

Sapan Kumar Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 23, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 313
Indian Penal Code, 1860 " Section 34, 300, 302, 304II, 307, 323, 324, 342

Hon'ble Judges: Ananda Sen, J; Gautam Kumar Choudhary, J

Bench: Division Bench

Advocate: Shree Niwas Roy, Deepak Kumar Prasad

Final Decision: Partly Allowed

Judgement

Gautam Kumar Choudhary, J

1. Appellants are before this Court in appeal against the judgment of conviction and sentence under Section 323, 342, 324, 307 and 302/34 of the IPC.

2. As per the fardbeyan, there was a land dispute between the informant party and the accused persons. Appellants were insisting to construct a

house on a piece of land which was opposed by the informant party. It is said that when the informant, his sons Ranjeet Kumar Gupta (deceased),

Pradeep Kumar Gupta and mother Radhika Devi went to oppose the construction, it led to a hot exchange and altercation, in which Ranjeet was

caught hold by Rakesh Kumar Gupta and Sudhish Kumar Gupta caught and stabbed him with knife resulting in his death. When the informant and his

son Pradeep rushed to his rescue, he was also assaulted with knife as a result, Pradeep sustained injuries. His mother Radhiya Devi was assaulted

with rod by Parmeshwar Ram. On hulla, when people gathered there, accused persons fled away.

3. On the basis of the fardbeyan, Pirtand P.S. Case No.8/99 was registered under Sections 342, 323, 324, 307, 302/34 of the IPC against Parmeshwar

Ram, Sudhis Kumar and these appellants. After investigation, police found the case true and submitted charge sheet and the accused persons were

put on trial Under Section 323, 342, 324, 307, 302/34 of the IPC.

4. Altogether eleven witnesses have been examined in this case and the relevant documents including post-mortem examination report were adduced

into evidence and marked as exhibits.

5. After prosecution evidence, statement of the accused persons was recorded under Section 313 of the Cr.P.C. Specific defence has been taken that

the building was being constructed on their own land and it was the informant party who were the aggressor and falsely implicated the appellants

because of land dispute.

6. It is argued by the learned counsel on behalf of appellants that there was vital contradiction between the testimony of P.W. 1, P.W. 2 and P.W. 3.

It was the informant party who were the aggressor and have not produced the chit of paper in support of the claim over the land in question.

7. Learned A.P.P. has defended the judgment of conviction and sentence.

FINDING

8. After hearing the submissions advanced on behalf of both sides and considering the materials on record, it is evident that there is no delay in lodging

the FIR (Exhibit 5). The incidence took place on 10.04.1999 at 9:30 in the morning, the fardbeyan was recorded on the very same day at 10:00 O'Clock,

clock. The endorsement on the FIR of CJM is of 11.04.1999 which further shows that it was dispatched to the Court without any delay. FIR being

valuable piece of evidence, promptness in lodging it, to some extent obviates the possibility of exaggeration and interpolations in it.

9. Informant- Vijay Prakash Ram (P.W. 9) has deposed that the incidence took place on 10.04.1999 at 9:00 O'Clock in the morning. A Panchayat

was held about 4-5 days ago with regard to land dispute involving ten inches of land. Accused persons were digging foundation for construction of

house which was opposed by the informant party leading to the incidence. It has been deposed in para-4 that Ranjeet was caught hold by Sudhish and

Rakesh and both of them stabbed him with knife which they drew from near their waist. His son Pradeep Kumar rushed to his rescue, they were

assaulted by Sapan Kumar with knife. He was assaulted by Parmeshwar Ram with a rod. His mother was assaulted by Parmeshwar Ram over her

head, leg and hand. Ranjeet died of the injury sustained by him. In his cross-examination he failed to give details of plot, which was the bone of

contention.

10. Testimony of other witnesses namely Radhika Devi (P.W. 2), Pradeep Kumar (P.W. 1) who is son of the informant, P.W. 3- Birju Sao, P.W. 4,

P.W. 5 are more or less on the same line. What is significant to note is that in the earliest version as recorded in the fardbeyan as well as in the

deposition of witnesses, it has been consistently stated that it was Sudhish and Rakesh who had stabbed the deceased and the name of Appellant

Sapan is conspicuous by its absence, in this part of the incidence.

