

Munney and anr. Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-23-2001

Reported in : 2002CriLJ1541

Judge : J.C. Gupta and ;Onkareshwar Bhatt, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 307 and 326; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 421 of 1980

Appellant : Munney and anr.

Respondent : State of U.P.

Advocate for Def. : R.K. Singh, Adv. and ;V.S. Jauhari, A.G.A.

Advocate for Pet/Ap. : A.N. Srivastava and ;V.C. Tiwari, Advs.

Disposition : Appeal dismissed

Judgement :

J.C. Gupta, J.

1. By the judgment and order dated 26-2-1980 passed by the then Ist Additional Sessions Judge, Bareilly in Sessions Trial No. 108/1979 the appellants named above have been convicted and sentenced to imprisonment for life under Section

302 read with Section 34, I.P.C. Appellant Sarwar has been further convicted and sentenced to a period of three years' R.I. under Section 307. I.P.C.

2. Briefly stated the prosecution case is that Abdul Gaffar Qureshi, father of deceased Iqbal Farooq Ahmad had purchased a house situated in Mohalla Guiyan Talab. Absconding accused Sakhawat was a tenant in that house. Abdul Gaffar Qureshi obtained a decree for ejectment of Sakhawat from that house and in execution of the decree, Sakhawat was evicted on 16-10-1978 and his movables were attached by the Court Amin on the same day and they were given in the custody of Mohammad Jama Khan, PW-1. The attached property was kept by the Custodian, Mohammad Jama Khan in the same house. On account of eviction and attachment of his property Sakhawat was annoyed with Iqbal Farooq Ahmad and his father Abdul Gaffar Qureshi. Sri Qureshi was an ex-employee of Civil Court, Rampur while deceased Iqbal Farooq Ahmad was still working as a Reader in Civil Court, Rampur, when the present occurrence took place. It is alleged that Sakhawat suspected that Iqbal Farooq Ahmad was instrumental in getting him evicted. According to the prosecution case the present appellants Munney and Sarwar are friends of Sakhawat who could not be tried as he absconded.

3. The prosecution case further is that in the morning of 11-11-1978 Mohammad Jama Khan PW-1 had gone to the house in question in order to see the attached goods which he had kept there. Mohammad Jama Khan, Iqbal Farooq Ahmad, Abrar Ahmad alias Raju, PW-2 and Fasih Uddin, PW-3 had also accompanied him. At about 8.45 a.m. when all these four persons were inside the house, Sakhawat along with present appellants Munney and Sarwar came there. Sakhawat shouted that Iqbal was a Reader in the Judges Court and he got him evicted from the house and he be killed. Saying this Sakhawat gave a blow to Iqbal with a dagger (big chhuri) in his abdomen due to which Iqbal fell down on the ground. Then accused Sarwar held him by his head and accused Munney and Sakhawat gave a number of blows of dagger to him causing severe injuries. Appellant-Munney is alleged to be armed with a small dagger (Chhuri). When Abrar Ahmad attempted to rescue his brother, Sakhawat asked Sarwar to shoot him dead, whereupon appellant-Sarwar fired a shot from country-made pistol, but Abrar Ahmad escaped as he had entered into Kothri. The pellets of the fire created

marks, on the wall by the side of the doors. On the alarm raised by the victim and witnesses the accused-appellants and Sakhawat ran away from that house with their respective weapons. The witnesses found that Iqbal has already died on account of injuries sustained by him. Mohammad Jama Khan PW-1 immediately proceeded for the police station Ganj, Rampur where he dictated an oral report which was taken down in the chik register as Ex. Ka-1 by Head Constable Rajvir Singh PW-7 on the same day at 9.10 a.m.

