IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.250 of 1994

Arising Out of PS. Case No.-71 Year-1991 Thana- BAIKUNTHPUR District- Gopalganj

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Md. Husnain, S/O Murshid Alam, R/O Village- Bankati Nayatola, P.S- Baikunthpur, Distt.- Gopalganj.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 327 of 1994

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Abbas Mian

... ... Appellant/s

Versus

State Of Bihar

... ... Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 250 of 1994)
For the Appellant/s : Ms.Suray Nilambari, Amicus Curiae
For the Respondent/s : Mr.Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 327 of 1994)
For the Appellant/s : Ms.Suray Nilambari, Amicus Curiae
For the Respondent/s : Mr.Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 28-11-2025

1. In Sessions Trial No. 18 of 1992, the appellants, namely, Abbas Mian, Murshid Mian, Md. Mainuddin, Md.

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Husnain and Mubarak Hussain were held guilty for committing offence under Sections 302/34 and 323 of the IPC and were convicted. They were sentenced to suffer imprisonment for life. Though accused Husnain and Murshid were further charged under Section 323 and 342 of the IPC, no separate sentence was passed by the learned Trial Judge as they were sentenced imprisonment for life for the offence of murder in furtherance of common intention of all the accused persons. The convicts preferred three separate appeals against the aforesaid judgement and order of conviction and sentence.

2. Since both the above-mentioned appeals arose from a common judgement of conviction and sentence, we heard the appeals analogously and proposed to dispose of the same by the following common judgement.

3. The prosecution case was instituted on the basis of the *fard beyan* of the informant Khurshid Alam (PW 1), recorded on 23.06.1991 at about 06:30 p.m. at the State Dispensary, Baikunthpur, by the Officer-in-Charge of Baikunthpur Police Station. On the basis of the said *fard beyan*, Baikunthpur P.S. Case No. 71 of 1991 was registered for the offences under sections 302, 323 and 34 of the Indian Penal Code. After completion of investigation, the Investigating

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Officer submitted charge-sheet initially only against two accused persons and subsequently charge-sheet was extended against the remaining three appellants upon protest. The case was committed to the Court of Sessions where charges were framed against all the five accused persons and the trial proceeded.

4. The prosecution examined seven witnesses in support of its case. PW 1 Khurshid Alam and PW 2 Tanveer Alam are the two eyewitnesses to the occurrence. PW 3 Ram Pravesh and PW 4 Sattar Miyan reached the place of occurrence upon hearing alarm and did not witness the actual assault. PW 5 Dr. Vishwanath Agrawal conducted the postmortem examination of the deceased. PW 6 Dr. Ram Karan Singh medically examined PW 2 and the accused Abbas, finding simple injuries on PW 2 and the accused Abbas. PW 7 Krishna Gopal Verma, the Investigating Officer, recorded the *fard beyan*, prepared the formal FIR, inspected the place of occurrence and seized blood-stained grass from a grassy patch situated away from the pitched road.

5. The present appeals, therefore, call for a reappraisal of the entire evidence on record and reconsideration of the findings recorded by the learned trial court so as to determine

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whether the conviction of the appellants is sustainable in law.

6. One Khurshid Alam made a statement before the police attached to P.S. Baikunthpur in the district of Gopalganj on 23rd of June, 1991 at about 06:00 P.M. at State General Hospital, Baikunthpur in injured condition, stating, inter alia, that on the same day at about 05:30 P.M., he along with his brother Jahangir Mian was going to distribute meat sacrificed on account of Bakrid festival to one Wakil Mian and others of Reotith Tola Sukul. When they crossed Reotith New Market and left Pacca Road to reach southern side of the house of one Khalil Mian, the accused persons, namely, Murshid Mian and Mubarak Hussain appeared at the spot saying, “No better opportunity would be available”, caught hold of the informant and his brother Jahangir. Then Mainuddin Mian, son of Mubarak assaulted Jahangir on his back with the help of knife with the intention to commit his murder. Accused Abbas Mian gave a blow with the help of a knife on his shoulder. Jahangir was profusely bleeding and fell down on the road. The informant immediately raised hue and cry which attracted his another brother Tanveer Mian. Seeing him Husnain Mian assaulted him with the help of Lathi, causing bleeding injury on his Chin. Murshid Mian assaulted the informant by fist and

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blows. The incident was witnessed by Sattar Mian and others, who rushed to the place of occurrence hearing Halla raised by the informant and others. Local people took Jahangir to State General Hospital at Baikunthpur by a jeep of one Laxmi Sah. He was medically treated in the hospital by the doctor and the medical officer found him brought dead while he was medically examined. The informant and Tanveer were admitted to the hospital. The informant also stated that about one year before the incident, the informant and his family members were constructing a septic tank for construction of latrine in their house. Over the said incident, some dispute and tension was going on between them and the accused persons. A case was also pending before the Court between the parties and in order to take revenge of the said incident, the accused persons in furtherance of their common intention committed murder of Jahangir and assaulted the informant and Tanveer with the help of fist and blows and Lathi.

7. The statement of the informant was recorded at the State General Hospital, Baikunthpur itself approximately within one hour of the occurrence and on the basis of the said statement, formal FIR was drawn up for offence under Sections 302, 323 and 34 of the IPC.

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8. The Investigating Officer reached the place of occurrence, prepared a seizure list of blood-stained soil and grass found at the alleged second place where the deceased had fallen, recorded the statements of witnesses and prepared the inquest report of the dead body. The deceased was thereafter sent for postmortem examination, which was conducted on the same night. Upon arrest of the accused Abbas Mian, it was found that he had also sustained injuries which were examined upon a requisition by police.

9. After completion of investigation, the charge-sheet was initially submitted only against Mainuddin and Abbas, and subsequently upon protest of the informant and further supervision of police, charge-sheet was submitted against the remaining appellants as well. The case was committed to the Court of Sessions and charges were framed against all the five accused persons under sections 302, 323, 342 and 34 of the Indian Penal Code, to which they pleaded not guilty and claimed to be tried.

10. The defence set up during trial was one of complete denial and false implication owing to long-standing enmity. The defence also asserted that the alleged manner and place of occurrence was wholly improbable; that the deceased

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sustained injuries in a separate altercation with villagers near the paddy field of the informant; that the appellants were not present at the place of occurrence and were engaged elsewhere; and that the prosecution witnesses were highly interested witnesses whose testimony could not be relied upon. It was further contended that the injuries alleged to have been inflicted by chhura, which were contradicted by medical evidence and that the non-recovery of the polythene containing meat as well as the admitted contradictions regarding the exact location of the occurrence rendered the prosecution case doubtful. It was also argued that police constables and home guards posted on Bakrid duty, who were material witnesses to the alleged occurrence, were not examined despite request.

11. The learned trial court, however, upon appreciation of the evidence on record, convicted the appellants as stated earlier.

12. It is pertinent to mention at the outset that the incident took place on the day of Bakrid festival at about 05:30 P.M on the road by the southern side of the house of one Khalil Mian when the informant and the deceased were going to the house of Wakil Mian to distribute some sacrificed meat on account of Kurbani. The Investigating Officer did not take any

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attempt to examine Khalil Mian and Wakil Mian and record their statement under Section 161 of the Cr.P.C. The owner of the jeep or the driver, namely, Laxmi Sah who brought deceased Jahangir to hospital was also not examined. Amongst the witnesses, P.W. 1 is the informant, he claims himself as an eye witness and also the injured. P.W. 2 Tanveer Alam is the younger brother of the informant. P.W. 3 Ram Pravesh Prasad and P.W. 4 Sattar Mian claimed that they came to the place of occurrence after hearing the hue and cry. P.W. 5 Dr. Vishwanath Agrawal conducted post-mortem examination over the dead body of deceased Jahangir and P.W. 6 Dr. Ram Karan Singh medically examined Tanveer Alam on 23rd of June, 1991. P.W. 7 Krishna Gopal Verma is the Investigating Officer of the case.

13. PW 1 Khurshid Alam is the informant and the elder brother of the deceased Jahangir. He has stated that the occurrence took place on 23.06.1991 at about 05:30 in the evening when he and his deceased brother Jahangir were proceeding towards Reotith Sukul Tola carrying mutton in a polythene bag for distribution among acquaintances on the occasion of Bakrid. When they reached in front of the house of Khalil Mian, situated beside the metal road of the village, all the five accused persons suddenly appeared, surrounded them, and

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Murshid and Mubarak caught hold of PW 1 exhorting that the time was opportune to settle the matter. According to PW 1, the accused Mainuddin @ Moinuddin inflicted a knife (chhura) blow on the back of Jahangir and soon thereafter the accused Abbas Mian gave another knife (chhura) blow on the left side of the neck. PW 1 further stated that Husnain and Murshid assaulted his younger brother, Tanveer with Lathi. The deceased fell towards the southern grassy patch near the roadside and became unconscious due to profuse bleeding. Villagers assembled and helped in shifting the injured to the State Dispensary, Baikunthpur, where he succumbed during treatment. PW 1 identified all the accused in Court and attributed specific roles to each.

14. In cross-examination, PW 1 admitted that previous disputes existed between the parties and that proceedings under Section 107 of the Code of Criminal Procedure had earlier taken place. He admitted that Constables and Home-guards were present in the village on Bakrid duty. He further stated that the polythene bag containing meat had fallen at the place of occurrence though the same was never produced before the police. PW 1 admitted that the Investigating Officer found blood-stained grass at a patch situated at some distance away

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from the road and no blood was detected at the spot near the house of Khalil where he claims the initial assault occurred. He stated that many villagers had assembled at the time of the incident, but no independent witnesses from the locality were examined by the prosecution. He denied the defence suggestion that the incident took place elsewhere in the paddy fields near Reotith.

15. PW 2 Tanveer Alam, the younger brother of the informant and an injured eyewitness, in general supported the testimony of PW 1 and stated that Mainuddin inflicted a stab wound near the shoulder region and Abbas inflicted a blow on the neck of the deceased, while Husnain and Murshid assaulted him with Lathi. He was examined at the State Dispensary, Baikunthpur, where his injury was found simple. In cross-examination, he stated that he was following his brothers at a distance of about ten steps and that he could not state with certainty who appeared first at the spot. He admitted that independent villagers present nearby were not examined. He was confronted with contradictions regarding the precise spot where the deceased fell, since blood-stained grass was seized from a grassy patch situated some yards away from the road.

16. PW 3 Ram Pravesh stated that the assault occurred

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near the house of Khalil. In cross-examination, he admitted that he was not named in the FIR and that he reached the spot only upon hearing halla and did not witness the initial assault. Contradictions were elicited relating to the position of the deceased and the polythene bag.

17. PW 4 Sattar Miyan stated that upon hearing alarm he reached the place of occurrence and found the deceased lying on the grassy patch bleeding profusely. He saw the polythene bag containing meat lying near him. In cross-examination, he admitted that he did not hand over the bag to police nor indicate its position during investigation and that he could not state whether he saw the actual assault.

18. PW 5 Dr. Vishwanath Agrawal conducted the postmortem examination at about 10:00 p.m. on 23.06.1991. He found two incised wounds, one on the left side of the neck cutting a major vessel and another on the back region. He opined that the injuries were sufficient in the ordinary course of nature to cause death. In cross-examination, he stated that partly digested mutton was present in the stomach of the deceased indicating that he had consumed food approximately three to four hours prior to death and admitted that the injuries could not be caused by a blunt or heavy weapon.

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19. PW 6 Dr. Ram Karan Singh examined Tanveer Alam on 23.06.1991 at about 06:00 p.m. and found a simple injury caused by a hard and blunt substance. He also examined the accused Abbas on police requisition at about 10.30 p.m. and found injuries estimated to be approximately eight hours old. The evidence of P.W. 6 corroborates that the incident took place at the time described by P.W. 1 in his *fard beyan*.

20. PW 7 Krishna Gopal Verma, the Investigating Officer, stated that he recorded the *fard beyan* of PW 1 at about 06:30 p.m. at the State Dispensary, Baikunthpur, drew up the formal FIR, inspected the place of occurrence, and seized blood-stained grass. In cross-examination, he admitted that no blood was found at the spot shown by PW 1 as the site of the assault and that blood was found only some distance away from the road. He further admitted that the polythene bag containing mutton was not recovered at any stage, and that although several houses were located near the alleged place of occurrence, no independent witnesses were examined. He stated that initially final form was submitted against some of the accused and the subsequent charge-sheet was filed only upon a protest petition by the informant.

21. All the accused persons were examined under

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section 313 of the Code of Criminal Procedure after closure of the prosecution evidence. Each of them denied the allegations in toto and stated that they had been falsely implicated due to long-standing enmity and strained relations between the families. The accused Mainuddin @ Moinuddin stated that he was not present at the alleged place of occurrence at the relevant time and that no such incident had taken place in the manner alleged by the prosecution. The accused Abbas stated that he was apprehended from the hospital while under treatment for injuries sustained in a separate incident and that the prosecution had deliberately suppressed the real facts and fabricated a false case against him.

22. The remaining accused persons, Murshid, Md. Husnain and Mubarak Hussain also denied any involvement in the occurrence and stated that the prosecution witnesses were highly inimical and related witnesses whose testimony could not be relied upon in absence of any independent corroboration. They stated that the prosecution had failed to examine material witnesses, including local Constables and Home-guards who were on duty in the village on the occasion of Bakrid, and who could have unfolded the actual circumstances of the occurrence.

23. A consistent defence taken by all the accused persons was that the deceased Jahangir had sustained injuries

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elsewhere near the paddy field in a separate dispute and was later shifted to the road and falsely implicated in this case. The accused contended that the prosecution had failed to explain the presence of injuries upon the accused Abbas, which were examined by the doctor, indicating that he was involved in some other incident.

24. It was further asserted that the story regarding carrying of mutton in a polythene bag was fabricated to create the appearance of an unexpected assault, whereas the said polythene bag was never recovered by the police and was not produced during trial. The defence also stressed upon the contradictions regarding the exact place of occurrence, as blood was recovered only from a patch of grass situated at some distance away from the pacca road and no blood was found at the spot where PW 1 and PW 2 claimed the assault initially took place.

25. It is also highlighted that though a large number of villagers had assembled, no independent witness was examined. They submitted that the prosecution case was wholly unreliable, and that the trial court had committed a serious error by convicting the appellants on the basis of doubtful, inconsistent and interested testimony unsupported by independent evidence.

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26. Learned counsel appearing on behalf of the appellants submitted that the judgment of conviction recorded by the learned trial court suffers from serious factual and legal infirmities and is unsustainable in the eyes of law. It was contended that the prosecution version is wholly improbable and stands contradicted on material particulars by the medical and forensic evidence as well as by the internal inconsistencies within the testimony of the eyewitnesses themselves. Learned counsel submitted that although PW 1 and PW 2 have been projected as eyewitnesses, their conduct was unnatural and their statements suffered from serious discrepancies with respect to the time of occurrence, the precise place of assault, the position of the deceased at the time of receiving injuries, the recovery of blood and the location from where the body was taken to the dispensary. It was argued that the evidence of PW 1 and PW 2 is further weakened by the fact that they are related and highly interested witnesses and that no independent witness from the locality was examined, despite the admitted fact that several villagers had assembled immediately after the occurrence.

27. Learned counsel for the appellants further submitted that the prosecution has failed to establish the place of occurrence beyond reasonable doubt. According to the

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prosecution case, the initial assault took place in front of the house of Khalil on the pitched road; however, admittedly no blood was found at that place. The Investigating Officer himself stated that blood and grass were seized only from a patch located some distance away from the pitched road. It was contended that this discrepancy is fatal to the prosecution case and completely demolishes the version narrated in the FIR and depositions. It was further pointed out that while PW 1 stated that the deceased fell on the road itself, PW 2 stated that the deceased fell on the grassy patch and PW 4 stated that the deceased was lying on the ground when he reached the place of occurrence. It was submitted that such material contradictions render the ocular testimony wholly unreliable.

28. It was further argued that the prosecution has failed to produce the polythene bag containing meat which allegedly fell at the place of occurrence. PW 1 and PW 4 both stated that they had seen the polythene at the place of occurrence, yet it was neither seized during investigation nor produced at trial. Learned counsel submitted that this is a serious lapse and supports the defence case that the prosecution story is fabricated.

29. Learned counsel for the appellants strongly relied

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upon the medical evidence to argue that the prosecution version was improbable. It was submitted that the doctor conducting postmortem found partly digested mutton in the stomach of the deceased, indicating that he had taken food nearly three to four hours prior to his death. According to the prosecution case, the deceased was carrying meat for distribution, implying that he had not consumed it before leaving home. The defence contended that this contradiction throws serious doubt on the alleged time and sequence of events. It was also pointed out that the accused Abbas had also sustained injuries which were examined by the same doctor and were found to be about eight hours old at the time of examination, making it impossible for him to have been present at the time of alleged assault at 05:30 p.m. The trial court, according to learned counsel, failed to appreciate these contradictions properly.

