**HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**DIVISION BENCH**

**Criminal Appeal No.200/2006**

1. Ajay Kol, son of Late Kishanlal Kol, aged about 19 years,

2. Nokhelal @ Santosh Kol, son of Ramlal Kol, aged about 19 years,

3. Rajuwa @ Rajesh Kol, Son of Bharatlal, aged about 19 years,

4. Bahadur Kol, Son of Panchamlal, (since deceased)

All residents of village Sarr-Peepar, Nai Basti, Jabalpur (M.P.).

**Versus**

The State of Madhya Pradesh

**PRESENT** : **Hon'ble Shri Justice R.S. Jha**
**Hon'ble Smt. Justice Nandita Dubey**

Whether approved for reporting : **Yes**

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**For the Appellants**:

Shri Surendra Singh, learned Sr. Advocate with Shri Shivam Singh.

**For the State**:

Shri Anubhav Jain, learned Govt. Advocate.

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**Date of hearing: 11/10/2017**
**Date of Judgment: 06/11/2017**

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Law laid down
Significant paragraph numbers :**12 to 15, 21, 27**.

# JUDGMENT

**As per Nandita Dubey, J.:**

This appeal has been filed by the appellants being aggrieved by the judgment dated 13.01.2006, passed by learned 7th Addl. Sessions Judge, Jabalpur, in Sessions Trial No. 189/2004, whereby the appellants have been found guilty for the offence punishable under Section 302/34 of IPC and have been sentenced to undergo life imprisonment.

**2.** It is to be noted that appellant No.4 Bahadur died on 15.03.2013, during the pendency of the appeal and his name was deleted as per Court's order dated 24.01.2014, in such circumstances, the appeal, so far as it relates to appellant No.4 Bahadur stands abated.

**3.** The brief facts leading to this appeal as discerned from the prosecution case are that on 31.12.2003 a programme for celebrating the New Year was organized in the house of PW-6 Lakhanlal, who had arranged for sound box and light decorations. On 01.01.2004, at 12.30 a.m, the programme got over and the guest all left the place, except for PW-4 Bappa @ Kuldeep Saini, PW-6 Lakhanlal, PW-7 Rinku Gonthiya and Ashok Kumar (deceased). After few minutes the

accused persons namely Ajay Kol, Nokhelal, Rajuwa and Bahadur came, armed with sword, hockey stick and lathi respectively. An argument ensued between the appellants and the deceased on account of speaker set and decoration material. It is alleged that all the appellants repeatedly struck the deceased Ashok with their weapons, who fell down. The victim was thereafter dragged and thrown into a culvert. PW-6 Lakhanlal and others brought the unconscious Ashok to Police Station Ranjhi from where he was sent to hospital for treatment. However, on reaching the hospital Ashok was declared dead by P.W.-11 Dr. T.R. Digra.

**4.** FIR (Ex.P-6) to that effect was lodged at Police Station Ranjhi by PW-6 Lakhanlal, on the basis of which criminal law was set into motion. Spot map (Ex.P/7) was made and blood stained earth was seized. Blood stained shoe of the deceased was also seized vide (Ex.P/9). Marg intimation was recorded and the body of the deceased was sent for the postmortem. PW-5 Dr. N.S. Kukrele, who conducted the postmortem found in all 10 injuries over the body of the deceased all antemortem in nature. According to the doctor, injury nos.1 to 6 were caused by sharp edged weapon

and injury nos.8 to 10 were caused by hard and blunt object. In the opinion of the doctor, the death occurred due to excessive bleeding and haemorrhage on account of fracture of the frontal bone and laceration of the brain.

**5.** The accused persons namely Ajay Kol, Bahadur Kol, Nokhelal Kol and Rajuwa @ Rajesh Kol were arrested on 02.01.2004 by PW-12 C.N. Dubey. In his disclosure statement (Ex.P-10), Ajay has stated that he has given the sword to Bahadur. Based on the disclosure statement of Bahadur, the blood stained sword was seized from him. The disclosure statement of Nokhelal (Ex.P/13) led to the recovery of blood stained hockey stick and blood stained lathi were recovered at the instance of Rajuwa @ Rajesh. Besides these, the blood stained clothes were also seized from all the accused persons. All these articles were sealed and sent for chemical examination. After completion of the investigation, the accused persons were charged under Sections 302/34 of the IPC and Section 25 of the Arms Act.

**6.** In order to bring home the charge, the prosecution has examined 12 witnesses. The accused

persons abjured their guilt and pleaded false implication. However, they chose not to examine any witness.

