

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.852 OF 2015

Mr. Raja Ishwar Shinde
Age Adult, Occ.: Wage Earner,
R/o. Kati, Tal. Indapur,
District : Pune.
At present detained at Kalamba Central Appellant
Prison, Kolhapur. ... (Orig. Accused No.1)
V/s.

The State of Maharashtra
Through P.S.O. Mandrup Police Station
Tal. South Solapur, District: Solapur
Vide C.R. No.75/2013 ... Respondent

WITH
CRIMINAL APPEAL NO.52 OF 2014

Mr. Vijay Subrao @ Rupchand Kale
Age Adult, Occ: Wage Earner,
R/o. Dhayati, Tal. Sangole,
District : Solapur.
At present detained at Kalamba Central Appellant
Prison, Kolhapur. ... Orig. Accused No.4)
V/s.

The State of Maharashtra
Through P.S.O. Mandrup Police Station
Tal. South Solapur, District : Solapur.
Vide C.R. No.75/2013. ... Respondent

Ms. Rebecca Gonsalvez a/w Ms. Chandni Chawla i/b. Dr. Yug Mohit Chaudhary for the Appellant in Apeal/852/2015.

Mr. P.G. Jagdale a/w Mr. Shripad Jagdale for the Appellant in Apeal/52/2014.

Ms. S.V. Sonawane, APP for the Respondent – State.

**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

JUDGMENT RESERVED ON : 15.09.2021

JUDGMENT PRONOUNCED ON : 28.09.2021

JUDGMENT : (Per Sadhana S. Jadhav, J.)

1. The appellants herein are convicted for the offence punishable under section 302 r/w 34 of Indian Penal Code by the Additional Sessions Judge, Solapur in Sessions Case No.319 of 2013 vide judgment and order dated 24th December 2013. Hence, these appeals.

2. Such of the facts necessary for the decision of these appeals are that the appellants herein belong to the Pardhi Community. There is a custom in the said community that a bridegroom has to pay bride price at the time of marriage i.e. the father of a bride reserves the right to demand the bride price. The daughter of accused no.1 - Priyanka was married to Shravan who was deaf and mute. They were blessed with two sons and one daughter. Shravan used to earn living by working as a labour. At the time of marriage of Shravan, the bride price was settled at Rs.11,000/-. The parents of Shravan had paid Rs.11,000/- to the father of the bride i.e. accused no.1 Raja. It is the

case of the prosecution that subsequently accused no.1 was demanding further dowry of Rs.25,000/- and upon failure to pay the same, the accused no.1 conspired with the other accused and in collusion, had caused homicidal death of Shravan.

3. On 26th May 2013, Priyanka – wife of Shravan lodged a report at Mandrup Police Station alleging therein that her husband was killed by her father Raja in collusion with Philim (accused no.2), Dinya (accused no.3) and Vijay Rupchand Kale - Appellant in Criminal Appeal No.52 of 2014 (accused no.4). After investigation, chargesheet was filed. Accused Dinya was tried separately in Sessions Case No.161 of 2006 at the trial. The prosecution has examined two witnesses i.e. the complainant and the investigating officer in that case and the learned Additional Sessions Judge, Solapur vide judgment and order dated 24th November 2016 has acquitted the accused Dinya of all the charges levelled against him. The accused Philim was reported to be absconding.

4. At the trial, in the present case, prosecution has examined as many as 7 witnesses to bring home the guilt of the accused. The case of the prosecution rests on the evidence of P.W.1 – Priyanka – wife

of the deceased, P.W.2 – Dr. Shrikant Supekar, the Doctor had performed autopsy on the dead body of the deceased. P.W.3 – Shantabai Gopu Bhosale, mother of the deceased and P.W.7 – Vinod Ghuge, the Investigating Officer.

5. P.W.1 has deposed before the Court in consonance with the FIR. According to her, accused no.1 Raja i.e. her father had made a phone call to her brother-in-law Dhanya and demanded Rs.25,000/- as an additional bride price. That, few days prior to the incident, the accused had kidnapped P.W.1 in order to press their demand of Rs.25,000/- and also threatened that in the eventuality, the amount was not paid they would not release P.W.1. At that juncture, the parents of Shravan had shown their willingness to fulfill the demand. She was therefore released. P.W.1 was brought to Sangola Town. Her in-laws had paid Rs.15,000/- and agreed to pay the remaining amount of Rs.10,000/- within 15 days. P.W.1 was taken to her matrimonial abode by her in-laws and her brother-in-law. Thereafter, the accused insisted upon the in-laws of P.W.1 to pay the remaining amount of Rs.10,000/- within two days.