4. Upon registration of case the investigation was conducted by S.I. Surat Singh PW-5. He recorded the statement of first informant at the police station and then he proceeded to the scene of occurrence and reached there at about 10 a.m. He found the dead body of deceased Iqbal Farooq Ahmad lying inside the house in question. Inquest was held and dead body was sent for post-mortem examination along with necessary paper through Constable Suraj Pal Singh PW-4. The Investigating Officer took in his possession blood-stained and plain earth through Memo Ex. Ka-5. He further found marks of pellets on the wall of Kothri. He showed those marks in the site plan Ex. Ka-7. He further found some pellets and tiklies lying near the wall and they were also taken into possession through Memo Ex. Ka-6. Statements of other witnesses were also recorded and then after completion of investigation charge-sheet was submitted.

5. Before the trial Court prosecution examined thirteen witnesses namely, PW-1 Mohd. Zaman Khan, PW-2 Abrar Ahmad alias Raju, PW-3 Fasih Uddin, PW-4 Constable Suraj Pal Singh, PW-5, S.I. Surat Singh, P.W. 6 Dr. R.N. Bhardwaj, P.W. 7 Head Constable Rajvir Singh, PW-8 S.I. Gyan Prakash, PW-9 Head Constable Kishan Swarup Sharma, PW-10 Constable Ram Din, PW-11 Head Constable Rajvir. Singh, PW-12 Constable Tejpal Singh and PW-13 Constable Om Prakash Saxena.

6. Out of the witnesses examined PW-1 Mohd. Zaman Khan, PW-2 Abrar Ahmad alias Raju and PW-3 Fasih. Uddin were witnesses of fact. PW-8 to PW-13 were produced to state about the link evidence of the sealed bundles of blood, clothes etc. being carried from the scene of occurrence to the Chemical Examiner. Since the report of Chemical Examiner was only to the effect that blood was found on the

clothes of the deceased. their evidence is hardly of any significance.

7. Dr. R.N. Bhardwaj conducted autopsy of the dead body of deceased Iqbal Farooq Ahmad on 11-11-1978 at 2.30 p.m. Deceased was aged about 26 years. Following ante-mortem injuries were found on the body :

1. Incised wound 11 cm. x 1 cm x bone deep on right side face across the middle of nose cutting through the bone of nose and cheek bone.

2. Incised wound 14 cm x 4 cm x bone deep on right side neck just below lower jaw across neck, cutting the major vessels of neck and extending deeper down to the vertebral column.

3. Incised wound 3 cm x 1.5 cm x muscle deep across right side neck adjacent to injury No. 2.

4. Incised wound across the neck starts from centre extends to left of neck 5 cm x 1.5 cm x cutting the trachea and 3 cm above left sternoclavicular joint.

5. Incised wound 9 cm x 2 cm x bone deep on back of Right forearm just below elbow joint. This wound across the right forearm had cut through a chip of ulna bone.

6. Incised wound 15 cm x 8 cm on right side abdomen obliquely across, 6 cm right to umbilicus. The wound is abdominal cavity deep. Loops of intestine were coming out of the wound and they were divided at three places.

8. In the internal examination, Trachea was found cut under injury No. 4. Both the chambers of Heart were empty. Large vessels were found cut under injury No. 2. Abdominal Wall was also found cut under injury No. 6. Small intestine was found cut at three places under injury No. 6. In the opinion of the doctor the cause of death was shock and haemorrhage as a result of ante-mortem injuries. Post-Mortem Report is Ex. Ka-13. In his deposition before the trial Court Dr. Bhardwaj further categorically stated that death of deceased possibly occurred on 11-11-1978 at 8.45 and all the ante-mortem injuries could be caused by sharp edged weapon like dagger (Chhuri). He further opined that instantaneous death on

account of ante-mortem injuries was possible and the injuries were sufficient to cause death in ordinary course.

9. Both the appellants pleaded not guilty and in their statements recorded under Section 313, Cr.P.C. they denied the prosecution allegations and alleged that the witnesses have deposed against them under the influence of police. They further denied that they were friends of Sakhawat. Accused Munney denied that he had absconded. Accused Sarwar stated that police was chasing him so he appeared in Court. He further asserted that he was a witness in the theft case against Mohammad Jama and Abdul Gaffar and so he was implicated in the case. Accused Munney further stated that on 27-1-79 the Investigating Officer had taken him from District Jail, Bareilly. He was beaten and was shown to the witnesses and was sent to jail on 29-1-1979. He produced Sri K.K. Srivastava, Assistant Jailor, District Jail, Bareilly as DW-1 in defence to prove his admission in District Jail, Bareilly on 25-1-1979 and his release on 27-1-1979.

