

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 2055 OF 1998

1. Sukh Lal Yadav, S/o Resham Lal Yadav, aged about 27 years, R/o Chhichor, Umariya, Thana Pusor, District Raigarh.

2. Resham Yadav, S/o Mandru Yadav, aged about 80 years

3. Shishu Pal Yadav, S/o Samaru Yadav, aged about 40 years,

Residence of all the above Chhichor, Umariya, Thana Pusor, District Raigarh.

... Appellants

Versus

State of M.P. (now C.G.), through S.O. Pusor, District Raigarh.

... Respondent

CRIMINAL APPEAL NO. 2074 OF 1998

Udhaw Kolta, S/o Jageshwar Kolta, aged about 38 years, occupation Labour, resident of Chhichor, Umariya, Thana Pusor, District Raigarh.

... Appellants

Versus

State of M.P. (now C.G.), through S.O. Pusor, District Raigarh.

... Respondent

For Appellants	:	Mr. Awadh Tripathi, Advocate.
For Respondent-State	:	Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

14/10/2015

1. The Appellant Shishu Pal Yadav has been convicted under Section 302 IPC and sentenced to life imprisonment and the other Appellants have been convicted under Section 326/34 IPC and sentenced to 7 years rigorous imprisonment, as ordered on 24.8.1998 by the Sessions Judge, Raigarh, in Sessions Trial No. 10 of 1998.

2. The deceased Biju @ Shanti Bai is alleged to have been assaulted on 18.9.1997 at 6:30 a.m. on the road near the house of Ravi Kewat, PW-2. First Information Report, Exhibit P-1, was lodged on the same day at 8:15 p.m by PW-1 Fagulal, the brother of the deceased. Inquest report Exhibit P-8 was prepared by the police officer G.S. Dubey, PW-6. The post-mortem, Exhibit P-15 was conducted by PW-7, Dr. H.S. Uraon who found 8 incised wounds, opining that death was due to shock and excessive bleeding.

3. Learned Counsel for the Appellants submitted that Malti Bai, wife of PW-1 Fagulal, is the only eye-witness. According to her, only Appellant Shishu Pal Yadav had a "*farsha*". The others were not possessed of any weapon and did not commit any overt-act direct or indirect to aid the assailant. There was no material to hold any common intention and each of them is liable for his own acts. They were all residents of one locality and therefore the coming of the other Appellants apart from Shishu Pal Yadav on the commotion that followed after the deceased was assaulted, was but natural and it cannot be construed as presence with common intention. In cross-examination, PW-8 Malti Bai acknowledged that the Appellants with the exception of Shishu Pal Yadav were simply standing there alike her without any overt-act and they did not even make any attempt or effort to aid Appellant Shishu Pal Yadav. The Trial Judge has therefore committed error in convicting the Appellants Sukh Lal Yadav, Resham Yadav and Udhaw Kolta under Section 326/34 IPC while simultaneously holding that there was no material to show their involvement in any manner or any common intention. The three Appellants are therefore entitled to acquittal. In so far as Appellant Shishu Pal Yadav is concerned, it was

submitted that PW-8 Malti Bai was a solitary interested witness, being the sister-in-law of the deceased. Despite the fact that the assault took place on a public road and in a crowded locality, there is no independent eye-witness available and therefore it will not be safe to convict on basis of a solitary related interested witness.

4. Learned Counsel for the State opposing the appeal with regard to Appellant Shishu Pal Yadav submitted that the evidence is direct of his being the assailant. Blood has been found on the "*farsha*" recovered on his confession and also on his "*lungi*" for which he has offered no explanation. It cannot be said as an absolute proposition that conviction cannot be based on the evidence of a solitary related eye-witness. Even if it was a crowded locality, independent witnesses hesitate to come forward for various reasons and it is only the family members who ultimately depose. It is not the quantity but the quality of evidence that matters.

5. We have considered the submissions on behalf of the parties and perused the evidence on record.

6. It is not in controversy from the evidence available on record that the only eye-witness to the occurrence is PW-8 Malti Bai. Her evidence to us is most natural, considering the occurrence at 6:30 a.m. in the morning when she was brushing her teeth. Appellant Shishu Pal Yadav was the only one carrying a "*farsha*". Shishu Pal Yadav alone assaulted the deceased more than once. The motive for the occurrence was a land dispute. The witness in paragraph 4 of her cross-examination only stated that the other Appellants with the exception of Appellant Shishu Pal Yadav were only standing aside her when Shishu Pal Yadav alone made the assault. The seizure of clothes of Appellant Shishu Pal Yadav

and the “*farsha*” used for assault, marked Exhibits P-4 and P-5, was proved by PW-10 H.L. Nirajan, the Investigating Officer. It was sent for forensic examination confirming presence of blood, marked Exhibit P-20.

7. We therefore find no reason to interfere with the conviction of Appellant Shishu Pal Yadav and the appeal is rejected in so far as he is concerned. His bail-bonds are cancelled and he is directed to surrender and/or be taken into custody forthwith for serving out his remaining period of sentence.

8. No charge was framed under Section 326/34 IPC against the other Appellants. There are no allegations of their having used any weapons or assaulted in any manner by any dangerous weapons or means to invite application of Section 326 IPC or sharing of any common intention. The Trial Judge himself held in conclusion that from the evidence available it had not been established that Appellants Shukh Lal Yadav, Resham Yadav and Udhaw Kolta shared any common intention of causing injuries or to kill but still nonetheless abruptly sentenced under Section 326/34 IPC without any discussion. The conviction of Appellants Shukh Lal Yadav, Resham Yadav and Udhaw Kolta is therefore held to be not sustainable and is set aside. The appeal is allowed with regard to them subject to the conditions in Section 437-A Cr.P.C.

9. Resultantly, Criminal Appeal No. 2055 of 1998 is partly allowed and Criminal Appeal No. 2074 of 1998 is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge