

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1014 of 2004

- Neel Kanth, S/o Mahattar Dhruv, aged about 24 years, occupation Labourer, resident of Subhash Nagar, Mahasamund, P.S. and Tahsil Mahasamund, Distt. Mahasamund (CG)

---- Appellant

Versus

- The State Of Chhattisgarh through the District Magistrate, Mahasamund (CG)

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Smt. Smitha Ghai, Panel Lawyer.

And

CRR No. 99 Of 2005

- Smt.Tula Bai W/o Gokul, aged about 35 years, R/o Subhash Nagar, Mahasamund (CG)

---- Applicant

Vs

1. Neel Kanth S/o Mehattar Dhruv, aged about 24 years,
2. Mukesh Kumar @ Monu, S/o Suresh Ram Sahu, aged about 21 years,
3. Rajendra Yadav S/o Narrotam Yadav, aged 19 years,
All are R/o Subhas Nagar, Mahasamund, P.S. and Tahsil Mahasamund, Distt. Mahasamund (CG)
4. State of Chhattisgarh, through P.S.H.O. Police Station Mahasamund (CG)

---- Respondent

For Applicant	:	None.
For Respondent No.1	:	Smt. Indira Tripathi, Advocate.
For Respondent No.2	:	Shri J.A. Lohani, Advocate.
For Respondent No.3	:	Shri V. Goverdhan, Advocate.
For Respondent No.4/State	:	Shri Ravindra Agrawal, P.L.

And

CRA No. 1048 Of 2004

- Mukesh Kumar Sahu, age 21 years, S/o Suresh Kumar Sahu, By Caste: Teli-Sahu, By Profession-Fruit Seller, R/o Subhash Nagar, P.S. & Tahsil – Mahasamund, Distt. Mahasamund (CG)

---- Appellant

Vs

- State Of Chhattisgarh through the Police Station Mahasamund,

Distt. Mahasamund (CG)

---- Respondent

For Appellant	:	Shri J.A. Lohani, Advocate.
For Respondent/State	:	Smt. Smitha Ghai, Panel Lawyer.

And

CRA No. 1078 Of 2004

- Rajendra Yadav S/o Narottam Yadav, aged about 19 years, R/o Subhas Nagar, Mahasamund, Tahsil Mahasamund, Distt. Mahasamund (CG)

---- Appellant

Vs

- State Of Chhattisgarh through PS Mahasamund, Distt. Mahasamund (CG)

---- Respondent

For Appellant	:	Shri V. Goverdhan, Advocate.
For Respondent/State	:	Smt. Smitha Ghai, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

05/10/2017

As all the above four cases arise out of the common judgment of conviction and order of sentence dated 25.11.2004 passed by First Additional Sessions Judge, Mahasamund (CG) in ST No.148/2004, they are being disposed of by this common judgment.

02. Appellant Rajendra (CRA No.1078/04) has been convicted under Section 304 Part-II of IPC whereas appellants Neelkanth (CRA No.1014/04) and Mukesh Kumar Sahu (CRA No.1048/04) have been convicted under Section 304 Part-II read with 34 of IPC and each of them has been sentenced to undergo RI for five years plus fine of Rs.500/- with default stipulation.

03. Criminal Revision No.99/2005 has been filed by mother of the deceased Smt. Tula Bai, thereby seeking conviction of the appellants under Section 302 and 302/34 of IPC and sentence of life imprisonment.

04. As per prosecution case, on 7.3.2004 at 00.10 AM FIR (Ex.P/10) was lodged by Smt. Tula Bai (PW-1), mother of the deceased Khageshwar alleging in it that at about 11 pm when she was taking rest in her house, she heard the cries of her son Khageshwar and PW-4 Manglu Tandi, she immediately came out from her house and called her another son Vishnu (PW-2) and went to Durga Mandi which is adjacent to her house and saw accused No.3 Rajendra quarreling with PW-4 Manglu. She has stated that deceased Khageshwar was trying to pacify the quarrel by asking Manglu not to quarrel during festival as they all are residing in the same vicinity. She has stated that she also made an attempt to pacify the quarrel by making accused Rajendra understand and then Rajendra asked her to go back to her house by saying that he is not quarreling and he has no dispute with Khageshwar. She has further alleged that while she was returning along with her son Vishnu, all of a sudden accused Rajendra and Manglu (PW-4) again started quarreling and the said quarrel was intervened by her son Khageshwar by asking accused Rajendra that he would drop him to his house and then she asked Khageshwar not to go to the house of Rajendra, however, all of a sudden accused Rajendra took a turn and caused knife blow on the chest of Khageshwar as a result of which Khageshwar fell down. She has further stated that the incident has been witnessed by her son Vishnu

