

AP/AS/SDAS & PA
Item No.213

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Suvra Ghosh

C.R.A.389 of 2012

Jagan Gope & Ors.

-Vs-

State of West Bengal.

For the Appellant : Mr. Moinak Bakshi, Adv.

For the State : Mr. Rana Mukherjee, Adv.,
Mr. Sanjoy Bardhan, Adv.,
Md. Kutubuddin, Adv.

Heard on : 16th December, 2019

Judgment on : 16th December, 2019

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 10.5.2012 and 11.5.2012 passed by the learned Additional Sessions Judge, 1st Court, Purulia in Sessions Trial No.22 of 2008 arising out of Sessions Case No.186 of 2008 convicting the appellants for commission of offence punishable under Sections 302/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life each and to pay fine of Rs.5,000/- each. The fine amount if realized, would be paid to the heirs of the victim.

Prosecution case, as alleged, against the appellants is that on 12.7.98 at 10.00 P.M., there was a dispute over catching of fish between Abodh Saran

Gope, the deceased on the one hand and Ashadhan Gope, Bhadru Gope and Sasthi Gope on the other hand. The miscreants were chased away. Tulshi Gope, father of Bhadru and Sasthi threatened Abodh that he has become a rich person and should be taught a lesson. On 13.7.98, Abodh Gope, who was the Headmaster of Sirkadih Primary School, had gone to the school to discharge his duties. Around 1.00 P.M., the appellants being variously armed assaulted Abodh in the school resulting in his death. The incident was witnessed by P.W.6, Mathur Gope who reported the matter to Nilmohan Gope, P.W.3, brother of the deceased. Nilmohan Gope intimated Monoj Kumar Gope, P.W.1, son of the deceased who along with his uncle went to the spot and found his father dead. On the way to the police station, they were threatened by Sasthi Gope and Ashadhan Gope. Written complaint was lodged at Baghmundi Police Station resulting in registration of Baghmundi P.S. Case No.32 of 1998 dated 13.7.1998 under Sections 302/109/34 of the Indian Penal Code. In the course of investigation, the appellants were arrested and on the leading statement of Ashadhan Gope, it is alleged that bhojali, tangi and dagger were seized from the tank of Durga Charan Singh. In conclusion of investigation, charge sheet was filed and the case was committed to the Court of Sessions and transferred to the court of the learned Additional Sessions Judge, 1st Court, Purulia for trial and disposal. Charges were framed under sections 302/34 and 201/34 of the Indian Penal Code. In the course of trial, prosecution examined 19 witnesses and exhibited a number of documents. The defence of the appellants was one of innocence and false implication. In conclusion of trial, trial court by judgment and order dated 10.5.2012. and 11.5.2012 convicted and sentenced the appellants, as aforesaid.

Mr. Moinak Bakshi, learned Counsel appearing for the appellants argued that the prosecution essentially hinges on the evidence of the sole eye witness, P.W.6. P.W.6 is an unreliable witness. It is difficult to comprehend how he saw the incident which occurred inside the class room while walking down the road. Subsequent conduct of the witness in not disclosing the matter to local villagers is also unnatural. P.W. 1 and P.W.3 and other witnesses have enmity with the appellants and embellished their versions to falsely include Sasthi and Ashadhan who were not named by P.W.6 as the assailants. Deposition of these witnesses are also at variance to their earlier statements made to the police. Recovery of the alleged weapons is from a pond which is not within the exclusive control of the appellants and the fact that the articles were not sealed, labelled or sent for F.S.L. examination creates a dent in the prosecution case. Hence, the appellants ought to be acquitted of the charges levelled against them.

Mr. Sanjoy Bardhan, learned Advocate appearing for the State submitted that the evidence of P.W.6 unequivocally proves the role of Jagan Gope, Bhadrugope, Jishu Gope and Ajit Gope in assaulting the deceased in the primary school. Other witnesses had seen all the appellants including Sasthi and Ashadhan proceeded towards the school with arms. They had also seen them returning from the place of occurrence. Subsequently, Sasthi and Ashadhan obstructed P.W.1 from proceeding to the police station. These circumstances show that all the appellants shared common intention to commit the murder of the deceased and in pursuance thereof had gone to the place of occurrence variously armed and killed the victim. Conviction of the appellants ought to be upheld and the appeal is liable to be dismissed.

On 13.7.1998 at around 1.00 P.M. Abodh Gope, Headmaster of Sirkadih Primary School was brutally murdered in the school premises by miscreants. Mathur Gope (P.W.6) is an eye witness to the incident. He deposed in the afternoon he was proceeding towards his aunt's house at Karedih. When he reached in front of the primary school, he found Bhadru, Jagan, Jishu and Ajit assaulting the headmaster. Seeing the incident, he ran away. On his way back, he met Nilmohan Gope and disclosed the names of the aforesaid persons to him. He made a statement to the Magistrate. The witness was extensively cross-examined but remain steadfast to the aforesaid deposition.

P.W.3, Nilmohan Gope corroborated the evidence of P.W.6. He deposed Mathur (P.W.6), informed him that Jagan, Bhadru, Ajit, Sasthi, Jishu and Ashadhan had killed his brother. He rushed to the spot. On his way towards Murar-bandh, he found the accused persons returning from the tank of Durga Charan. They threatened him with dire consequences. From the place of occurrence, P.W.3 went to the house of the deceased and informed the incident Monoj Kumar Gope, P.W.1, son of the deceased, his wife, Jasoda Gope, P.W.13 and other family members. Thereafter, P.W.1 and P.W.3 proceeded to the police station in a motor cycle. At Lokor-bandh, Ashadhan and Sasthi restrained them. P.W.3 also deposed with regard to a dispute which occurred in the night of the previous day i.e. on 12.7.98 at 9/10 P.M. between the deceased on one hand and Ashadhan, Bhadru and Sasthi on the other hand over stealing of fish. There was a commotion in the locality and a village salish was held and the matter was amicably settled.

P.W.1, son of the deceased has substantially corroborated P.W.3 and proved the first information report. Police came to the spot and seized various articles. He signed on the seizure list, Ext.2. He also deposed that on 25.8.98

the accused persons other than Jishu Gope were brought to the village by police and tangi, ballam, bhojali and chhora was recovered from bank of Murar-bandh.

P.W.13, Jasoda Gope has corroborated the evidence of her husband and stated that P.W.3 came to their residence and disclosed the incident to them.

P.W.8 and P.W.10 are the students of the primary school.

P.W.8 was declared hostile. However, he admitted that the Headmaster had been murdered in the school on the fateful day. He also stated that the tiffin hour of the school is between 1.00 P.M. to 1.30 P.M. and he had gone to his house during tiffin.

P.W.10, Dipali Kumar, another student of the school deposed that 4 to 6 persons came to the school and murdered Abodh master at the gate of the school.

P.W.11, Narendranath Kumar, teacher of the school deposed that he heard about the incident and came to the spot and saw the dead body of Abodh. He was a signatory to the inquest report.

In addition to the aforesaid witnesses, prosecution has relied on the evidence of P.W.4, P.W.5 and P.W.7. P.W. 4 and P.W. 7 claimed they saw the accused persons in a body before and after the incident. P.W.4, Subhas Gope deposed while he was returning from the field at around 12.30 P.M., he saw the accused persons with weapons proceeding towards Sirkadih. Being apprehensive, he proceeded towards the school and subsequently found six persons fleeing near Murar-bandh. He also deposed with regard to the theft in the pond of Abodh master on 12.7.98.

P.W.5, Chaitan Gope, deposed that Jagan, Sasthi and Ajit though employed at Tata were present in their house on the said date.

P.W.7, Aswini Sen Gope, spoke of the presence of the appellants with weapons in front of the house of Tulshi Gope, father of Bhadru and Sasthi. He stated that he heard about the incident from Nilmohan, Bhaktu and Mathur.

P.W.16, Bhaktu Gope deposed with regard to recovery of the weapon viz., bhojali, tangi and chhora from the tank of Murar-bandh around 11.30 to 11.45 A.M. on 25.8.98 on the showing of Jagan, Ashadhan, Ajit and Bhadru. He proved the seizure list, Ext.5.

P.W.12, Abinash Gope deposed that Bhadru, Sasthi and others had gone to police station to lodge diary against Aboadh master on the fateful day around 11.00 A.M.

