

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 586 OF 2023
(Arising from SLP(Criminal) No.8692/2022)

The State of Madhya Pradesh

...Appellant

Versus

Jad Bai

...Respondent

J U D G M E N T

M.R. SHAH, J

Leave granted.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.09.2019 passed by the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 1244/2011, by which the High Court has allowed the said appeal preferred by the respondent herein – Jad Bai and has acquitted her for the offences punishable under section 302 read with section 34 of the Indian Penal Code (for short, 'IPC') by observing that the prosecution has failed to prove the case of common intention against her, the State of Madhya Pradesh has preferred the present appeal.

2. The respondent herein and the co-accused – husband and son of the respondent, all were tried and ultimately convicted for the offences

punishable under section 302 read with section 34 of the IPC for having killed Vesta, the deceased.

3. That an FIR was lodged by one Nanbai – wife of the deceased at the Police Station Nanpur, alleging that on the Diwali night at about 10:00 or 11:00 pm the elder brother of her husband (Jeth) – accused No.1 – Sekadiya and his son Mukesh – accused No.2 came to her house to call her husband saying that there had been cooked 'Murga' in their house. According to the complainant, her husband – Vesta went along with accused No.1 and accused No.2. According to the complainant after sometime, she heard the voice of crying/scream of her husband and she immediately rushed to the house of her Jeth – accused No.1 – Sekadiya and she saw in the light of electricity that accused No.3 – Jethani (wife of accused No.1 – Sekadiya) had caught hold her husband – Vesta and accused No.1 assaulted her husband by Axe on the head, due to which Vesta fell down. As per the case of the prosecution, the husband of the complainant – Vesta died due to injuries from the axe. According to the prosecution there was a land dispute and therefore the accused persons killed the deceased by calling him at their house. According to the prosecution the accused persons committed the offences punishable under Section 302 read with Section 34 of the IPC. After conclusion of the investigation, the Investigating Officer filed the

chargesheet against the accused for the aforesaid offences. The accused pleaded not guilty and therefore all of them claimed to be tried by the learned Sessions Court for the offences punishable under Section 302 read with Section 34 of the IPC. To prove the charge against accused the prosecution examined in all eight witnesses out of which Nanbai – PW1 was the eye witness. The prosecution also brought on record the documentary evidences including the medical evidence through various witnesses. On closure of the evidence on the side of the prosecution, statements of accused under Section 313 Cr.PC were recorded in which the accused stated that they have been falsely implicated in the case at the instance of the Sarpanch due to enmity of election. On appreciation of evidence, the learned Trial Court held all the accused guilty for the offences punishable under Section 302 read with Section 34 of the IPC and sentenced all of them to undergo life imprisonment.

4. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned trial Court, all the accused preferred an appeal before the High Court. By the impugned judgment and order, the High Court has partly allowed the said appeal and has acquitted the respondent herein – original accused No. 3 – Jad Bai, wife of original

accused No. 1, however, dismissed the appeal qua original accused Nos. 1 & 2.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the High Court acquitting the respondent herein – Jad Bai, original accused No.3, the State of Madhya Pradesh has preferred the present appeal.

6. Shri Yashraj Singh Bundela, learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a very serious error in acquitting the respondent herein – original accused No.3 by holding that the prosecution has failed to prove the case of common intention.

6.1 It is submitted that in the present case, PW1-Nanbai, the wife of the deceased was the eyewitness and in her deposition she specifically stated that the respondent – Jad Bai caught hold of the deceased. It is submitted that therefore the presence of the respondent at the place of incident has been established and according to her deposition, the respondent caught hold of the deceased and her husband – original accused No.1 caused injuries on the deceased . It is submitted that therefore the learned trial Court rightly convicted the respondent –

original accused No.3 for the offences punishable under section 302 with the aid of section 34 of the IPC, along with the other accused.

6.2 It is further submitted that as such the incident occurred at the house of the respondent. It is submitted that in her section 313 statement, the respondent has not explained why she was holding and/or caught hold of the deceased.

6.3 Learned counsel appearing on behalf of the State, relying upon a recent decision of this Court in the case of ***State of Rajasthan v. Gurcharan Singh and Others, reported in 2022 SCC OnLine SC 1716***, has vehemently submitted that as observed and held by this Court, common intention can be formed at the spur of the moment and during the occurrence itself. It is submitted that it is further observed and held by this Court that, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved.

6.4 Learned counsel appearing on behalf of the State has also heavily relied upon the decision of this Court in the case of ***Major Singh v. State of Punjab, reported in (2002) 10 SCC 60*** in support of his case that the respondent was rightly convicted by the learned trial Court for the offences punishable under section 302 with the aid of section 34 of the IPC.

7. Ms. Jesal Wahi, learned Amicus Curiae has vehemently submitted that in the facts and circumstances of the case and by giving cogent reasons when the High Court has acquitted the respondent-accused, the same may not be interfered with by this Court, in exercise of powers under Article 136 of the Constitution of India.