(PW-2), Manglu (PW-4), Mithun (PW-5), Devnath (PW-6) and one Horilal. She has further stated that after the incident she chased Rajendra who fled from the spot and thereafter other two accused persons Neelkanth and Mukesh after abusing her also fled from the spot. Based on this FIR, offence under Section 302/34 of IPC was registered against all the three accused persons. At 00.35 AM on 7.3.2004 merged intimation (Ex.P/11) was recorded at the instance of PW-1. Inquest over the dead body was conducted vide Ex.P/7 on 7.3.2004. The dead body was sent for postmortem which was conducted on the same day by PW-13 Dr. Girdharilal Chandrakar vide Ex.P/8 who noticed a single stab wound on the chest and opined that the cause of death was cardiac respiratory failure due to injury on vital organ. On 9.3.2004 memorandum of accused/appellant Rajendra was recorded vide Ex.P/1 and pursuant to which one knife was seized vide Ex.P/2. However, there is no FSL report. While framing charge, the trial Court framed charge under Section 302 of IPC against accused/appellant Rajendra whereas other accused/appellants Neelkanth and Mukesh Kumar were charged under Section 302/34 of IPC.

05. So as to hold the accused persons guilty, the prosecution examined 14 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment convicted and sentenced the appellants as mentioned above.

07. Counsel for appellants Neelkanth & Mukesh Kumar @ Monu submit as under:

(i) that no specific role has been assigned to appellants Neelkanth & Mukesh Kumar @ Monu in commission of murder of Khageshwar and therefore, merely on the basis of their presence at the place of occurrence they cannot be convicted for commission of murder with the aid of Section 34 of IPC.

(ii) that quarrel was between accused/appellant Rajendra and PW-4 Manglu but it appears that all of a sudden when Khageshwar intervened, he was unfortunately assaulted by Rajendra with knife which resulted in his death.

(iii) that PW-1 Smt. Tulabai, PW-2 Vishnu and PW-6 Devnath are interested witnesses and they have falsely implicated the accused/appellants.

(iv) that from the entire evidence adduced by the prosecution, nowhere it has come that there was any previous meeting of mind of all the accused persons to commit the offence and therefore, these appellants (Neelkanth & Mukesh Kumar @ Monu) cannot be convicted with the aid of Section 34 of IPC.

Reliance has been placed on the judgments in the matter of ***State of UP Vs. Sahrunnisa and another, 2009 CriLJ 4151 (SC)*** and ***Ratiram and another Vs. State of MP (Now CG), 2011 (4) CGLJ 481.***

08. Counsel for appellant Rajendra Kumar submits that there is no evidence that the appellant Rajendra had any intention to cause such

injury to Khagehswar which could result in his death. He submits that PW-1 Smt. Tulabai, PW-2 Vishnu and PW-6 Devnath are interested witnesses and they have improved on material points in the Court while deposing against appellant Rajendra. Even if the entire act of Rajendra is taken as it is, he is, at the most, liable to be convicted under Section 326 of IPC.

09. Criminal Revision No.99/2005 has been filed by mother of the deceased Smt. Tula Bai whereby she has sought for conviction of the appellants under Section 302 and 302/34 of IPC and sentence of life imprisonment on the ground that considering the eyewitnesses account, the manner in which the deceased was done to death and the medical evidence, conviction of the appellants under Section 304 Part-II and 304 Part-II/34 of IPC is not in accordance with law and they are liable to be convicted and sentenced under Section 302 and 302/34 of IPC.

10. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

11. Heard counsel for the respective parties and perused the material on record.

12. PW-1 Tulabai, mother of the deceased and lodger of FIR and merg intimation, has stated that at about 11 pm when she was resting in her house, she heard the cries of Manglu and accused Rajendra whereupon she immediately called her son and when she reached the

place of occurrence she saw some persons quarreling and then accused Rajendra told her that he has no dispute with her son Khageshwar and he is quarreling with Manglu. She has stated that she tried to pacify the said quarrel by saying that all of them reside in the same vicinity and therefore, they should not quarrel. Thereafter, accused Neelkanth and Mukesh told her that they would quarrel and beat drum and they again started beating drum. She has further stated that after some time accused Rajendra again started quarreling with Manglu (PW-4) and then accused Mukesh abused Khageshwar and pushed him. When she was trying to take Khageshwar to home, accused Rajendra gave a blow of knife on the upper side of his stomach and then all the accused persons fled from the spot. She states that the injured was taken to hospital where he was declared dead. In cross-examination she remained firm so far as making allegation against accused Rajendra of assaulting deceased Khageshwar is concerned. However, no question was put to the witness regarding beating of drum. If the FIR and diary statement of this witness are seen, it appears that while deposing in the Court she has improved a bit and has brought a new story of dispute between the two group on account of beating of drum. She also states that accused Rajendra had no dispute with her son Khageshwar and their relations were cordial.

