

Ragho Kumar and anr. Vs. State of Bihar

Ragho Kumar and anr. Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/129546

Court : Patna

Decided On : Sep-17-1996

Judge : B.P. Singh and B.P. Sharma, JJ.

Appeal No. : Cr. Appeal No. 212 of 1986

Appellant : Ragho Kumar and anr.

Respondent : State of Bihar

Judgement :

B.P. Singh and B.P. Sharma, JJ.

1. This appeal has been preferred against the judgment and order of 4th Additional District and Sessions Judge, Saran, Chapra, dated 24th March, 1986, in Sessions Trial No. 99 of 1980. The two appellants herein alongwith five others were put for trial before the learned Additional District and Sessions Judge. Appellant No. 2 herein, Jagarnath Kumhar, was charged of the offence under Section 302 of the Indian Penal Code while others were charged of the offence under Section 302/140 of the Indian Penal Code. On appreciation of the evidence on record the trial Court found that the prosecution had failed to prove its case as against the remaining accused persons, but held that the case against Jagarnath Kumhar was fully established. He, accordingly, held appellant Jagarnath Kumhar guilty of the offence under Section 302 of the Indian Penal Code and sentenced him to rigorous imprisonment for life. He also held appellant No. 1 Ragho Kumhar guilty

of the offence under Section 302/149 of the Indian Penal Code and sentenced him as well to rigorous imprisonment for life. The appellants have preferred this appeal challenging their conviction sentence.

2. The occurrence is said to have taken place on 20th February, 1978 at about 12 noon in which one Kamla Pandey lost his life. The fardbeyan was lodged by Sheojee Singh (P.W. 7) at about 2 p.m. on the same day, pursuant to which the case was investigated by the Investigation Officer (P.W. 9), and ultimately a charge-sheet was filed against seven persons, who were tried in Sessions Trial No. 99/80. In his fardbeyan Sheojee Singh (P.W. 7) stated that at about 12 noon he was going on his tractor to bring bricks, but when he reached near Brahmasthan of village Lauari, he saw that Kamla Pandey and Jagarnath Kumhar (appellant No. 2) were fighting in the orchard of Kamla Pandey. On a call being given by Jagarnath Kumhar (appellant No. 2) 15 to 16 persons came armed with lathi, Bhala, knife etc. After reaching the place of occurrence Ragho Kumhar (appellant No. 1) caught hold of Kamla Pandey (deceased) while others exhorted to assault the deceased. Jagarnath Kumhar (appellant No. 2) took out a knife and inflicted an injury on Kamla Pandey (deceased). Several persons ran to the place of occurrence alongwith the informant, but the accused persons fled away towards their village. Kamla Pandey, who was injured, fell down after walking a- few steps. He was informed by Kamla Pandey, (deceased) that Jagarnath Kumhar (appellant No. 2) was digging the root of his tree, and when he protested, the occurrence took place. Kamla Pandey (deceased) asked for water, but in the meantime he succumbed to his injuries. Several persons came thereafter.

3. At the trial the prosecution examined nine witnesses, but the prosecution story is supported by three witnesses, namely, informant Sheojee Singh (P.W. 7), Gautam Pandey (P.W. 1) and Gopal Pandey (P.W. 2). Two other witnesses examined by the prosecution, namely, Radha Krishan Singh (P.W. 3) and Lai Babu Pandey (P.W. 4) turned hostile. The other witnesses are not of any significance but we may notice that the doctor, who had conducted the post-mortem examination could not be examined, as he was not available having gone to a foreign land for higher studies, but the post-mortem report was formally proved by P.W. 8 Rama Shanker Paswan.

4. The trial court has considered the evidence on record, and learned Counsel for the appellants has also taken us through the entire evidence. The trial Court on consideration of the evidence on record found that the prosecution had succeeded in establishing that the deceased, Kamla Pandey, succumbed to the injuries caused to him by knife, and the prosecution had been able to establish that the occurrence took place; as alleged, and Kamla Pandey received knife injury on his back resulting in his death. We find ourselves in complete agreement with the findings recorded by the trial Judge. The evidence of P.Ws. 1, 3 and 7 establishes conclusively that appellant No. 2, Jagarnath Kumhar and deceased, Kamla Pandey, were fighting with each other, and this was noticed by several witnesses. It is also established that in course of that fight Kamla Pandey was stabbed on his back by Jagarnath Kumhar which resulted in his death. The motive for the occurrence appears to be that the deceased had an orchard adjacent to the land of appellant No. 2. It appears that there was a Mahua tree standing on the ridge between the fields of the deceased and the accused, and the deceased suspected that Jagarnath Kumhar (appellant No. 2) was cutting the roots of his Mahua tree. Since the Mahua tree stood on the ridge adjacent to the land of appellant No. 2 (Jagarnath Kumhar), it is understandable that there was some dispute between the two, that resulted in the scuffle between them on the date of occurrence. The defence sought to urge that the deceased had no right to go on plot Nos. 92 and 93, which belonged to appellant No. 2 and, therefore, the deceased was himself the aggressor. Having regard to the fact that there was a dispute with regard to the cutting of the roots of Mahua tree, which admittedly belonged to the deceased, there was no question of the deceased being the aggressor, and the accused exercising right of private defence. It is no one's case that the deceased was armed with any weapon or that there was any danger to the life and property of the appellants. He simply protested that the roots of his Mahua tree should not be cut, and this gave rise to the scuffle between him and appellant No. 2.

5. The trial Court then considered the complicity of the other accused in the commission of the offence. It appears from the evidence on record that they had not been named in the first information report and no overt act was alleged against them except that it was said that the mob which had collected exhorted the appellants to assault. The trial Court had not believed that part of the prosecution

case, and we are satisfied that for good reasons the trial Court had acquitted the remaining accused persons who are not even named in the first information report. If they had really played the role, as was assigned to them in the trial, there can be no reason why they would not be named in the first information report lodged by P.W. 7 soon after the occurrence. We are, therefore, satisfied that apart from the appellants herein, no role was played by any other person, and it also appears to us that on alarm being raised by Jagarnath Kumhar several persons may have come running to see what was happening and may have rushed to the place of occurrence to see why Jagarnath Kumhar was raising alarm. Their presence, even if established, was innocent presence, and without anything else it cannot be held that they shared any common unlawful object or common intention.

6. So far as complicity of appellant No. 1 Ragho Kumhar, is concerned, the trial Court held that he came running when his brother appellant No. 2, Jagarnath Kumhar, cried for help. After coming to the place of occurrence he caught hold of Kamla Pandey (deceased), whereafter Jagarnath Kumhar stabbed Kamla Pandey with a dagger on his back. We agree that these facts have been established. A question still arises as to whether on these facts one can safely infer that Ragho Kumhar (appellant No. 1) shared a common intention with Jagarnath Kumhar (appellant No. 2) to commit any offence. It is not in dispute that initially the scuffle was going on between appellant No. 2 and Kamla Pandey. Ragho Kumhar (appellant No. 1) was not present at the initial stage. It was only when Jagarnath Kumhar called for help that several persons came running from the village. That was but natural, and from the fact that those persons came to the place of occurrence on hearing alarm raised by Jagarnath Kumhar (appellant No. 2), no inference can be drawn against those persons of having shared any common unlawful object or common intention. It was but natural that on hearing alarm raised by a villager, other villagers will come to his rescue. So far as Ragho Kumhar is concerned, he was one of the persons WHO came running along with other villagers. He thereafter caught hold of Kamla Pandey by the waist. From this it was sought to be inferred that he acted in concert with Jagarnath Kumhar (appellant No. 2). No doubt, the trial Court had convicted him of the offence under Section 302 read with Section 149 of the India Penal Code. We have no doubt, having regard to the findings recorded by the trial Court, that the conviction with

