

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.218 of 1990

Against judgment and order of conviction and sentence dated 30.05.1990
passed by Shri Bhikhari Ram, Additional Sessions Judge XI, Patna in
Sessions Trial No. 210 of 1988/3 of 1988

- 1. Ram Briksh Ram @ Bakhori son of late Laldhari Ram
- 2. Ram Chander Ram son of Bangali Ra
- 3. Lallu Ram son of Late Hira Ram
- 4. Suchit Ram son of Late Hira Ram
- 5. Shankar Ram son of Late Ramdeo Ram
- 6. Sadhu Musahar sonof Saukhi Musahar

-All residents of Village Baddulah Chak, PS Gaurichak, District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 272 of 1990

Against judgment and order of conviction and sentence dated 30.05.1990
passed by Shri Bhikhari Ram, Additional Sessions Judge XI, Patna in
Sessions Trial No. 493 of 1989 /44 of 1989

Dukhata Mushahar, son of Jathu Manjhi, resident of Village Badulachak, PS
Gaurichak, District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :
(In both Appeals)
For the Appellant/s : Ms. Guriya Nisha, Amicus Curiae.
For the State : Mr. Shiwesh Chandra Mishra, APP
For the Informant : Mr. Anil Kumar, Advocate.



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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-10-2017

Appellants herein challenge their conviction rendered by the trial court by its judgment and order dated 30th May, 1990 passed by the learned Additional Sessions Judge II, Patna in two Cr. Appeal No. 218 of 1990 and Cr. Appeal no. 272 of 1990. Appellant No. 1 Ram Briksh Ram @ Bakhori is sentenced to undergo life imprisonment for having committed offence under Section 302 and the remaining five appellants, namely, Ram Chander Ram, Lallu Ra., Suchit Ram, Shankar Ram and Sadhu Musahar to life imprisonment for commission of offence under Section 302/34 of the Indian Penal Code. By the same judgment, in Cr. Appeal No. 272 of 1990, the sole appellant therein Dukhata Musahar is also convicted and sentenced to undergo life imprisonment for offence committed under Section 302/34, IPC.

It is the case of the prosecution that on the date of the incident, namely, 11.06.1986 PW 6 Arjun Ram lodged a *Fardi* that at about 8.00 A.M. in the morning his brother Bal Govind Ram, deceased, who worked in the Patna Secretariat after taking his meal



left home to go to Patna for attending his duty. PW 4 Muni Ram was moving ahead of him and the informant was also going to buy certain household articles from Parsa Bazar. It is stated that the three were moving towards Patna and when the deceased reached the payeen of Rahimpur Khand, appellant no. 6 Sadhu Musahar in Cr. Appeal No. 218 of 1990 was found sitting there and other appellants were hidden and kept themselves concealed in the bed of the water channel. When Bal Govind Ram deceased reached the eastern bank of payeen Sadhu Mushahar stood up, stopped him, and at that point of time all the other appellants, (the co-accused) emerged from the hidden spot and appellant no.1 Ram Briksh Ram @ Bakhori in Cr. Appeal No. 218 of 1990 ordered that Bal Govind Ram should be done to death. He was carrying a *farsa* with him and on his instruction all the accused persons caught hold of Bal Govind Ram and thereafter Ram Briksh Ram @ Bakhori dealt with a blow of *farsa* on the neck of the deceased, he fell down and died, and all of them ran away.

Based on the *Fardi*, F.I.R. was also lodged and after trial the appellants have been convicted. Challenging the conviction, these appeals have been filed.

During the trial in question, in all nine witnesses were examined. They were PW 1 Ram Khelawan Ram and PW 2 Dwarka Ram both hearsay witnesses who were informed about the incident



but not eye-witnesses. PW 3 Mohan Ram is brother of the deceased and also eye-witness to the witness. PW 4 Muni Ram is an eye-witness to the incident along with PW 6 Arjun Ram and all others like PW 5 Sunil Ram, PW 7 Brahmdeo Narayan are formal witnesses, whereas PW 8 Dr. J P Karan conducted the postmortem on the deceased Bal Govind Ram on 12.06.1986 and PW 9 Nagendra Singh is the Investigating Officer.

Miss Guriya Nisha, learned counsel appearing as Amicus Curiae for the appellants, took us through the statements of each of the witnesses, particularly the statement of PW 6 Arjun Ram, the F.I.R and the *Fardi*, and tried to argue that there are discrepancies in the statements and the conviction based on the testimony of Arjun Ram, brother of the deceased and informant, as also of Mohan Ram, who are interested witnesses, is not sustainable. He also refers to the statement of PW 4 Muni Ram to point out certain discrepancies and argues that even if the entire story of the prosecution is accepted it is only appellant no. 1 Ram Briksh Ram @ Bakhori in Cr. Appeal No. 218 of 1990 who had dealt with fatal blow no specific overt act is attributed to the other appellants and, therefore, conviction based on such testimony, conviction of all other appellants except appellant no.1 Ram Briksh Ram @ Bakhori, is unsustainable. She argues that the ingredients necessary for bringing home the charges levelled



against the appellants is not made out. That apart, she points out that initially PW 6 Arjun Ram had given a story of family enmity as a motive for the offence but subsequent in the trial a new story has been developed to say that the members of the appellants were Naxalites and the deceased Bal Govind was not helping the appellants therefore they have done away with him. It is stated that the story of the prosecution is not proved beyond reasonable doubt and, therefore, the conviction is unsustainable.