P.W.15, Dr. Dipak Kumar Basak is the post mortem doctor. He found the following injuries on the deceased:-

- “1. 10” long sharp cut injury with the fracture of skull including left side of the face and encroaching left parieto temporal area in upper part of the face.
 2. 6” sharp cut injury over the left parietal area.
 3. 8” sharp cut injury over the left parietal area.
 4. 3” sharp cut injury skin deep over the left side of the nose and upper lip.
 5. sharp cut 1” penetrating injury over the left side of the chest near 05th rib.
- 05th rib cut and injury is 1” to the left nipple.”

He opined that the death was due to the aforesaid injuries suffered by the victim which were ante mortem and homicidal in nature.

P.W.17, Samar Banerjee and P.W.18, Manik Kumar kuila are the investigating officers of the case. P.W.17 begun the investigation by visiting the place of occurrence. He prepared rough sketch map with index, Ext.6. He held inquest over the dead body, Ext.3/4. He examined witnesses. He arrested the

accused persons. Ashadhan Gope made a statement disclosing the place where they had dropped the weapons (Ext.7 series). Pursuant thereto, the weapons were recovered upon identification by the accused persons in the presence of witnesses. He handed over the investigation upon transfer. Remaining part of the investigation was conducted by P.W.18 and charge sheet was filed.

On 12.7.98 around 9/10 P.M., there was a dispute in the village over theft of fish from the tank of Abodh Gope, the deceased. Ashadhan, Sasthi, Bhadru and others were chased by P.W.1 and local people. The matter was amicably resolved. On the next day, it appears from the deposition of P.W.12 that Sasthi, Bhadru and others (not accused in the case) had gone to police station to lodge complaint against Abodh Gope. Thereafter around 1 P.M. P.W. 6, Mathur Gope, while passing in front of Sirkadih Primary School where Abodh was working as the head teacher, saw the latter being brutally assaulted by Jishu, Bhadru, Ajit and Jagan. He did not note the presence of Sasthi and Ashadhan at the spot. He ran from the spot and informed the incident to P.W. 3, Nilmohan, brother of the deceased. P.W. 3, intimated Monoj, P.W. 1, son of the deceased who lodged F.I.R. against the miscreants. Evidence of P.W. 6 has been criticized on the premise that the incident occurred inside the school room and he could not have witnessed it from the road.

I am unable to accept such contention raised on behalf of the defence.

P.W. 10, Dipali Kumar, a student of the school, deposed that Abodh master had been assaulted by 4 to 6 men at the gate of the school. Rough sketch map prepared by P.W. 17 marked as Exbt.-6 also shows that the dead body of the victim was lying adjacent to the door of the classroom which was visible from the nearby road. These circumstances probabalise the fact that P.W. 6 while travelling down the road had seen the brutal assault on the victim which

took place at the gate of the classroom and was visible from outside. It has also been argued that conduct of P.W. 6 that he did not inform any villager apart from P.W. 3 is unnatural. Evidence on record shows that a tension was prevailing between the family of the deceased and that of the appellants. In fact, they are related to each other. In this backdrop, it is natural that P.W. 6, after witnessing the murder, had informed Nilmohan, P.W. 3 - a family member of the deceased instead of other villagers. His conduct in that regard appears to be most logical and deposition of the said witness ought not to be disbelieved on this ground alone. Furthermore, ocular version of the aforesaid eye-witness is corroborated by the medical evidence of P.W. 15, post mortem doctor, who found a number of incised wounds on the body of the deceased which were ante mortem and homicidal in nature.

Accordingly, I am convinced that P.W. 6 is a reliable and truthful witness and has clearly narrated the involvement of Jishu, Jagan, Bhadru and Ajit in the murder of Abodh Gope, the headmaster.

Although P.W. 6 did not disclose the role of Sasthi and Ashadhan in the murder of Abodh to P.W. 3, the latter appears to have embellished his version and claimed that P.W. 6 had named the said appellants to him. Learned Counsel appearing for the appellants strenuously argued in view of pre-existing enmity, P.W. 3 made an exaggerated claim with regard to their involvement in the murder of Abodh. On the other hand, learned Counsel appearing for the State, submitted that most of the witnesses had noted the presence of Sasthi and Ashadhan along with other appellants in a body before and after the murder. P.W. 3 saw all the accused persons near Murar-bandh fleeing from the spot. Subsequently, Sasthi and Ashadhan obstructed P.W. 1 and 3 from going to the police station. P.W. 4, Subhas Gope, claimed that he had seen all the

appellants with arms proceeding to village Sirkadih. Subsequently, he saw them fleeing near Murar-bandh. P.W. 7 also deposed that he had seen the appellants with arms in a body in the village. Finally, pursuant to the leading statement of Ashadhan marked as Exbt.-7 (series), P.W. 17, Samar Banerjee, investigating officer, recovered weapons from the tank at Murar-bandh.

Relying on these pieces of evidence it has been contended although P.W. 6 did not find Sasthi and Ashadhan at the place of occurrence, the said accused persons also shared common intention with the other appellants to commit murder of the deceased. Common intention under Section 34 of the Indian Penal Code is a species of constructive liability which renders every member of a group who shares such intention responsible for the criminal act committed by anyone of them when such act is done in furtherance of the common intention. Common intention, however, cannot be confused with similar intention. Although accused persons may have similar intention to commit a crime, say murder, until and unless the pre-requisites of : (a) pre-consent, (b) presence and (c) participation in respect of each accused are established, it cannot be said that they shared common intention and be culpable for the crime committed by any of them in furtherance to such intention. [See ***Mahbub Shah Vs. Emperor, AIR 1945 Privy Council 118; Shreekantiah Ramayyia Munipalli and anr. Vs. State of Bombay, AIR 1955 SC 287 (paras 23 and 24); Shiv Prasad Vs. State of Maharashtra, AIR 1965 SC 264 (para12)***]

I have assessed the version of the prosecution witnesses in the light of the aforesaid well-established principle of law. Although there is some evidence that Sasthi and Ashadhan had enmity with the deceased and may have tried to obstruct P.W. 1 and 3 from going to the police station, there is no evidence on record that they were present at the place of occurrence and participated in the

assault and murder of the victim with Jagan, Bhadru, Jishu and Ajit. Even the evidence with regard to their accompanying the other appellants with arms to the place of occurrence or fleeing from the spot appears to be embellished. Cross-examination of the investigating officer, P.W. 17, shows that these facts were stated for the first time in Court by P.Ws. 4 and 7 and not before him during interrogation. Recovery of weapons from the tank at Murar-bandh purportedly on the statement of some of the accused persons leaves much to be desired. There is no evidence on record that the appellants had exclusive control of the tank from where recovery was effected. The spot was accessible to others and the said recoveries had been effected 12 days after the date of occurrence. Hence, possibility of planting such articles cannot be wholly ruled out. It is also apposite to note that the seized weapons were neither sealed or labelled nor sent for FSL examination.

Hence, I am not willing to give much credence to these pieces of evidence to come to a conclusion with regard to presence and participation of Ashadhan and Sasthi in the crime. Enmity is a double-edged sword. While it gives justification to commit the crime, it is also a vital motivation for interested witnesses to falsely implicate innocent persons in the crime. Although the principle "*falsus in uno, falsus in omnibus*" is inapplicable in Indian jurisprudence, evidence of interested witnesses require to be subjected to stricter scrutiny so that their overzealous versions do not rope in innocent persons along with the real offenders.

In the light of the aforesaid discussion, although I am convinced with regard to the roles of Jagan, Bhadru, Jishu and Ajit in the murder of the deceased, I am inclined to extend the benefit of doubt to Sasthi and Ashadhan.

Accordingly conviction and sentence of the appellants i.e. Jagan Gope, Bhadru Gope, Jishu Gope and Ajit Gope are upheld.

Conviction and sentence of the appellants i.e. Sasthi Gope and Ashadhan Gope are set aside.

The appeal is partly allowed.

Sasthi Gope and Ashadhan Gope shall forthwith be released from custody, if not wanted in any other case, upon executing a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

The period of detention suffered by appellants Jagan Gope, Bhadru Gope, Jishu Gope and Ajit Gope during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Copy of the judgment along with Lower Court records be sent down to the trial court at once for necessary compliance.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties, as expeditiously as possible on compliance of all necessary formalities.

I agree.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)