

Dinesh Sahu Alias Dinnu

v.

The State of Madhya Pradesh

(Criminal Appeal No(s). 960 of 2021)

22 August 2024

[Bela M. Trivedi* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Concurrent conviction of the appellant for the offence punishable under Section 302 read with Section 34 of the Penal Code, 1860, if justified. Whether the prosecution was able to prove the guilt of the appellant beyond reasonable doubt.

Headnotes[†]

Penal Code, 1860 – s.302 r/w s.34 – Concurrent conviction under – If to be interfered with:

Held: No – Evidence of witnesses cannot be totally discarded merely because they turned hostile to the case of prosecution during the course of trial – One of the panch witnesses duly supported the case of the prosecution as regards the recovery of the alleged weapon/article, Khukri, from the house of the appellant – Merely because the said witness knew the deceased, it cannot be said that he was an interested witness or an unreliable witness – Doctor who carried the post-mortem of the deceased, also opined that the injuries on the body of the deceased were possible with the alleged weapon khukri – Further, as per the FSL report, the blood group of the deceased was present on the khukri – Courts below discussed the evidence in detail and found the appellant guilty – Prosecution succeeded in proving the guilt of the appellant beyond reasonable doubt. [Paras 10, 13]

List of Acts

Penal Code, 1860.

List of Keywords

Section 302 read with Section 34 of the Penal Code, 1860; Concurrent conviction; Guilt proved beyond reasonable doubt; Evidence; Witnesses; Hostile witnesses; Panch witnesses;

* Author

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Recovery of the alleged weapon/article; Khukri; Interested witness; Unreliable witness; Material witnesses; Blood group of the deceased.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 960 of 2021

From the Judgment and Order dated 04.07.2019 of the High Court of M.P. Principal Seat at Jabalpur in CRA No. 1867 of 2007

Appearances for Parties

Ms. Sangeeta Kumar, Adv. for the Appellant.

Ms. Mrinal Gopal Elker, Adv. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

Bela M. Trivedi, J.

1. The instant appeal arises out of the impugned judgment and order dated 04.07.2019, passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Criminal Appeal No. 1867 of 2007, whereby the High Court has confirmed the judgment and order dated 16.08.2007, passed by the Court of 3rd Additional Sessions Judge, Bhopal in S.T. No.43 of 2007, convicting the present appellant *Dinesh Sahu alias Dinnu* and the co-accused *Raju Sharma alias Awadhesh Sharma alias Naresh Sharma*, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer Life Imprisonment along with a fine of Rs.3,000/-, in default thereof to undergo further rigorous imprisonment for six months.
2. The case of the prosecution in a nutshell was that, one *Vinod Sai (since deceased)* was running a light refreshment stall under the name and style of Ajay Tea Stall Baba Board Chowraha. There was a previous enmity between the said *Vinod Sai (since deceased)* and *Raju Sharma alias Awadhesh Sharma alias Naresh Sharma*. On 10.09.2004, a quarrel took place between the above parties and both lodged reports against each other. Driven by the same,

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on 11.11.2006 at 07:00 p.m., when *Kamal Sanwale (PW-6)* and *Vinod Sai (since deceased)* were at the shop, the said *Raju Sharma alias Awadhesh Sharma alias Naresh Sharma* armed with sword and *Dinesh Sahu alias Dinnu* (the appellant herein) armed with a *khukri*, came on the spot. Both of them inflicted several blows on *Vinod Sai*. As a result, thereof, he fell down and died on the spot.

3. According to the further case of the prosecution, on hearing the ruckus, *Kamal, Kalim, Anil, Salman* and *Santosh* rushed to the spot to save *Vinod Sai* but the appellant- *Dinesh Sahu alias Dinnu* threatened them by showing *khukri*, and thereafter both the accused, namely, *Raju Sharma and Dinesh Sahu*, fled away from the spot. At that time, *Shashi Bai (PW-13)*, the mother of *Vinod Sai* was coming to the shop of her son to take charge of the shop and she witnessed the entire incident.
4. At the instance of the informant *Kamal Sanwale (PW-6)*, *Dehati Nalisi (Ex.P/1)* was prepared by *Arvind Singh Raghuvanshi*, who was the Investigating Officer of the case and a temporary Crime bearing No. 0/06 was registered for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. *Dehati Nalisi* was sent to the Police Station, *Habibganj* for registration, where it was registered as Crime No.1100/2006. After the completion of the investigation, charge-sheet was filed against both the accused.
5. The Trial Court, after recording the evidence of the witnesses examined by the prosecution and on appreciating the evidence on record, convicted the accused, namely, *Raju Sharma alias Awadhesh Sharma alias Naresh Sharma* for the offence punishable under Section 302 of the IPC and *Dinesh Sahu alias Dinnu*, for the offence punishable under Section 302 read with Section 34 of the IPC.
6. Being aggrieved by the said judgment and order of conviction and sentence, both the accused preferred the Criminal Appeal No.1867 of 2007 before the High Court, which dismissed the appeal and confirmed the judgment and order passed by the Trial Court.
7. The present appellant (*Dinesh Sahu alias Dinnu*), being aggrieved by the said judgment and order passed by the High Court, has preferred the instant appeal.
8. The learned counsel, *Ms. Sangeeta Kumar*, appearing for the appellant, taking the Court to the record of the case, more