**7.** The learned Additional Session Judge vide judgment dated 13.01.2006 convicted all the accused persons relying on the testimony of the eye-witnesses PW-4 Bappa @ Kuldeep Saini, PW-6 Lakhanlal and PW-7 Rinku Gonthiya.

**8.** Shri Surendra Singh, learned Sr. Counsel appearing on behalf of the appellants in support of the appeal, interalia submitted though :-

(i) Name of one of the appellants, appellant No.4, having not been mentioned in the FIR nor having specified with any weapon by P.W.-6 Lakhanlal and P.W.-7 Rinku Gonthiya, although the parties are resident of the same village, the prosecution story should not have been believed.

(ii) No lathi injuries were found on the body of the deceased, thus the medical evidence rules out participation of appellant No.2 Nokhelal and appellant No.3 Rajesh.

(iii) No blood stain or blood trail was

found between the place of incident and the place where body was found.

(iv) The prosecution story that deceased was assaulted at P.W.-6 Lakhanlal's house and dragged upto the culvert near the shop of Patel is false and fabricated as no abrasions were found on the heels of the deceased.

(v) Since specific overt act has been attributed only against some of the accused persons, those who did not had any weapon and did not take part in the commission of the offence could not have been convicted with the aid of Section 34 of the I.P.C.

(vi) There are major contradictions and discrepancies in the evidence of the witnesses.

**9.** Shri Anubhav Jain, learned Govt. Advocate appearing on behalf of the State, on the other hand has submitted :-

(i) Presence of all the appellants was established by P.W.-1 Kuldeep Raj, P.W.-3 Shanker Chandramurti, P.W.-4 Bappa @ Kuldeep Saini, P.W.-6 Lakhanlal and P.W.-7 Rinku Gonthiya. It was appellant No.4 Bahadur, who started the quarrel by asking for the decoration material. Sword that was used in the commission

of the offence was seized from Appellant No.4 Bahadur.

(ii) Genesis of the incident has been explained by the witnesses. The assault was preplanned and premeditated. P.W.-6 Lakhanlal has stated that the accused persons had fought previously with the brother of the deceased. P.W.-8 Omprakash @ Sonu also affirmed the fact of previous enmity.

(iii) FSL report confirm the presence of blood on the weapon and clothes seized from the accused persons.

(iv) Doctor has stated that the injuries to the deceased were caused by the weapons seized.

(v) Deceased was wearing shoes, as he was pulled and dragged by hands and shirt, no injuries were found on his heels.

**10.** We have heard the counsel for the parties at length and meticulously perused the record.

**11.** The learned Senior counsel appearing for the appellants has seriously questioned the FIR to the effect that FIR does not contain the name of one of the appellants nor was he described as having any

weapon, hence entitled to acquittal. Reliance in this regard is placed on **AIR 2011 SC 632 Sajjan Sharma Vs. State of Bihar**.

**12.** As far as the argument that FIR does not contain the name of appellant No.4 is concerned, it is settled law that FIR is not an encyclopedia of the entire case and any omission in the FIR cannot be said to be fatal to the prosecution case as the involvement of the accused persons cannot be determined solely on the basis of what has been mentioned in the FIR.

**13.** In **Mukesh Vs. State (NCT of Delhi) (2017) 6 SCC 1**, the Supreme Court has observed :-

> "***57.*** *As far as the argument that the FIR does not contain the names of all the accused persons is concerned, it has to be kept in mind that it is settled law that FIR is not an encyclopedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful.*"

**14.** In **State of U.P. Vs. Naresh (2011) 4 SCC 324**, the Supreme Court has opined :

> *Reiterating the principle, the Court opined that it is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from the same. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. For the aforesaid purpose reliance was placed upon* ***Rotash v. State of Rajasthan (2006) 12 SCC 64*** *and* ***Ranjit Singh v. State of M.P. (2011) 4 SCC 336.***

**15.** Similarly in **Rattan Singh Vs. State of H.P. (1997) 4 SCC 161**, the supreme Court has held :-

*"The Court, while repelling the submission for accepting the view of the trial court took note of the fact that there had been omission of the details and observed that the criminal courts should not be fastidious with mere omissions in the first information statement since such statements can neither be expected to be a chronicle of every detail of what happened nor expected to contain an exhaustive catalogue of the events which took place. The person who furnishes the first information to the authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often, the police officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement and hence, any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all.*

