

**Criminal Appeal (D.B.) No. 888 of 2002**

**WITH**

**Criminal Appeal (D.B.) No. 631 of 2002**

**WITH**

**Criminal Appeal (D.B.) No. 59 of 2003**

*[Against the Judgment of conviction and Order of sentence dated 19.09.2002, passed by learned Additional Judicial Commissioner, Ranchi, in Sessions Trial No.88 of 1997]*

Sane Nath Mahto Son of Late Bhado Mahto, Resident of Village Sukurhuttu, P.S. Kanke, District Ranchi.

... **Appellant** [In Cr. Appeal (DB) No.888 of 2002]

1. Pannenath Mahto Son of Bhado Mahto, Resident of Sukurhuttu, P.S. Kanke, District Ranchi.

2. Tunu Mahto Son of Hira Lal Mahto, Resident of Karu, P.S. Kanke, District Ranchi.

... **Appellants** [In Cr. Appeal (DB) No.631 of 2002]

Bogdo Mahto Son of Late Jhubla Mahto, Resident of Sugnu, P.S. Sadar, District Ranchi.

... **Appellant** [In Cr. Appeal (DB) No.59 of 2003]

**Versus**

The State of Jharkhand

... **Respondent** [In all cases]

.....

For the Appellant : Mr. Naveen Kr. Jaiswal, *Amicus Curiae*

For the State : Mr. Bhola Nath Ojha, Addl. P.P.  
[In Cr. Appeal (DB) Nos.888 of 2002 & 59 of 2003]

Mr. Tarun Kumar, Addl. P.P.  
[In Cr. Appeal (DB) No.631 of 2002]

.....

**P R E S E N T**

**SRI ANANDA SEN, J.**  
**SRI PRADEEP KUMAR SRIVASTAVA, J.**

.....

## JUDGMENT

Dated- 16.12.2024

*By Court:-* We have heard Mr. Naveen Kr. Jaiswal, learned *Amicus Curiae* appearing on behalf of the appellants, Mr. Bhola Nath Ojha and Mr. Tarun Kumar, learned Addl. P.Ps. appearing for the State.

2. Above criminal appeals are arising out of common judgment of conviction and sentence dated 19.09.2002 passed by learned Additional Judicial Commissioner, Ranchi in Sessions Trial No.88 of 1997, hence, are taken together for hearing.
3. In these appeals, the appellants have challenged their conviction and sentence for the offences under Sections 302, 307, 324, 449 read with Section 34 of the Indian Penal Code passed in the aforesaid judgment, whereby and whereunder the appellants were directed to undergo rigorous imprisonment (R.I.) for life for the offence under Section 302/34 along with fine of Rs.2,000/-, R.I. for 10 years for the offence under Section 307/34 I.P.C. along with fine of Rs.2,000/- each, R.I. for 10 years for the offence under Section 449/34 I.P.C. along with fine of Rs.2,000/- each and R.I. for 3 years each for the offence under Section 324/34 I.P.C. with default stipulation. All sentences were directed to run

concurrently.

4. Factual matrix giving rise to this appeal is that on 09.09.1996 at about 11:00 am, informant Mohrai Mahto along with his wife Bilaso Devi and brother Balku Mahto were sitting in their house, meanwhile the step-brother of the informant namely Bogdo Mahto, Panenath Mahto, Sanenath Mahto and Tunu Mahto armed with lathi, danda, tangi and kudal (spade) came to the house of the informant and due to land dispute between the parties, Bogdo Mahto ordered to kill the informant party. All the other accused persons entered into the house of the informant and assaulted to his wife and brother by lathi, danda and tangi, who sustained severe injuries and fell down on earth and brother of the informant became unconscious. Then accused persons started fleeing away but chased and apprehended by the villagers. The informant brought the injured persons on a jeep to the hospital where his statement was recorded by A.S.I. C. Pandey of Sadar P.S. Ranchi. Accordingly, F.I.R. was registered against the above named four accused persons as Ranchi Sadar P.S. Case No.57 of 1996 for the offences under Sections 448, 341, 323, 324 and 307 read with Section 34 of the Indian Penal Code. Later on, brother of the informant namely Balku Mahto died during the course of

treatment and Section 302 I.P.C. was added.