6. On 25th May 2013, the accused had allegedly made a call to

the brother of Shravan demanding the remainder amount at the earliest. They had also threatened of dire consequences upon failure to pay the amount. On the day of the incident, P.W.1 and her family had retired for sleeping. The family was sleeping on open ground as their hut was set on fire. All the four accused had been to the farm armed with axe. They had mounted three blows on the neck of Shravan. Shravan was deaf and mute and, therefore, he could not raise any cries. P.W.1 had seen the incident, however, before she could react, the damage was done. Since, they were sleeping near the electricity pole erected in front of their premises they could see the whole incident and identify the accused. P.W.1 then claims to have called upon her maternal uncle from the neighbouring village. They approached the Police Station and lodged a report at 4.30 am. P.W.1 has proved the contents of the FIR and the same is marked at Exh.13. According to her, the accused no.1 happens to be her father and accused no.4 - Vijay happens to be the husband of her maternal aunt. It is elicited in the cross-examination that accused no.1 is the original resident of Village Kati, Taluka Indapur. In the said community, the talks of bride price are settled in the presence of panchas. According to her, her in-laws had paid dowry of Rs.15,000/- to accused no.1 - Raja. She has admitted to

have not disclosed the incident of abduction to other members of her community. According to her, there was availability of light at the time of incident. She has reiterated that at the time of occurrence, she could see the incident as it was a moonlit night and there was sufficient availability of light. She has denied the suggestion that Shravan was killed by his brother Dhanu and father Gopu Bhosale. She has also denied the suggestion that she had illicit relation with her brother-in-law and that her husband had set the hut on fire. As far as the incident is concerned, P.W.1 deposed that accused no.1 Raja had placed a dagger on her neck and at that time, the accused Dinya, Vijay, Philim and Raja had mounted blows upon her husband. P.W.1 has admitted in the cross-examination that her father had abandoned her biological mother when she was one year old and had married to another woman thereafter and he had not met P.W.1 till her marriage. She was brought up by her grandfather who happens to be the brother of her mother-in-law. Her marriage with Shravan was child marriage i.e. she was married when she was 7 years old. Half of her dowry amount was paid to Dagadu, her maternal uncle who looked after her, post the demise of her grandfather. Her maternal uncle Dagadu, had sold her to the family of deceased on acceptance of Rs.7,000/-. Her father-in-law had

accompanied her to the Police Station when she lodged the FIR and she had signed the FIR at the request of her father-in-law.

7. The deposition of P.W.3– Shantabai Bhosale is corroborating the evidence of P.W.1 in all material particulars. As far as the incident is concerned, according to her, since the hut was set on fire, they were all sleeping on the open ground. In the early hours of 2.00 to 2.30 am, the accused no.1 had put a dagger on the neck of her daughter-in-law and rest of the accused had assaulted her son Shravan with axe. She tried to rescue her son but in vain. She claims to have seen the incident in the flash of streetlight adjacent to her premises because the pole of streetlight is located adjacent to her open premises. It is reiterated in the cross-examination that she was indeed sleeping in the open premises at the spot of occurrence. She has admitted certain criminal antecedents of the deceased Shravan.

8. P.W.2 – Dr. Shrikant Supekar performed autopsy on the dead body. He found the following injuries :-

- “(1) CLW size 15x4x7 cms extending from right cheek lower side to chin.
- (2) CLW size 10x4x7 cms over neck just above midline extending to chin.
- (3) CLW size 20x5x7 cms neck midline extending to chest.

(4) Laceration size 8x8x2 cms over left wrist dorsal aspect.”

9. Pancha to the recovery of axe was hostile. Scene of offence panchanama at Exh.26/C indicates that the electric pole was erected at a distance of 10 ft. from the scene of occurrence and the connection to the tube-light was functional at the relevant time.

10. PW.7 – Vinod Ghuge happens to be the Investigating Officer. He has deposed about the steps taken by him in the course of investigation. According to him, an axe was recovered at the instance of accused no.1 Raja. He admits to have not sent the seized axe to the chemical analyzer. Moreover, the panchas have turned hostile. He admits to have not sent a letter to the Revenue Authority to prepare the sketch of scene of offence.

11. This is a case of direct evidence and there are two eyewitnesses to the incident. PW.1 happens to be the daughter of accused no.1 and there was no reason for her to falsely implicate her own father. It can be seen that in order to restrain her or obstruct her from interfering with their plan in eliminating Shravan, the accused no.1 had placed the dagger on her neck. He shared a common intention with accused no.2.

12. The learned counsel for the accused no.1 – appellant Raja vehemently submits that the accused no.1 did not share any common intention with the accused no.2 in causing the homicidal death of Shravan. It can only be submitted that it would only be a case of criminal intimidation and not a case under section 302 r/w 34 of Indian Penal Code. The learned counsel has further submitted that even if the eyewitnesses are believed, no overt act is attributed to accused no.1 in the commission of the murder of Shravan.