30. It was further submitted that the prosecution suppressed important evidence by not examining home guards and constables who were admittedly present in the village on Bakrid duty and who would have been the most natural and impartial witnesses. It was argued that this failure justifies drawing an adverse inference against the prosecution. It was also argued that the Investigating Officer had initially submitted

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a final form exonerating some of the accused persons and that charges were subsequently framed only on the basis of protest, which itself reflects that initially the evidence was not considered sufficient.

31. With respect to the applicability of section 34 of the Indian Penal Code, it was submitted that the prosecution failed to establish any prior meeting of minds or common intention. The roles attributed to different accused are vague, inconsistent and uncorroborated, and the alleged act of catching hold by the elderly accused Murshid and Mubarak was highly improbable, particularly in view of the fact that the deceased and PW 2 were young and healthy persons. It was submitted that the trial court mechanically invoked section 34 without any substantive legal foundation.

32. Learned counsel for the State, on the other hand, supported the judgment of conviction and submitted that the ocular evidence of PW 1 and PW 2 was consistent and trustworthy and should not be discarded merely because they were related witnesses. It was contended that medical evidence was not inconsistent with the prosecution case and that minor discrepancies regarding time or place should not defeat otherwise credible testimony. It was further submitted that the

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defence had failed to produce any material in support of the plea of alibi and that the conviction was fully justified.

33. On careful consideration of the evidence on record, both oral and documentary, this Court records at the outset that police was informed about the incident within one hour of the same. The incident took place at about 05:30 P.M. on 23rd of June, 1991 and *fard beyan* was recorded at about 06:30 P.M. at Baikunthpur State General Hospital.

34. At the risk of repetition, let me now narrate the sequence of the incident as stated by the informant:-

> *(i) The informant and his brother Jahangir were going through the road running by the side of the house of Khalil Mian to deliver some meat to Wakil Mian and others;*
>
> *(ii) They were first obstructed by Murshid Mian and Mubarak Mian;*
>
> *(iii) Then Mainuddin assaulted Jahangir on his back with the help of a knife;*
>
> *(iv) Abbas Mian assaulted Jahangir by a knife on his shoulder;*
>
> *(v) In order to save himself, he managed to set himself free and after proceeding few steps, he fell down on the ground by the side of the road;*

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(vi) Hearing the hue and cry, Tanveer Alam, the younger brother of the informant and Jahangir rushed to the place of occurrence. He also assaulted by Husnain. The informant was assaulted by fists and blows by Murshid. The incident and consequent hue and cry attracted many people at the place of occurrence.

35. It is rightly stated by the learned Advocate of the appellants that except the informant, no other persons saw the incident. The informant also received injury, being assaulted by Murshid by fists and blows. According to the learned counsel for the appellants, the Trial Court committed a gross error in appreciating solitary evidence of P.W. 1, informant. It is found from the *fard beyan* itself that a dispute between the parties over a construction of latrine was going on from before. A case under Section 107 of the Cr.P.C was also pending between them. Thus, there was obvious enmity between the informant, his brother and the appellants.

36. Under such circumstances, the evidence of the informant ought not to have been treated as truthful account of the story in the absence of corroboration.

37. In paragraph 27 of the cross-examination, P.W. 1 stated that the houses of one Mahadev Singh and Chandrika

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Singh are situated about 20/25 steps away from the place of occurrence. In Sukul Tola, there are houses of Jakir Mian, Faruk Mian, Aahshan Mian, Mukhtar Mian, Kumsuddin Mian and Hakim Mian. He clearly admitted that people came to the occurrence after the incident. Therefore, beside P.W. 1, no other persons saw the incident.

38. The learned Advocate for the appellants further submits that the informant had the scope to save Jahangir but he did not take any attempt to save him from the clutches of the assailants. Therefore, the conduct of P.W. 1 seemed very peculiar and it raises a cloud of suspicion about the veracity of the incident.

39. The learned Advocate on behalf of the appellant also submits that from the evidence of P.W. 2 Tanveer Alam, it is ascertained that he was at Reotith New Market at the time of occurrence. He heard the sound of Khurshid and reached the place of occurrence. He saw Murshid and Mubarak caught hold of Jahangir; Husnain was standing with a Lathi; Mainuddin came from behind running with a knife in his hand and gave a blow with the help of the said knife on the right side of Jahangir’s back below the shoulder. Abbas assaulted Jahangir on his right side of the throat from the front. P.W. 2 tried to save

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Jahangir but Husnain assaulted him with the help of Lathi causing bleeding injury on his chin. In order to resist the accused persons, P.W. 1 took a piece of brick from the ground and assaulted Abbas with the help of brick on his head to save Jahangir. Then Murshid Mian started assaulting P.W. 1 by fist and blow. P.W. 1 and P.W. 2 raised hue and cry. One Sattar Mian and Khurshid were present at the spot and saw the incident. After raising hue and cry, one Ram Pravesh Prasad rushed to the place of occurrence. P.W. 3 Ram Pravesh Prasad corroborated evidence of P.W. 1 and P.W. 2 in his examination in chief. He also claimed himself to be the eye witness of the occurrence.

40. The learned Advocate for the appellant criticized the evidence of P.W. 3 on the ground that his name was not stated by the informant in the initial statement as an eye witness. The statement of P.W. 3 was also recorded under Section 164 of the Cr.P.C. In his statement before the Magistrate, he also narrated the same incident which he stated in his examination in chief in paragraph 8 of the cross-examination. The defence practically took the corroboration of the statement recorded under Section 164 of the Cr.P.C by P.W. 3. We have also narrated the evidence of P.W. 4. He also corroborated evidence of P.W.s 1, 2 and 3.

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41. The learned counsel for the appellants has tried to impress upon us that the P.W.s 2, 3 and 4 are not the eye witnesses of the occurrence and there are contradictions in their evidence. We have closely perused the evidence of the above-named three witnesses. Of course, there are contradictions in their evidence but the said contradictions are really minor in nature. These minor contradictions does not suggest that the above-named witnesses adduced false evidence against the appellants. On the other hand, these contradictions lead the Court to hold that they made truthful account of the incident and they saw accused Murshid and Mubarak catching hold of Jahangir; Hasnain was standing there with Lathi in his hand; Accused Mainuddin struck him with a blow of his knife on Jahangir and accused Abbas gave a blow by a knife on his throat from the front.

42. P.W. 6 Ram Karan Singh examined deceased Jahangir at about 06:00 P.M. at Baikunthpur State General Hospital and found the following injuries. The said injury report was marked as Exhibit 4. He medically examined Khurshid Alam on the same day at about 07:30 P.M. and found:-

(i) Swelling with tenderness round the left eye wall lateral position of irregular size;

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(ii) Swelling with tenderness lateral side of parietal region size 2"X1/2" severe pain on touch of the injuries.

43. He also examined Tanveer Alam (P.W. 2) and found the following injuries:-

(i) One lacerated would of chin 1/2" X 1/2"

(ii) Lacerated wound just by the side of 1st wound 1/4" X 1/4"

44. According to the Medical Officer, the injuries of Tanveer was inflicted by hard and blunt substance.

45. On the same day at about 10:30 P.M., he examined one Abbas Mian and found the following injuries:-

(i) One lacerated wound at the tip of external ear left 1/4" X 1/4".

(ii) One lacerated wound on the left side of parietal part of scull size 1/2" X 1/4".

46. The Medical Officer found both the injuries simple in nature. The injury report of accused Abbas Mian was marked as Exhibit 4/C.

47. P.W. 5 Dr. Vishwanath Agrawal is the Autopsy Surgeon who held post-mortem examination over the dead body of Jahangir Mian and found the following injuries:-

(i) One incised wound 1x1/2"

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chest cavity deep torn on upper part and right side of back of chest

(ii) An incised torn 1x1/4" X 3"/4 situated on right side and lower part of front of neck with injury to skin softness vessels and carotid vessels.

48. According to him, both the injuries were caused by sharp cutting weapon, such as knife (Chhura). He also opined that the death of the deceased was caused due to shock and hemorrhage as a result of the injuries, specially injury no. 2.

49. P.W. 7 is the investigating officer of the case.

50. On the basis of evidence on record, let us now consider as to whether the Trial Court came to the just decision to hold the appellants guilty for committing offence under Section 302 and 34 of the IPC.

51. It is needless to say that Section 34 of the IPC speaks about common intention, i.e., when a criminal act was done by several persons with a common intention, each of the person is liable for that act as if it has been done by him alone. Therefore, where participation of the accused in a crime is proved and the common intention is also established, Section 34 of the IPC shall come into play. To attract, Section 34, it is not necessary that there must be dire conspiracy or premeditated mind, the common intention can be formed even in the course of

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incident, i.e., during the occurrence of the crime.

