

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.685 of 2001**

Jitendra Kumar Choubey, son of Chandrika Choubey, aged about 21 years, resident of Sharda Para, Bhilai, Thana Chhawani, District Durg, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh, through the District Magistrate, Raipur

---- Respondent

Criminal Appeal No.820 of 2001

Menejer Saha, son of Kesher Saha, aged about 25 years, resident of Village Balli, Post Husainganj, Police Station Husainganj, District Siwan, Bihar

---- Appellant

versus

State of Chhattisgarh, through S.H.O., G.R.P. Raipur, Chhattisgarh

---- Respondent

Criminal Appeal No.858 of 2001

Satish Kumar Shukla, aged 22 years, son of Shri Madanlal Shukla, resident of Jawalpur, Police Station Janjgir, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh, through Railway Police Raipur, District Raipur, Chhattisgarh

---- Respondent

For Appellants	:	Shri Akash Pandey, Shri Hemant Kesharwani and Shri Akhtar Hussain, Advocates
For Respondent/State	:	Shri Neeraj Mehta, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****21/9/2015**

1. The Appellants stand convicted under Section 302/34 IPC and sentenced to life imprisonment with fine of Rs.1,000/-, in the event of failure

to pay which, they were required to undergo further three months rigorous imprisonment each as ordered on 17.7.2001 by the 6th Additional Sessions Judge, Raipur in Sessions Trial No.208 of 1999.

2. The deceased Shekhar Chand Jain was shot dead on 3.11.1998 at railway platform No.2 about 7:45 am. Merg was lodged at 12:10 pm by PW-1, Yogesh Kumar Soni, against three unknown persons by description. The witness claimed to recognize the assailants if he saw them again. Formal FIR was registered the same day. The post mortem of the deceased, Exhibit P-24 was conducted by Dr. B.P.Malani, PW-24, who found 57 small pellets in the body of the deceased which were taken out and handed over for obtaining expert opinion from fire-arm expert. The Appellants are alleged to have been chased by a mob and caught. Fire arm and knife are stated to have recovered on confession from an open place. The bag of the deceased with money was handed over to the police by PW-16, Santosh Kumar Jain.

3. Learned Counsel for the Appellants made common submissions in their respective appeals. Contending that the police report was against unknown based on physical features, the witness claiming to recognize if shown the accused, yet no Test Identification Parade (T.I.P) was held. The occurrence took place on a railway platform, a public place. A large number of persons are stated to have been present and the assailants are stated to have been chased and apprehended by a mob. Despite 33 prosecution witnesses having been examined not one of them identified the Appellants as the assailants. The only identification is as persons who were being chased by the mob. Their defence under Section 313 Cr.P.C that they were also present at the railway station, a public place for their own reasons and ran as members of the mob in the melee that followed has been rejected on assumptions and presumptions holding that it confirms their presence and consequentially involvement in the crime, and for which there was

absolutely no iota of evidence thus making the finding perverse. The possibility of false implication or wrong identification by a mob or any one of them interested cannot be ruled out. The Merg was lodged against three unknown persons by description. PW-1 Yogesh Kumar Soni stated he could identify the assailants but failed to recognize the Appellants in Court stating that he was seeing them for the first time. The alleged extra-judicial confession before a mob, some of whom were also assaulting the Appellants, cannot be believed to be true and in any case cannot be said to be voluntary and admissible in evidence. The alleged recovery of a country made weapon from an open space on confession is inconsequential in absence of any ballistic report of the weapon having been used or expert opinion that the pellets recovered could have been used only from the kind of country made weapon allegedly recovered. The knife alleged to have been recovered is also inconsequential as there is no knife injury on the person of the deceased much less any forensic report with regard to it. The bag of the deceased was produced by PW-16, Santosh Kumar Jain and there is no evidence to link the bag with the Appellants as either having been seen in possession of the same or that they had thrown it at any time while they were being chased by the crowd. In any event these were corroborative evidence and cannot be considered as substantive evidence for conviction. If there was a large mob chasing the Appellants, the possibility that the real assailants may have escaped and that the Appellants by mistaken identity may have been implicated absolving the real culprits cannot be ruled out.

4. Reliance was placed on AIR 1979 SC 1127 (Kanan v. State of Kerala) in support of the submission that merely because the Appellants were allegedly chased by a mob and apprehended it would not be safe to convict on that ground in absence of even a single identification by the mob.

5. Learned Counsel for the State submitted that the Appellants were caught immediately after the occurrence and there has been recovery of the fire-arm on confession. They were taken to the entertainment center where they were alleged to have made extra-judicial confession of their guilt also.

6. We have considered the submissions on behalf of the parties and examined the evidence also.

7. The deceased is stated to have been shot dead on a railway platform at about 7:45 am. PW-1, Yogesh Kumar Soni, who lodged the Merg against unknown on basis of physical features, stated he could identify the assailants if he saw them again. But he failed to identify the Appellants in the dock stating that he was seeing them for the first time. Despite the fact that the place of occurrence was a public place, several persons were present, the Appellants were chased by a mob, 33 prosecution witnesses have been examined, not a single person has identified the Appellants as the assailants. The best evidence for the prosecution could have come from PW-1, Yogesh Kumar Soni. The only identification of the Appellants is as persons being chased by the mob. It was a very appropriate case for holding a T.I.P. The police miserably failed in its duty to investigate properly, either by design or ignorance, when it did not hold T.I.P in the facts of the case.

8. A railway platform is a public place. The Appellants had taken the defence under Section 313 Cr.P.C. that they were present at or near the railway station for their own reasons as mentioned. It was their further case that they also ran in the chaos and commotion that followed after the shooting. The judgment of the Trail Court does not reflect any consideration of the defence. A complete misreading and misappreciation of evidence led the Trail Judge to conclude that since the Appellants had admitted their presence, the prosecution story of their being chased and apprehended by

the mob established them as assailants. The charge against the Appellants had to be proved by the prosecution beyond reasonable doubt. If a plausible and possible defence was urged and two views were possible with regard to the Appellants, the view favourable to them had to be taken. Unfortunately the Trial Judge completely reversed this principle of criminal jurisprudence by treating the prosecution story as the gospel truth without considering the plea of the Appellants. In (2003) 11 SCC 527 (Suchand Pal v. Phani Pal) it was observed :-

“8....The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent....”

9. The Appellants have aptly relied upon Kanan (supra) observing as follows :-

“1..... At any rate, the witness only identified the appellant Kanan and M.P. Veluyudhan as persons who were running away near the place of occurrence. The witness, however, did not say that he saw these witnesses either entering the police station and attacking it or coming out from the police station with explosives or arms. There was a huge crowd after the police station was attacked and if these two appellants were seen running away that by itself would not show that they had taken part in the raid.....”

10. PW-3, Kanhaiyalal only stated that three people had been caught, but did not identify the Appellants as the assailants notwithstanding the fact that he was at the railway platform drinking tea. Similarly, PW-4, Babulal Soni deposed that when he heard the commotion and went to the platform, he saw the deceased lying on the ground and three/four persons were running away, but did not identify the Appellants. PW-7, Girwar Ram Dhiwar, who ran a hotel near the railway platform, only stated that he heard that three people were caught, but did not identify the Appellants as the

assailants. Likewise, PW-11, Raju Kesharwani, who was also at the railway station, deposed that he had not seen the occurrence and did not know who had fired at the deceased, but only that he heard that three people had been caught by the crowd. PW-13, Atmaram Teli, stated to be one of the persons in the mob only identified the Appellants as persons apprehended by the mob.

11. PW-15, Dharmendra Singh was witness to the confession and recovery of the country made weapon, Exhibits P-15 and P-16 as also the knife, Exhibit P-19. Considering the fact that the country made weapon was recovered from an open field and there is no ballistic report available either with regard to its recent use or that the pellets recovered from the body of the deceased could have been fired from a weapon of that kind, as also that there is no allegation of assault by a knife, recovery of the two items as a piece of corroborative evidence is inconsequential. The bag containing money was not recovered on confession of the Appellants but was produced by PW-16, Santosh Kumar Jain. No witness has stated that the Appellants when they were being chased by the public were carrying a bag similar to that of the deceased and which they may have subsequently thrown away. If a mob was chasing three alleged assailants without any positive identification of the assailants, and the mob swelled as it kept chasing the assailants, the possibility of false implication of the Appellants cannot be ruled out. It shall be highly unsafe to hold them guilty merely because in a mob frenzy they happened to be pinned down during the chase as suspected assailants without any specific identification more particularly when the assault took place in a public place at a railway platform.

12. It is important to notice from the evidence of PW-20, Dauram Sagar, Head Constable that he had not made any entry in the station diary, Exhibit P-20 that someone had been killed by a fire-arm on the railway platform

and neither name of the deceased was mentioned much less the number of the assailants which again creates doubt about the manner in which the deceased may have been killed and that the Appellants were the real assailants being chased by the mob and apprehended in the same sequence.

13. An extra judicial confession though admissible in evidence is a weak piece of corroborative evidence. Its evidentiary value may be considered if it is otherwise found to be made voluntarily, is reliable and inspires confidence including the circumstances in which it was made and to whom. In the facts of the present case, if the Appellants were apprehended by a mob after chase, taken to a place before the police came, were being assaulted by some members of the mob, it can hardly be stated that an extra judicial confession by them to members of the mob was voluntary, reliable and inspiring confidence.

14. In the nature of evidence produced by the prosecution and the defence taken by the Appellants, the possibility of false implication either deliberate or in a case of mistaken identity by a mob of unidentified assailants cannot be completely ruled out and therefore we do not consider it safe to uphold the conviction of the Appellants.

15. The conviction of the Appellants is therefore held to be unsustainable and is set aside subject to the conditions in Section 437A Cr.P.C.

16. All the appeals are allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE