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AFR



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2399 of 1983

Raghuver and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Ajay Kumar Pandey, G.C.Saxena, Jaysingh Yadav, Y.S. Saxena
Counsel for Respondent(s)	: D.G.A.

Court No. - 44

HON'BLE SIDDHARTH, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Sri Ajay Kumar Pandey, learned Amicus Curiae for appellants, Sri G.N. Kanaujia, learned AGA-I for State-respondent and perused the trial court record and judgment and order of the trial court.

2. This criminal appeal has been preferred by the appellants Raghuver, Hira, Idal and Chhakki against the judgment and order of the learned Sessions Judge, Lalitpur dated 03.10.1983 passed in Sessions Trial No. 147 of 1982, arising out of crime No. 54 of 1982, Police Station Talbehat, District Lalitpur. By the impugned judgment and order dated 03.10.1983, the learned Trial Court found guilty to accused appellants Raghuver, Hira, Idal and Chhakki under Section 302 read with Section 34 I.P.C., and sentenced to each accused appellant for life imprisonment. Aggrieved by the above judgment and order of

conviction and sentence, accused-appellants have preferred this criminal appeal in this Court.

3. Informant Viran-PW-1 has given oral information (*suchna jubani*) at Police Station Talbehat on 15.06.1982 at 08:45 a.m. in the morning in respect of the incident which happened on 15.06.1982 at about 07:00 a.m. in the morning. According to the oral information of informant Viran-PW-1, that informant Viran was a resident of village Gevra, Police Station Talbehat; name of his father was Laxman. Accused appellants were also residing in the same village, Gevra. According to the informant Viran-PW-1, that on 14.06.1982, one Sub-Inspector of the police station had searched the house of Raghuver accused in connection with the manufacturing of illicit liquor, but after searching the house of Raghuver, police could not find anything. Raghuver suspected the hand of Laxman who had an impression that on the *Mukhbiri* of Laxman, this search had been made. Due to this reason, Raghuver and his family members felt aggrieved. On the next day, i.e. 15.06.1982 at about 07:00 a.m. my father Laxman had gone to ease himself from his house. After easing himself, he was on the road near his well (*kuaan*), then at that time, accused-appellant Raghuver, Hira, Idal and Chhakki surrounded Laxman and began to beating and assaulting by laathi. According to the informant Viran PW-1, he and his mother had seen the assaulting of his father Laxman by accused persons. At that time, my mother was at Well (*Kuaan*); we raised alarm and rushed to the place. Ram Dayal, Ram Prasad, and Tulsi had also reached at the spot and challenged the accused persons. However, after assaulting, accused- persons managed to escape. Laxman was lying unconscious with injuries on his body. The informant rushed to the house of Raja Sahab, who came to the spot and thereafter came his son Mahendra Singh with the tractor. The injured was taken to Thana, but on way, Laxman died.

4. On the basis of the above, oral information (*suchna jubani*) of informant Viran PW-1, a chik FIR exhibit Ka-1 was registered against the accused persons by Head Constable Jaideo Singh PW-4. The investigation of the case was taken by the Investigating Officer Harnath

Singh PW-8. The Investigating Officer Harnath Singh PW-8 prepared *panchayatnama* of the dead body of the deceased Laxman. He also prepared other necessary police papers regarding the Panchayatnama, such as challan lash, photo lash and namuna seal which are from Exhibit Ka-12 to Ka-14, respectively. Thereafter the Investigating Officer handed over the dead body to Constable Lallan-PW-5 and Upendra Singh for autopsy examination by the doctor. He has also inspected the place of occurrence and prepared site plan as Exhibit Ka-15. He also taken blood stained soil and simple soil from the place of occurrence and prepared a recovery memo Exhibit Ka-16. The Investigating Officer recorded the statement of the prosecution witnesses including informant Viran PW-1, thereafter this witness Harnath Singh PW-8 was transferred. After transfer of Harnath Singh PW-8, Nandkishore Malla PW-6 had took the investigation of the case and filed a charge-sheet Exhibit Ka-10 on 16.07.1982 against accused-appellants.

5. Dr. H.N. Srivastava, PW-9, who was posted at the District Hospital, Lalitpur at that time, had conducted the postmortem examination of the deceased Laxman on 16.06.1982 and prepared postmortem report Exhibit Ka-20. According to the postmortem report Exhibit Ka-20, following ante mortem injuries were found on the dead body of the deceased Laxman.

“(1) Lacerated wound 2cms x 2cms x 2 inch front of skull, margins lacerated.

(2) Lacerated wound tear 3 cms x 0.2 cm x through and through right upper pinna.

(3) Contusion 2 cms x 2 cms on right elbow.

(4) Contusion 2 cms x 2 cms on right wrist back.

(5) Abrasion 2 cms x 2 cms on right thumb middle part back.

(6) Abrasion 2 cms x 2 cms to 1 cm x 1 cm on front of left leg in area about 6 cms x 6 cms multiple.

(7) Abrasion 2 cms x 1 cm on right ankle outside.

(8) Two contusions 3 cms x 3 cms to 2 cms x 2 cms in middle of back. Red blue.

(9) Traumatic swelling 6 cms x 4 cms on right side back, reddish blue colour.

6. After filing of the charge-sheet against the accused-appellants by Nandkishore Malla PW-6 in concerned Magistrate Court, the case was committed to the Court of Sessions for trial.

7. Charges were framed against accused-appellants on 22.11.1982 by trial Court under Section 302 read with Section 34 IPC. The accused-appellants denied from the charge as levelled against them and claimed for trial.

8. In support of its case, the prosecution adduced informant Viran PW-1, Ram Dayal PW-2, Tulsi PW-3 as witnesses of fact and Jaideo Singh PW-4, Upendra Singh Yadav PW-5, Nand Kishore Malla PW-6, Mahendra Singh PW-7, Harnath Singh PW-8, Dr. H.N. Srivastava, PW-9 as formal witnesses. Apart from the above ocular evidence, the prosecution also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-20.

9. After recording of the evidence of all prosecution witnesses, both of fact and formal, the trial court examined the accused-appellants under Section 313 Cr.P.C. In their statements under Section 313 Cr.P.C., accused-appellants denied from the allegations. They have also stated that they have been falsely implicated in this case due to enmity. In their defence, the accused-appellants adduced Rashiya DW-1, Gopal Singh DW-2, and accused-appellant Raghuver DW-3 as defence witnesses.

10. The trial Court has heard arguments of both sides and after hearing the arguments and perusing the evidence as available on the record, found guilty to accused-appellants under Section 302 read with Section 34 IPC and convicted them for life imprisonment for the commission of the crime. Aggrieved by the judgment and order of conviction and sentence dated 03.10.1983, accused-appellants have preferred this criminal appeal in this Court.

11. It is noteworthy to mention here that appellant Nos. 1 and 2 Raghuver and Hira have died and due to their death, appeal in respect of appellant Nos. 1 and 2 namely Raghuver and Hira has been abated by

order dated 16.07.2024. Appellant No.3 Idal has also died and appeal in respect of appellant No.3 Idal has also been abated by order dated 03.04.2026. Thus, accused-appellant No.1 Raghuver, appellant No.2-Hira and appellant No.3 Iddal have died during the pendency of appeal. This appeal, therefore, survives only in respect of accused-appellant No.4 Chhakki, hence we are adjudicating only in respect of surviving accused-appellant No.4 Chhakki.

12. Learned counsel for the surviving accused-appellant No.4 Chhakki has submitted that surviving accused-appellant No.4 Chhakki has been falsely implicated in this case. There is no motive of any kind against surviving accused-appellant No.4 Chhakki for the commission of the crime. It is also submitted that there is no any quarrel, dispute with the surviving accused-appellant No.4 Chhakki with deceased Laxman. The informant Viran PW-1 falsely and with afterthought named in his *jubani* information, the name of surviving accused-appellant No.4 Chhakki and other deceased appellants. The prosecution case that four accused-persons have assaulted with laathi at deceased Laxman. It is an established fact that there is only three lacerated wounds on the head of the deceased Laxman, injury Nos.1, 2 and 9 are also on the head of the deceased on the back side. Thus, only three injuries were found on the head of the deceased Laxman in which injury No.9 occipital bone was found broken. It is argued by the learned counsel for surviving accused-appellant No.4 Chhakki that if four persons would attack simultaneously at the deceased Laxman, then there is most possibility that many other injuries would have been caused at the body of the deceased Laxman, but there is only three injuries i.e. injury No.1 and 2 and injury No.9 which are found on the head of the deceased Laxman. These injuries shows that involvement and implication of four persons including surviving accused-appellant No.4 Chhakki was falsely narrated by the prosecution. In this way, it is submitted by the learned counsel for the surviving accused-appellant No.4 Chhakki that he has no enmity so as to attack at the deceased Laxman. However, the informant has wrongly and falsely with consideration and afterthought named the surviving

accused-appellant No.4 Chhakki for the alleged commission of the crime. It is submitted that the learned trial Court has not considered this major aspect also that there is no evidence on behalf of the prosecution that there was a premeditation, pre-planned and pre-concert, on behalf of the surviving accused-appellant No.4 Chhakki for the commission of the alleged crime. Despite this fact, the trial Court without considering those aspects and without recording any cogent reason in this regard, has given a finding against the evidence as available on the record. The trial Court has not appreciated the evidence in proper perspective and delivered a finding against the evidence and settled principles of the law. Therefore, the appeal of the surviving accused-appellant No.4 Chhakki is liable to be allowed and judgment and order of conviction and sentence passed against the surviving accused-appellant No.4 Chhakki with the aid of Section 34 IPC are liable to be set aside.

13. Per contra, learned AGA for respondent-State has submitted that all accused-persons including the surviving accused-appellant No.4 Chhakki simultaneously attacked with laathi at deceased Laxman and by assaulting with laathi in their hands, they have caused death of the deceased Laxman. There is a strong motive against the surviving accused-appellant No.4 Chhakki for the commission of the alleged crime. The surviving accused-appellant No.4 Chhakki has also equally participated and was present at the scene of the crime. In view of the above facts and evidence of prosecution witnesses of fact, informant Viran PW-1, Ram Dayal PW-2 and Tulsi PW-3, the learned trial Court has delivered a finding against the accused persons including surviving accused-appellant No.4 Chhakki for the commission of the crime. The trial Court has appreciated the evidence in a proper perspective and there is no illegality and perversity in the finding and reasoning as delivered by the trial Court in the judgment and order dated 03.10.1983. The appeal of the appellants is devoid of merit and hence liable to be rejected.

14. In the light of the above arguments and counter arguments on behalf of the surviving accused-appellant No.4 Chhakki and learned

AGA for the State, from the perusal of the oral information (*suchna jubani*) of informant Viran PW-1, we find that before the date of incident on 15.06.1982, local police had raid and searched the house of deceased accused appellant Raghuver in the impression that he was manufacturing illicit liquor in his house. However, the police could not recover any incriminating material including the illicit liquor. According to the *suchna jubani*, Raghuver and his family suspected that Laxman was the man behind this police raid and search, therefore, in the light of the above facts, only element of enmity is revealed insofar as the deceased accused appellant Raghuver and Hira are concerned, who are real brothers in information *jubani*, no any cause, reason or motive for the commission of the occurrence has been stated in respect of surviving accused-appellant No.4 Chhakki.

15. From the perusal of the evidence of eye-witness, Viran PW-1 son of the deceased Laxman, we find that during the time of recording his evidence in the Court, informant Viran PW-1 has alleged general allegations about all accused-appellants that accused-appellants have had doubt that my father has done *mukhibiri*, by which police search was made at the house of Raghuver. In his cross-examination, Viran PW-1 has clearly stated that before the incident, there was no any enmity with accused persons and there was also no any mis-happening between them. From the perusal of the evidence of Ram Dayal PW-2, we find that there is no any specific allegation, motive and enmity against the surviving accused-appellant No.4 Chhakki for the commission of the alleged crime. Ram Dayal PW-2 has also made a general allegation against accused-persons that they had came jointly with *laathi* in their hands and attacked at Laxman. In the same way, next prosecution witness Tulsi PW-3 has also stated about accused-appellants. Tulsi PW-3 also made a general allegation without attributing any motive, reason or cause against surviving accused-appellant No.4 Chhakki for the participation in the crime. During the course of cross-examination, Tulsi PW-3 has stated that I had seen accused appellant No.1-Raghuver, accused-appellant No.2-Hira, accused-appellant No.3-Idal and accused-appellant

No.4-Chhakki with *laathi* going from the back side of the house. How Daroga Ji has written, I could not know the reason for this. The Investigating Officer Harnath Singh PW-8, who investigated the case and recorded the statement of witnesses under Section 161 Cr.P.C. has stated in his cross-examination that no witness has told to me that they have seen Raghuver etc. coming out of their house. This witness has also stated that Tulsi had given the statement to me that I had seen Raghuver, Hira, Idal and Chhakki with *laathi* going from back side of the house.

16. Thus, prosecution witness Tulsi PW-3 is not aware about this fact that whether he had seen or not accused-appellant Raghuver, Hira, Idal and Chhakki with *laathi* in their hands going from the back side of the house. Meaning thereby, this witness himself is not sure and certain about the above facts.

17. Thus, from the perusal of the evidence of informant Viran PW-1, Ram Dayal PW-2, Tulsi PW-3, we find that only this fact is revealed from the evidence of above prosecution witnesses that enmity was only between deceased Laxman and accused-Raghuver and his brother Hira, because Raghuver suspected that Laxman has given information to the police and police searched his house for illicit liquor. There is no any single fact about any reason, cause or enmity that motivated to surviving accused-appellant No.4 Chhakki to come with *laathi* in his hands and attack on the body of the deceased Laxman. The accused-appellant Raghuver and Hira were real brothers. However, the surviving accused-appellant No.4 Chhakki is not a family member of accused-appellant Raghuver. From this, it appears that surviving accused-appellant No.4 Chhakki has been falsely implicated in this case without any cause or reason only after consideration and afterthought. It was Raghuver and his family who has doubted about the deceased Laxman that Laxman has informed the local police about making of illicit liquor in his house. However, from the perusal of the evidence of Viran PW-1, Ram Dayal PW-2, Tulsi PW-3, we find that there is no any evidence of this kind on behalf of the prosecution that why surviving accused-appellant No.4 Chhakki would be present and participated in the commission of the

crime for accused-appellant Raghuver and his family. The prosecution evidence is silent on this point. The learned trial Court has also not considered this material and major aspect in its discussion and finding when trial Court has held guilty to all accused-appellants with the aid of Section 34 IPC. The learned trial Court only with the aid of Section 34 IPC held guilty of accused-appellants including surviving accused-appellant No.4 Chhakki without discussing and giving any finding in this respect that why surviving accused-appellant No.4 Chhakki would participated in the commission of the alleged crime. Due to this reason, participation by surviving accused-appellant No.4 Chhakki in the commission of the crime appears to be doubtful and shrouded in suspicion.

18. It is settled principle of law that for the conviction of any person under Section 302 IPC with the help of Section 34 IPC, definite and conclusive evidence must be present on the record that accused-appellants have by a premeditation, preplanned and preconcert, along with other accused person for committing the alleged offence. However, we find that in the case at present, there is no any evidence of this kind and nature which could show that there was a premeditation, preplan, preconcert amongst accused-appellants for the commission of the alleged crime. Apart from the above elements, overt act of other accused-persons must be proved by the prosecution in respect of the commission of the crime. The Supreme Court in ***Krishna Govind Patil Vs. State of Maharashtra 1963 SCC Online SC 29*** has held in respect of Section 34 IPC thus:

“It is well settled that common intention within the meaning of the section implied a pre-arranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under s. 302, read with Section 34 of the Indian Penal Code, it should come to a definite conclusion that the said person, had a prior concert with one or more other persons, named or unnamed, for committing the said offence.”

19. From the perusal of the finding and reasoning as given by learned trial Court in paragraph 12 at page 6 of the judgment, it appears that trial Court has not discussed and considered on this point that whether there was any premeditation, preplan and preconcert of surviving accused-appellant No.4 Chhakki with deceased accused-appellants Raghuver, Hira and Idal for the commission of the crime. The learned trial Court only on the ground of injuries found on the dead body of the deceased Laxman has held that these accused had an intention to kill in furtherance of common intention of all, that they had assaulted Laxman to such an extent that he had lost his life within just an hour and after the incident, when he was being taken to the police station, the intention to kill has been established. Thus, the trial Court has not considered and given any cogent finding about premeditation, preplan and preconcert of surviving accused-appellant Chhakki with deceased-appellant Raghuver, Hira and Idal for the commission of the crime. The Hon'ble Supreme Court in the case of ***Constable 907 Surendra Singh and Another Vs. State of Uttarakhand (2025) 5 SCC 433*** has held in paragraph 30 in respect of Section 34 IPC thus:

“By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused.”

20. Thus, in the light of the above discussion, we find that the presence and participation of the surviving accused-appellant Chhakki at the place of occurrence and in the commission of the crime is highly doubtful. There is no any evidence of this nature, which could support the reason and causes by which surviving accused-appellant Chhakki would participate in the commission of the alleged crime. The trial Court, on general allegations by the prosecution witnesses, has only on the ground of common intention and in furtherance of the common intention of all the accused persons, held guilty to surviving accused-appellant

Chhakki. In our view, this is not sustainable in the eyes of law. Apart from the above facts even in the light of the law as propounded by the Hon'ble Supreme Court in *Krishna Govind Patil (supra)* and *Constable 907 Surendra Singh and Another (supra)*, we find that premeditation, preplanned, and preconcert could not be proved by the prosecution behind reasonable doubt. In a heinous offence like murder, every ingredient of the law must satisfy the requirements and evidence must be present on the record in this respect. Thus, in the light of the above discussion, we are unable to sustain the judgment and order of the trial Court dated 03.10.1983 in respect of surviving accused-appellant Chhakki. Therefore, we find that the judgment and order dated 03.10.1983 of conviction and sentence as passed by the trial Court is not sustainable and affirmable in respect of surviving accused-appellant **Chhakki**. Hence, we inclined to set aside the judgment and order of conviction and sentence as passed by the trial Court in respect of surviving accused-appellant **Chhakki**.

21. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 03.10.1983 of conviction and sentence passed against the surviving accused-appellant, **Chhakki**, by learned Trial Court in Sessions Trial No. 147 of 1982, arising out of Crime No. 54 of 1982, Police Station Talbehat, District Lalitpur. The appellant is acquitted of the charge under Sections 302/34 IPC. The appellant, **Chhakki**, is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged. However, he shall comply with the provisions of Section 437-A Cr.P.C.

22. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)

May 07, 2026
NSC