**16.** Applying this to the facts of the instant case, we may analyse the evidence on record. As per the prosecution, the incident happened at two places. First at the house of P.W.-6 Lalkhanlal and thereafter near the shop of Chetan. P.W.-4 Bappa @ Kuldeep Saini, who had installed the speaker set, P.W.-6

Lalkhanlal and P.W.-7 Rinku Gonthiya had clearly stated that the accused persons namely, Ajay, Bahadur, Nokhelal and Rajuwa started arguments with deceased Ashok, who was sitting near the speaker set, on account of the speaker set and decoration material. They had attacked and assaulted the deceased. P.W.-4 Bappa @ Kuldeep Saini had specifically stated that appellant No.1 Ajay and appellant No.4 Bahadur were carrying sword, whereas appellant No.2 Nokhelal and appellant No.3 Rajesh were carrying hockey stick and lathi respectively. These witnesses had clearly stated that Ajay hit the deceased on head with a sword, as a result of which Ashok fell down and thereafter all of them started assaulting him simultaneously. Ashok was thereafter picked and carried from collar and hands towards the house of Chunnilal.

**17.** P.W.-1 Kuldeep Raj had stated that while returning from Ranjhi alongwith Shanker (P.W.-3), they saw the accused persons assaulting the deceased near the shop of Chetan. Ajay was holding the deceased, while Bahadur assaulting the deceased with sword and Nokhelal and Rajesh with hockey stick and lathi. He has stated that when they tried to intervene, they were threatened of dire consequences by the accused

persons, hence ran away. He has admitted having personal relations with accused Ajay and Nokhelal and there was no reason for him to falsely implicate the accused persons. Statement of P.W.-1 Kuldeep Raj is corroborated by P.W.-2 Sudersan Patel in material particulars. All these witnesses have been very consistent in their testimony, despite having extensively cross-examined. The evidence of these witnesses clearly established the presence of Bahadur at the place of incident and also his overt act. P.W.-4 Bappa @ Kuldeep Saini, P.W.-6 Lalkhanlal and P.W.-7 Rinku Gonthiya have clarified that out of fear they did not intervene. They went to inform family of Ashok and to P.W.-2 Sudarsan, who thereafter came with them to search for the deceased, whom they found lying unconscious in dry culvert near Chetan's shop. Ashok was thereafter taken in a autorishaw to the police station. Under the circumstances, if P.W.-6 Lakhanlal has omitted to mention the name of one of the appellants, appellant No.4 Bahadur in the FIR as also clarified by him in para 6 of his deposition, the same will not make it fatal to the prosecution story. It is pertinent to mention that on the direction of appellant No.4 Bahadur, the sword was seized from him vide Ex. P-28.

**18.** The impact of omission has to be considered in the backdrop and the totality of the circumstances and merely because the name of Bahadur (appellant No.4) was not mentioned in the FIR, it cannot be said that he was not involved in the incident.

**19.** In view of the aforesaid, the reliance placed by the appellants on the case of **Sajjan Sharma** (supra) has no applicability, as appellant No.4 was not named in the FIR but his name and the overt act figured in the deposition of P.W.-1 Kuldeep Raj, P.W.-2 Sudersan Patel, P.W.-4 Bappa @ Kuldeep Saini, P.W.-6 Lakhanlal and P.W.-7 Rinku Gonthiya.

**20**. An argument was advanced by the learned Sr. Counsel that no lathi/hockey stick injuries were found on the body of the deceased by Dr. N.S. Kukrele (P.W.-5). The medical evidence thus rules out the involvement of Appellant No.2 Nokhelal and appellant No.3 Rajesh, who alleged to have caused injuries by lathi. Rliance in this regard is placed on **Jadu Yadav and others Vs. State of Bihar AIR 1994 SC 957.**

**21.** So far as the discrepancies between ocular

evidence and medical evidence is concerned, the Supreme Court in the case of **Kamaljeet Singh Vs. State of Punjab (2003) 12 SCC 155** the Supreme Court has observed as under :-

> *"8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.*

**22.** In the instant case, P.W.-5 Dr. N.S. Kukrele, who conducted the post mortem of the body of the deceased, reported following injuries :-

> *1. Incised wound - 4cm x 2cm x bone deep right frontal region superior orbital part.*
> *2. Incised wound - 14 cm x 5cm x bone fracture brain tissue comes out right temporal part.*
> *3. Incised wound - 5cm x 3 cm x bone deep superior to injury No.2 size 1 cm.*
> *4. Incised wound - 3cm x 2 cm x bone deep right parietal region.*
> *5. Incised wound – 1cm x 1/2 cm at left frontal region.*
> *6. Incised wound – 1cm x 0.5 cm x muscle deep back and right index*

*finger.*
*7. Abrasion – 6cm x 4cm at left frontal region below injury No.5.*
*8. Abrasion - 5cm x 4cm at right cheek.*
*9. Abrasion - 10 cm x 6 cm at left side of chest interior to left nipple.*
*10. Abrasion- 4cm x 2cm at left pelvic region.*

According to Dr. N.S. Kukrele, injury Nos. 1 to 6 were caused by sharp edged weapon, whereas injury Nos. 7-10 were caused by hard and blunt object.