13. PW-2 Vishnu Tandi, brother of the deceased and son of PW-1, has stated that he was called by his mother and then he accompanied her to the place of occurrence where he saw accused Rajendra quarreling with PW-4 Manglu and that deceased Khageshwar was

trying to intervene in the matter. He states that the quarrel was on the eve of Holy festival and then accused Rajendra asked his mother to take Khageshwar from the place of occurrence. He states that accused Mukesh @ Monu gave his knife to accused Rajendra who in turn caused injury to Khageshwar by knife and thereafter all the accused persons fled from the spot. In para-15 he, however, has admitted the fact that he did not disclose to the police that accused Mukesh @ Monu took out his knife and gave it to accused Rajendra. He admits that for the first time he is disclosing the said fact in the Court. PW-6 Devnath Mahanand, another eyewitness to the incident while supporting the prosecution has stated that at the relevant time he was enjoying picnic/party with his friends including Vishnu (PW-2) and at that time Tulabai, mother of Vishnu came there and informed that quarrel is going on at the place where holy is being burnt. He has stated that he along with PW-1 and PW-2 also went to that place and saw the quarrel. Accused Rajendra asked PW-1 to take Khageshwar from the place of occurrence and thereafter all the three accused persons had some discussion and then accused Rajendra gave knife blow to Khageshwar on his chest as a result of which he fell down and the accused persons fled from the spot. In para-9 he, however, admits that prior to assault being made by accused Rajendra, the accused persons had no discussion and for the first time this fact is being disclosed by him in the Court. In para-17 he has stated that he could not see as to who took out knife and that he saw accused Rajendra carrying some weapon with him while running but he cannot say with certainty that the said weapon was a knife.

14. PW-4 Manglu is the person with whom initially accused Rajendra had a quarrel. He has stated that when he reached the place of occurrence after hearing abusive words being uttered by the accused persons and asked them not to utter such words, all the three accused started abusing him filthily. He states that deceased Khageshwar was trying to pacify the quarrel and immediately thereafter he saw accused Rajendra fleeing from the spot, Khageshwar lying on the ground after sustaining injury and that blood was oozing from his stomach. Almost similar statement has been made by PW-5 Mithun.

15. PW-13 Dr. Girdharilal Chandrakar conducted postmortem on the body of the deceased on 7.3.2004 vide Ex.P/8 and noticed one stab wound on the chest. In his opinion, the cause of death was cardiac respiratory failure due to injury on vital organ. He also examined the weapon of offence knife and as per query report Ex.9 opined that the injury found on the person of the deceased could be caused by the said weapon. PW-10 Sanat Kumar Tiwari assisted in the investigation. PW-14 Shoib Ahmad Khan, investigating officer, has duly supported the prosecution case.

16. On the memorandum of the appellant Ex.P/1, axe has been seized vide Ex.P/2, however, there is no FSL report on record.

17. Close scrutiny of the evidence makes it clear that on 6.3.2004 at about 11 pm there was quarrel between accused/appellant Rajendra and PW-4 Manglu which was being intervened by Khageshwar (deceased). Hearing the commotion PW-1 Tulabai, mother deceased Khageshwar, went to the spot along with Vishnu (PW-2) and they saw accused Rajendra quarreling with PW-4 Manglu.

Evidence goes to show that as the deceased was trying to pacify the quarrel, accused Rajendra got annoyed and dealt a knife blow on his chest which resulted in his death. Apart from PW-1, another eyewitness PW-6 Devnath has also supported the prosecution case and stated that it is appellant Rajendra who caused knife blow to the deceased. Medical evidence is also in consonance with the eyewitness account according to which one stab wound was found on the chest of the deceased which led to cardiac respiratory failure that proved to be his cause of death. Thus, from the evidence, ocular and medical, available on record, complicity of the accused/appellant Rajendra in commission of the crime stands proved beyond all reasonable doubt.