52. In ***Ram Naresh v. State of U.P.*** reported in ***2023 INSC 1037***, the Hon'ble Supreme Court relies on his earlier decision in the case of ***Krishnamurthy @ Gunodu and Ors. v. State of Karnataka, reported (2022) 7 SCC 521***. The relevant portions of the said judgement in paragraph nos. 12 to 14 are quoted below:-

> *"12. Assistance has been taken of paragraph 26 of the decision of this Court in Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka1, which is reproduced herein below.*
>
> *26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act*

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is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the

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> *main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."*
>
> *13. A plain reading of the above paragraph reveals that for applying Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or as stated earlier even during the occurrence of the incidence."*

53. In the same decision, the Hon'ble Supreme Court relied on the decision of ***Jasdeep Singh @ Jassu v. State of Punjab***, reported in ***(2022) 2 SCC 545***, wherein it was held that mere common intention *per se* may not attract Section 34 of the

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IPC unless the present accused has done some act in furtherance thereof is no assistance to the appellant as it is writ large on record as per the evidence that the appellant not only had common intention to kill the deceased Ram Kishore but also actively participated in assaulting and giving blows to the deceased Ram Kishore together with the other accused persons. Thus, the appeal filed by the appellants was dismissed by the Hon'ble Supreme Court.

54. In ***Lakshmi Singh and Ors. v. State of Bihar***, reported in ***(1976) 4 SCC 394***, the Hon'ble Supreme Court held as hereunder:-

> *"In such a situation……. when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:*
>
> *(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.*
>
> *(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.*

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(3) It does not affect the prosecution case at all." …….

55. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstances from which the Court can draw the following inferences: -

(i) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(ii) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable; and

(iii) That in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to through doubt on the prosecution case.

56. It is true that in the instant case, informant did not say anything in his fard beyan about the injuries received by the accused Abbas Mian, but during evidence, it was explained by the witnesses that in order to save his brother, the informant took a piece of brick from the ground and threw it towards

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Abbas. It struck on his head and Abbas received bleeding injury on being hit by a piece of brick. Thus, the prosecution explained during trial how Abbas received the injury. The Medical Officer found the said two injuries received by Abbas Mian, simple in nature. P.W. 2 Tanveer Alam, in paragraph 29 of his cross-examination has stated as follows: -

> "29.मुर्शीद तथा मुबारक जहांगीर को जब पकड़े हुए थे तो खुर्शीद उनसे जहांगीर को छुड़ाने का प्रयास नहीं किये। मैं पुलिस को नहीं कहा था कि खुर्शीद मियां, मुर्शीद, मुबारक को रोकने तथा पकड़ने का प्रयास करते थे। जहांगीर को जब वे लोग पकड़े हुए थे उस समय हसनैन था। रामप्रवेश सत्तार थे, उस समय मेरे हाथ में हथियार नहीं था। मोबारक तथा मुर्शीद जब जहांगीर को पकड़े हुए थे उस समय मैनुद्दीन वहां नहीं आये थे। मुर्शीद दाहिने तरफ तथा मुबारक बायें तरफ से पकड़े थे। दोनों आगे से पकड़े थे। मैनुद्दीन आलम आगे पीछे आये। मैनुद्दीन आगे थे। अब्बास पीछे थे। दोनों अपने हाथ में छुरा लिये थे। जब मैं उन दोनों को देखा उस समय वे जहांगीर से तीन चार डेग पर थे। हमलोग मैनुद्दीन अब्बास को रोकने का प्रयास नहीं किया। जिस समय वे दोनों छूरा मारे उस समय मुर्शीद, मुबारक, जहॉगीर को पकड़े हुये थे। जिस समय जहॉगीर को छूरा मारा गया। उस समय गवाह में मैं सत्तार, रामप्रवेश खुर्शिद थे। वहॉ इन चारों गवाहों के अलावा छोड़कर और कोई गवाह नहीं आया। छुरा मारने के वक्त नया बाजार से कोई नहीं आया। छुरा मारने के बाद बहुत आदमी आये। कितना आये गिनती नहीं किया दस आदमी से ज्यादा आये। इस दस आदमी में कमल किशोर, शिवजीत सिंह, विद्या सिंह थे, बाजार के कितने आदमी थे तथा