7.1 Learned Amicus has taken us to the deposition of PW1 – Nanbai. It is vehemently submitted that from her deposition, it can be seen that she had never seen original accused No.1 causing injuries on the body of the deceased. It is submitted that in fact she had come at the place of the incident after the entire incident had taken place and the deceased was lying with injuries. It is submitted that what is stated by her in her deposition is that the respondent – accused had caught hold of the deceased. It is submitted that she has not stated in her deposition that in fact she had seen the respondent – Jad Bai causing any injury and/or taking any active part in causing the death of the deceased. It is submitted that therefore the High Court has rightly acquitted the respondent by observing that the prosecution has failed to prove the common intention shared by the respondent with the other accused, namely, original accused No.1.

7.2 Making above submissions and relying upon the decisions of this Court in the cases of ***Mukesh v. State of Madhya Pradesh, reported***

in (2022) 3 SCC 241 and *Ramashish Yadav v. State of Bihar, reported in (1999) 8 SCC 555*, it is prayed to dismiss the present appeal.

8. We have heard learned counsel appearing on behalf of the parties at length. We have gone through the judgment and order of conviction passed by the learned trial Court as well as the impugned judgment and order passed by the High Court. We have also considered and gone through in detail the deposition of PW1 – Nanbai, an eyewitness to the incident.

9. The learned trial Court convicted the respondent Jad Bai – original accused No.3 for the offences punishable under section 302 with the aid of section 34 of the IPC. By the impugned judgment and order, the High Court has acquitted the respondent – original accused No.3 by observing and holding that the prosecution has failed to prove the case of common intention.

10. The entire prosecution case rests on the sole testimony of PW1 – eyewitness to the incident. PW1 is the wife of the deceased. She has categorically stated in her deposition that the incident occurred in the house of the respondent – original accused No.3. She has specifically stated that original accused No.1 – husband of the respondent caused four injuries on the head of the deceased. She has also stated that the

respondent caught hold of the deceased. She has also stated that thereafter the respondent – original accused No.3 dragged the dead body of the deceased and thrown it on the gate of her house. It is the case on behalf of the accused that PW1 was not present at the time when the original accused No.1 caused injuries on the deceased. According to the learned counsel appearing on behalf of the respondent, PW1 came subsequently and at that time she had seen the respondent having caught hold of the deceased. The aforesaid has no substance. The deposition of the eyewitness is required to be considered as a whole and it cannot be in a particular part or sequence. On considering the deposition of PW1 as a whole, the presence of the respondent at the place of the occurrence has been established. The prosecution has also established that the respondent caught hold of the deceased. In her section 313 statement, the respondent – original accused No.3 has not explained why she caught hold of the deceased. Thus, the participation in action of the respondent has been established and proved. If the respondent would not have caught hold of the deceased, in that case the original accused No.1 might not have been able to cause injuries on the head of the deceased. Thus, it can be seen that the respondent participated actively in commission of the offence and shared the common intention to kill the deceased.

11. In the case of **Gurbachan Singh (supra)**, it is observed and held as under:

“12. Given the aforesaid position, we are of the view that Section 34 of the IPC i.e., common intention, is clearly attracted in the case of Gurbachan Singh, whose case cannot be distinguished, so as to exclude him as one who did not share common intention with Darshan Singh, Balvir Singh, and Manjit Singh. Section 34 of the IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 of the IPC to apply, there should be common intention among the co-perpetrators, which means that there should be community of purpose and common design. Common intention can be formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention, can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention.”

12. Now so far as the decisions relying upon on behalf of the respondent in the cases of **Mukesh (supra)** and **Ramashish Yadav (supra)** are concerned, on facts and in light of the deposition of PW1 – eyewitness and that she has specifically stated that the respondent caught hold of the deceased, the said decisions shall not be of any assistance to the respondent.

13. In the present case, the participation in action of the respondent in commission of the offence and the common intention to commit the murder of the deceased with original accused No.1 – husband of the

respondent have been established and proved by the prosecution. Therefore, the High Court has committed a very serious error in acquitting the respondent for the offences punishable under section 302 with the aid of section 34 of the IPC.

14. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 24.09.2019 passed by the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 1244/2011, acquitting the respondent herein – original accused No.3 for the offences punishable under section 302 with the aid of section 34 of the IPC is hereby quashed and set aside and the judgment and order dated 24.08.2011 passed by the learned trial Court in Sessions Trial No. 204/2010, convicting the respondent herein – original accused No.3 for the offences punishable under section 302 with the aid of section 34 of the IPC is hereby restored.

As we have quashed and set aside the impugned judgment and order passed by the High Court acquitting the respondent herein, respondent – Jad Bai is directed to surrender before the concerned Jail authorities within a period of six weeks from today to undergo the remaining sentence as per the judgment and order passed by the learned trial Court, failing which she may be taken into custody on the expiry of six weeks' time to serve out the remaining sentence.

15. The instant appeal is allowed accordingly.

.....J.
[M.R. SHAH]

NEW DELHI;
FEBRUARY 24, 2023.

.....J.
[C.T. RAVIKUMAR]