

KAPILDEO SINGH AND ORS.

v.

STATE OF BIHAR

APRIL 7, 1993

[DR. A. S. ANAND AND N.P. SINGH, JJ.]

Indian Penal Code, 1860:

Sections 34, 148, 149, 302, 324 and 326—Murder and causing grievous injury—Common intention—Proof of—Conviction altered to one u/s. 302 r/w/s 34—Benefit of doubt—Acquittal of certain accused.

The appellants were charged with offences under Sections 302/149, 148, 324 and 326 IPC-for causing the murder of one 'S' and for causing grievous injury to one 'R'. The Trial Court acquitted them. On appeal by the State, the High Court reversed the order of acquittal. Aggrieved by the High Court's judgment, the appellants preferred the present appeal.

It was contended on behalf of the appellants that the version of the occurrence given by PW 11 in his statement recorded viz. Ex. P12 was materially different from the statement of PW 13 recorded as FIR (Ex.7) and gave a lie to the prosecution case rendering the prosecution case doubtful; that the High Court erroneously ignored the statement of PW 11 holding it inadmissible in evidence on the ground that it had been recorded during the investigation; and that due to the admitted enmity between the parties and the hostility of the Mukhiya of the Gram Panchayat towards A1 and A2, it would not be safe to rely upon the testimony of the prosecution witnesses without looking for independent corroboration and in the absence of which the conviction of the appellants was not justified.

Partly allowing the appeal, this Court,

HELD: 1. In view of the admitted enmity between the parties and the close relationship of the witnesses *inter-se* and the close relationship of the accused persons with one another, the possibility that

A alongwith the actual assailants some others have also been implicated
cannot be ruled out. Prudence therefore requires that this court
should look for corroboration of the testimony of PW 13 in respect of
each of the accused before finding them guilty. Since, the prosecution
witnesses knew each of the accused, the non-identification by any one
of them of A5, A6 and A7 renders the presence of these accused and
B their participation rather doubtful. It is not possible to say with any
amount of certainty that they were actually involved in the commis-
sion of the crime along with the other accused persons. Of course, PW
13 would not leave her own assailants or the assailants of her father,
C the parties, the close relations of A1, A2, A3 and A4, namely, accused
A5, A6 and A7 may have also been roped in (8-H, 9-A-C).

2. Though PW 10 and PW 12 did not recognize A4 as one of the
accused but the participation of A4, who according to PW 13 had
D given her the blow with the grasa chopping off her two fingers of the
left hand, has been conclusively established. The presence of A3, since
deceased, is admitted by all the prosecution witnesses. The testimony
of PW 13, is consistent about the participation of A1 and A2 alongwith
A4 in the crime. In spite of lengthy cross-examination nothing has been
brought out to discredit her testimony in so far as either the occur-
E rence or the actual assault on her and the deceased is concerned. The
ocular testimony regarding the participation of the accused in the
crime as well as the manner of assault and the nature of weapons used
by A1, A2 and A4 for causing injuries has received ample corrobora-
tion from the medical evidence and the recovery of the blood stained
F clothes and earth from the place of occurrence. The FIR lodged
promptly by the injured witnesses also lends enough assurance as
regards the participation of A1, A2, A3 and A4 in the crime. Thus, the
prosecution has established the case against A1, A2, A3 (since dead)
and A4, beyond any reasonable doubt (9-D-G)

G 3. Since, the presence of A5, A6 and A7 and their participation
in the crime is in doubt they are entitled to the benefit of doubt and
giving them the benefit of doubt, their conviction and sentence are set
aside and they are acquitted. With their acquittal it is only the four
appellants A1, A2, A3 and A4 against whom the prosecution can be
H said to have established its case beyond reasonable doubt. Section 148
IPC under the circumstances would have no application. Similarly,

Section 149 IPC would also not be attracted and A2, A3 and A4 cannot be convicted under Section 302 with the aid of Section 149 IPC. From the prosecution evidence, however, it stands amply established that the three appellants, A1, A2 and A4 alongwith A3 (since dead) had come together armed with deadly weapons to the house of the deceased and while A1 had fired pistol shot at the deceased resulting in his death, A2 had fired from his gun at PW 13 causing her a serious injury on her breast while A4 had caused her grievous injuries with a grasa resulting in the chopping off two of her fingers on the left hand. The crime was committed in the presence of A3. Therefore, while A2, A3 and A4 cannot be convicted for the offence under Section 302/149 IPC all of them can be said to have shared the common intention with A1 for committing the murder of the deceased. The very fact that A1, A2, A3 and A4 came together armed with deadly weapons, at the night, to the house of the deceased and caused deadly injuries to the deceased and seriously wounded PW 13 and thereafter escaped together would undoubtedly go to show that all of them shared the common intention. They are, therefore, liable to be convicted with the aid of section 34 IPC. (9-H, 10-A-F)

5. The evidence on record has established beyond any doubt that A1 committed the murder of the deceased by firing the pistol shot. He has, therefore, rightly been convicted by the High Court for the offence under Section 302 IPC and sentenced to suffer imprisonment for life. His conviction for the offence under Section 27 of the Arms Act and the sentence of two years R.I. is also justified. Hence, his conviction and sentence on both counts is maintained. However, the conviction of A2, A3, and A4, for the offence under section 302/149 IPC is altered to the one under Section 302/34 IPC. A2 and A4 are sentenced to suffer imprisonment for life (A3 being already dead). The conviction of A1, A2 and A4 for the offence under Section 148 is, however, set aside. The conviction and sentence of the appellants under S. 27 of the Arms Act and under Sections 324 and 326 IPC are maintained. The sentence of imprisonment imposed on A1, A2 and A4 on different counts shall, however, run concurrently. (10-H, 11-A-C)

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 540 of 1985.

From the Judgment and Order dated 27.3.85 & 22.5.85 of the Patna High Court in Govt. Appeal No. 28 of 1979.

B Udai Narain Sinha and M.P. Jha for the Appellants.

D. Goburdhan for the Respondent.

C The Judgment of the Court was delivered by

DR. ANAND, J. This appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, is directed against the judgment and order of the High Court of Patna dated 27th March, 1985 in Government Appeal No. 28 of 1979, convicting and sentencing the appellants, Shatrugan Singh (A1), Kapildeo Singh (A2), Rampriya Yadav (A4), Brij Bihari Singh (A5), Ram Ekbal Singh (A6) and Suresh Singh (A7), (Awadesh Singh (A3) died after the judgment of the High Court) for offences under Sections 302, 302/149, 148, 324 and 326 IPC, by reversing an order of acquittal recorded by the Additional Sessions Judge VI, Patna dated 28th April 1979.

F While A1 and A2 are brothers, A3 is the son of A2, A4 is a ploughman of A1, A5 is the son-in-law of A2, A6 is the brother-in-law of A3 and A7 is the son of A6.

G The prosecution case in brief is that the deceased Shyamdeo Singh was on enimical terms with A1 and A2 and litigation was going on between the two parties. On the night intervening 12/13 October 1977, at about mid-night at village Malia Gaura, the appellants along with Awadesh Singh A3, variously armed went to the house of the deceased and knocked at the door of the room in which he was sleeping. Rajmani Devi PW 13, the daughter of the deceased alongwith her ailing child was also sleeping in the same room. On hearing the knocking, she opened the door and found A1, A3 and A5 armed with pistols, A2 armed with a gun, A4 and A7 armed with a grasa each and **H** A6 armed with a dagger present there. As soon as she opened the door

Kapildeo Singh A2 fired from his gun at her causing an injury to her person. Rampriya Yadav A4 hurled a grasa blow as a result of which two of her fingers of the left hand were chopped off. Ram Ekbal Singh A6, thereupon, told his companions to spare her and to kill her father, Shyamdeo Singh, for which purpose they had come there. Rajmani Devi PW13 was pushed aside by the accused who entered the room. When her father moved towards her, A1 Shatrugan Singh opened fire at him with his pistol aiming it at his chest. Shyamdeo Singh on receipt of the pistol shot fell down in the room and died. Ram Ekabal Singh A6 hurled a dagger below on the deceased. After committing the crime, the accused party opened the entrance door and fled away. While they were retreating, some villagers who were coming towards the house of the deceased on hearing the noise were also attacked and in the process a gun shot injury was caused to Basant Sao PW11. The villagers, thereafter, made arrangements for a cot to carry Rajmani Devi PW13 to the Police Station and while going to the Police Station, they stopped at the house of the local Mukhiya, Ram Nandan Singh PW 8, who also accompanied her to the Police Station Naubatpur. Basant Sao PW 11 was also brought to Naubatpur Police Station on a cot by his relations and villagers. On the basis of the statement of Rajmani Devi PW13, FIR Ex. 7 was drawn up at the Police Station Naubatpur and a case was registered in the early hours of the morning of 13.10.1977. Investigation was immediately taken up by Parmeshwar Parshad Singh PW 15 and both the injured Rajmani Devi PW 13 and Basant Sao PW 11 were sent for treatment to Naubatpur Hospital where their injuries were examined by Dr. Ramesh Kumar Rai PW14. Considering the serious nature of the injuries of Basant Sao PW11, he was referred to Patna Medical College Hospital. The investigating officer Parmeshwar Prasad Singh PW15 visited the place of occurrence and prepared the inquest report of the dead body of Shyamdeo Singh and sent the body for post-mortem examination. During the investigation, the investigating officer PW15 seized blood stained earth from the place of occurrence. An empty cartridge was produced before the investigating officer by one Ram Rekha Singh. After Basant Sao PW11 reached PMCH for treatment, information was sent by the doctor to the local police of PIRBAHORE Police Station. ASI Ram Lakhan Jha of PIRBAHORE Police Station went to the hospital and recorded the statement of Basant Sao PW11, Ex. 12 on 14.10.1977 at about 8 P.M., after Basant Sao PW11 had regained consciousness. He sent the same to the officer-

A in-charge of Naubatpur Police Station.

Mr. Udai Sinha, learned senior advocate, appearing for the appellants submitted that the version of the occurrence given by Basant Sao PW11 in his statement recorded at PMCH by Ram Lakhan Jha DW1 (Ex. 12) was materially different from the statement of Rajmani Devi PW13 recorded as FIR Ex. 7 at Police Station Naubatpur and gave a lie to the prosecution case rendering the prosecution case doubtful. Learned counsel submitted that the High Court erroneously ignored the statement of Basant Sao PW11 holding it inadmissible in evidence on the ground that it had been recorded after the investigation in the instant case had started on the FIR being lodged by Rajmani Devi PW 13. According to the learned counsel, statement of Basant Sao, Ex. 12 could not be said to have been recorded during the investigation of the case and should not have been ruled out of consideration. We cannot agree. In our opinion, the High Court was justified in ignoring the statement of Basant Sao, Ex. 12, as it admittedly was recorded during the investigation of the case registered on the basis of FIR Ex. 7 and had been sent to the investigating officer PW 15 by Ram Lakhan Jha DW1. The statement was, therefore, hit by Section 162Cr. P.C. and could not be read in evidence. Even if it be assumed for the sake of argument, though without accepting it, that Ex. 12 was in the nature of an FIR lodged by Basant Sao PW11, the same could not have been brought on record as not only Basant Sao PW11 denied making any such statement, he was not even confronted with the alleged statement Ex. 12 nor his signatures got proved on it. Ex. 12 could not, therefore, be read at all in evidence. The trial court not only committed an error in bringing on record Ex. 12 and reading it in evidence but also going further and comparing it with FIR Ex. 7 lodged by Rajmani Devi and finding discrepancies in the two documents.

Learned counsel then submitted that due to the admitted enmity between the parties and the hostility of the Mukhiya of the Gram Panchayat, PW8 towards A1 and A2, it would not be safe to rely upon the testimony of the prosecution witnesses without looking for independent corroboration and since none was forth coming in the case, the conviction of the appellants was not justified.

H In view of the hostile relations between the parties and the fact that all the accused are closely related to each other and the prosecution

witnesses are also closely related or connected with each other, we have scrutinised the evidence on the record with care. A

Our independent and careful appraisal of the evidence on the record has convinced us that the version given by the first informant, PW13, about the occurrence in the first FIR Ex. 7, lodged almost within three hours of the occurrence, is a truthful version of the manner in which she had received the injuries as also how her father had been shot at and as to who the assailants were. Rajmani Devi PW13, is the injured person and as such she would be the last person to spare her real assailants or the assailants of her father and substitute the real assailants by innocent persons. She was the first victim of the assault. Her statement in court corroborates FIR Ex. 7 and the medical evidence and the testimony of other witnesses lends sufficient corroboration to her testimony. From the evidence on the record it is established that Rajmani Devi PW13 was sleeping along with her child in the same room as her father, deceased Shyamdeo Singh, at the time of the occurrence. She knew all the appellants and she had enough time to see them in the light of the burning lantern. It is the consistent case of prosecution witnesses PW9, PW10 and PW12 that a lantern was burning in the room and the mere fact that the investigating officer failed to take the lantern into possession cannot render the testimony of these witnesses doubtful. B
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Rajmani Devi PW13 attributed specific acts to Kapildeo Singh A1 and Rampriya Yadav A4 in so far as the injuries on her own person were concerned and to Shatrugan Singh A1 in so far as the fatal pistol shot on her father was concerned. She, of course, deposed that the other accused persons variously armed were also present at the time of occurrence. F

Kunti Devi PW10, the sister of Rajmani Devi PW13, stated that after hearing the sound of gun shot she woke up and went into the room where her sister was sleeping with the child. She then went on to say "I saw that the accused Kapildeo Singh, Shatrugan Singh and Awadesh Singh were coming out from the room of my father. Besides these other people were also there but I could not recognize them due to darkness. A lantern was litting up in the room of my father. I had recognised the aforesaid three accused persons in the lantern light". This witness, G
H

A therefore, recognized only A1, A2 and A3, though she knew all the
accused persons. Varat Devi PW12, the sister-in-law of the deceased,
Shyamdeo Singh, who was also present in the house on the night of the
occurrence and was sleeping in another room with Kunti PW10 and the
wife of the deceased deposed that at mid night she heard the shot of a
gun and as she got up and opened the door to go out, she saw some
B persons coming out from Shyamdeo Singh's room. She went on to say
that "out of them, I recognized Kapildeo Singh, Shatrugan Singh and
Awadesh Singh. All the three accused persons are present in the court".
C This witness also thus recognized only three accused A1, A2 and A4,
even though according to the prosecution case, all the accused were
known to her.

Ram Nandan Singh PW8, who according to the prosecution case,
being the Mukhiya of the village went to the police station, stated in his
examination that he had told the police that seven persons had their
hand in the killing of the deceased but admitted in the cross-examina-
D tion that before the police, he had named only two accused persons,
namely, Kapildeo Singh A2 and Shatrugan Singh A1 as the assailants.

Rajeshwar Singh PW5, a neighbour of the deceased, who woke
up on hearing the firing of the gun and went to the house of the deceased
E stated that he had seen the deceased Shyamdeo Singh lying and
Rajmani Devi PW13 sitting near the dead body with injuries on her
breast and fingers and that on his inquiry from Rajmani Devi PW13 as
to what had happened was told by her that Kapildeo Singh had caused
her the injury by his gun and that Rampriya Yadav had cut her fingers
F with a grasa and that Shatrugan Singh had killed her father by the shot
of pistol. This witness has also, therefore, supported PW13 about the
manner of assault and the nomination of the actual assailants.

From an analysis of the evidence referred to above, it is clear that
while Rajmani Devi PW13 had named all the seven accused, she had
G attributed specific acts only to Kapildeo Singh A2, Rampriya Yadav
A4, and Shatrugan Singh A1. Kunti Devi PW10 and Varat Devi PW12,
on their own showing had recognized only Kapildeo Singh A2,
Shatrugan Singh A1 and Awadesh Singh A3. They did not recognize
and other accused persons even though they were known to them. PW5
H also did not state that Rajmani Devi PW13 had given to him the name:

of any other accused, when he had reached her house soon after the occurrence. In view of the admitted enmity between the parties and the close relationship of the witnesses *inter-se* and the close relationship of the accused persons with one another, the possibility that along with the actual assailants some other have also been implicated cannot be ruled out. Prudence therefore requires that this court should look for corroboration of the testimony of PW13 in respect of each of the accused before finding them guilty. Since, the prosecution witnesses referred to above knew each of the accused, the non-identification by any one of them of A5, A6 and A7 renders the presence of these accused and their participation rather doubtful. It is not possible to say with any amount of certainty that they were actually involved in the commission of crime with the other accused persons. Of course, PW13 would not leave her own assailants or the assailants of her father, but it is not unknown that in view of the pronounced hostility between the parties, the close relations of A1, A2, A3 and A4, namely, accused A5, A6 and A7 may have also been roped in.

Though PW10 and PW12 did not recognize Rampriya Yadav A4 as one of the accused but the participation of Rampriya Yadav A4, who according to Rajmani Devi PW13 had given her the blow with the grasa chopping off her two fingers of the left hand, in our opinion has been conclusively established. The presence of Awadesh Singh A3, since deceased, is admitted by all the prosecution witnesses. The testimony of Rajmani Devi PW13, is consistent about the participation of Shatrugan Singh A1 and Kapildeo Singh A2 alongwith Rampriya Yadav A4 in the crime. In spite of lengthy cross-examination nothing has been brought out to discredit her testimony in so far as either the occurrence or the actual assault on her and the deceased is concerned. The ocular testimony regarding the participation of the accused in the crime as well as the manner of assault and the nature of weapons used by A1, A2 and A4 for causing injuries has received ample corroboration from the medical evidence and the recovery of the blood stained clothes and earth from the place of occurrence. The FIR lodged by the injured witnesses promptly also lends enough assurance as regards the participation of A1, A2, A3 and A4 in the crime. We have, therefore, no hesitation to hold that the prosecution has established the case against Shatrugan Singh A1, Kapildeo Singh A2, Awadesh Singh A3 (since dead) and Rampriya Yadav A4, beyond any reasonable doubt.

A This now takes us to the question of the nature of the offence committed by the aforesaid four appellants. Since, we have doubted the presence of A5, A6 and A7 and their participation in the crime, they are entitled to the benefit of doubt and giving them the benefit of doubt, we allow their appeal and setting aside their conviction and sentence acquit them.

B

With the acquittal of A5, A6 and A7, it is only the four appellants A1, A2, A3 and A4 against whom the prosecution can be said to have established its case beyond a reasonable doubt. Section 148 IPC under the circumstances would have no application. Similarly, Section 149

C IPC would also not be attracted and A2, A3 and A4 cannot be convicted under Section 302 with the aid of Section 149 IPC. From the prosecution evidence, however, it stands amply established that the three appellants, A1, A2 and A4 alongwith A3 (since dead) had come together armed with deadly weapons to the house of the deceased

D Shyamdeo Singh and while A1 Shatrugan Singh had fired pistol shot at Shyamdeo Singh resulting in his death, Kapildeo Singh A2 had fired from his gun at Rajmani Devi PW13, causing her a serious injury on her breast while Rampriya Yadav A4 had caused her grievous injuries with a grasa resulting in the chopping off two of her fingers of the left hand. The crime was committed in the presence of Awadesh Singh A3.

E Therefore, while A2, A3 and A4 cannot be convicted for the offence under Section 302/149 IPC all of them can be said to have shared the common intention, with Shatrugan Singh A1, for committing the murder of Shyamdeo Singh deceased. The very fact of A1, A2, A3 and A4 came together armed with deadly weapons, at the night, to the house of the deceased and cause deadly injuries to the deceased and

F seriously wounded Rajmani Devi PW 13 and thereafter escaped together would undoubtedly go to show that all of them shared the common intention to murder Shyamdeo Singh. They are, therefore, liable to be convicted with the aid of Section 34 IPC and learned counsel was unable to point out any impediment in the way of

G convicting them with the aid of Section 34 IPC instead of Section 149 IPC.

The evidence on the record has established beyond any doubt that Shatrugan Singh A1 committed the murder of Shyamdeo Singh

H deceased by firing the pistol shot. He has, therefore, rightly been

convicted by the High Court for the offence under Section 302 IPC and sentenced to suffer imprisonment for life. His conviction for the offence under Section 27 of the Arms Act and the sentence of two years R.I. is also justified. We, maintain his conviction and sentence on both counts. We, however, alter the conviction of Kapildeo Singh A2, Awadesh Singh A3 and Rampriya Yadav A4, for the offence under Section 302/149 IPC to the one under Section 302/34 IPC and sentence A2 and A4 each to suffer imprisonment for life (A3 being already dead). We maintain the conviction of Kapildeo Singh A2 for the offence under Section 27 of the Arms Act as also the sentence of two years R.I. imposed on him for the said offence. His conviction and sentence for an offence under Section 324 IPC as recorded by the High Court is also maintained. Rampriya Yadav A4 has also been convicted for the offence under Section 326 IPC and sentenced to three years R.I. We maintain his conviction and sentence for the said offence. The conviction of A1, A2 and A4 for the offence under Section 148 is, however, set aside. The sentence of imprisonment imposed on A1, A2 and A4 on different counts shall, however, run concurrently.

As a result of the above discussion, the appeal of Brij Bihari Singh A5, Ram Ekbal Singh A6 and Suresh Singh A7 is accepted and allowed. Their conviction and sentence, as recorded by the High Court, are set aside. They are given the benefit of the doubt and acquitted. They are on bail. Their bail bonds shall stand discharged.

The appeal of A1, A2 and A4 except to the extent of the modification of the judgment under appeal, as indicated above, is dismissed. All the three appellants Shatrugan Singh A1, Kapildeo Singh A2 and Rampriya Yadav A4 are on bail. Their bail bonds shall stand cancelled. They shall be taken into custody to undergo the remaining period of their sentence.

G.N.

Appeal partly allowed.