Learned counsel appearing for the State on the contrary took us through the statements of some of the witnesses, particularly the statement of Arjun Ram PW 6 and Muni Ram PW 4 and argued that their statements except for some minor discrepancies is trustworthy. Muni Ram was a witness who is not related to the family, he was also going ahead of the deceased and that all the appellants were hiding, waiting for the deceased to come and committed the offence. All the necessary ingredients for common intention is made out. Learned counsel placed reliance on the following judgments in support of his contention:-

(i) Suresh Sakharam Nangare vs. State of Madhya Pradesh

[(2012) 9 Judgment Today 116]

**(ii) Shyamal Ghosh vs. State of West Bengal
(AIR 2012 SC 3539)**



**(iii) Mrinal Das vs. State of Tripura
(AIR 2011 SC 3753);**

And, a recent judgment of the Supreme Court, in the case of **Raj Kishore Purohit vrs. State of Madhya Pradesh [2017 (4) PLJR (SC) 1]**, to say that evidence available on record and conduct of the appellants show that they have committed the offence. Ingredients of common intention are made out and, therefore, the appeals deserve to be dismissed.

Mr. Anil Singh, learned counsel appearing for the respondent-complainant argues that the conviction is sustainable and the appeals are liable to be dismissed. He also took us through the statements of various witnesses, particularly PW 6 Arjun Ram, PW 4 Muni Ram and PW 3 Mohan Ram, the eye-witnesses in support of his contention.

We have learned counsel for the parties at length and have gone through the records and the statements of the witnesses. PW 6 Arjun Ram and PW 4 Muni Ram are eye-witnesses to the entire incident even though PW 6 Arjun Ram is the brother of the deceased but his presence in the spot is being proved and he cannot be treated as an implanted witness. The statement of PW 6 Arjun Ram and PW 4 Muni Ram independent witnesses are trustworthy and corroborative in nature except for some minor discrepancies which we do not find



to be of much consequence. We find on a combined reading of the statements of the said two witnesses that the deceased was working in the Patna Secretariat and for attending his duty he left his house at 8 A.M. on the date of occurrence. While he had reached the place near the payeen in question the appellant Sadhu Mushahar was sitting on the way in anticipation of the deceased crossing the road as this was the road through which the deceased always goes to his work place in the Secretariat. When the deceased came near Sadhu Mushahar, he got up and stopped him and at that point of time all the other co-accused persons emerged from their hidden place of water canal and caught hold of the deceased. Appellant no. 1 Ram Briksh Ram @ Bakhori dealt with a *farsa* blow which proved fatal.

The medical evidence of PW 8 Dr. J P Karan and the postmortem report submitted by him does show that the deceased had suffered three injuries – one lacerated wound 9 ½` x ½`x bone deep in front of the neck extending from right ear to left ear. This had cut his thyroid and cartilage. That apart, he had two other injuries on the leg and the hand. The injury on the neck proved fatal. It is, therefore, clear that the deceased died by virtue of the injury caused by appellant no. 1 Ram Briksh Ram @Bakhori and all the other appellants were waiting for the deceased to come through the road caught hold of him and finished him. As far as Ram Briksh Ram @



Bakhori is concerned, he has blown the fatal injury and the other appellants with common intention had assembled at the place of occurrence on the date to commit the offence.

Section 34 of the Indian Penal Code provides that when a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for the act in the same manner as if it was done by them alone. In the present case, the deceased was going to his office in the Secretariat through which the road he used to go everyday and all the appellants in anticipation of his arrival were waiting for him hiding in the water body of the canal. This proves their common intention and as held in the case of **Nangare** (supra) common intention is established not based on any overt act attributed to any individual. In the present case, an outright common intention to commit the offence is established from the conduct of the appellant. As they all with an intention, in a pre-determined manner and acting in furtherance of intention to the same had assembled at the place of incident, and if the case of **Shyamal Ghose** (supra) is applied the common intention in the matter stands proved.

In the case of **Rajkishore Purohit vs.State of Madhya Pradesh** (supra), the principle governing the existence of common intention has been crystallized by the Supreme Court in the following



manner:-

“10. Common intention is a state of mind. It is not possible to read a person’s mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered in the facts and circumstances of each case. Events prior to the occurrence as also after and during the occurrence are all relevant to deduce if there any common intention. There can be no straightjacket formula. The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.”

In case, if the aforesaid principle is applied and if the statement of each of the appellants is analyzed, it would be clear that in anticipation of arrival of the deceased all the appellants were waiting by hiding in the water body and the appellant Sadhu Mushahar stopped the deceased on the way, they all emerged from their hidden place, caught hold of him and facilitated appellant no. 1 Ram Briksh Ram @ Bakhori in assaulting him on the neck with the weapon *farsa*. That being so, it is a case where common intention to commit the offence is established the evidence on record indicates that all the appellants were present in the spot and there is no reason



as to why in view of some minor discrepancies the appeals should be allowed and the judgment and order of the learned trial court should be quashed for it is a case where the prosecution has proved its case beyond any doubt and we have no hesitation in upholding the same and dismissing the appeals.

The appeals are accordingly dismissed.

All the appellants are directed to surrender before the concerned court below in connection with Sessions Trial No. 210 of 1988/3 of 1988, and Sessions Trial No. 493 of 1989/44 of 1989 and to undergo the remaining period of sentence.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl

AFR/NAFR	NAFR
CAV DATE	N.A.
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