

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1827 OF 2000

- The State of Madhya Pradesh (Now CG). **---Appellant.**

Versus

- Chhote @ Shardamani, aged about 30 years, son of Shri Heeralal, Occupation Advocate, R/o Piprahi, Police Station Balrampur, Tahsil Ramanujganj, District Sarguja (CG). **---Respondent.**

For the State	:-	Mr. Lalit Jangde, Dy. GA.
For the Respondent	:-	Mr. Abhishek Pandey, Adv.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Manindra Mohan Shrivastava, J.

24.03.2021

This appeal at the instance of the State is directed against acquittal of the respondent Chhote @ Shardamani who was an accused in Sessions Trial No.222/1994 wherein it was alleged that the present respondent/accused shared common intention with his brother co-accused Rajan @ Sarvjit to murder Bigan Minj (PW-13).

2. The learned trial Court relying upon the evidence of the eye witnesses held that co-accused Rajan was guilty of commission of offence under Section 307 IPC as he had fired gunshot on Bigan (PW-13) with intention to kill. As far as, present accused Chhote @ Shardamani is concerned, the learned trial Court acquitted him holding that even according to the evidence of the prosecution witnesses, this accused, though present at the spot, did not give any assault to PW-13 – the victim. Aggrieved by the said judgment this appeal has been preferred.

3. Learned State counsel argued in *extenso* and submitted that in the present case the learned trial Court committed patent illegality and

perversity in acquitting respondent/accused by giving him benefit of doubt only on the ground that he did not open any assault on victim Bigan Minj (PW-13) or any of his associates but without taking into consideration evidence on record that when at the spot, victim (PW-13) was threatened to vacate the land, he refusing the vacate, respondent declared that these persons will not understand in this manner and asked co-accused Rajan to kill and only thereafter, the accused Rajan fired gunshot on victim (PW-13) with intention to cause death. He would argue that this has been so stated by Jeevan (PW-11), Jasita (PW-12) – wife of victim (PW-13). On the face of such evidence, the acquittal of respondent is without consideration of most material evidence on record. Learned counsel for the State would highlight that the learned trial Court did not take into consideration this clinching evidence much less recording any reason to disbelieve the same. Therefore, it is argued, respondent was also liable for conviction under Section 307 IPC as the evidence proves that he shared common intention with his brother Rajan. Learned counsel for State would submit that the evidence on record overwhelming in nature is to the effect that initially Rajan came to the spot and asked Bigan (PW-13) to vacate the agricultural land which was refused and then Rajan went home and then came back with a gun in his hand along with his brother respondent Chhote @ Shardamani who was holding an axe in his hands. In this background the utterances made by respondent at the spot proves that he also shared common intention to kill the deceased and even if he did not open any assault with the help of axe which he was holding in his hands, his involvement is clearly proved.

4. On the other hand, learned counsel for respondent/accused would argue that the respondent/accused has been acquitted by the

trial Court after minute scrutiny of the evidence of all the prosecution witnesses including Anil (PW-6), Jeevan (PW-11), Jasita (PW-12) and Bigan (PW-13) and now their evidence, as has been scrutinized by the trial Court, the allegation of criminal overt act was only against the co-accused Rajan and the only evidence against the present appellant that he declared at the spot and told co-accused to kill Bigan Minj (PW-13) is clear improvement upon the case diary statements of all those eye witnesses and even in the FIR this fact has not been stated by victim PW-13. Such an important omission in the FIR and case diary statement particularly with regard to allegation of Chhote @ Shardamani asking co-accused to kill coupled with no assault opened by the respondent/accused, renders possible the view which have been taken by the learned trial Court against respondent/accused and therefore, given the limited scope of interference against the judgment of acquittal, even if two views are possible, the view taken by the learned trial Court is not liable to be interfered with.

5. We have given our anxious consideration to the submissions made by learned counsel for the parties and perused the records.

6. The First Information Report which was instantaneously lodged soon after the incident by victim Bigan Minj though states that after the first round of incident Rajan had gone back home and then returned with a gun in his hands accompanied by his brother Chhote @ Shardamani who was holding an axe, there is no whisper that at the spot when quarrel was going on and the accused were insisting the victim to vacate the agricultural land, Chhote @ Shardamani asked Rajan to kill and then only Rajan opened fire. Even in his diary statement under Section 161 Cr.PC this fact has not come but for the

first time in the Court statement, Bigan Minj (PW-13) came with an improved story alleging a criminal overt act on the part of the respondent/accused that he asked Rajan to kill Bigan Minj. It is further argued that though other prosecution witnesses namely Jeevan (PW-11) and Jasita (PW-12) have also come out with such a statement in their Court statement regarding alleged criminal overt act on the part of the respondent/accused in asking the co-accused to kill the victim, this is a clear improvement on their case diary statement under Section 161 Cr.P.C. which have been clearly elicited in their cross-examination and all these witnesses who have admitted that such fact was not stated in their case diary statement has failed to explain why it was not there. He would further argue that, as far as, Anil (PW-6) another independent witnesses who was present at the spot is concerned, he has not made any such statement of respondent Chhote declaring at the spot and requiring co-accused Rajan to kill by using gun. Therefore, it is argued, the view taken by the learned trial Court becomes plausible and possible.

7. Though we find that the learned trial Court while acquitting the respondent has recorded reasons in very brief without elaborate discussion and analysis of the evidence with regard to his involvement, it has rightly been observed by the trial Court and which is also clear from the all the prosecution witnesses that even though respondent was present at the spot, he did not choose to open any assault on the victim.

8. Ones the alleged criminal overt act on the part of the respondent/accused in commanding co-accused Rajan to open fire to kill victim becomes doubtful, mere presence at the spot renders it highly

doubtful whether co-accused Chhote@Shardamani also shared common intention to kill victim Bigan (PW-13). The learned trial Court kept it in forefront that the respondent/accused though was present at the spot with an axe, he did not open any assault. That was a relevant consideration for the Court to come to the conclusion that involvement of the respondent is doubtful in the alleged commission of offence. The benefit of doubt obviously has tilted in favour of the accused.

Learned counsel for respondent has relied on Supreme Court decision in the case of **Harjit Singh and others Vs. State of Punjab (2002), 6 SCC 739** wherein the scope and ambit of Section 34 IPC was explained thus:-

“38. Common intention is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of the crime as also prior and subsequent attendant circumstances. Mere participation in the crime with others is not sufficient to attribute common intention to one of others involved in the crime. The subjective element in common intention therefore should be proved by objective test. It is only then that one accused can be made vicariously liable for the acts and deeds of the other co-accused.”

The limited scope of interference against judgment of acquittal as adumbrated in the case of **Ram Pat and others Vs. State of Haryana (2009) 7 SCC 614** was also rightly brought to the notice of this Court where in the Supreme Court explained the principle as below:-

“56. There cannot be any doubt or dispute whatsoever that if two views are possible, the

appellate court should not interfere with a judgment of acquittal, but this has many exceptions. In State of Punjab Vs. Gurnan Kaur (2009) 11 SCC 225:-

“18. The jurisdiction of this Court to interfere with a judgment of acquittal is limited. When two views are possible, a judgment of acquittal should not be interfered with.””

9. In view of our consideration we are not inclined to interfere with the judgment of acquittal passed by the learned trial Court. The appeal therefore, fails and is **dismissed**.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay