

**Rewaram and ors. Vs. State of Maharashtra**

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**Court :** Mumbai

**Decided On :** Aug-05-1983

**Reported in :** 1983CriLJ1845

**Judge :** Waikar and ;Patel, JJ.

**Appellant :** Rewaram and ors.

**Respondent :** State of Maharashtra

**Judgement :**

Waikar, J.

1. The first three accused viz. Rewaram Aniruddha and Sumedh were held guilty of the offence punishable under Section 302 read with Section 34 of the I.P.C. and each of them has been sentenced to undergo imprisonment for life. Original accused No. 4 Shailendra who was charged of the offence punishable under Section 201 of the I.P.C. was however acquitted. The accused No. 2 Aniruddha and accused No. 3 Sumedh are brothers.

2. The victim of the offence is Baiju Chavhan and the first information report (Ex. 25) was lodged by his brother Suresh (P. W 1). The incident took place on 6-7-1980 at 1-30 p.m., on Wardhadeoli road in the city of Wardha.

3. Briefly stated the prosecution alleged that when deceased Baiju was in his house, these three accused came and started loudly abusing him. Baiju came out of the house, when accused No. 1 Rewaram struck him with a swordstick Gupti which was tugged to his Lungi which he was wearing. As Baiju ran, he was chased and a second thrust was again given by accused No. 1 Rewaram and Baiju fell down. Thereafter, accused No. 2 Aniruddha with an iron-bar or plate assaulted Baiju on his chest. Accused No. 3 Sumedh who was armed with a hatchet gave two blows with it on the right leg of Baiju while he was lying on the ground which nearly severed his leg. Suresh (P. W. 1) the brother of the deceased who wanted to intervene, was threatened and also chased. He however ran up to the Police Station and lodged the report at Exhibit 23 which was recorded there at 1-30 p.m.

4. Deceased Baiju was taken to the hospital from the spot but he was declared dead at 2-30 p.m., as soon as he was taken there. The three accused came to be arrested the same night and it was alleged that they stated in the presence of the panchas that they had made over the weapons of offence viz. the swordstick the iron-band and the hatchet, to their friend Shailendra acquitted accused No. 4. All these articles it is alleged were produced by Shailendra. It may be pointed out at this stage only that the learned Sessions Judge disbelieved this evidence of alleged discovery of the said

weapons and, consequently accused Shailendra came to be acquitted.

5. From the person of accused No. 1 one Lungi (Article 6) and a Baniyan (Article 7) came to be seized and according to the report of the Chemical Analyser human-blood was detected on these clothes.

6. From the person of accused No. 2, a pink coloured shirt (Article 8) was seized and human-blood on this garment again was detected.

7. From the house of accused No. 3, one pant and one Manilla (Article 10) were seized vide seizure memo (Ex. 69) and it is alleged that human-blood of 'B'-Group was detected on the Manilla, which was also the blood-group of deceased Baiju.

8. Though the evidence of discovery has been disbelieved by the learned Sessions Judge it may be pointed out that on the swordstick (Article 9) and on the hatchet (Article 12) no blood was detected as per the report of the Chemical Analyser (Ex. 69). The Iron-plate it appears was never sent for chemical analysis. The incident, according to the prosecution was witnessed by Suresh (P. W. 1) Chhaya (P. W. 4) and Prakash (P. W. 6).

9. The defence of accused No. 1 Rewaram was that he has a Pan-shop at a little distance from the scene of offence. When his brother Bapu was at the shop, deceased Baiju came there, placed a spear on his neck and on the pain of death took away the cash from the shop. When Bapu narrated the incident to him, he went to the Pan-shop when Baiju again appeared, abused him and wanted to assault him. Suresh (P. W. 1) the brother of Baiju, who was with him, hurled a stone which hit this accused on his occipital region. Baiju and Suresh left the place and accused, No. 2 Aniruddha carried him accused Rewaram to the Police Station where a report of this incident was lodged at 3-00 p.m. (vide Ex. 72). Accused No. 1 Rewaram was also medically examined for his head-injury. The clothes of accused No. 2 Aniruddha were stained with the blood of the injury which was caused to the head of accused Rewaram while the latter was being carried to the Police Station. Accused No. 3 Sumedh denied his presence. Then according to the defence, deceased Baiju was thereafter attacked and assaulted by some unidentified persons. The defence examined Kashinath (D. W. 3) Shripat (D. W. 6) and Sadashiv (D. W. 8) to prove that Baiju was attacked and assaulted by persons other than these accused, who were unknown to them and had come from outside.

10. The learned Sessions Judge relied upon the evidence of eye-witnesses Suresh Chhaya and Prakash and rejected the defence version. He acquitted original accused No. 4 Shailendra of the charge under Section 201 I.P.C. but convicted each of these three appellants of the offence under Section 302 read with Section 34 I, P.C. and sentenced them as aforesaid.

11. Now it was not and it could not be disputed that deceased Baiju met with a violent homicidal death on 6-7-1980 at about 1-30 p.m. on Wardha-Deoli road. Again it is not disputed and it is also well-nigh established that deceased Baiju was a man of questionable antecedents. In the year 1975, he was convicted of the offence under Section 304 I.P.C. and sentenced to undergo rigorous imprisonment for four years. Proceedings for his externment from Nagpur were also pending at the material time. For having assaulted a R. P. F. Sainik on 2-3-1980, a prosecution was launched on the police report under Sections 324 and 341 I.P.C., but the proceedings abated because

of his death.

12. It was submitted on behalf of these appellants that the F.I.R. (Ex. 25) lodged by Suresh (P. W. 1) the brother of the deceased, never mentioned the presence of accused No. 3 at the spot or as an assaulter. It was further submitted that the evidence of these three eye-witnesses is highly discrepant on material particulars. Shri Rizvi the learned Counsel for the appellants, pointed out that the learned Sessions Judge rejected the prosecution evidence that accused No. 2 Aniruddha committed any overt act as alleged and even so he was convicted under Section 302 read with Section 34 I.P.C. merely because his presence was proved by the eye-witnesses.

13. The last submission of Shri Rizvi as regards conviction of accused No. 2 to our mind is well-founded. The learned Sessions Judge in para 80 of his judgment observed:-

However the prosecution has conceded that, that could not be the weapon which could be used as a weapon of assault. I, therefore, find that the witnesses in this case are making some mistake as regards the weapon used by the accused No. 2. There are no marks of force on the body of Baiju of any beating on chest. Under these circumstances I find that the accused No. 2, though present, is not proved to have committed any overt act as against Baiju.

14. Having so observed the learned Judge remarked in para 83 of the judgment:

The witnesses have stated that when accused No. 1 was committing assault on Baiju accused Nos. 2 and 3 were also present on the spot. They just went ahead and assaulted Baiju. The assault is not simultaneous. After accused No. 1 punched the swordstick second time, accused No. 3 who was present there, went ahead and hacked the leg of Baiju. This does not mean that he came later on the scene. Similarly, accused No. 2 was also present when accused No. 1 assaulted Baiju. Thus, though the accused Nos. 1, 2 and 3 were together simultaneously they assaulted Baiju one after the other.

15. The learned Sessions Judge failed to recapitulate that the prosecution story was one of active participation by each of the three accused in assaulting Baiju by separate weapons. On scrutinising the evidence, he found that accused No. 2 committed no overt act and was simply standing when accused No. 1 committed the assault. The allegation was not that though merely avoiding, he incited accused No. 1 to commence any act or to continue it from which any inference of any meeting of the minds could be deduced. The learned Sessions Judge failed to reason out how accused No. 2, though standing and non-participating in any overt act, could be held guilty of the offence, by virtue of Section 34 I.P.C.

16. Section 34 I.P.C. requires that there must be a general intention shared by all the persons concerned in the offence. In other words, when several persons unite with a common purpose to do any criminal act, then all those who assist in the accomplishment of that object would be held guilty. Therefore common intention animating from the accused is the foundation of the constructive liability. The expression, 'criminal act' in Section 34, means that unity of criminal behaviour which results in something for which an individual would be punishable, if it were all done by himself alone. To constitute common intention, it is again necessary that the

intention of each of the accused is known to the others and is shared by them. It is true that in crimes as in other cases, 'They also serve who stand and wait', but then what is necessary for application of the principle of joint liability embodied in Section 34 is that the accused by his presence and behaviour has served or subserved that common cause in some way or the other.

17. Before we deal with the oral evidence it may be pointed out that as per the report of the Chemical Analyser on the Lungi (Article 6) and Baniyan (Article 7) of accused No. 1 and on the pink-coloured shirt (Article 8) of accused No. 2, human-blood was found that its origin however, could not be detected. Accused No. 1 admittedly had sustained a bleeding injury at his head for which he was medically examined. These two accused tried to explain that their clothes came to be stained with the blood by the bleeding head-injury of accused No. 1.

18. So far as the garments of accused No. 3 are concerned, his Manilla (Article 10) it is alleged, was found to contain human blood of 'B'-Group which tallied with the blood group of the deceased. Now, the fact of seizure of this Manilla from the house of accused No. 3 is duly proved by the panch witness Gokul (P. W. 12). Then the only evidence to establish any nexus between this seized article and this accused is the testimony of eye-witness Suresh (P. W. 1) and curiously enough, in his examination-in-chief itself he stated:

Accused No. 3 had on his person jerkin. I am shown shirt (Article 10). It was not on his person.

In the absence of any evidence to establish any nexus the find of human blood of 'B'-Group on this Manilla seized from the house of accused No. 3, cannot be taken as an incriminating circumstance.

19. In the first information report (Ex. 25) lodged by Suresh, he stated that he took his brother Baiju home, whereafter accused Nos. 1 and 2 and two or three other persons came in front of his house and started abusing. His brother Baiju came out of the house and started running, when accused Rewaram dealt a blow by his Gupti and accused No. 2 Aniruddha struck him with an iron-bar. Baiju, he stated, had three injuries on the stomach and one on the chest and was lying on the road. The explanation offered by Suresh for omission of the name of accused No. 3 is that as he was in a confused state of mind, he forgot to mention his name. Now, the overt act that is attributed, to accused No. 3 is that he gave two forcible blows by his hatchet on the leg of Baiju while he was lying injured on the ground, which nearly severed the leg. The accused No. 3 was known to this witness and it is incredible that such an astonishingly, fearful, sad and shocking part played by this accused could be omitted by him while lodging the F. I. R.

20. In his examination-in-chief he stated that when he returned home at 1-30 p.m., he found his brother Baiju standing on the road at a distance of about 60 or 70 feet. He, therefore, took him home, whereafter the four accused came from the side of Boudha Mandir and rushed in front of their house In his cross-examination, he admitted that he had stated during investigation that at about 1-30 p.m., when he came home he found his brother Baiju being abused by accused Nos. 1 to 3 in front of the Boudha Mandir. Now, the Boudha Mandir is at a little distance from the scene of offence. This shows that during the evidence, he1 tried to suppress an earlier incident which took place near the Boudha Mandir. According to the defence, there was an earlier

