

CASE NO.:
Appeal (crl.) 772 of 2005

PETITIONER:
Kishore Eknath Nikam

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 22/09/2006

BENCH:
G.P. Mathur & A.K. Mathur

JUDGMENT:
JUDGMENT

A.K. MATHUR, J.

Leave granted. This appeal is directed against an order passed by the Division Bench of the High Court of Judicature at Bombay in Criminal Appeal No. 727 of 1999 whereby the High Court has confirmed the conviction and sentence of the accused appellant under Section 302 read with 34 of Indian Penal Code and sentenced him to suffer imprisonment for life each and to pay a fine of Rs. 5,0007 each, in default to suffer rigorous imprisonment - for six months each. He was also sentenced to suffer rigorous imprisonment for three months each and to pay fine of Rs. 5007 each, in default to suffer simple imprisonment for six months under Sections 504 and 562 read with 34 of Indian Penal Code. Aggrieved against the order passed by the Bombay High Court this appeal was filed.

Brief facts giving rise to this appeal are that on 11.4.1998, Mahendra Vishwasrao Bhatge (PW1), Prashant (deceased) and Uttam Kumar had their dinner at Maruti Hotel in Laxminpuri. After their dinner, they returned to Azad Chowk. PW -1 and deceased sat on the steps in front of one shop styled as "Shanti Plywood". Meanwhile, Uttam left the spot. Vijay Bapusaheb Piste (PW2) and Bandu @ Vijay Dynandeo Gata (PW3) were sitting inside of one cement godown nearby. Meanwhile, Jagdish Prabhakar Babar (A1), Kishore Eknath Nikam (A2) and Arun Hulswar (A3) came from the side of Ghat Hospital. A1 was on scooter whereas A2 and A3 were on motorcycle. They were proceeding towards Bindu Chowk. When they saw the deceased and PW1 - complainant sitting on the steps of 'Shanti Plywood' they came back towards them and A1 gave a call to the deceased asking to come near him. Deceased reached near A1. They had a discussion among themselves and thereafter the discussion turned into exchange of hot words and they started to give abuses to each other. PW1 tried to separate the quarrel and persuaded not to quarrel with the deceased. Meanwhile PW2 and PW3 who were sitting in the godown came out after hearing the loud voice of quarreling of A1. A1 took out a knife from the side of his waist and rushed towards deceased to give him a blow of the same. To avoid such fatal mishap PW2 and PW3 rescued the deceased from the attack of the A1 and they could succeed in pushing the deceased from that place. Then the PW1 rushed to the godown to get some help but he found none. He took an electric tube and a piece of bamboo from the godown. He came out with the electric tube and piece of bamboo from the godown. Meanwhile, he found that the quarrel has shifted before the Audi Pan Shop. PW1 complainant was about to reach near A1, A1 gave a knife blow in the abdomen of the deceased and A2 and A3 were standing on the spot. When other witnesses tried to intervene A2 took out knife and threatened that they should keep away and not to interfere in the incident. Meanwhile, deceased fell down on the ground. PW1 immediately brought rickshaw from Bindu Chowk. Meanwhile, A1 gave a blow of knife in the abdomen of the deceased and on the other parts of the body. PW1 - complainant also gave a blow of electric tube on the head of A1 and also with bamboo on his back. A1 also received injury on his head and other parts of the body. Meanwhile,

PW 3 also tried to snatch the knife from A2 who had threatened him not to rescue the deceased. He also sustained injury on the middle finger of the hand. Meanwhile PW2 sought help and on his call one Suryavanshi also came on the spot. Rickshaw was brought by the PW1- complainant. Thereafter all the three accused persons ran away from the spot. The deceased was brought to the C.P.R. Hospital. He was attended by PW 14 - Dr. Nalavade but the deceased succumbed to the injuries. Thereafter the report was sent to the police. Post mortem of the dead body was done. The case was registered against the accused. The accused were arrested and knives were recovered from their possession. Police after completion of the investigation filed the challan against the three accused persons.

Prosecution produced necessary evidence and the learned Sessions Judge after due trial found the accused A1 and A2 guilty of offence punishable under Sections 302, 504, 562 read with 34 of Indian Penal Code and sentenced them to suffer imprisonment for life as aforesaid. However, the learned Sessions Judge acquitted A3 - Arun Vilas Hulaswar because he was simply present on the spot and was not found guilty. The learned Sessions Judge held that mere presence of this accused is not sufficient to hold him guilty under Sections 302, 504, 506(2) read with 34 I PC.

Against this order the appeal was preferred before the Hon'ble High Court. The learned Division Bench of the Bombay High Court confirmed the conviction and sentence of both the accused persons aforementioned. Hence, the present appeal by A2 only.

Learned senior counsel for the appellant submitted that in the present case Section 302 read with 34 IPC is not attracted so as to hold accused appellant guilty.

Learned senior counsel has assailed the judgment of the Bombay High Court and took us to the evidence and tried to persuade us that in the present situation Section 34 cannot be invoked so as to convict the appellant. Learned counsel submitted that the appellant was only standing and tried to prevent the other persons not to intervene in the matter. That cannot be said to be sufficient so as to attract Section 34 of Indian Penal Code, for convicting the accused appellant under Section 302 read with 34 of Indian Penal Code.

In support of this contention learned senior counsel invited our attention to the following decisions:

(i) [2002] 8 SCC 16

[Parshuram Singh v. State of Bihar]

(ii) [2001] 4 SCC 193

[Mithu Singh v. State of Punjab]

(iii) [2005] 3 SCC 277

[Idrish Bhai Daudbhai v. State of Gujarat]

In all these three cases, there was an exhortation, this Court did not find the exhortation sufficient to attract Section 34 IPC and convicted the accused on the basis of their individual action. But all these cases cannot provide any assistance as there is no question of exhortation in the present case. The intention of the accused appellant is clearly evident by his own action and as such Section 34 is attracted.

We have heard learned counsel for the parties and perused the record. We need not to repeat the detail factual aspect in the matter because both the courts below have found that the incident did take place and the accused appellant tried to stop the other witnesses to save the deceased from being

attacked by A1- Jagdish. In the present case as per the statements of PWs 1, 2 and 3 it is more than evident that all the three accused were going on scooter and motorcycle when they saw deceased - Parshant and PW1 - complainant sitting at the steps of shop 'Shanti Plywood' they came back and A1 - Jagdish called the deceased and then certain exchange of hot words took place and ultimately converted into a serious attack by A1 - Jagdish with the knife on the deceased. The injuries ultimately caused death of the deceased - Parshant. Statements of PWs 1, 2 and 3 squarely hold A1 - Jagdish responsible for causing knife blows to -the deceased. But when the accused appellant and A3 were both present on the spot and when PW 3 tried to intervene in the matter he was prevented and sustained injuries with the knife.

A perusal of the statements of all PWs 1, 2 and 3 shows that there is no manner of doubt that accused appellant in furtherance of the common intention of the A1 - Jagdish tried to prevent PWs 2 and 3 from intervening in the matter. So much so that PW 3 who wanted to intervene, effectively was prevented by causing knife injury by accused appellant. Therefore, this conduct of the accused appellant is sufficient to attract Section 34 because he acted in furtherance of common intention of accused A-1. Looking to the facts of the present case there remains no manner of doubt that accused appellant was acting in furtherance of common intention and prevented PWs 2 and 3 to save deceased. He facilitated the commission of the offence in furtherance of common intention of A1 - Jagdish in commission the murder of the deceased -Parshant. Therefore, Section 34 is attracted in the present case and the accused appellant was rightly convicted under Section 302 read with Section 34 of IPC.

Hence, we do not find any merit in this appeal and the same is dismissed.