the aid of Section 149 of the Indian Penal Code could not be justified, and if at all complicity of Ragho Kumhar could be established, only with the aid of Section 34 of the Indian Penal Code. The trial Court did not come to the conclusion that the persons who had assembled, shared any common unlawful object with appellant No. 2 and, therefore, the trial court was in error in holding that the charge under Section 302 read with Section 149 of the Indian Penal Code was proved against appellant Ragho Kumhar. We are of the view that having regard to the facts found, Ragho Kumhar cannot be held guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code. It is well- settled that courts will not readily infer a common intention. A common intention may be established by express evidence or by necessary inference. If the facts and circumstances established necessarily lead to the inference that the parties had acted in concert, common intention may be inferred. However, if the facts and circumstances are consistent with the innocence of the accused, the courts will not be justified in inferring common intention against the accused. Coming to the facts of this case, Ragho Kumhar came running to the place of occurrence and found that his brother Jagarnath Kumhar (appellant No. 2) was grappling with the deceased Kamal Pandey and was crying for help. He rushed and caught hold of Kamla Pandey (deceased). It is no one's case that he either asked his brother to kill Kamla Pandey and did anything also which would support an inference of common intention. It was his natural conduct with a view to save his brother from further assault. In doing so, Ragho Kumhar acted on his own, and not pursuant to a common intention which he shared with his brother Jagarnath Kumhar (appellant No. 2). He intended only to save his brother from further assault and, perhaps, did not even know at that stage that his brother was armed with a knife. His conduct must therefore, be held to be innocent, and he neither shared any common intention with his brother Jagarnath Kumhar (appellant No. 2) nor did he entertain a similar intention. It is perfectly justified to hold on the facts of the case that he only intended to save his brother from further assault. The role assigned to him is consistent with his innocence and we, therefore, do not wish to infer that he acted pursuant to a common intention which he shared with his brother. In our view, the conviction of Ragho Kumhar is unjustified and the same is, therefore, set aside.

7. Coming to the case of Jagarnath Kumhar (appellant No. 2), it is no about true that he has been named by all the witnesses, as the person who was grappling with Kamla Pandey, and at least three eye-witnesses have stated that he gave one stab injury on the back of the deceased. He did not repeat that injury nor did he attempt to assault Kamla Pandey any further. Having regard to the surrounding circumstances, we are satisfied that he did not intend to cause the death of deceased Kamla Pandey, but he certainly had the knowledge that his action was such as was likely to cause death. We, therefore, find him guilty of the offence under Section 304, Part II of the Indian Penal Code.

8. The next question is as to the sentence to be imposed against appellant No. 2 Jagarnath Kumhar. The occurrence is said to have taken place in February, 1978 i.e., more than 18 years ago. Appellant No. 2, it is stated, has remained in custody for about twelve months before the trial and was released on bail pursuant to the order of this Court dated 9th July, 1987, after his conviction. Since the judgment in this case was delivered on 24th March, 1986, it is stated that appellant No. 2 remained in jail from 23.4.1986 till at least July, 1987 a period of roughly about sixteen months. Appellant No. 2 has undergone actual sentence of about two years four months.

9. In these circumstances, while finding appellant No. 2 guilty of the offence under Section 302, Part II of the Indian Penal Code, we sentence him to the period already undergone, and we impose a fine of Rs. 3,000/- (three thousand) to be paid by him to the wife of the deceased, if alive, and alternatively to the dependants of the deceased. The fine should be paid within three months from today, and in default appellant No. 2 will undergo rigorous imprisonment for six months.

10. In the result, the order of conviction and sentence passed against appellant No, 1 Ragho Kumhar, is set aside, and he is discharged from the liability of his bail bond. So far as appellant No. 2, Jagarnath Kumhar, is concerned, the order of conviction and sentence passed against him is modified to the extent indicated above.

11. This appeal is partly allowed.

