

Criminal Appeal (D.B.) No. 507 of 2014  
with  
Criminal Appeal (D.B.) No. 252 of 2013  
with  
Criminal Appeal (D.B.) No. 595 of 2013

Against the judgment of conviction and order of sentence dated 15.03.2013 passed in S. T. No. 22 of 2010 by Sri Satyendra Kumar Singh, Sessions Judge, Dhanbad.

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Sapan Hadi	... .. Appellant (in Cr. Appeal (DB) No. 507/2014)
Gujra Dome	... .. Appellant (in Cr. Appeal (DB) No. 252/2013)
1.Santosh Hadi 2Manoj Hadi	... .. Appellant (in Cr. Appeal (DB) No. 595/2013)

Versus

The State of Jharkhand	... .. Respondent
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For the Appellants	: Mr. Peeyush Krishna Choudhary, Advocate : Mr. Kalyan Banerjee, Advocate : Ms. Shruti Shrestha, Amicus Curiae
For the Respondent	: Mrs. Nehala Sharmin, A.P.P.

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**Present:**

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**  
**HON'BLE MR. JUSTICE SANJAY PRASAD**

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**C.A.V. on - 03.01.2022**

**Pronounced on - 03.02.2022**

Heard Mr. Peeyush Krishna Choudhary, learned counsel for the appellant in Cr. Appeal (DB) No. 507 of 2014, Mr. Kalyan Banerjee, learned counsel for the appellant in Cr. Appeal (DB) No. 252 of 2013 and Ms. Shruti Shrestha, learned Amicus Curiae in Cr. Appeal (DB) No. 595 of 2013 and Mrs. Nehala Sharmin, learned A.P.P. for the State in all the cases.

2. These appeals are directed against the judgment and order of conviction and sentence dated 15.03.2013 passed by Sri Satyendra Kumar Singh, learned Sessions Judge, Dhanbad in S. T. No. 22 of 2010 whereby and whereunder the appellants have been convicted for the charge under Section 302/34 of I.P.C. and all of them have been sentenced to undergo

imprisonment for life with a fine of Rs. 2,000/- for the offence under Section 302/34 of I.P.C. and in default of payment of fine they have been directed to undergo simple imprisonment for six months each.

3. It has been alleged that the informant was sleeping along with her husband and children when at about 1-1:30 A.M., somebody knocked at the door. When her husband enquired as to their identity, the accused persons broke the door and forcibly entered into the room. The informant could identify the accused who are the present appellants. All the accused persons had thrashed her husband to the ground and started assaulting him, while Sapan Hadi (appellant in Cr. Appeal (DB) No. 507 of 2014) had stabbed him on his chest with a knife. When he started raising alarm, all the accused persons fled away. After some time, her husband succumbed to his injuries. The reason for the occurrence is that about one and half months back, appellant – Santosh Hadi had enticed away the daughter of the informant namely, Khusboo Kumari and kept her in the house of Manoj Hadi (appellant no. 2 in Cr. Appeal DB No. 595 of 2013). It has been alleged that the husband of the informant was in jail with respect to a criminal case and when he was released, he had asked the informant to somehow bring her daughter back. She had gone to the house of Manoj Hadi and had requested to send back her daughter. Her daughter had returned back and her husband had told not to send her daughter again. He had also stated that he does not intend to solemnize the marriage of his daughter Khusboo Kumari with Sapan Hadi and on coming to know about such facts, Sapan Hadi is alleged to have become infuriated and wanted to forcibly take back the daughter of the informant. It has been alleged that earlier also he had extended threats which finally culminated in the murder of the husband of the informant.

Based on the aforesaid allegations, Katras (Tetulmari) P. S. Case No. 180 of 2009 was instituted. On completion of investigation, charge-sheet was submitted against Sapan Hadi, Santosh Hadi and Manoj Hadi pursuant to which cognizance was taken for the offences under Sections 302/34 of I.P.C. A supplementary charge-sheet was submitted against Gujra Dome and cognizance was taken on 10.03.2010 by the learned Chief Judicial Magistrate, Dhanbad for the offence under Section 302/34 I.P.C. The case was committed to the Court of Sessions and charge was

framed against Santosh Hadi, Manoj Hadi and Gujra Dome for the offence under Section 302/34 I.P.C. and against Sapan Hadi for the offence under Section 302 I.P.C. which was explained to them to which they pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case has examined as many as 8 witnesses.

