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OMKAR SINGH

v.

JAIPRAKASH NARAIN SINGH & ANR.

(Criminal Appeal No. 84 of 2022)

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FEBRUARY 9, 2022

[M. R. SHAH AND SANJIV KHANNA, JJ.]

*Penal Code, 1860 – s.302 r/w s.34 – Murder – Common intention – Two accused, A-2 (respondent no.1) and his son (A-1) – Three PWs – Sessions Court convicted A-1 u/s.302 and A-2 u/s. 302 r/w 34 – High Court affirmed conviction of A-1, but, acquitted A-2 – On appeal by first informant/ son of deceased, held: High Court erred in acquitting A-2 – All three PWs were consistent and fully supported the case of prosecution – Even as per the High Court the motive was established and proved – High Court also observed that due to land dispute there was enmity between the parties – Therefore, High Court ought to have appreciated that A-2 was rightly convicted with the aid of s.34 as he with a common intention to kill the deceased accompanied his son and on finding the deceased sleeping on the different cot exhorted his son to kill him and thereafter his son (A-2) killed the deceased by fire arm – Once the presence of A-2 was established and proved and specific role of exhortation was assigned to him, the High Court ought to have confirmed the conviction of A-2 u/s.302/34 – Judgment of trial court convicting A-2 u/s.302/34 and sentencing him to undergo life imprisonment, accordingly, restored.*

**Allowing the appeal, the Court**

**HELD:1. Respondent No.1 – accused No.2 was named in the FIR. There are three eye witnesses to the incident namely PW-1, PW-2 and PW-4 and all the prosecution witnesses have named respondent No.1 – accused No.2 and all of them have stated that both the accused came at the pumping set where the deceased was sleeping and at that time on finding the deceased sleeping on the different cot, respondent No.1– accused No.2 exhorted his son to kill the deceased and his son – accused No.1**

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killed the deceased by fire arm. All the three prosecution witnesses are consistent and fully supported the case of the prosecution. Once the High Court has even confirmed the conviction of accused No.1 relying upon all the three eye witnesses, the High Court ought to have confirmed the conviction of respondent No.1 – accused No.2 also relying upon the three eye witnesses. [Para 12][555-F-H; 556-A-B]

2. It appears that the High Court has acquitted respondent No.1 – accused No.2 just on the ground that all the three eye witnesses had given him the role of exhortation and no overt act has been assigned to him, this may be due to exaggeration of his role so as to falsely implicate him and see that the father and son are put behind bars. However, it is required to be noted that both the accused – father and son went together to the place/pumping set where the deceased was sleeping. Even as per the High Court the motive has been established and proved. The High Court has also observed that due to land dispute there was enmity between the parties. Therefore, the High Court ought to have appreciated that respondent No.1 – accused No.2 was rightly convicted with the aid of Section 34 of the IPC as he with a common intention to kill the deceased accompanied his son and on finding the deceased sleeping on the different cot exhorted his son to kill him and thereafter his son killed the deceased by fire arm. Therefore, once his presence has been established and proved and specific role of exhortation was assigned to him, the High Court ought to have confirmed the conviction of respondent No.1 – accused No.2 for the offence punishable under Section 302/34 of the IPC. [Para 12.1][556-C-F]

3. The High Court committed a grave error in acquitting respondent No.1 – accused No.2. The finding recorded by the High Court is just contrary to the evidence on record. The judgment and order passed by the Trial Court convicting respondent No.1 – accused No.2 for the offence punishable under Section 302/34 of IPC and sentencing him to undergo life imprisonment is hereby restored. [Paras 12.2, 13][556-H; 557-A, B]

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A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 84 of 2022.

From the Judgment and Order dated 15.03.2019 of the High Court of Judicature at Allahabad, U.P. in Criminal Appeal No.304 of 1983 along with Correction Order dated 02.05.2019 in Crl. Misc. (Correction)

B Application No.03 of 2019.

D. P. Singh Yadav, Rajeev Kumar Deora, Ms. Smriti Kumari, Shiv Sagar Tiwari, Advs. for the Appellant.

Ms. Manju Jetley, R. M. Sinha, Garvesh Kabra, Advs. for the Respondents.

C The Judgment of the Court was delivered by

**M. R. SHAH, J.**

D 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 15.03.2019 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 304 of 1983 by which the High Court has allowed the said appeal preferred by respondent No.1 herein – original accused No.2 and has acquitted him for the offences punishable under Section 302 read with Section 34 of the IPC, the original informant – son of the deceased has preferred the present appeal.

E 2. As per the case of the prosecution, one Omkar Singh son of Parasnath Singh lodged an FIR at Police Station Karanda, District Gazipur stating that due to the enmity going on between his family members with Udaibhan Singh and his father Jaiprakash Narain Singh @ Lala (original accused Nos.1 and 2) his father has been killed. As per the allegation, on 21.04.1982, there was marriage of daughter of one F Kailashu Vishwakarma, who was his neighbour where he along with his Tau - Vikrama Singh and his cousin brother Indradeo Singh had gone. After taking meal at about 12 in the night, he along with his Tau and cousin had gone on his pumping set for sleeping where his father Parasnath was lying from before. He and his cousin Indradeo Singh had G slept on one cot whereas his Tau had slept on another cot. There was a lantern burning which was hanging on a stick. In between 2:30-3:00 am in the night, accused Udaibhan Singh came near his cot and pulled the bed-sheet on which he and his cousin woke up and his Tau also woke up. At that moment Jaiprakash Narain Singh @ Lala (A-2) exhorted and stated that Paras is lying here come quickly and shoot him on which H

Udaibhan Singh (A-1) went near the cot of his father Parasnath and shot him with country made pistol on his chest from a point-blank range and when the informant and the witnesses raised alarm then Udaibhan Singh again reloaded his country made pistol and threatened them on account of which they kept quiet. Thereafter both the accused ran away towards North. During the course of investigation, the Investigating Officer (IO) recorded the statements of the concerned witnesses including eye witnesses and also collected the relevant evidences. On conclusion of the investigation, the IO filed the chargesheet against both the accused for the offences under Sections 302 read with Section 302/34 of the IPC. As the case was exclusively triable by the learned Court of Sessions, the case was committed to the sessions court. Accused pleaded not guilty and therefore both of them came to be tried by the learned Sessions Court for the offences punishable under Sections 302 and 302/34 of the IPC respectively.

3. In order to bring the guilt of the accused the prosecution examined PW-1 Omkar Singh – informant and PW-2 Inderdeo Singh and PW-4 Vikram Singh (all eye witnesses) and PW-3 Dr. P.C. Srivastava who conducted the post mortem of the deceased and PW-5 SI Kamta Singh. On closure of the evidence on behalf of the prosecution, further statements of the accused under Section 313 Cr.PC were recorded. That thereafter on appreciation of the entire evidence on record and believing PW-1, PW-2 and PW-4 (eye witnesses) the learned Trial Court convicted A-1 – Udaibhan Singh for the offences punishable under Section 302 of the IPC and A-2 – Jaiprakash Narain Singh @ Lala for the offences punishable under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment.

4. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned Trial Court convicting the accused for the offences punishable under Section 302 and Section 302/34 of the IPC respectively, the accused preferred an appeal before the High Court. By the impugned judgment and order, the High Court has though believed the eye witnesses – PW-1, PW-2 and PW-4 so far as the A-1 – Udaibhan is concerned and has confirmed the judgment and order of conviction passed by the learned Trial Court convicting the A-1 – Udaibhan, has acquitted A-2 – Jaiprakash Narain Singh @ Lala mainly on the ground that the three prosecution witnesses had given him role of exhortation only and no overt act has been assigned to him and

A therefore there might be an exaggeration of his role and false implication by the witnesses in order to see that both the accused – father and son are put behind the bars because of the property dispute between the parties.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court acquitting respondent No.1 herein - original accused No.2, the original informant has preferred the present appeal.

6. Shri D.P. Singh Yadav, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error while acquitting respondent No.1 herein – original accused No.2.

6.1 It is vehemently submitted by learned counsel appearing on behalf of the appellant that as such respondent No.1 was named in the FIR. It is submitted that all the three eye witnesses – PW -1, PW-2 & PW-4 named respondent No.1 – accused who went to the pumping set where the deceased was sleeping and that respondent No.1 with a common intention to murder the deceased accompanied his son – accused No.1 and on finding the deceased on a different cot exhorted his son to kill him and thereafter accused No.1 killed the deceased with fire arm. It is submitted that therefore the learned Trial Court rightly convicted respondent No.1 – accused with aid of Section 34 of the IPC.

6.2 It is further submitted that even as per the finding recorded by the High Court the motive has been established and proved by the prosecution. It is submitted that unfortunately the High Court has acquitted respondent No.1 – accused solely on the ground that overt act assigned to respondent No.1 – accused No.2 is of exhortation only and therefore, his involvement appears to be doubtful.

6.3 It is submitted that the said finding/observation is on surmises and conjectures and just contrary to the evidence on record. It is submitted that the presence of the accused has been established and proved by the prosecution by examining PW-1, PW-2 and PW-4, who are the eye witnesses and that their evidence has been believed by the High Court. It is submitted that therefore there is no reason to doubt the presence of the accused – respondent No.1 herein at the place of incident.

7. Making the above submissions it is prayed to allow the present appeal.

8. Shri Garvesh Kabra learned counsel appearing on behalf of the State has supported the appellant and has submitted that the High Court has erred in acquitting respondent No.1 – accused No.2. A

9. The present appeal is opposed by Shri R.M. Sinha learned counsel appearing on behalf of respondent No.1 – accused No.2. It is submitted by learned counsel appearing on behalf of respondent No.1 – accused No.2 that cogent reasons have been given by the High Court while acquitting respondent No.1 – accused for the offence punishable under Section 302 of the IPC, and therefore the same is not required to be interfered with by this Court in exercise of power conferred under Article 136 of the Constitution of India. B C

9.1 It is further submitted that as rightly observed by the High Court all the three prosecution witnesses had given accused the role of exhortation only and no further overt act has been assigned to him and even as per the prosecution witnesses and even the prosecution the fire arm was used by accused No.1 and the only allegation against respondent No.1 herein – original accused No.2 was exhortation. The High Court has rightly acquitted respondent No.1 – accused for the offences punishable under Section 302/34 of the IPC. D

10. Making the above submissions it is prayed to dismiss the present appeal. E

11. We have heard learned counsel appearing on behalf of the respective parties at length.

12. At the outset it is required to be noted that in the present case right from the very beginning the name of respondent No.1 was disclosed. Respondent No.1 – accused No.2 was named in the FIR. There are three eye witnesses to the incident namely PW-1, PW-2 and PW-4 and all the prosecution witnesses have named respondent No.1 – accused No.2 and all of them have stated that both the accused came at the pumping set where the deceased was sleeping and at that time on finding the deceased sleeping on the different cot, respondent No.1 herein – accused No.2 exhorted his son to kill the deceased and his son – accused No.1 killed the deceased by fire arm. All the three prosecution witnesses are consistent and fully supported the case of the prosecution. Even the High Court has also specifically observed and held that all the three prosecution witnesses are reliable and trustworthy and there is no reason to doubt them. Therefore, once even the High Court also found all the F G H

- A three prosecution witnesses – PW-1, PW-2 and PW-4 trustworthy and reliable and in fact confirmed the conviction of accused No.1 for the offence punishable under Section 302/34 of the IPC, the High Court ought not to have thereafter doubted the presence of accused No.2 – respondent No.1 herein. Once the High Court has even confirmed the conviction of accused No.1 relying upon all the three eye witnesses, the
- B High Court ought to have confirmed the conviction of respondent No.1 – accused No.2 also relying upon the three eye witnesses.

- 12.1 From the reasoning given by the High Court it appears that the High Court has acquitted respondent No.1 – accused No.2 just on the ground that all the three eye witnesses had given him the role of
- C exhortation and no overt act has been assigned to him, this may be due to exaggeration of his role so as to falsely implicate him and see that the father and son are put behind bars. However, it is required to be noted that both the accused – father and son went together to the place/pumping set where the deceased was sleeping. Even as per the High Court the
- D motive has been established and proved. The High Court has also observed that due to land dispute there was enmity between the parties. Therefore, the High Court ought to have appreciated that respondent No.1 – accused No.2 was rightly convicted with the aid of Section 34 of the IPC as he with a common intention to kill the deceased accompanied his son and on finding the deceased sleeping on the different cot exhorted his son to
- E kill him and thereafter his son killed the deceased by fire arm. Therefore, once his presence has been established and proved and specific role of exhortation was assigned to him, the High Court ought to have confirmed the conviction of respondent No.1 – accused No.2 for the offence punishable under Section 302/34 of the IPC.

- F 12.2 It is also required to be noted that as such the High Court has upheld/confirmed the conviction of accused No.1 for the offence punishable under Section 302/34 of the IPC. Therefore, once the conviction of accused No.1 for the offence punishable under Section 302/34 of the IPC was upheld/confirmed, the High Court ought to have upheld/
- G confirmed the conviction of accused No.2 who was also charged for the offence punishable under Section 302/34 of the IPC. Both the accused with a common intention went to the place of deceased at mid-night and as observed hereinabove the motive has been established and proved, the High Court has committed a grave error in acquitting respondent No.1 – accused No.2. The finding recorded by the High Court is just

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contrary to the evidence on record. The impugned judgment and order is unsustainable both, on law and on facts. A

13. In view of the above and for the reasons stated above the present appeal succeeds. The impugned judgment and order passed by the High Court acquitting respondent No.1 – original accused No.2 – Jaiprakash Narain Singh is hereby quashed and set aside and the judgment and order passed by the learned Trial Court convicting him for the offence punishable under Section 302/34 of IPC and sentencing him to undergo life imprisonment is hereby restored. Now respondent No.1 – original accused No.2 to surrender within a period of four weeks to undergo life imprisonment. B C

Bibhuti Bhushan Bose

Appeal allowed.