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particularly, the evidence of the witnesses, strenuously urged that all the material witnesses had turned hostile including the informant Kamal Singh (PW-6). She further submitted that neither the evidence of Pratap Singh (PW-14), in whose presence the alleged recovery of *khukri* was made from the house of the appellant, was reliable nor the evidence of the mother of the deceased, Shashi Bai (PW-13), was reliable. According to her, even the very presence of Shashi Bai (PW-13) was doubtful inasmuch as, her statement was recorded three days after the alleged incident took place. She further submitted that the appellant has already undergone incarceration for a period of more than 11 years (as on the date) and that there being no evidence on record against the appellant to show that the appellant had shared the same intention as his co-accused-*Raju Sharma to kill Vinod Sai*, the appellant should be given benefit of doubt.

9. However, the learned counsel Ms. Mrinal Gopal Elker, appearing for the respondent-State would vehemently submit that there being concurrent finding of facts recorded by the two Courts below, this Court in exercise of the powers under Article-136 of the Constitution of India, should not interfere with the same, more particularly, when the prosecution had proved the charges levelled against the present appellant beyond reasonable doubt. She has placed heavy reliance on the evidence of Dr. C.S. Jain (PW-17), who had carried out the post-mortem of the deceased, who had opined in his post-mortem report that the cause of death of the appellant was due to several injuries sustained by him and that such injuries are possible with the weapon recovered from the appellant-accused.
10. Having regard to the submissions made by the learned counsel for the parties, and to the evidence available on record, it appears that the guilt of the appellant was sought to be established by the prosecution by examining as many as seventeen witnesses, including the informant Kamal Singh and the other eye-witnesses, as also the Shashi Bai (PW-13), who was the mother of the deceased. It is true that except the two witnesses, namely, Pratap Singh (PW-14) and Shashi Bai (PW-13), the other material witnesses had turned hostile. Nonetheless, it is pertinent to note that the evidence of witnesses cannot be totally discarded, merely because they have turned hostile to the case of prosecution during the course of trial.

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The informant, Kamal Singh (PW-6), had admitted his signatures on the Dehati Nalisi (Ex.P/1), which was recorded immediately after the incident in question involving both the accused in the alleged incident. It is further required to be noted that one of the panch witnesses, namely, Pratap Singh (PW-14) has duly supported the case of the prosecution as regards the recovery of the alleged weapon, *Khukri*, from the house of the present appellant. Though the said witness was thoroughly cross-examined by the defense counsel, nothing significant adverse to the case of prosecution has come on record. Of course, the learned counsel for the appellant had tried to impeach the credibility of the said witness by submitting that he was an interested witness as he was known to the deceased *Vinod Sai*, and also since he had come to the Court in a drunken condition, the said fact was taken into consideration by the Trial Court at the time of recording his deposition by noting that though, the witness was drunk, he was perfectly in sound state of mind to understand the questions put to him and was able to give his deposition. Merely because the said witness knew the deceased, it cannot be said that he was an interested witness or an unreliable witness.

11. The mother of the deceased, Shashi Bai (PW-13), was also thoroughly cross-examined by the defense and nothing adverse to the case of prosecution had come on record, which would help the case of the appellant.
12. It is also pertinent to note that Dr. C.S. Jain (PW-17), who had carried the post-mortem of the deceased, had also opined that the injuries on the body of the deceased were possible with the alleged weapon/ article *khukri*, which was recovered from the house of the present appellant. The said weapon *khukri*, seized/ recovered from the house of the appellant was also sent to Forensic Science Laboratory (FSL) and as per its report, the human blood of 'Group B' was present on it, which was the blood group of the deceased.
13. In view of the above evidence, we are of the opinion that the prosecution had succeeded in proving the guilt of the appellant beyond reasonable doubt. Even the two Courts below have also discussed the said evidence in detail and found him guilty of the charges levelled against him.

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14. We do not see any good ground to interfere with the said concurrent findings of facts recorded by the Courts below.
15. In that view of the matter, the present appeal is dismissed.
16. Pending application(s), if any, shall stand closed.

Result of the case: Appeal dismissed.

[†]Headnotes prepared by: Divya Pandey