11. What further transpires from the testimony of the witnesses is that the incidence took place on the spur of moment, when the informant party went

to oppose the digging foundation for construction of house by the appellants. Further the injury sustained by Pradeep Kumar (P.W. 1) as per the injury

report, was simple in nature caused by hard and blunt substance. Radhika Devi (P.W. 2) has also sustained simple injuries caused by hard and blunt

substance, which discounts the nature of assault as stated by the witnesses. There is no injury report of informant-Vijay Prakash Ram. The

deceased-Ranjeet Kumar sustained the following injuries: -

I. Incised wound 1½" x ½" upto abdominal cavity deep over right hypochondria area.

II. Incised wound 2½" x ½" upto abdominal cavity deep over left side of abdomen, one inch below the umbilicus.

III. Incised wound over the left posterior axillary fold 1½" x ½" upto skin deep.

12. Fatal blow was not inflicted by Sapan Kumar, but by Rakesh Kumar, therefore matter for consideration is, can the former be constructively held

liable for the act of the later with the aid of Section 34 of the IPC.

13. Constructive liability in criminal law means the liability of a person for an offence which he has not actually committed. An act committed by

another person will be attributed to the accused if such an act is done in furtherance of common intention or in prosecution of a common object. It is

intention to commit the crime and the accused can be admitted only if such an intention has been shared by all the accused. Such a common intention

should be anterior in point of time to the commission of the crime. It is difficult, if not impossible, to procure direct evidence of such intention. In most

cases it has to be inferred from the act or conduct of the accused. Expression a criminal act done in furtherance of common intention does not mean

that several persons do the same act, which is physically impossible. It only means that several persons commit separate act which may be similar or

diverse. Same or similar intention should not be confused with common intention: as their Lordships said in Mahboob Shah vs. Emperor, (AIR. 1945

P.C. 118), "the partition which divides their bounds is often very thin nevertheless; the distinction is real and substantial, and if overlooked,

will result in miscarriage of justice. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly.

14. The picture that emerges from the reading of evidences is that it was not a case of pre-mediated assault, rather the things came to a head when

the informant party raised objection to the digging of foundation. The dispute was only for ten inches of land and it was not that entire digging of

foundation for construction work was wholly illegal. Appellants were digging the foundation, and it was the informant party who had moved forward to

oppose the digging of trench for the alleged encroachment by 10 inches, therefore there was no prior concert on the part of the appellants. The

suddenness in which the incidence took place, do not justify an inference of prior concert of mind which is necessary ingredient of Section 34 of the

IPC. Unless an act is done in furtherance of common intention, the person cannot be made vicariously liable for the act committed by the co-accused.

Under the circumstance, each shall be liable for their individual act. As discussed above, it was only Rakesh and Sudhish who had inflicted fatal blow

on the deceased. That being the case appellant- Sapan Kumar cannot be held vicariously liable for act committed by Rakesh.

15. In this view of matter, judgment of conviction and sentence under Section 302 of the IPC of appellant- Sapan Kumar is not sustainable and is

accordingly, set aside. Injury reports do not suggest any grievous injury sustained by anyone. Therefore, he is convicted for offence under Section 323

of the IPC and the period already undergone by him will meet the ends of justice.

16. So far as the case of Rakesh Kumar is concerned, I find some force in the argument advanced on his behalf that it was the informant party who

were the aggressors, as it was they who had come to oppose the digging of foundation on the plea that it was deviating by ten inches. It was this

immediate provocation that resulted in the incidence. It was a sudden fight that took place at the spur of moment. In a somewhat similar case,

Keshoram Bora v. State of Assam, (1978) 2 SCC 407, Hon'ble Supreme Court held, "where the deceased must have entered the land of the

accused and either tried to assault or may have assaulted Someswar with a lathi which provoked the appellant to assault the deceased purporting to

act in self-defence. As however, neither the appellant nor Someswar received any injuries, there can be no doubt that the appellant exceeded the right

of private defence. Thus, on the acceptable evidence in the case, the accused can only be convicted of an offence under Section 304 Part II of the

Penal Code for having exceeded the right of private defence.

17. Under the circumstance, for the reasons discussed above I am of the view that act of appellant Rakesh Kumar will come within Exception 1 and 4

to Section 300 of the IPC. He is accordingly held guilty for culpable homicide for offence under Section 304 Part II of the IPC. Judgment of

conviction and sentence passed under Sections 342, 324, 307 and 302/34 of the IPC is set aside and he is convicted under Section 304 Part II and 323

of the IPC. He has remained in custody for eight years and three months (as per the report of Jail Superintendent, Giridih) and therefore, he is

sentenced to the period already undergone.

Criminal Appeal is partly allowed with modification in finding and sentence.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.