18. So far as involvement of accused/appellants Neelkanth and Mukesh Kumar @ Monu is concerned, they have been held guilty of sharing common intention with accused Rajendra of committing the crime. PW-1 Tulabai has though stated unequivocally against accused/appellant Rajendra, but if the FIR and diary statement of this witness are seen, it is clear that while deposing in the Court she has improved to implicate Neelkanth and Mukesh Kumar also and has brought a new story of dispute between the two group on account of beating of drum. This apart, though PW-2 Vishnu Tandi, brother of the deceased and son of PW-1 in his examination-in-chief has stated that accused Mukesh @ Monu gave his knife to accused Rajendra who in turn caused injury to Khageshwar by knife but in cross-examination (para-15) he has admitted the fact that he did not disclose to the police that accused Mukesh @ Monu took out his knife and gave it to accused Rajendra and is disclosing the said fact in the Court for the first time. Likewise, PW-6 Devnath Mahanand, another eyewitness to

the incident, though in examination-in-chief has stated that before assault being made on the deceased, all the three accused persons had some discussion, however, in para-9 he admits that prior to assault being made by accused Rajendra, the accused persons had no discussion and for the first time this fact is being disclosed by him in the Court.

19. In the matter of ***State of UP Vs. Sahrunnisa*** (supra) the Supreme Court while dealing with the identical issue observed as under:

“There can be no dispute that these two respondents were present and indeed their mere presence by itself cannot be of criminal nature in the sense that by their mere presence a common intention cannot be attributed to them. Indeed, they have not done anything. No overt act is attributed to them though it was tried to be claimed by one of the witnesses that when the police party reached that they were standing on one leg. This also appears to be a tall claim without any basis and the High Court has rightly not believed this story which was tried to be introduced.”

20. In the matter of ***Ratiram and another*** (supra) also this Court while dealing with legality and validity of conviction of the accused with the aid of Section 34 of IPC acquitted him of all the charges on the ground that there was no evidence to show that he was sharing common intention with the main accused. It was observed that in order to constitute common intention it is necessary that the intention of each of the accused is known to the rest and shared by them. The common intention has to be inferred from the act, conduct or other relevant circumstances of the case and therefore, the totality of the circumstances must be taken into consideration in arriving at a

conclusion.

21. In the present case, from the overall evidence on record it is though established that appellants Neelkanth and Mukesh Kumar @ Monu were also present at the place of occurrence but that itself is not sufficient to connect them the crime in question. The ingredients of Section 34 are that there should be criminal act i.e. either committing the act or omitting to commit the act, which is an offence under IPC, that criminal act is done by more than one person and that criminal act is done in furtherance of common intention of all, meaning thereby that the persons should have decided in advance about the commission of the act and every one of them have acted keeping in mind that common intention. However, in the case in hand, there is no evidence at all to show that prior to assault being made by accused Rajendra there was any previous meeting of mind of the accused persons or they had made a plan for commission of the crime in question and in furtherance of that common intention, these appellants (Neelkanth and Mukesh Kumar) reached the spot and facilitated the commission of the crime. Being so, they can, by no stretch of imagination, be said to be sharing common intention of committing the crime in question with accused/appellant Rajendra and the act so committed appears to be the individual one of accused Rajendra, for which they cannot be held liable with the aid of Section 34 of IPC. In the given facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution, involvement of accused/appellants Neelkanth and Mukesh Kumar in commission of the crime becomes doubtful.

22. So far as Criminal Revision No.99/2005 is concerned, from the

facts and circumstances of the case giving rise to the incident as has come in the evidence of the eyewitnesses, the manner in which the assault was made, it is writ large that the incident occurred on a sudden quarrel in the heat of passion without there being any premeditation on the part of accused/appellant Rajendra and he gave a single blow with knife which hit the vital organ of deceased and unfortunately resulted in his death. Being so, his conviction under Section 304 Part-II of IPC appears to be just and proper. As already discussed above, involvement of appellants Neelkanth and Mukesh Kumar in the crime is doubtful and they appear to have been falsely implicated in it with the aid of Section 34 of IPC.

23. *In the result:*

- Cr.A.No.1014/04 and Cr.A.No.1048/04 preferred by appellants Neelkanth and Mukesh Kumar Sahu respectively are allowed. They are acquitted of the charge under Section 304 Part-II/34 of IPC. They are on bail, therefore, their bail bonds stand discharged and they need not surrender.
- Cr.A.No.1078/04 preferred by appellant Rajendra being without any substance is hereby dismissed. He is also on bail, therefore, his bail bonds stand cancelled and he be taken into custody forthwith to serve out the remaining part of his sentence.
- Cr.Rev.No.99/05 preferred by Smt. Tula Bai is also dismissed for want of any substance.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge