

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 318 OF 2014

Appellant : Barsai Ramsu Gawade,
aged about 43 years, Occ. Agriculturist,
R/o, Gurrekasa, Tahsil Dhanaora,
District Gadchiroli.

...VERSUS...

RESPONDENT: The State of Maharashtra,
Through Police Station Officer,
Police Station Dhanora,
District Gadchiroli.

Mr. V.N.Morande, Advocate for appellant.
Mr. S.M.Ukey, Addl. Public Prosecutor for Respondent.

CORAM : SMT. SWAPNA JOSHI
AND

AVINASH G. GHAROTE, JJ.

DATE : 17/08/2021.

(Per: Avinash Gharote J)

1] Heard Mr. Morande, learned counsel for the appellant
and Mr. Ukey learned APP for the respondent.

2] The present appeal under Section 374 of Criminal
Procedure Code challenges the judgment and order dated

05/04/2014, passed by the learned Sessions Judge, Gadchiroli, in Sessions Case No. 126 of 2011, convicting the appellant for the offence punishable under Section 302 r/w 120(B) of the IPC, sentencing him to suffer imprisonment for life and a fine of Rs. 1000/-, in default of payment of which, to suffer further S.I. for one month.

3] The facts of the present case are as under;

On 25.06.2011, one Ramchandra Bahirwar who was having a welding shop in his house at Mouza-Murumgaon, Tah. Dhanora, District-Gadchiroli, was called from his house by the appellant. When they were talking outside the house, three to four unknown persons were alleged to be present along with the appellant. The talk is alleged to have gone for 10 to 15 minutes, after which one of the persons, is claimed to have shot dead the said Ramchandra, whereupon the appellant and the other persons standing there ran away. It is further alleged that while running away, the other persons were shouting/giving slogans, "lal salam zindabad, mao-wadi zindabad". It was alleged, that these four

persons were naxalites and had caused the death of Ramchandra in the manner stated above. Ramchandra, was taken to the hospital at Morangaon by his son Ganesh and from there to the Hospital at Dhanora, but unfortunately he passed away on the way. On 25.06.2011, a report came to be lodged at Police Station Dhanora regarding the said incident and offence was registered against the appellant and 3-4 unknown persons at Dhanora Police Station. P.S.I. Devre – PW-7 is claimed to have done the investigation and consequently had arrested the appellant and the original accused 2 to 4, on the charge of having committed a criminal conspiracy, under section 120-B of the IPC for causing the death of Ramchandra.

4] On 30.8.2012, a charge was framed at Exh.34 by the Additional Sessions Judge, Gadchiroli, against the appellant and accused 2 to 4 under Section 302 r/w 120(B) and 34 of the IPC and so also Section 3 and 25 of the Indian Arms Act. The prosecution examined 10 witnesses. It is noteworthy to state, that none of the witnesses can be said to be an eye-witness, as none of them had seen the shot being fired, which resulted in the death of Ramchandra.

The time of the incident is stated to be 1.35 p.m. at Mouza Murumgaon, Tah. Dhanora, Dist. Gadchiroli.

5] The learned Sessions Court by the impugned judgment dated 5.4.2014, acquitted the accused 2, 3 and 4 of the offence punishable under Section 302 and 120B r/w 34 IPC and under Section 3 and 25 of the Arms Act, however, convicted the appellant/accused No.1 of the offence punishable under Section 302 r/w 120B IPC.

6] Mr. Morande learned counsel for the appellant, submits that the learned Sessions Judge having acquitted the accused 2 to 4 of the offence punishable under Section 302 and 120B r/w 34 IPC and under Section 3 and 25 of the Arms Act, it was impermissible for him to have convicted the appellant/accused No.1 of the offence punishable under Section 302 r/w 120B IPC, for the reason that for a criminal conspiracy, there is a requirement of meeting of the minds of more than one person and therefore, the requirement of Section 120A of the IPC were clearly not established, vis-a vis the appellant, in support of which learned counsel places reliance upon

Topandas vrs. State of Bombay [AIR 1956 SC 33]. He further submits that even otherwise, no other action is attributable to the appellant, except that he had called Ramchandra out of the house and was talking to him, which cannot be a ground to convict him of an offence under Section 302 IPC.

7] Learned APP Mr. Ukey vehemently opposes the contention on the ground that the involvement of the appellant in the offence according to him is apparent from the fact that it was the appellant who had called Ramchandra out of the house, which resulted in the demise of Ramchandra. He therefore submits, that the offence under Section 302 of the IPC has been made out. In so far as the plea regarding Section 120B of the IPC is concerned, learned APP submits that the conduct of the appellant in running away after the shot was fired, which resulted in the death of Ramchandra, would be enough to demonstrate his being part of the criminal conspiracy to eliminate Ramchandra.

8] We have given our anxious consideration to the rival contentions. The issue of criminal conspiracy, has to be viewed in

light of the language of Section 120-A of IPC, which requires the presence of two or more persons, and the meeting of minds of such two or more persons, to agree to do an illegal act. In the instant case, it is an admitted position, that the accused 2 to 4, who have been accused to have conspired with the appellant/accused no. 1, have been acquitted of the charge under Section 120B of IPC, which leaves the appellant/accused No. 1 alone in the arena, in view of which the requirement of law as contemplated under Section 120-A of the IPC, is clearly not satisfied. In *Topandas* (supra), while considering the definition of Criminal Conspiracy as occurring in Section 120-A of IPC, it has been held that by the terms of the definition itself, there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. In the facts of that case, which were identical to the present one, it was held that if therefore four named individuals were charged with having committed the offence under Section 120-B IPC and if three out of these four were acquitted of the charge, the remaining accused could never be held guilty of the offence of criminal conspiracy. The learned Sessions Judge has

unfortunately lost sight of the requirement of Section 120-A of the IPC, requiring the presence and meeting of minds of two or more persons, for bringing home the offence under Section 120-B of the IPC. Thus, in view of the language of Section 120-A of IPC, as well as what is held in *Topandas* (supra), the conviction of the appellant under Section 120-B of the IPC cannot be sustained.

9] In so far as the charge under Section 302 of the IPC, is concerned, in respect of the appellant, PW-2/Neeraj Laxmilalji Parakh says that he had learnt that some naxalite had fired bullet on Ramchandra. Dharamsingh Hirasingh Sangodia/PW-3 also says that after hearing the noise of bursting in front of the shop of Ramchandra, he had come out of his shop. Though he says that he had seen that someone had fired bullet on Ramchandra, he says that he had not seen the assailant. Gajanan Mathu Chanap/PW-4, who works in the shop of Neeraj Parakh (PW-2) says that he had seen four persons had come to the shop of Ramchandra and were talking with him, he heard sound of bursting and those persons running away, without naming a single person, nor any of the accused 1 to 4.

10] Laxmi Narayan Ambatwar / PW-5 says that he was present in the house of Ramchandra at the time of the incident, wherein 4 persons were present along with one lady. When he was talking with Ramchandra inside the house, at that time those persons had called Ramchandra out of the house (he does not say that it was the appellant who had called Ramchandra out of the house), and thereafter he heard sound of firing. After coming out, he saw that Ramchandra had received bullet on his chest and abdomen. He also says, he had seen four persons, one lady and one person by name Gawade running from there, who were shouting “lal salam zindabad” while running from the spot and one of them was carrying a pistol. Though he states that he was able to identify the persons if shown to him, no such persons has been identified by him. Leelawati Ramchandra Bairwar/PW-10, is the only person, who has seen the appellant Barsai come inside the house and called her husband out of the house prior to which she states that four persons had already come to visit her husband and were sitting outside the house. She claims to have heard the noise of the bullet being fired, whereupon she and her son, had rushed outside and had seen Ramchandra with bullet wounds and so also the four persons who were present in the

shop running away, which included the appellant as well as the accused 2 to 4. She also claims that the accused No. 4 was holding a bag in a hand which she had left, which later on was claimed to have found containing bullets. This is the nature of evidence which has come on record.

11] PW-6, is the Head Constable attached to PS Dhanora who has recorded the oral report given by Ganesh Bairwar. PW-7 is PSI Yogesh Devre, who had investigated the crime. PW-8 is Doctor Milind Ramteke, who had conducted the Post Mortem. PW-9 is Narayan Bachalwar, ASI, who had prepared the inquest panchnama, sent the body of Ramchandra for post mortem, given duty pass, Exh.99; letter to Medical Officer for conducting post mortem - Exh. 94, compliance report Exh. 100, receipt regarding handing over of body of Ramchandra to relatives – Exh. 101.

12] There is no overt action attributed, to the appellant, in the matter of causing the death, except for the presence of the appellant at the house of deceased Ramchandra and in running away after the bullet was fired. The learned Sessions Judge has entered

into the realm of conjecture in finding that the appellant ought to have run in a direction away from the one in which the assailants ran, which is no ground in law to base a conviction. These two circumstances of their own would not be enough, to bring the charge under Section 302 of the IPC, home to the appellant, which is more so in view of the fact that the charge of criminal conspiracy against the appellant cannot be sustained in law. That being the position, the impugned judgment and order sentencing the appellant for the offence under Section 302 r/w 120(B) of the IPC cannot be sustained and the conviction is accordingly quashed and set aside. The appellant is already on bail, by the order of this court dated 23.9.2014, his bail bond stands cancelled.

JUDGE

JUDGE