

HIGH COURT OF MADHYA PRADESH AT JABALPUR**CRIMINAL APPEAL NO.146/2009**

Indu @ Indrapal Singh and another..... Appellants

Versus

The State of Madhya Pradesh..... Respondent

For the appellant No.1 : Mr.Vikash Mahawar , Advocate

For the appellant No.2 : Mr.L.N. Sakle, Advocate

For the respondent/State : Mr.Manhar Dixit, Panel Lawyer

Present:

HON'BLE MR. JUSTICE ATUL SREEDHARAN

HON'BLE MRS. JUSTICE SUNITA YADAV

J U D G M E N T

(28.07.2021)

Per : Sunita Yadav, J.

This appeal has been filed against the judgment dated 29.11.2008 in Sessions Trial No.2/2007, passed by Sixth Additional Sessions Judge, Fast Track Court, Chhatarpur by which appellant No.1 Indu @ Indrapal Singh has been convicted under Section 302 of IPC and sentenced to undergo life imprisonment and a fine of Rs.5000/-,in default of payment of fine, additional rigorous imprisonment for 2 years, under Section 307 of the Indian Penal Code rigorous imprisonment for 7 years and a fine of Rs.2000/- in

default of payment of fine additional rigorous imprisonment of one year, under Section 25/27 of the Arms Act rigorous imprisonment for 3 years and a fine of Rs.1000/-, failing which simple imprisonment for six months and Appellant No.2 Devendra Singh @ Pappu Raja has been convicted under Section 302/34 and sentenced to undergo life imprisonment and a fine of Rs.5000/-, in default of payment of fine, additional rigorous imprisonment for 2 years, under Section 307/34 of the IPC rigorous imprisonment for 7 years and a fine of Rs.2000/- in default of payment of fine additional rigorous imprisonment of one year.

2. For the sake of convenience, the appellants shall be referred as accused persons and the respondent as prosecution hereinafter.

3. The case of prosecution, in brief, is that accused Indu @ Indrapal had enmity with deceased Khuman Patel because Khuman had slapped Indu three years before. On 17.09.2006 at about 7:00 p.m. in village Darguwa in the field of Bachchu Patwari, accused Indu @ Indrapal and Devendra Singh @ Pappu Raja arrived where Khuman Patel, Santosh Patel and Shankar Patel were working. Accused Indrapal was carrying a gun and Devendra Singh @ Pappu Raja had an axe in his hand. Accused Indrapal uttered obscene words and ordered Khuman, Santosh

and Shankar to stand in a line. Then he asked whom should he shot at first. When Khuman asked the accused why were they killing them, accused Devendra Singh said "kill them all". After that Accused Indu @ Indrapal fired at Khuman Patel on his chest who died on the spot. When Shankar tried to escape, accused Indu @ Indrapal fired at him too. The bullet hit Shankar's left hand. Devideen Patel and Santosh, who were present at the time of incident in the same field, came running to their village and told the entire incident to sarpanch Harsevak Patel, Nandu Patel and Balkishan Patel.

4. Injured Shankar was taken to the Police Station Satai where he lodged a report. The report was registered under crime no. zero. The FIR was registered by Police Station Pipat as the place of incident falls within its jurisdiction.

5. The concerned police station completed the investigation and filed the charge sheet against the accused persons under Sections 302/34,307/34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act.

6. The learned trial Court framed charges for the offence under Sections 302, 307 of the IPC and Sections 25, 27 of the Arms Act against the accused Indu @ Indrapal and also framed charges under Sections 302/34, 307/34 of the IPC against accused

Devendra Singh @ Ghappu Raja. The accused persons denied their guilt and stated that they are innocent and pleaded for trial raising defence of false implication.

7. The Learned trial Court after trial of the case and on the basis of the evidence and material came on record found the accused persons guilty of the offences as mentioned above and sentenced them as per the impugned judgment.

8. As per the prosecution story, Shankar Patel (PW-12) Santosh (PW-6) and Devideen (PW-14) are the eyewitnesses. Santosh (PW-6) has corroborated the story of prosecution. However, Shankar Patel (PW-12), who had lodged the First Information Report, has turned hostile and only corroborated the part of the prosecution story about his receiving gun fire injury on his left hand. This witness has denied that it was accused Indrapal who shot at him with intent to kill him.

9. Devideen (PW-14) has corroborated the prosecution story in his examination-in-chief. However, this witness has turned hostile during his cross-examination. At para 23 of his statement PW-14-Devideen has categorically admitted that after the death of Khuman, accused persons lodged an FIR under Section 307 of the Indian Penal Code against the complainant party in which both parties had entered into a compromise and because of that

he had changed his version about the incident. PW-12 Shankar who is the brother of Devideen has also admitted in his statement at para-5 that Durg Singh had got a false case registered against them to put the pressure upon them and in that case they have reached a compromise. Looking to the above admission of the witness Devideen (PW-14), and Shankar (PW-12) the possibility of their turning hostile to save the accused persons because of the compromise in the criminal case registered against them by the father of accused cannot be ruled out. Therefore, the prosecution story cannot be disbelieved only on account of the statements of Shankar (PW-12) and Devideen (PW-14) who have turned hostile.

10. From a perusal of First Information Report Exhibit P-2, it transpires that the same was lodged on the date of incident within half an hour from the time of incident by injured Shankar (PW-12). Complainant Shankar (PW-12) was examined by Dr. B.S. Chourasiya (PW-9) on 18.09.2006. Dr. Chourasiya had found a gun shot injury on the left hand of Shankar which corroborates the prosecution case and the statement of Santosh (PW-6). The time gap between the incident and the report was too short to concoct a false story against the accused persons.

11. PW-6 Santosh who is the eye witness remained unshaken

during his cross-examination. Nothing emerged in his cross-examination to disbelieve his statement. Medical report of injured Shankar and P.M. report of Khuman also support his statement. Therefore, there is no reason to disbelieve his statement. Hence, it is proved beyond any reasonable doubt that the accused Indu @ Indrapal has committed the murder of Khuman and attempted to murder Shankar.

12. Now it is to be considered whether the accused Devendra @ Pappu Raja had common intention to commit the crime with co-accused Indu@ Indrapal ? To invoke Section 34 of Indian Penal Code, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore be proved that (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually committed by them in furtherance of that common intention. The essence of liability under Section 34 of Indian Penal Code is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-plan and acting in concert pursuant to the pre-arranged plan. Common

intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention.

13. In the present case, as per prosecution story, at the time of incident, accused Devendra @ Pappu Raja was carrying an axe in his hand but this is not the case of prosecution that this accused has participated in any manner to cause injuries to deceased Khuman or Shankar with co-accused Indu @ Indrapal. It is apparent that the eye witness PW-6 Santosh has also not attributed any act to this accused to commit the crime by using the said axe. The prosecution has not even got the independent witnesses examined to prove the seizure of the said axe. As per the court evidence of PW-6 Santosh at para -1 accused Indrapal and Devendra arrived in the field where they were working and accused Indrapal had fired at Khuman on his chest. This witness does not say that after the instigation of accused Devendra @ Pappu, co-accused Indrapal had fired at Khuman. Therefore, the participation of accused Devendra @ Pappu Raja in the crime with co-accused Indu@Indrapal with common intention and pre-arranged plan has not been proved. Prosecution has not put forth any fact about the previous enmity of this accused with deceased Khuman or Shankar. Consequently, the offence under Section

302/34 and Section 307/34 of the Indian Penal Code is not proved beyond reasonable doubt against him.

14. The prosecution has duly proved the seizure of a 12 bore gun and cartridges from the possession of accused Indrapal Singh through the evidence of B.S. Parihar (PW-18) and Jamna Prasad (PW-13). It has also been proved that the accused Indu @ Indrapal has used the said fire arm to commit the crime as mentioned above. Therefore, the conviction of accused Indu@ Indrapal under Section 25 and 27 Arms Act is found to be in accordance with law and facts.

15. Learned counsel for the appellant Indu @ Indrapal submitted during the arguments that the prosecution case is vitiated because Police Station Satai had gone beyond its territorial jurisdiction and did primary investigation before sending the case to police station Pipat who had the territorial jurisdiction to investigate the case. But the above argument is not tenable because this case is based on direct evidence and the direct evidence of the eye witness has been found reliable. Hon'ble Supreme Court in the case of **State of Rajasthan vs Kishore 1996 SCC (Cri) 646: (1996) 8 SCC 217: 1996 Cr. L.J 2003** held that "mere fact that the Investigating Officer committed irregularity or illegality during the course of the

investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be set aside to record acquittal on that account." Similarly in the case of **Amar Singh vs. Balwinder Singh and Others AIR 2003 SC 1164: 2003(2) SCC 518: 2003 SCC(Cri) 641** it was held by Hon'ble Supreme Court that "If the prosecution case is established by the evidence adduced, any failure or omission on the part of the Investigating Officer cannot render the case of the prosecution doubtful".

16. In light of the above discussion, the appeal filed by accused Indu @ Indrapal Singh is dismissed hereby. His conviction and sentence under Sections 302, 307 of the Indian Penal Code and section 25/27 of the Arms Act, is affirmed. The appeal filed by accused Devendra Singh @ Pappu Raja is allowed. The impugned judgment with regard to this appellant is set aside and he is acquitted from the offence under Sections 302/34 and 307/34 of the Indian Penal Code.

(Atul Sreedharan)
Judge

(Sunita Yadav)
Judge