

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.311 of 1994

1. Ganga Rai, son of Lakhan Rai.
2. Sadanand Rai, son of Lakhan Rai.
3. Shyam Sundar Rai, son of Tarni Rai.

All residents of village-Bhagatpur, P.S.-Balua, District- Begusarai.

4. Krishnandan Singh, son of Jageshwar Singh, resident of village-Chhitror,
P.S.-Mauhari, District-Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Akhileshwar Pd Singh, Senior Advocate Mr. Bimal Kumar No.2, Advocate Mr. Surendra Prasad Singh, Advocate
For the Respondent/s	:	Mr. A.K. Sinha

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 14-12-2017

We have heard parties and have perused the records of this case.

The appellants have filed this appeal assailing the judgment of conviction dated 30.05.1994 and order of sentence dated 31.05.1994 passed by the District and Sessions Judge, Begusarai in Sessions Case No. 215 of 1992 arising out of Balua P.S. Case No.156 of 1991 by which the appellants have been convicted for



the offences punishable under Sections 302/34 of the Indian Penal Code and have been sentenced to undergo imprisonment for life.

The statement of the informant Sone Lal Yadav (P.W. 6) was recorded by Nand Kishore Rajak (P.W. 8), the Officer-in-charge of Ballia Police Station on 29.08.1991 at about 9.00 P.M. The informant has stated that while he was feeding his buffalo on the eastern side of his field situated in Kamdaha Diara, he heard screaming sound coming from the western side of his field. The informant along with Bachhu Yadav, Suresh Thakur, Kailu Yadav and Hareram Yadav rushed there. They saw that accused Sadanand Rai, Shyam Sundar Rai and Krishnandan Singh were catching hold of deceased Kamleshwari Yadeav. Accused Ganga Rai was standing there holding a dagger. He further stated that accused Krishnandan Singh ordered the accused Ganga Rai to finish Kamleshwari Yadav. Thereafter, accused Ganga Rai pieced dagger into the left side of the chest of Kamleshwar Yadav, as a result of which, he fell down. Thereafter, all the accused dragged Kamleshwari Yadav towards south. The informant and other witnesses snatched away the dead body of Kamleshwari Yadav from the accused. The accused persons, thereafter, fled away after showing dagger to the informant. The informant along with others brought the dead body of deceased to the Police Station and



lodged informant (Ext.4) to the police. The genesis of the occurrence was stated to be on account of the fact that the accused persons had gone to cut the maize grass for fodder from the field of Kamleshwari Yadav to which he protested. It was then stated that there was outstanding litigation between the accused Shyam Sundar Rai and deceased Kamleshwari Yadav which might have been the cause for the alleged occurrence.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 302/34 of the Indian Penal Code vide Balia P.S. Case No.156 of 1991. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellants under Sections 302/34 of the Indian Penal Code. Thereafter, the Chief Judicial Magistrate, Begusarai took cognizance and committed the case to the court of sessions, where charges were framed, to which, the accused persons pleaded not guilty. Thereafter, trial started against the appellants. The defence of the accused is of complete denial.

During trial, the prosecution has examined altogether nine witnesses in support of its case. P.W. 1 is Bachhu Yadav, P.W. 2 is Suresh Thakur, P.W. 3 is Angad Choudhary, P.W. 4 is Kailu Yadav, P.W. 5 is Hareram Yadav, P.W. 6 is Sonelal Yadav, P.W. 7 is Dr.



S.D. Jha, P.W. 8 is Nand Kishore Rajak and P.W.9 is Ram Sharan Yadav.

The defence has also examined Uma Shankar Rai as D.W. 1 in support of its case.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellants and, as such, the judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

The informant and the many witnesses have said that the accused Ganga Rai has stabbed the deceased Kamleshwari Yadav on the orders given by Krishnandan Singh. However, there is no evidence at all on the record as to whether they had assembled there for the purpose to kill the deceased or what was the motive for such occurrence. One of the witnesses stated that there was some legal dispute between the parties some time back but that has not been substantiated by bringing anything on record or by giving specific statement on that. This is further clear from the



ocular as well as the medical evidence that there was only one penetrating wound on the left side of the back so there was no repetition of blow also. There is absolutely no evidence that there was some planning or pre-meditation or pre-meeting of mind for commission of the plan. The fact is that it is proved that the appellant no. 1, Ganga Rai, had given a blow which had caused death. However, the testimony of PW 1 gives a clue. The PW 1 Bachhu Yadav has stated in his evidence that the appellants were harvesting corn of deceased Kamleshwari Yadav who was resisting. He raised alarm. On that Krishnandan Singh gave order and appellant no. 1 Ganga Rai gave a blow. Thus, it appears that the occurrence was due to quarrel between the parties and on fit of anger the dagger blow was given by the appellant no. 1.

In such a situation, in our considered view, the conviction under section 302 would not be proper rather this case would come under the purview of section 304 Part II. The act seems to be in the knowledge of the appellant No. 1 that the same is likely to cause death but without any intention to cause death. Accordingly, the appellant no. 1, though held guilty, his conviction is converted into under section 304 Part II and order of sentence is modified from sentence to imprisonment for life to rigorous imprisonment for seven years.



Since the appellant no. 1 is on bail, he is directed to surrender before the trial court to serve out the remaining sentence as imposed by this Court.

So far other appellants are concerned, they have been convicted under section 302/34 of the IPC. It is well known that if a person is to be held under section 34 of the IPC, there should be material to show that he was liable for that act in the same manner as if the same was done by him alone but such criminal act done by several persons should be in furtherance of the common intention of all. On proving that common intention of all was to kill the deceased even if no overt act is attributed to the individual accused, section 34 of the IPC would be attracted as it invokes vicarious liability. However, if participation of the accused in the crime is proved and common intention is absent, then section 34 of the IPC cannot be invoked as it requires a pre-arranged plan and pre-supposes prior concert. Therefore, there must be prior meeting of minds. Common intention means a pre-oriented plan and acting in pursuance to the plan, thus, common intention must exist prior to the commission of the act in a point of time. On the aforesaid issue, a reference is made to a decision of the Apex Court rendered in **Shyamal Ghosh vs State Of West**



Bengal [AIR 2012 SC 3539]. The Apex Court in its another decision rendered in **Mrinal Das & Ors vs State Of Tripura [AIR 2011 SC 3753]** has held that in such a situation burden lies on prosecution to prove that the actual participation of more than one person for commission of criminal act was done in furtherance of common intention at a prior concept.

In the case in hand there is no material on record to prove such common intention prior to the commission of crime or pre-arranged plan or there was any prior meeting between the accused persons for commission of such crime.

In view of the aforesaid coupled with the fact that there is no actual participation by the appellants save and except appellant no. 1 Ganga Rai as has been discussed above, in our considered view, the appellant nos. 2 to 4 cannot be convicted under section 34 of the IPC and, as a consequence, they can also not be convicted under section 302 of the IPC.

Considering the facts and circumstances of the case, judgment of conviction and order of sentence passed by the trial court against the remaining appellant nos. 2 to 4 are set aside. They are acquitted of the charges.

Since the appellant nos. 2 to 4 are on bail, they are discharged from the liability of their respective bail bonds.



As a result, this appeal is allowed to the extent as indicated
above.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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