10. On appraisal of evidence the learned Sessions Judge has come to the conclusion that prosecution has succeeded in proving its case beyond doubt and the evidence of three eye-witnesses was convincing and reliable and there was nothing in their cross-examination to indicate that they were not speaking the truth and with these findings both the appellants have been convicted and sentenced as stated above.

11. We have heard Sri V.C. Tiwari, Senior Advocate appearing for the appellants and Sri R.K. Singh, A.G.A. for the State.

12. We have also perused and examined the record.

13. Learned counsel for the appellants has neither challenged nor assailed the factum of death of Iqbal Farooq Ahmad on account of ante-mortem injuries found on his dead body during post-mortem examination. It is otherwise also evident from the post-mortem report and the statement of Dr. R.N. Bhardwaj PW-6 that as many as six incised ante-mortem injuries were sustained by Iqbal Farooq Ahmad which caused his death on account of shock and haemorrhage and these injuries were sufficient to cause death in ordinary course. It is thus fully establish beyond

any doubt that Iqbal Farooq Ahmad died a homicidal death.

14. Sri V.C. Tiwari learned counsel for the appellants, however, submitted before us that from the evidence on record and the circumstances appearing in the case it was doubtful that the incident occurred at the time alleged by the prosecution and most likely it occurred much earlier while it was still dark. He further submitted that the presence of the three alleged eye-witnesses at the scene of occurrence was highly doubtful. They were highly interested witnesses and even according to their own version they happened to be there by a sheer co-incidence. Sri Tiwari also submitted that the medical evidence does not support the ocular testimony of the witnesses as the nature of injuries of deceased indicates that he was assaulted by heavy cutting weapons and the ante-mortem injuries could not be the result of pointed weapon like 'Chhuri'. It was further argued that as far as the present appellants are concerned they had no motive to commit the murder of the deceased. Lastly it was argued that the present appellants could not be held guilty for the offence of murder with the aid of Section 34 of the Indian Penal Code.

15. On the other hand learned A.G.A. appearing for the State argued that the incident in question occurred in broad day light in the presence of witnesses of whom three were produced before the trial Court who all supported the prosecution case and nothing has come out in their cross-examination to discredit their testimony. Their evidence further gets support from attending circumstances and the medical evidence. It was further argued that the evidence on record leaves no room of doubt that both the appellants along with absconding accused Sakhawat had come to the house in question with a pre-plan and murder of deceased was committed in furtherance of common intention of all of them.

16. Before we advert to the evidence with regard to the incident in question, we may first deal with motive part. As per prosecution of case, Iqbal Farooq Ahmad was murdered in the house which belonged to Abdul Gaffar Qureshi. father of the deceased. There is ample evidence on record, both oral and documentary, to indicate that the said house was owned by Abdul Gaffar Qureshi and the absconding accused Sakhawat was living therein as tenant. The landlord Abdul Gaffar Qureshi filed suit for ejectment against Sakhawat and the same was

decreed on 22-3-1978 as is clear from the copy of judgment Ex.Ka-18. The decree of ejectment and arrears of rent was put to execution. The decree-holder obtained possession over the house in question on 16-10-1978 through Court Amin. The movables of judgment-debtor were attached in execution of money decree and were given in the custody of Mohd. Jama Khan. All these facts are borne out from the oral testimony as well as from documents Ex. Ka-19 to Ex. Ka-23. Abdul Gaffar Qureshi had retired as Munsarim from Rampur Judgeship. His son Iqbal Farooq Ahmad deceased was still working as Reader in Rampur Judgeship. It has come in the evidence that absconding accused Sakhawat suspected that Iqbal Farooq Ahmad was instrumental in getting him evicted from the tenanted house. Since Sakhawat was evicted and his movables were attached and given in custody of Mohammad Jama Khan there was nothing unnatural if Sakhawat started bearing ill-will against Abdul Gaffar Qureshi and his son Iqbal Farooq Ahmad. Sakhawat was thus certainly having a grudge against the deceased. It has also come in evidence that the present appellants were friends of Sakhawat. Therefore, there is nothing unnatural if they also joined hands with Sakhawat.

17. Coming to the actual incident, we find that it has been firmly established beyond any doubt that Iqbal Farooq Ahmad was murdered in the house which was hitherto in occupation of Sakhawat as tenant, whose possession had been obtained by the father of deceased in execution of eviction decree. To state about the occurrence, the prosecution produced Mohammad Jama Khan PW-1, Abrar Ahmad alias Raju PW-2 and Fasih Uddin PW 3. According to these witnesses they had gone to the house in question along with deceased Iqbal Farooq Ahmad in the morning of 11-11-1978 and while they were still in the house at about 8.45 a.m., the appellants with Sakhawat came there. As per the statement of PW-1 Mohammad Jama Khan, the attached goods had been kept inside this house and Iqbal Farooq Ahmad and his father had put their lock on the house. He asserted that he used to go to the house to look after the attached goods as they were given in his custody. His statement is corroborated by PW-2 Abrar Ahmad alias Raju and PW-3 Fasih Uddin who both have also asserted of their having gone to the house in question with the deceased and PW-1. We have gone through their statements carefully and find no sufficient reason to doubt in their claim of having gone to the house in question on the relevant day and time. No doubt that Abrar

Ahmad alias Raju PW-2 is real brother of deceased and PW-3 Fasih Uddin is brother-in-law of deceased but the mere fact of their close relatives of the deceased is not enough to discard their testimony. All the three witnesses in their statements before the Court gave a vivid account of occurrence and they remained unshaken throughout their cross-examination. Their evidence does not suffer from any embellishment or infirmity. Learned counsel for the appellants made an unsuccessful attempt to create a doubt regarding their presence and his main criticism in this regard is that though the witnesses were closely related to the deceased they did not make any attempt to save him and if they had done so they would have naturally sustained some injuries. This submission of the learned counsel for the appellants is devoid of any force inasmuch as the accused persons were having a direct animus against the deceased and he was their main target. As soon as the three accused entered into the house Sakhawat shouted for the blood of Iqbal Farooq Ahmad deceased and inflicted a blow with a big 'Chhuri' in his abdomen whereby Iqbal Farooq Ahmad fell on the ground, ante-mortem injury No. 6 was on the right side of abdomen. It was an abdominal cavity deep injury and loops of intestines had come out of the wound. This injury supports the ocular testimony that accused Sakhawat gave first blow with dagger in the abdomen of the deceased and since the injury was of a very serious nature there was nothing unnatural if deceased fell on the ground on receiving this injury. The evidence of the witnesses is further to the effect that when Iqbal Farooq Ahmad fell on the ground appellant-Sarwar held him by his head and accused Munney and Sakhawat gave a number of blows of 'Chhuri' possessed by each of them. Appellant Munney was armed with a small dagger while Sakhawat with a big dagger. Use of two kinds of sharp cutting weapons is apparent from the perusal of nature and kind of ante-mortem injuries noted in the post-mortem report. It is further in the evidence that when Abrar Ahmad PW-2 advanced to the rescue of his brother, Sakhawat accused asked appellant Sarwar to shoot him dead whereupon Sarwar fired a shot from country-made pistol but luckily Abrar Ahmad escaped as he rushed inside a kothri of the house. The fact that a shot was fired gets corroboration from the pellet marks which were noticed on the wall of the kothri by the Investigating Officer when he visited the scene of occurrence. Pellets and tiklies were also found lying on the ground near the wall of kothri and they

were taken into possession by the Investigating Officer through Memo Ex. Ka-6. The statement of the Investigating Officer that he found pellet marks on the wall and had shown those marks in the site plan Ex. Ka. 7 has not been assailed by the defence counsel in the cross-examination and we have no reason to disbelieve the Investigating Officer in this regard. Therefore, it cannot be said that no attempt was made by any witnesses to rescue the deceased. The deceased was real brother of Abrar Ahmad alias Raju and when this witness tried to save his elder brother one of the accused made an attempt on his life by opening fire towards him. In such a situation, if other witnesses did not make any physical attempt to save the deceased their conduct cannot be regarded as incongruous as to dub them as unnatural witnesses. Obviously, they must have been afraid that if they advanced for the help of deceased they would meet the same fate. After having closely examined the evidence of these witnesses, We could find no good reason to discard their evidence. The medical evidence also materially corroborates the statement of the eye-witnesses as regards the use of weapons at the time of occurrence. Dr. Bhardwaj PW-6 in his deposition before the trial Court in examination-in-chief categorically deposed that all the ante-mortem injuries could be caused by sharp edged weapon like 'Chhuri'. This part of his statement remained unassailed and it was not even suggested to him that the ante-mortem injuries could not be caused by weapon like Chhuri (dagger). It may not be out of place to mention here that even the witnesses were not asked as to what were the size and shape of Chhuris with which accused Sakhawat and accused Munney assaulted the deceased. There is no specific or standard size of Chhuri. The incident was of district Rampur and it is of common experience that in that area big Chhuries are manufactured which are even used to mince meat. In the absence of any effective cross-examination in this regard it would be most imprudent to discard the testimony of these witnesses on the ground that ante-mortem injuries could not be caused by daggers particularly when Dr. Bhardwaj who conducted autopsy gave out a clear-cut opinion that the injuries of the deceased could be the result of blows of dagger. We thus find no weight in the submission of the learned counsel for the appellant that the ante-mortem injuries found on the body of deceased were of a heavy cutting weapon and not of Chhuri. Even Chhuri could be a heavy sharp cutting weapon. In our opinion there is no conflict between the

medical evidence and the ocular testimony of the witnesses.

18. Learned counsel for the appellants then argued that as per the statement of PW-2 Abrar Ahmad, the deceased had taken tea and a little piece of Paratha before proceeding to the house in question but only four ounce of watery fluid was found in the stomach of deceased which according to the learned counsel for the appellants supports the defence argument that the deceased had not eaten anything before his death and his murder was committed much earlier, most likely in darkness. If we closely examine the statement of Abrar Ahmad it is to be found that he has merely stated that his brother perhaps had taken tea and a little Paratha before leaving the house. He was obviously not definite about this fact and, therefore, the absence of Paratha or any semi or undigested food in the abdomen of deceased does not adversely affect the prosecution story. Watery fluid was found in the abdomen which supports the statement of P.W. 2 that the deceased had taken some fluid, may be tea, before his death which fact also negatives the defence argument that he was murdered in darkness. This finding of ours further gets strength from the fact that the dead body was found wearing pant, bush shirt, socks and shoes which rules out the possibility of the murder having been committed in darkness while deceased was still asleep.

19. It was submitted on behalf of accused-Sarwar that he has been falsely implicated in this case as he was named as a witness in the theft case against Abdul Gaffar Qureshi and Mohammad Jama Khan lodged by Hamid Raza Khan as admitted by P.W. 1. Hamid Raza Khan was related to Sakhawat-accused but it may be noticed that P.W. 1 has further stated that in the theft case police has submitted final report and, therefore, there could be no reason for them to falsely implicate accused-Sarwar. If the first informant actually wanted to falsely implicate somebody it could be Hamid Raza Khan who had lodged the theft case against Abdul Gaffar Qureshi and P.W.1 but he was not nominated.

20. On appraisal of evidence on record, we are of the view that the learned Sessions Judge has rightly concluded that the prosecution has succeeded in proving its case beyond reasonable doubt against the appellants.

21. It was argued in the last that even if participation of appellants is held to have been established, they cannot be held guilty for the offence of murder with the aid of Section 34, IPC. According to Sri V.C. Tiwari, learned counsel for the appellants the present appellants cannot be said to have shared common intention with absconding accused Sakhawat of committing murder of deceased and at best they could be held guilty under Section 326 read with Section 34, I.P.C. as according to the witnesses it was Sakhawat-accused who possessed big dagger and the three fatal injuries in the form of ante-mortem injuries No. 2, 4 and 6 could be the result of a big dagger only.

22. It is true that presumption of common intention is subject to the same restrictions as other presumptions and it must not take the form of a bare surmise, conjecture or suspicion. Inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. A common intention must be anterior in time to the commission of crime showing a pre-arranged plan and prior concert and though, it is difficult in most cases to prove the intention of an individual, it has to be inferred from the act or conduct or other relevant circumstances of the case. No hard and fast rule can be laid down in this regard and the question whether inference of common intention can be drawn depends upon facts and circumstances of each case. Sometimes this inference can be gathered by the manner in which the accused persons arrived on the scene of occurrence and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence for instance that all of them left the scene of occurrence together and other acts which all or some may have done as would help in determining the common intention. In other words, totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence with which they could be connected. In the case of *State of U.P. v. Iftiqar* 1973 ACC 366 : AIR 1973 SC 863, it was held by the Apex Court that for invoking Section 34 prior concert or a prearranged plan has to be established but it is difficult to prove the intention of an individual. It has to be inferred from his act, conduct and other relevant circumstances. It is not necessary that any overt act must be done by each

accused. In the present case the prosecution evidence is to the effect that absconding accused Sakhawat was having a strong personal grudge against deceased Iqbal Farooq Ahmad. Both the appellants were friends of Sakhawat accused. This part of the evidence of witnesses remained unshaken. It is further in the evidence that all the three accused persons came together at the house in question. Sakhawat was armed with a big dagger, appellant-Munney with a small dagger and appellant-Sarwar with a country-made pistol. As soon as Sakhawat saw the deceased he shouted that he be killed and saying this he himself gave a severe blow with a dagger in the abdomen of deceased due to which Iqbal Farooq Ahmad fell on the ground. Thereafter accused-Sarwar held the head of deceased by his hands and accused-Munney and Sakhawat then started giving dagger blows on Iqbal causing him several injuries. And when Abrar Ahmad P.W. 2 attempted to rescue his brother, Sakhawat asked Sarwar-appellant to shoot him dead where upon appellant-Sarwar fired a shot from his country-made pistol upon Abrar Ahmad. After committing the murder of the deceased all the accused persons ran out of the house together carrying with them their respective weapons. The only reasonable inference deducible from these established facts would be that all the accused persons were having common intention to commit the murder of Iqbal Farooq Ahmad and the mere fact that appellant-Sarwar did not himself cause any injury to the deceased or the appellant Munney used only a small dagger in inflicting injuries on the deceased, will not bring their case out of the purview of the offence of murder. We thus find ourselves unable to agree with the submission of the learned counsel for the appellants that the appellants could only be held liable under Section 326 read with Section 34 and not under Section 302 read with Section 34 of the Indian Penal Code. Learned counsel for the appellants placed reliance on the decision of the Apex Court in the case of Mithu Singh v. State of Punjab (2001) 4 JT (SC) 216 : AIR 2001 SC 1929. The facts of Mithu Singh's case were entirely different from the facts of the present case. What was laid down in the said decision is that an inference as to common intention should not be readily drawn; the culpable liability can arise only if such inference can be drawn with a certain degree of assurance. The facts and circumstances appearing in the present case leave no room of doubt in our mind that all the accused persons shared the common intention of causing death of deceased-Iqbal

Farooq Ahmad.

23. For the foregoing reasons, this appeal is dismissed and the judgment and order of conviction and sentence dated 26-2-1980 of the trial Court is upheld. Both the appellants are on bail. They shall be taken into custody and sent to jail forthwith to serve out their respective sentences as imposed by the trial Court and affirmed by this Court.

24. Let a copy of this judgment be sent to the trial Court for immediate compliance.

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