5. After completion of investigation, charge-sheet was submitted against above named appellants for the offences under Section 448, 341, 323, 324, 307 and 302 read with Section 34 of the Indian Penal Code. The case was committed to the Court of Sessions, where charges were framed against the accused persons to which they did not plead guilty and claimed to be tried. After conclusion of trial, impugned judgment and order has been passed, which has been assailed in this appeal.
6. The learned *Amicus Curiae*, appointed by this Court on behalf of the appellants to assist this Court, has fairly argued that the conviction of appellants for the offence under Section 302 I.P.C. is not legally warranted under factual background of the case as proved by the prosecution. Admittedly, the appellant Bogdo Mahto never joined in assaulting any of the injured persons rather there is simple attribution of instigating other accused to assault the informant's brother and wife. No specific overt act has been attributed against any of the appellants. Both parties are gotia and land dispute is admitted. The occurrence has also taken place in a sudden manner without any premeditation and the prosecution has failed to bring on record any material showing common intention

of all the appellants to cause murder of the deceased. After sustaining injuries, the deceased survived for some days, thereafter, died. The Postmortem Report of the deceased (Ex.3) shows that deceased has sustained only one head injury on right Temporo-parietal occipital region causing fracture of temporo-parietal bones with diffused contusion caused by hard and blunt substance and sharp edge of kudala or tangi has not been used. The above single blow cannot be said to be caused by all the accused persons. It is also opined by the P.W.5 Dr. Niranjan Minz that kudal and tangi even if used by blunt portion, it may cause different injuries. It is further submitted that the injury sustained by Bilaso Devi has been proved by P.W.6 Dr. C.B. Sahay (Ex.4) to be simple in nature. Therefore, by any stretch of imagination, offence under Section 302 I.P.C. cannot be invoked in this case rather the same falls under Section 304 Part II of I.P.C. The incident was of the year 1996. One of the appellants has crossed 70 plus and others have also attained 50 plus age and during trial of the case have undergone about three years' imprisonment. Therefore, appellants have already sufficiently been punished for their guilt. Hence, their sentence may be reduced to the extent of imprisonment already undergone by the appellants.

7. Per contra, learned Addl. P.Ps. appearing for the State have defended the impugned judgment and order on merits and submitted that the injury sustained by the deceased was sufficient to cause death in the ordinary course of nature and the appellants in furtherance of their common intention to kill the deceased have given massive blow on head of the deceased which is very vital part of body. Hence, there is no reason to interfere with the impugned judgment and order as well as sentence passed against the appellants. These appeals are devoid of merits and fit to be dismissed.
8. We have gone through the entire record of the case along with impugned judgment and order in light of contentions raised on behalf of both side.
9. We find that in order to substantiate the charges levelled against the appellants altogether ten witnesses have been examined by the prosecution and following documentary evidence were also adduced:

<b>Exhibit 1</b>	Fardbeyan
<b>Exhibit 1/1</b>	Formal F.I.R.
<b>Exhibit 1/3</b>	Inquest Report
<b>Exhibit 1/4</b>	Inquest Report
<b>Exhibit 2</b>	Case Diary
<b>Exhibit 3</b>	Postmortem Report
<b>Exhibit 4</b>	Injury Report of Bilaso Devi P.W.1

10. On the other hand, two witnesses namely D.W.1 Lubra Pahan and

D.W.2 Biru Mahli have been examined by defence, who have proved the long-standing land dispute between the parties. The houses of accused persons and informant are common having common courtyard and these witnesses have never heard or seen any incident of scuffle and assault between the parties. The appellants have also pleaded their innocence and false implication due to land dispute.

- II.* For better appreciation of the contentions pointed out by learned *Amicus Curiae*, we have to take brief resume of the ocular testimony of witnesses. The most important eye witness of this case is the informant as well as another injured Bilaso Devi (P.W.1).

According to the evidence of **Bilaso Devi (P.W.1)**, she returned from her field to her house, meanwhile Panenath armed with tangi, Kununath armed with leg of cot and Bogdo armed with lathi came to her house and started assaulting to her brother-in-law Balku Mahto and husband Mohrai Mahto (informant). This witness intervened then all the accused persons assaulted her also. Thereafter, they fled away. She has sustained head injury. Her husband also sustained injuries and devar Balku Mahto died during treatment.

In her cross-examination, she admits that the accused persons also reside in one room and there is common courtyard and Sahan land. She has also admitted the land dispute with the accused persons. She has failed to state the specific overt act of each of the accused persons.

**P.W.3 Mohrai Mahto** is the informant of this case. He has proved the contents of F.I.R. and stated that Bogdo Mahto, Panenath Mahto, Sanenath Mahto and Tunu Mahto armed with cot leg (पकआ), lathi, tangi and kudal (spade) claiming partition of land and abusing to the informant party started assaulting to his wife and brother. His brother died at R.M.C.H. hospital, Ranchi due to sustaining of injuries.

**P.W.2 Chhotelal Mahto** is the son of informant. He has also stated about the factum of assault given by the accused persons to his mother and elder father.

**P.W.4 S.I. Chandreshwar Pandey** has recorded the fardbeyan of informant at R.M.C.H., Ranchi and he was also deputed with the charge of investigation of this case. After completion of investigation, he submitted charge-sheet against the accused persons.

**P.W.5 Dr. Niranjana Minz** has proved the Postmortem Report of



the deceased showing single head injury caused by hard and blunt object.

**P.W.6 Dr. C.B. Sahay** has proved the injury report of P.W.1 Bilaso Devi.

**P.W.7 Mahendra Mahto** is a hearsay witness.

**P.W.8 Kujo Devi** married daughter of deceased who also appears to be hearsay witness of the occurrence.

**P.W.9 Raj Nath Mahto** is a local villager, who heard hullah in the village at about 11:00 am and went to the house of Balku Mahto and Bilaso Devi and saw them in injured condition and also came to know that accused persons have assaulted them.

**P.W.10 Basudeo Mahto** does not appear to be eye witness of this case as he has stated that the incident took place in the night at about 23 hours.

12. We have given thoughtful consideration to the ocular testimony of the witnesses keeping in view the nature of injury sustained by the deceased and manner of assault as stated by witnesses, find that there was single blow on head sustained by the deceased resulting in his death but there is no evidence at all as to which one of the appellants has caused single fatal blow. None of the injured have sustained any injury caused by sharp cutting weapon. The

prosecution has also not brought on record any material establishing common intention of the accused persons in furtherance of which the assault was given to the deceased rather land dispute regarding partition of properties was going on between the parties and periodic scuffle is also admitted by prosecution. The place of occurrence is also joint house of the parties having common courtyard. Therefore, it cannot be said that there was any house trespass committed by the appellants. As such the conviction of the appellants under Section 307/34, 324/34 and 449/34 of the I.P.C. is absolutely not justified at all, which is hereby set aside.

13. The Hon'ble Apex Court in a recent judgment in the case of ***Ram Naresh v. State of Uttar Pradesh, (2024) 1 SCC 443*** reiterated the principals laid down in ***Krishnamurthy v. State of Karnataka, (2022) 7 SCC 521***, has observed that "Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or

valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co- assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator,

resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants.”

It was further observed that a plain reading of the above paragraph reveals that for applying under Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or as stated earlier even during the occurrence of the incidence.

- 14.** From the aforesaid observations of the Hon’ble Supreme Court, it may be deduced that a mere common intention per se may not attract Section 34 IPC, unless the person accused has done some act in furtherance thereof.
- 15.** In the instant case, the trend of testimony of ocular witnesses does not specify any specific overt act and manner of participation of

all the appellants in the alleged offence rather the injury sustained by the deceased also shows a singular injury on head, therefore, assault by other appellants, is not corroborated from Postmortem Report of the deceased and the other injured P.W.1 Bilaso Devi has not disclosed the name of her assailant although she has sustained simple injury on her body in the said occurrence. The cumulative effect of ocular testimony of witnesses does not warrant the conviction of the appellants for the offence under Section 302 IPC rather the ingredients of Section 299 IPC are attracted and the case falls under Section 304 Part II of IPC. Therefore, we convert the conviction of appellant from Section 302 IPC to Section 304 Part II of IPC.

The appellants have undergone agony of trial near about three decades and have also sustained imprisonment more than three years during the trial/post-trial of this case. Therefore, in our considered view, the imprisonment already undergone by the appellants appears to be sufficient punishment for their guilt.

16. In view of above discussion and reasons, these appeals are **dismissed** on merits with the aforesaid modification in the findings and sentence. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds and

sureties are also discharged.

17. Pending interlocutory applications, if any, stand disposed of.
18. We had requested Mr. Naveen Kumar Jaiswal, the learned counsel and appointed as learned *Amicus Curiae* to assist this Court. Considering his assistance, we direct the Jharkhand High Court Legal Services Committee to pay consolidated remuneration of Rs.7,500/- to Mr. Naveen Kumar Jaiswal, the learned *Amicus Curiae*.
19. Let a copy of this judgment along with Trial Court record be sent back to the concerned Trial Court for information and needful.

**(ANANDA SEN, J.)**

**(PRADEEP KUMAR SRIVASTAVA, J.)**

Jharkhand High Court, Ranchi

Dated: 16/12/2024

Sachin / **NAFR**