brother of Sanjay could equally be a target because the grievance of the accused was that the Sharma

family would park a handcart belonging to the Sharmas on the narrow public street. Simultaneous with Dhannu giving the exhortation, appellant Sanjeev and Sant Ram caught the deceased. So did Dhannu. This shows, that if not more, the intention was no less than beating Ajay. Simultaneously, Kamal took out a knife and started the assault.

18. From the aforesaid admitted facts, to be fair to the appellants, none can hold at this stage that there was a prior meeting of minds to murder the deceased. There is no evidence that Sanjeev, Sant Ram and Dhannu were aware that Kamal was carrying a knife.

19. If not impossible, it is difficult to procure direct evidence to prove the intention of a group. Thus, intention has to be gathered from the acts of the parties and the attendant relevant circumstances enwombing the acts. Concerted conduct during the commission of the offence and the subsequent conduct has to be seen. Thus, we have to analyze further evidence with respect to the participation of Sanjay, Sant Ram and Dhannu when Kamal took out the knife and started stabbing Ajay.

20. Ajay has been inflicted five stab wounds and prudence guides us that this would take anything between ten to fifteen seconds. Evidence proves that Sanjeev, Dhannu and Santu caught hold of the deceased. The said accused persons,

instead of preventing each other from resorting to violence, participated in the incident to the fullest extent i.e. continued to catch hold of the deceased till the last stab wound was inflicted. Injury No.7, a linear scratch 4 cm x 0.1 cm present over left side front of neck starting from midline and going obliquely 3 cm below the angle of mandible shows, that in an iron grip, the neck of Ajay, was being held. Except for one injury on the buttock inflicted with the knife, four stab wounds have been inflicted on the front portion of the body of Ajay and are on the chest and the abdomen. There are no defence injuries, meaning thereby that Ajay was demobilized for at least ten to fifteen seconds by Sanjay, Dhannu and Santu.

21. A common intention can spring even at the spur of the moment. It can be gathered from the act and the conduct of the accused.

22. In the decision reported as 1973 RLR 54 Krishan Lal & Anr. vs. State, an act of a co-accused of holding on to the deceased with a cast iron grip and continuing to hold on, thereby exposing the injured to an attack with a knife, was held to be attracting Section 34 of the Penal Code. The act was held indicative of a common intention. The decision shows that where the co-accused participates to the fullest extent in the commission of the crime, it shows his common intention with the other co-accused.

23. In another decision, also involving an accused with a similar name; being *Kishan Lal*, reported as 1995 Cri.L.J.2161 *Kishan Lal & Ors. vs. The State*, in para 15 it was observed as under:-

“15. It appears that in that case the appellant Inderjit was merely present with the assailants and he had not taken any part in the assault on the deceased and therefore, it was held that he could not be held guilty under Section 34 but in the case before us the evidence of the three prosecution witnesses clearly shows that the appellant Kishan Lal had tightly caught hold of deceased Amir Chand till the appellant Ashok Kumar had finished him by giving the four blows of the knife one after another and then both of them left him there and took to their heels. Therefore, in the case before us there is active participation of appellant Kishan Lal in assaulting the deceased and hence the appellant Kishan Lal is rightly held guilty under Section 302 read with Section 34 IPC.”

24. We thus hold that appellants Sanjay, Dhannu and Sant Ram @Santu, by their acts of catching hold and continuing to catch hold of the deceased till the very end, and having participated in the incident to the fullest extent, by exposing Ajay to the assault till the end, have evidenced their intention common with that of Kamal and hence are vicariously liable for the action of Kamal.

25. We find no merit in the appeals which are dismissed.

26. The appellants are on bail. The bail bonds and surety bonds furnished by the appellants are cancelled. The

appellants are directed to surrender and undergo the remaining sentence.

**(PRADEEP NANDRAJOG)
JUDGE**

**(INDERMEET KAUR)
JUDGE**

**September 14, 2009
mm/dk**