P.W. 1 – Raj Kumar Chouhan has stated that he had gone to the house of Binod Dome on hearing the cry of alarm, where he saw Binod Dome having been murdered. This witness was declared hostile by the prosecution.

P.W. 2 – Dr. Vinit Pd. Tigga was posted as a Tutor in the department of FMT, PMC, Dhanbad on 14.07.2009 on which date, he had conducted autopsy on the dead body of Binod Dome and had found the following ante-mortem injuries:

a. Stabbed 1 ½" x 1" x cavity deep on left side of manubrium between the 2<sup>nd</sup> and 3<sup>rd</sup> costal cartilages with one edge blunt and other edge sharp, margin found sharp and inverted and blood clots all over.

b. 1" x ½ " x muscle deep over front of left thigh, one edge blunt and other edge sharp and margin sharp.

No other external wound found.

The cause of death was opined to be haemorrhage and shock as a result of stab wound caused by penetrating weapon with one edge sharp and other blunt (pointed sharp cutting weapon).

This witness has proved the post-mortem report which has been marked as Exhibit 1, inquest report which bears his signature and which has been marked as Exhibit 2 and the dead body challan which has been proved and marked as Exhibit 3.

P.W. 3 – Shanta Prasad has stated that on 14.07.2009 he was posted at Tetulmari Police Station as Assistant Sub-Inspector of Police. On receiving information about the murder, he had gone to Pandeydih 6 No. at 4:00 A.M. and recorded the statement of Jira Devi. The Fard Bayan which is in his hand-writing has been proved and marked as Exhibit 4. He had taken over the investigation and had recorded the re-statement of the informant as well as the statement of Khusboo Kumari. He had prepared the inquest report which has been marked as Exhibit 5. He has

described the place of occurrence which is the mud-house of the deceased having tiled roof. Inside the room, there was a substantial quantity of blood and some belongings were found scattered. The door was found broken and was lying in the courtyard. He had seized the blood soaked earth and had prepared the seizure list. He had sent the dead body of Binod Dome for autopsy to the hospital. He had also recorded the statement of several witnesses, arrested Sapan Hadi and had also recorded his statement. On 30.09.2009, due to his transfer to the Office of the Superintendent of Police he had handed over the charge of the investigation to Sub-Inspector – Rajesh Kumar.

P.W. 4 – Alakhdeo Prasad Singh was assigned with the investigation by the Officer In-charge of Tetulmari Police Station. He had submitted charge-sheet against Sapan Hadi, Santosh Hadi and Manoj Hadi and subsequent thereto charge-sheet was also submitted against Gujra Dome.

P.W. 5 – Jira Devi is the informant and the wife of the deceased. She has stated that the occurrence had taken place 2-2 ½ years back. In between 12:00-1:00 A.M., the accused persons had come to her house and started knocking at the door. On being questioned from inside, they disclosed that the Officer Incharge of Panchgari Police Station has come. When she asked them to wait, they had broken open the door and Sapan Hadi had stabbed her husband with a Bhujali on his chest and she was pinned to the wall by Santosh Hadi who was also having Bhujali. At the time of the incident, her children were also present. Her daughter Khusboo Kumari was enticed away by Sapan Hadi and he had forcibly solemnized marriage with her. This witness has stated that when her daughter was enticed away by Sapan Hadi, her husband was in the jail and about a week prior to the incident, he had come back in the house.

In cross-examination, she has stated that Raj Kumar's house is adjacent to her house. Her husband was in jail for a year in a case of theft. She has also stated that her husband was assaulted on his chest twice.