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> कौन कौन आये थे नहीं कह सकता। ऐसी बात नहीं है कि मैं झूठी गवाही दिया हूं। ऐसी बात नहीं है कि मुदालेह कोई घटना नहीं किये, ऐसी बात नहीं है कि धान के खेत के लिए हमलोगो के साथ मुर्शीद, मोबारक से उसी दिन दो बजे दिन में झंझट हुआ था। उसी के बदला लेने के लिए मैं, खुर्शीद, जहांगीर गये थे और अब्बास को जब खुर्शीद ने ईटा से मारा तो रंज होकर बनबटी गांव तथा नया बाजार के लोगों ने जहांगीर को तनवीर को खुर्शिद को मारे। ऐसी बात नहीं है कि कुर्बानी के गोश्त ले जाने वाली कहानी हमलोग मनगढ़ंत किये हैं, ऐसी बात नहीं है कि मोइनुद्दीन के विरूद्ध हैं। जहांगीर को छुरा से मारने का आरोप गलत लगाया गया है।"

57. The part of cross-examination of P.W. 2, quoted above, establishes the prosecution case beyond any shadow of doubt in first few lines of the evidence. The defence did not specifically deny the prosecution case during the cross-examination of P.W., rather the incident was admitted. In the last part of cross-examination of P.W. 2, it was suggested by defence that on the date of occurrence at about 02.00 p.m., Khurshid (P.W. 1) and Jahangir (deceased) came to the agricultural land of the accused persons to take over illegal control of the same. The accused persons protested. Then Khurshid assaulted Abbas by a piece of brick. Seeing this, the villagers of Banbati and Naya Bazar assaulted Khurshid, Tanveer and Jahangir. P.W. 2 denied defence version in his cross-examination.

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58. Surprisingly enough, the accused persons did not state the said fact while they were examined under Section 313 of the Cr.P.C. Even such defence in the nature of alibi was not tried to be brought on record by adducing defence witness on the principle of preponderance of probability.

59. It emboldens the prosecution case and we have no hesitation to believe the prosecution case beyond any iota of doubt.

60. It is needless to say that the decision of the Court is based on the quality of the evidence and not on the quantity. In the instant case, it is found that P.W. 1 / the Informant is the eye-witness as well as one of the injured in the occurrence. P.W.s 2, 3 and 4 are also the eye witnesses. P.W. 2 received injury on being assaulted by Husnain with the help of Lathi. From the initiation of criminal case as well as during trial, P.W. 1 was consistent that while he and his brother Jahangir were going to the house of Wakil Mian to give some sacrificed meat of Bakrid, they were caught hold by Murshid Mian and Mubarak Hussain. Husnain also came to the spot along with them and they told that they would not get any better opportunity to finish the informant and his brother. Immediately, Moinuddin rushed from behind with a knife in his hand and

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gave a blow on the back side of Jahangir. Simultaneously, Abbas Mian struck with the help of a knife on the front side of Jahangir's shoulder. The commonality of the act, causing death and injury of P.W. 1 and P.W. 2 by the accused persons conclusively suggests that they had common intention to commit murder of Jahangir and in furtherance of their common intention, they not only assaulted Jahangir with the help of knife, other accused persons assaulted Khurshid and Tanveer when they tried to resist them from assaulting Jahangir. The specific act and conduct of each of the accused clearly proves that they had common intention to commit murder of Jahangir and caused injury to the informant and his brother Tanveer.

61. Therefore, the Trial Court rightly held the appellants guilty for committing offences under Sections 302/34 of the Indian Penal Code. We do not find any reason to take a different view in these appeals.

62. Last but not the least, the prosecution during trial also explained the injuries received by the appellant, Abbas Mian. He was assaulted by Khurshid while trying to save his brother from the fatal blow inflicted by Abbas Mian on his shoulder.

63. We put on record the words of appreciation for the

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able assistance rendered by Ms. Surya Nilambari, learned Amicus Curiae, to this Court in arriving at the proper conclusion for deciding this appeal. We direct the High Court Legal Services Committee to pay the admissible amount to Ms. Surya Nilambari, learned Amicus Curiae, for the services rendered by her.

64. In view of such circumstances, we do not find any merit in these appeals, and, accordingly, the same are dismissed.

(Bibek Chaudhuri, J)

Dr. Anshuman, J: - I agree.

(Dr. Anshuman, J)

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AFR/NAFR	NAFR
CAV DATE	15.10.2025
Uploading Date	01.12.2025
Transmission Date	01.12.2025

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