13. The learned counsel has placed reliance upon the judgments of the Apex Court in the case of Jagannath and Ors. Vs. State of U.P.¹, the Apex Court has observed thus :-

“8. Undoubtedly the above criminal acts of the three appellants, which must be held to be conclusively proved in view of the concurrent findings of the learned courts below, clearly indicate that they shared some common intention with the other accused but then the question is whether their common intention was to commit the murder. Besides the evidence of PW1 of their having assaulted the deceased with lathis – which we have found to be unacceptable – there is no other evidence, to indicate, that they wanted the deceased to be done away with. It cannot be gainsaid, however, that their acts facilitated the stabbing of the deceased by Badri Narain but there is nothing whatsoever to indicate that the appellants knew that he intended to kill him though they must have anticipated that he would assault the deceased with the spear that he was carrying. In that view of the matter, we conclude that though the

¹ 1995 Supp (1) SCC 564

common intention of the appellants to cause the death of Shyam Narain has not been established beyond all reasonable doubts, if has been conclusively established that their common intention was to cause injuries to the deceased with a deadly weapon, namely, spear.”

14. We have perused the judgment. It is in the facts of that case wherein the quarrel was in fact going on between two other persons and the deceased was assaulted by an accused who was unconcerned with the said incident and therefore, the Apex Court had held that “they had not shared common intention and the attack was with sticks”. The Court had disbelieved eyewitness version. The facts are not applicable to the present case.

15. The learned counsel has placed reliance upon the judgment in the case of *Arun Vs. State by Inspector of Police*². The said judgment is also in the specific facts of that particular case wherein the Supreme Court had held that the murderous assault on the deceased was an individual act and therefore, it would be necessary to ascertain as to whether there was prior meeting of minds. Implicit reliance is being placed on the judgment of the Apex Court in the case of *Sukhbir Singh Vs. Kirtan Singh and Ors.*³ which is again in the facts of that particular case.

2. (2008) 15 SCC 501

3 2005 SCC (Cri.) 1624

16. Per contra, the learned APP submits that, in fact, it was accused no.1 who was demanding the bride price and the accused no.2 was helping him to accomplish his job. That, there was intimidation to such an extent that P.W.1 could not save her husband. Accused no.1 had protected his daughter and eliminated his son-in-law.

17. The learned counsel in Criminal Appeal No.52 of 2014 has argued that this is a case of false implication and a case of no evidence. According to him, the accused had not even visited the scene of offence. A false story is concocted by P.W.1 and that is evident from the fact that she had not lodged any complaint in respect of her abduction for demanding the money from Shravan. In that eventuality, the offence would have been under section 364A of Indian Penal Code. It is submitted that the accused deserves to be acquitted of all the charges.

18. The facts in the case of *Raju Ram Vs. State of Bihar*⁴, are similar to the facts of the present case, wherein the appellants were one of the three accused persons convicted for offence punishable under sections 302, 387 r/w 34 of IPC. The Supreme Court had

4 (2005) SCC (Cri.) 1627

observed “we found it extremely difficulty to de-cipher the intention of the third accused from that of the other two persons for the purpose of de-escalating the penal liability to be fastened on him. In the result, we dismiss the appeal.”

19. We have perused the records to appreciate as to whether the intention of accused no.1 was only intimidation or he shared common intention with accused no.2.

20. In the case of *Rajesh Govind Jagesha Vs. State of Maharashtra*⁵, the Supreme Court held that “no pre-meditation or previous meeting of mind is necessary for the applicability of Section 34 of the IPC. The existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purposes of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. The circumstances of the present case clearly show that the accused persons had come on spot with deadly weapons and inflicted injuries on Joy Kutty, obviously with the intention of causing his death.”

5 1999 Supp (4) SCR 277

21. It is clear from the attending circumstances that there was a meeting of minds between the accused nos.1 and 2 since accused no.2 had no personal grudge against Shravan. It is an admitted position that accused no.2 had accompanied accused no.1. They both were armed with deadly weapons. Accused no.1 had intimidated his daughter with a deadly weapon only to facilitate the brutal assault on Shravan. Hence, section 34 of IPC is clearly attracted. In view of the discussion hereinabove, we have no hesitation to accept the prosecution case that the accused had shared a common intention to commit the murder of Shravan. We, therefore, pass the following order:-

ORDER

- (i) The Appeals are dismissed;
- (ii) The conviction and sentence passed by the learned Additional Sessions Judge, Solapur in Sessions Case No.319 of 2013 vide judgment and order dated 24th December 2013 is hereby confirmed;
- (iii) The Appeals are disposed of on above terms.

(SARANG V. KOTWAL, J)

(SMT. SADHANA S. JADHAV, J)