P.W. 6 – Khusboo Kumari is the daughter of the deceased, who has stated that some people had come at about 1:00 A.M. and had asked to open the door. While her mother was telling them that she is opening

the door, they had become impatient and had broken the door and had come inside. She had recognized them as Sapan Hadi, Santosh Hadi, Manoj Hadi and Gujra Dome. She has stated that her father was stabbed with a Bhujali by Sapan Hadi while her mother was pinned to a wall by Santosh Hadi while keeping a Bhujali on her head. She has stated that Gujra Dome and Manoj Hadi had threatened them with Bhujali. She has also stated that the accused persons thereafter fled away. She has disclosed that she had solemnized marriage with Sapan Hadi at Lilori Sthan and at that point of time, her father was in jail. She was made to stay in the house of Manoj Hadi. When she was assaulted by the accused persons, she came back to her father's house. She had also expressed her repentance before her father.

In cross-examination, she has stated that she had solemnized marriage with Sapan Hadi against the wishes of her father. There are 3-4 houses in the vicinity and she knows her neighbour Raj Kumar and none other. She has also stated that her marriage was solemnized a year back at Varanasi (Uttar Pradesh).

P.W. 7 - Shankar Dome did not support the prosecution case and hence declared hostile by the prosecution.

P.W. 8 - Rama Shankar Chouhan has denied to be having any knowledge as to who had committed the murder.

5. The defence has examined as many as four witnesses in its support:

D.W. 1 - Dablu Hadi has stated that the accused Manoj Hadi was present in the marriage ceremony from 7:00 P.M. on 13.07.2009 to 9:00 A.M. on 14.07.2009.

D.W. 2 - Punu Bhuiyan has stated that on 13.07.2009, a Kirtan was going on in the courtyard of Vijay Rai and Santosh Hadi was present there from the evening of 13.07.2009 till the morning of 14.07.2009 and he had never gone anywhere during this period.

D.W. 3 - Surendra Singh had stated that when some commotion was heard from the house of Binod Dome, he had rushed to the house of Binod Dome where Gujra Dome had also come.

D.W. 4 - Vijay Kumar Rai has stated that Santosh Hadi was

throughout present in the religious programme held in the Shiv Mandir from 6:00 P.M. of 13.07.2009 to 6:00 A.M. of 14.07.2009.

6. The statement of the accused were recorded under Section 313 Cr.P.C. in which all have merely denied having participated in the commission of the murder.

7. It has been contended by Mr. Peeyush Krishna Choudhary, learned counsel appearing on behalf of the appellant in Cr. Appeal (DB) No. 507 of 2014 that the appellant has been implicated only on account of the fact that he had enticed away and solemnized marriage with the daughter of the informant namely, Khusboo Kumari (P.W. 6 ). Learned counsel submits that the conviction of the appellant is based on the testimonies of P.W. 5 and P.W. 6 who are interested witnesses and therefore, no reliance could be placed on their evidences. He has further stated that no independent witness has been examined by the prosecution.

8. Mr. Kalyan Banerjee, learned counsel appearing for the appellant in Cr. Appeal (DB) No. 252 of 2013 has submitted that the appellant had been convicted primarily on account of his purported presence at the scene of the crime. Learned counsel submits that there are vital contradictions with respect to the role essayed by the appellant as could be culled out on a dissection of the evidences of P.W. 5 and P.W. 6. According to the P.W. 5, the appellant was merely present along with other accused persons though, P.W. 6 has stated about the appellant threatening them with a Bhujali. Mr. Banerjee submits that mere standing at the place of occurrence would not invite invocation of Section 34 I.P.C. He adds that the appellant could also have actively participated in the commission of assault had there been a meeting of minds with the other accused persons.

9. Mrs. Shruti Shrestha, learned Amicus Curiae appearing for the appellants in Cr. Appeal (DB) No. 595 of 2013 apart from adopting the arguments advanced by Mr. Kalyan Banerjee has stated that the case of Manoj Hadi (Appellant no. 2 in Cr. Appeal DB No. 595 of 2013) is similar to that of Gujra Dome (Appellant no. 1 in Cr. Appeal DB No. 595 of 2013). She has submitted that P.W. 5 had substantially diverted from her version of assault as revealed in the FIR and as stated in her

evidence. She has submitted that the appellant Santosh Hadi appears to have been attributed to have pinned P.W. 5 to a wall with a Bhujali and such specification regarding his participation seems to be absent in the FIR.

