

(2008) 03 MP CK 0059

Madhya Pradesh High Court

Case No: None

Tok Singh, Sher Singh, Charan
Singh and Amar Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: March 3, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 300, 302, 304, 307, 323

Citation: (2008) ILR (MP) 2980**Hon'ble Judges:** Rakesh Saxena, J; Ajit Singh, J**Bench:** Division Bench

Judgement

Rakesh Saxena, J.

Appellant Charan Singh has been convicted u/s 302 of Indian Penal Code and appellants Tok Singh, Sher Singh and Amar Singh have been convicted u/s 302 read with Section 34 of Indian Penal Code. All of them have been sentenced to imprisonment for life for causing the murder of Rai Singh. Appellant Amar Singh has been convicted u/s 307 of Indian Penal Code and appellants Tok Singh, Sher Singh and Charan Singh have been convicted u/s 307 read with Section 34 of Indian Penal Code and have been sentenced to rigorous imprisonment for seven years each for causing hurt to Hem Singh. The substantive jail sentences have been ordered to run concurrently.

2. The facts of the prosecution case, in brief, are that a day before 24.11.1996 Ahru had stolen some Soya bean crop from the field of Hem Singh. Ahru was relative of appellants Charan Singh and Amar Singh. Kamla Bai, wife of Hem Singh had rebuked Ahru for his committing theft of the crop. Felt aggrieved, appellants Charan Singh, Amar Singh and their relative Tok Singh got annoyed. On 24.11.1996, at about 11.00 a.m. when Rai Singh (deceased) and Hem Singh went to their

threshing-floor, they found appellants present there. As soon as they reached there, appellant Amar Singh rushed and caught hold of Rai Singh. At that moment Tok Singh and Sher Singh assaulted Hem Singh by fists and kicks and felled him. Immediately thereafter, Charan Singh picked up a spade which was lying there and dealt several blows from the backside of it on the head of Rai Singh, as a result of which, Rai Singh fell down and died. Thereafter, appellant Amar Singh took the spade from Charan Singh and dealt 2-3 blows from the back side on the head of Hem Singh. Bajru Bega (PW-3), who was present in the vicinity, raised alarm, then all the four appellants ran away from the spot leaving the spade there. Hem Singh went to his house and narrated the occurrence to Buddha Singh (PW-1). Buddha Singh went to Police Station Karanjiya, district Mandla and lodged report (Ex. P/1). A marg report (Ex. P/2) was also recorded.

3. Sub Inspector Rajendra Mohan Dubey (PW-13) went to the spot and carried out inquest proceedings. He seized the blood stained earth and spade from the spot vide seizure memo Ex. P/14. He sent the dead body of Rai Singh to Primary Health Centre, Karanjiya, for postmortem examination, where Dr. Pradeep Sinha (PW-12) carried out the postmortem examination. According to his report (Ex. P/16), Rai Singh had sustained one lacerated wound 2x1/2x1/2 cms. on left lower part of face, lacerated wound 2x1x1 cms. on left upper part of face and temporal region and Anr. lacerated wound 2x1x1 cms. on right upper part of forehead. There had been depressed fractures in the skull of left temporal region and right upper part of forehead. The brain had a lacerated wound on left temporal region and lower jaw was broken at three places. All the injuries were caused by hard and blunt object. Cause of death was the injury to brain and intracranial region with haemorrhage. Nature of death was homicidal. On examining Hem Singh, Dr. Pradeep Sinha (PW-12) found one lacerated wound 2x1x1/2 cms. on post-central part of scalp. The injury was caused by hard and blunt object and was simple in nature. Injury report is Ex. P/17.

4. After investigation, the police filed a charge-sheet against the appellants on the allegations that they committed murder of Rai Singh and attempted to cause the death of Hem Singh.

5. Trial Court, mainly relying on the evidence of Hem Singh (PW-2), Bajru (PW-3), Buddha Singh (PW-1) and medical evidence of Dr. Pradeep Sinha (PW-12), convicted and sentenced the appellants, as aforesaid.

6. Shri Mohd. Saleem, learned Counsel for the appellants, without disputing the occurrence, submitted that appellants Tok Singh, Sher Singh and Amar Singh were not liable to be convicted with the aid of Section 34 of the Indian Penal Code for the act of appellant Charan Singh. He submitted that the conviction of Charan Singh for the offence u/s 302 of Indian Penal Code was also not justified and at the most, he could be held liable u/s 304-II of the Indian Penal Code. He also assailed the conviction of appellants u/s 307 read with Section 34 of Indian Penal Code on the

ground that the injury found on the body of Hem Singh was not dangerous or sufficient to cause his death.

7. Learned Counsel for the State tried to justify the finding of conviction recorded by the trial Court.

8. It has not been disputed, in our opinion rightly, that the presence of Hem Singh (PW-2) at the spot is established. Hem Singh (PW-2) testified that when he and Rai Singh went to the threshing-floor, all the four appellants abruptly pounced on Rai Singh. They scuffled and felled him. Appellant Charan Singh then dealt blows from the back side of spade on his head. When he tried to rescue him, they felled him and at that time appellant Amar Singh snatched the spade from the hand of Charan Singh and dealt a blow on his head. When Bajru (PW-3) raised hue and cry, all the appellants-accused, leaving spade there, ran away towards forest. According to him, along with Bajru he went to the house of his brother Buddha Singh (PW-1) and narrated incident to him.

9. Learned Counsel for the appellant pointed out that Hem Singh has improved upon his case diary statement (Ex. D/1) wherein he did not say that all the four appellants had pounced over Rai Singh and felled him. Hem Singh was confronted with his aforesaid statement (Ex. D/1) wherein he did not say that when Charan Singh had dealt blows of spade on the head of Rai Singh, other appellants had held his hands.

10. On perusal of the relevant portion of case diary statement of Hem Singh (PW-2), it is revealed that when appellant Amar Singh had caught hold of Rai Singh and Hem Singh wanted to intervene, appellants Tok Singh and Sher Singh assaulted him by fists and kicks and, in the meantime, suddenly, Charan Singh picked up a spade lying at the spot and dealt its blows on the head of Rai Singh. Similarly, the earlier version of Hem Singh was that suddenly appellant Amar Singh had taken spade from the hand of Charan Singh and assaulted on his head.

11. On perusal of the evidence of Bajru (PW-3), we find the same situation. In chief examination of his testimony, he said that all the four appellants had caught hold of Rai Singh and Charan Singh had dealt a blow by blunt side of spade and during the quarrel Amar Singh had taken the spade from the hand of Charan Singh and assaulted Hem Singh by its blunt side on his head and that on raising his hue and cry, all the appellants ran away. During cross-examination, this witness was also contradicted by his case diary statement (Ex. D/2) wherein he did not say that all the four appellants-accused had caught hold of Rai Singh.

12. The evidence of Hem Singh (PW-2) finds corroboration from the testimony of Buddha Singh (PW-1), to whom he had narrated the incident.

13. On careful examination of the evidence of these witnesses, we are satisfied that all the four appellants had participated in the incident in which Rai Singh suffered

injuries at the hands of appellant Charan Singh and Hem Singh suffered simple injury at the hands of appellant Amar Singh.

14. Now the crucial question before us is whether all the appellants are liable for causing death of Rai Singh and for attempting to cause death of Hem Singh with the aid of Section 34 of Indian Penal Code and whether the conviction of the appellants u/s 302 read with Section 34 of the Indian Penal Code is justified.

15. On appraisal of the evidence of eyewitnesses Hem Singh (PW-2) and Bajru (PW-3), it appears that they have improved upon their earlier version given by them u/s 161 of the Code of Criminal Procedure in attributing the act of holding Rai Singh by all the four appellants while the assault was made by appellant Charan Singh. It is not established beyond doubt that appellants Tok Singh, Sher Singh and Amar Singh continued to hold Rai Singh till the assault on him was over. All that appears in the evidence is that appellant Amar Singh had scuffled with Rai Singh and, in the meanwhile, appellant Charan Singh had picked up a spade, which was lying at the spot and had assaulted by its back side on his head, as a result of which he died. Thus, from the mere fact that appellant Amar Singh caught hold of the deceased and scuffled with him while Charan Singh picked up a spade and assaulted him, it cannot be inferred beyond reasonable doubt that he formed common intention with Charan Singh to murder the deceased. Similarly, other appellants Tok Singh and Sher Singh also cannot be held liable for the murder of the deceased vicariously with the aid of Section 34 of the Indian Penal Code. On the same principle, appellants Tok Singh, Sher Singh and Charan Singh cannot be convicted for the offence u/s 307 read with Section 34 of the Indian Penal Code for causing injury to Hem Singh (PW-2). It has clearly come in the evidence of eyewitnesses that suddenly appellant Amar Singh had snatched the spade from the hands of Charan Singh and assaulted by its blunt side on the head of Hem Singh. At the most, appellants Tok Singh, Sher Singh and Amar Singh were liable for an offence u/s 325 read with Section 34, Penal Code. We are fortified in concluding so from the ratio of [Shambhu Kuer Vs. State of Bihar](#), wherein the Apex Court held that from the mere fact that the appellant caught hold of the deceased and scuffled with him, while co-accused took out a knife and commenced the assault, it cannot be inferred beyond reasonable doubt that he shared the intention of co-accused to murder the deceased. At the most, he was vicariously liable for an offence u/s 326 read with Section 34, Penal Code.

16. Learned Counsel for the appellants submitted that since the assault by the blunt side of the spade was made in a sudden fight, the act of appellant Charan Singh was covered under the 4th Exception of Section 302 of the Indian Penal Code and he was only liable to be convicted u/s 304-II of the Indian Penal Code.

17. For bringing in operation the Exception 4 to Section 300 of Indian Penal Code, it has to be established that the act was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without the offender taking undue advantage and having not acted in a cruel or unusual manner. A "sudden

fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. In such circumstances, the cause for committing the offence of homicide is not clearly traceable to unilateral provocation i.e. whole blame cannot be placed on one side. In the instant case, the established facts are that when deceased had reached his threshing-floor, appellant Amar Singh had scuffled with him and immediately thereafter appellant Charan Singh had picked up a spade and dealt repeated blows from its blunt side on the head of deceased. There is absolutely no confusion that there had been bilateral quarrel between the deceased and the appellants. Dr. Pradeep Sinha (PW-12) had found three lacerated wounds on the skull of Rai Singh, which had resulted into depressed fractures of skull bones and laceration of brain. His lower jaw was also broken at three places. Aforesaid injuries had resulted into the death of Rai Singh.

18. In the above circumstances, we are of the considered view that appellant Charan Singh had caused the death of Rai Singh with the intention of causing his death. His conviction u/s 302 of the Indian Penal Code is therefore affirmed.

19. Since the injury caused by appellant Amar Singh to Hem Singh (PW2) was found to be simple in nature, his conviction u/s 307 of the Indian Penal Code is set aside, instead he is convicted u/s 323 of the Indian Penal Code.

20. In the result, the appeal is partly allowed. Conviction and sentence of appellant Tok Singh, Sher Singh and Amar Singh u/s 302 read with Section 34 of Indian Penal Code is set aside, instead they are convicted u/s 325 read with Section 34 of Indian Penal Code and sentenced to rigorous imprisonment for five years. Conviction and sentence of appellants Tok Singh, Sher Singh and Charan Singh u/s 307 read with 34 of Indian Penal Code is set aside. They are acquitted of that charge. Conviction and sentence of appellant Amar Singh u/s 307 of Indian Penal Code is set aside, instead he is convicted u/s 323 of Indian Penal Code and sentenced to rigorous imprisonment for one year. All the aforesaid sentences of the appellants shall run concurrently. Conviction and sentence of life imprisonment of appellant Charan Singh u/s 302 of Indian Penal Code is affirmed.

21. Appeal is partly allowed.