**23.** In the case of **Jadu Yadav** (supra), all the injuries on the body of the deceased were incised wound, opined to have been caused by sharp cutting weapon. Under such factual aspect, the conviction of accused persons carrying lathi was set aside. In the instant case, a specific query was put to Dr. N.S. Kukrele as to whether these injuries could be caused by the seized weapon. He has stated that injury Nos. 1, 4, 5 and 6 have been caused by the seized sword and injury Nos. 2 and 3 could be caused by the seized hockey stick and lathi. He has further stated that injury Nos.7 to 10 could be the result of fall. It is thus clear that there is no discrepancy, as far as the medical evidence and the ocular evidence is concerned and the

prosecution version relating to assault by lathi and hockey stick substantially tallied with the medical evidence. It is pertinent to mention that vide Ex. P-14, hockey stick was seized from Nokhelal and on direction of Rajesh vide Ex.P-16, lathi was seized.

**24.** The case of prosecution is attacked contending that P.W.-1 Kuldeep Raj, P.W.-2 Sudarshan, P.W.-4 Bappa @ Kuldeep Saini, P.W.-6 Lalkhanlal and P.W.-7 Rinku Gonthiya are all planted witness and the story of dragging was introduced only to bring these witnesses into picture. It is submitted by learned Senior Counsel for the appellants that absence of blood trail and abrasions on the heel of deceased raises serious doubt about the prosecution version. Reliance in this regard is placed on **AIR 1987 SC 826 Amar Singh and others Vs. State of Punjab** and **AIR 1976 SC 2191 Akoijam Ranbir Singh Vs. State of Manipur**.

**25.** It is evident from the statement of witnesses that the deceased was wearing shoes, hence did not receive any abrasion on his heels. It is pertinent to mention that one of his blood stained shoe was recovered from the road near the shop of Chetan. It is

also established from the statement of the witnesses that it was a busy road and there was a lot of traffic, due to the new year. Under these circumstances, absence of blood trail or dragging marks on the road will not make any difference to the veracity of the prosecution case.

**26.** In the aforesaid facts and circumstances of the case, the reliance placed by the appellants on the decision of the Supreme Court in the cases of **Amar Singh** (supra) and **Akoijam Ranbir Singh** (supra) has no applicability, as the facts of case before the Supreme Court were totally different from the facts that are existing in the present case.

**27.** In this case, the facts clearly demonstrative that the accused persons had motive and came with preintent, armed with deadly weapons. In **Gurudatta Mal Vs. State of U.P. AIR 1965 SC 257**, the Supreme Court has observed :-

> *"9.......It is well settled that Section 34 of the Penal Code does not create a distinct offence; it only lays down the principle of joint criminal liability. The necessary conditions for the application of Section 34 of the Code are common intention to commit an offence and participation by all the accused in doing*

> *act or acts in furtherance of that common intention. If these two ingredients are established, all the accused would be liable for the said offence"*

**28.** From the aforesaid analysis of the material on record, it is apparent that the commission of the offence by the appellants is clearly established beyond reasonable doubt and the trial Court has rightly analyzed and considered the statements of the eye witnesses and other factors to record a finding of guilt against the appellants.

**29.** In the circumstances, the conviction of the appellants under Section 304/34 of the I.P.C. on account of having committed the murder of Ashok is affirmed and upheld and the sentence imposed upon the appellants by the trial Court is also confirmed.

**30.** In view of the aforesaid, the appeal filed by the appellants, being devoid of merit is accordingly dismissed.

**31.** It is informed that the appellant No.1 is in jail, it is ordered that he shall suffer out the remaining part of his sentence in accordance with the conviction recorded by the trial Court. Appellant No.2 and 3 are

on bail. Their bail bonds shall stand cancelled and they are directed to surrender forthwith to undergo the remaining part of jail sentence.

**(R.S.Jha)**
**JUDGE**
**06/11/2017**

**(Nandita Dubey)**
**JUDGE**
**06/11/2017**

b/gn