10. Mrs. Nehala Sharmin, learned A.P.P. appearing in all the appeals has stated that the evidence of P.W. 5 and P.W. 6 are cogent, categorical and clear on the point of appellant Sapan Hadi having stabbed the husband of the informant to death and the other appellants sharing a common platform with a pre-determined intention to do away with the life of Binod Dome. She submits that the evidence of P.W. 5 and 6 specifically defines the role enacted by each of the appellants though, the final assault was committed by the appellant – Sapan Hadi and the acts of the other appellants would come within the purview of Section 34 I.P.C.

11. We have heard at length the arguments advanced by the learned counsel for the respective parties and have also scrutinized the Lower Court Records.

12. The canvas presented before us by the prosecution seems to suggest that the main role in the murder has been enacted by Sapan Hadi (Appellant in Cr. Appeal No. 507 of 2014) and assistance has been provided by the other appellants. We are therefore, firstly considering the case of the appellant – Sapan Hadi.

13. The criminal law was set into motion by Jira Devi (P.W. 5) due to an incident which had taken place in the dead of night of 14.07.2009 when the appellants had forcibly entered into the house of the informant by breaking upon the door and committing the murder of her husband Binod Dome. The informant has clearly stated that it was Sapan Hadi who had stabbed Binod Dome with a Bhujali in his chest. The only eye-witnesses to the occurrence are the informant and her children who were present inside the house when the occurrence had taken place in the house. However, the prosecution has examined only P.W. 5 and 6 who have witnessed the occurrence. P.W. 5 has stuck to her narration made in the FIR that it was the appellant – Sapan Hadi who had stabbed her husband with a Bhujali on his chest. P.W. 6 – Khusboo Kumari who is the daughter of the deceased and who was subjected to enticement by

the appellant Sapan Hadi had also supported the role played by Sapan Hadi. The manner of assault attributed to the accused Sapan Hadi seems to have been corroborated by the Post Mortem report wherein the cause of death was opined to be on account of shock and haemorrhage as a result of stabbed wound caused by penetrating weapon with one edge sharp and the other blunt. The prosecution has also been able to establish the motive which can be singularly attributed to the appellant Sapan Hadi for committing such a dastardly act. P.W. 6 – Khusboo Kumari has stated about her solemnization of marriage with the appellant Sapan Hadi and due to the torture meted out to her, she had come back to her parents' house. The marriage was solemnized according to her against the wishes of the deceased. As per P.W. 5, her daughter had come back about a week prior to the incident. According to P.W. 6, the appellant had come to her house about two days back and had threatened the deceased of dire consequences, if she was not sent back to the house of Sapan Hadi.

14. The role of the appellant Sapan Hadi in the murder of Binod Dome is thus clearly proved beyond any reasonable doubt and therefore, the judgment and order of conviction and sentence passed against him is hereby affirmed.

15. We now venture out to consider the case of the appellants in Cr. Appeal (DB) No. 252 of 2013 and Cr. Appeal (DB) No. 595 of 2013. These appellants have been convicted under Sections 302 I.P.C. taking the aid of Section 34 I.P.C. The scope and object of Section 34 I.P.C. has recently been considered by the Hon'ble Supreme Court in the case of ***"Jasdeep Singh @ Jassu Vs. State of Punjab"*** reported in (2022) SCC Online 20, and the relevant paragraphs for the purpose of this case are quoted hereinbelow:

21. *"Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him at par with the one who actually committed the offence.*

22. *What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.*

24. *The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offense.*

25. *Normally, in an offense committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offense consists of diverse acts done at different times and places. Therefore, it has to be seen on a case to case basis.*

26. *The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.*

27. *There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offense. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.*

28. *The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court."*

16. It is to be seen therefore as to whether a common intention was shared by each of the appellants with the exception of the appellant – Sapan Hadi in finalizing the act of murder. It is no doubt true that the presence of these appellants along with Sapan Hadi in the house of the appellant has been well-established by virtue of the evidences of P.W. 5 and P.W. 6. Whether mere presence in the scene of murder would attract Section 34 I.P.C. or not is to be considered herein.

17. Motive, as noted above, has been clearly established so far as the appellant – Sapan Hadi is concerned. He had an intention to cause bodily harm to Binod Dome for the reasons which are obvious, but the rest of the appellants do not seem to share the same platform with Sapan Hadi. In the FIR, the informant had stated that all the four appellants had forcibly entered inside the room, threw her husband to the ground, started assaulting him and Sapan Hadi had knifed her husband in his chest. The informant had come out and raised alarm at which the accused persons had fled away. Nothing has been indicated in the FIR regarding the presence of weapons in the hands of the appellants barring Sapan Hadi. The FIR is not an encyclopedia but can be used for corroborating the maker of the report. In her evidence as P.W. 5, the informant has substantially shifted from her earlier stance regarding the role played by each of the appellants and the weapon of assault they had in their possession. She as P.W. 5 does not speak of any assault except the assault committed by Sapan Hadi. She was pinned to the wall by the appellant – Santosh Hadi, while the appellant Manoj Hadi had threatened the children with a knife to remain silent and appellant Gujra Dome was standing at the door. P.W. 5 has also stated that she could not raise any alarm, but after the accused persons had fled away, she and the children started shouting. P.W. 6 has stated about the appellant Manoj Hadi and Gujra Dome threatening them with Bhujali while Santosh Hadi pinned her mother to the wall with a Bhujali. Thus there appears to be contradictions in the evidences of P.W. 5 & 6 so far as the role played by the appellants – Manoj Hadi and Gujra Dome are concerned. A common intention can be derived from a pre-meeting of minds or it can develop at the spur of the moment depending upon the ambience when the incident is taking place. Whether all the accused are sharing a common intention

or not can be assessed from the evidence of the witnesses. At the same time motive can also act as a catalyst for the accused in sharing a common platform. In the present case, the presence of all the appellants in the scene of the crime is an indisputable fact. Similarly, the motive of committing the offence singularly rests with the appellant – Sapan Hadi, though certain acts have been attributed to the appellants – Santosh Hadi, Manoj Hadi and Gujra Dome but the said acts do not unequivocally indicate the presence of a common intention amongst each of them.

18. Though, this court is conscious of the fact that all the accused persons had assembled at the dead of night, but it has also to be borne in mind that the wife of Sapan Hadi namely, Khusboo Kumari had left Sapan Hadi and had come back to her parents' house about a week back which had infuriated Sapan Hadi and the motive was therefore existing. Moreover, as stated earlier, P.W. 5 and 6 have not attributed any act of assault to the appellants – Santosh Hadi, Manoj Hadi and Gujra Dome. In fact the post mortem report also does not indicate any other external injuries except what has been inflicted by the appellant – Sapan Hadi.

19. We, therefore come to the conclusion that so far as the appellant in Cr. Appeal (DB) No. 252 of 2013 and Cr. Appeal (DB) No. 595 of 2013 are concerned, the learned trial court had committed an error of law while convicting the said appellants for the offence under Section 302/34 I.P.C. and sentencing them accordingly.

20. However, so far as the appellant – Sapan Hadi in Cr. Appeal No. (DB) No. 507 of 2014 is concerned, the learned trial court was justified in convicting him for the offence under Sections 302/34 I.P.C. and sentencing him to undergo imprisonment for life with a fine of Rs. 2,000/-.

21. We accordingly, dismiss Cr. Appeal (DB) No. 507 of 2014 while setting aside the judgment and order of conviction and sentence dated 15.03.2013 passed by Sri Satyendra Kumar Singh, Sessions Judge, Dhanbad in S. T. No. 22 of 2010, so far as the appellants in Cr. Appeal (DB) No. 252 of 2013 and Cr. Appeal (DB) No. 595 of 2013 are concerned. Since the appellants in Cr. Appeal (DB) No. 252 of 2013 and Cr. Appeal

(DB) No. 595 of 2013 are on bail, they are discharged from the liabilities of their bail bonds.

22. All these appeals are accordingly disposed of.

23. Pending I.A.s, if any stands disposed of.

(Rongon Mukhopadhyay, J.)

(Sanjay Prasad, J.)

Jharkhand High Court at Ranchi  
The 3<sup>rd</sup> day of February, 2022  
R. Shekhar/NAFR/Cp. 3