incident near the Pan-shop, which had taken place between accused No. 1 and deceased Baiju in which accused No. 1 had sustained the head-injury. The witness admitted further that he had also stated during investigation that when his brother Baiju had gone to the Pan-shop of accused No. 1 Rewaram he had quarrelled with Bapu, the brother of accused No. 1, which, according to him, was the cause of this incident. Further in his cross-examination, he admitted that after his brother Baiju came out of the house, he took to his heels and did not stop of his own accord. The three accused chased him and during the chase, accused No. 1 pierced a swordstick as a result of which he fell down. In his examination-in-chief, he stated that as his brother came out of the house, he was held by the three accused. Accused No. 1 took out from his Lungi a swordstick and thrust it in the chest of Baiju whereafter Baiju ran' towards the road but dropped down. Thereafter accused No. 1 thrust the Gupti (swordstick) second time on the left side of his chest and while he was lying, accused No. 2 delivered two strokes with iron-bar on the chest and accused No. 3 gave three hacks on the right leg, by which his ankle was severed and his foot was dangling. If really deceased Baiju after coming out of the house and seeing the accused started running and while being chased was struck by accused No. 1 with the swordstick, the thrust normally would be on the back of Baiju who was running and was being chased. Thus, there is a variation in his account as regards the actual occurrence, apart from the fact that in his F.I.R. (Ex. 25) he neither referred to the presence of accused No 3 nor attributed any overt act to him.

21. The second witness Chhaya (P. W. 4) who resides in the close neighbourhood and claims to have witnessed the occurrence, stated that she first saw these three accused grappling with Baiju in front of his house. She then stated that accused No. 1 at once took out a swordstick from his Lungi and thrust it in the chest of Baiju. As Baiju started running, he was chased by all the three accused. After Baiju fell down on the road, accused No. 1 pierced the sword-stick for the second time. Accused No. 2 then gave two strokes with the iron band on the chest of Baiju and accused No. 3 with his hatchet gave 2 or 3 strokes on the right ankle. In her cross-examination, she stated that the grappling continued for about five minutes in front of the house of Baiju a story not corroborated by Suresh (P. W. 1) She further stated that after the first sword-stick was thrust Baiju collapsed on the road (sic). This version again conflicts with her own earlier version in the examination-in-chief and the version of the incident as given by Suresh (P. W. 1). If really Baiju had fallen down in front of his house after the first thrust by the sword-stick was given on the chest, there was no question of his running and being chased by the accused.

22. The last witness Prakash (P. W. 6) deposed that as he came out of his house hearing some commotion he saw accused No. 1 piercing the swordstick in the chest of Baiju. He does not refer to the presence of the other accused when Baiju was so attacked by accused No. 1 He then stated that Baiju started running towards Wardhadeoli road and fell down, whereafter accused No. 1 gave another thrust with the swordstick on the chest and by that time accused No. 2 arrived who then gave two blows with an iron-band. Thereafter according to him, accused No. 3 arrived and gave two blows with the hatchet on the leg of Baiju. Thus, in his examination-in-chief itself he speaks of three isolated and separate acts committed by each of the accused at intervals and does not corroborate the version of the earlier witnesses that all the three accused appeared in a body initially and indulged in hurling abuses or in grappling. The learned P. P. tried to reconcile and asked witness as to where the accused Nos. 2 and 3 were at the time of the assault by accused No. 1 on Baiju. Now, the earlier two witnesses had already deposed about two assaults at different spots

committed by accused No. 1; one in front of the house of Baiju and the second after he ran some distance and collapsed. The witness gave an equivocal answer stating that at the time of the assault committed by accused No. 1 on Baiju, accused Nos. 2 and 3 were also present on the spot, which could as well refer to the presence of accused Nos. 2 and 3 when the second stroke was given to Baiju while he was lying down on the ground. During cross-examination, the witness demonstrated by lifting the iron-band and taking it back 40 behind the head holding the same in the centre, as to how accused No. 2 assaulted, Baiju with that iron-band. Now, the assault by the said iron-band (Article 5) is already ruled out by the learned Sessions Judge, and we must say rightly as the only injury No. 6 on the chest was a minor one, and Dr. Murkute (P. W. 5) opined that the said injury could not be caused by this weapon. Thus, this witness evidently indulged in falsehood when he stated that accused No. 2 assaulted Baiju by the said weapon as demonstrated by him. Lastly, he stated that he saw the hatchet for about fifteen minutes in the hand of accused No. 3, though he could not say from where it was brought a version not corroborated by the two earlier witnesses. The earlier two witnesses never stated that accused Nos. 2 and 3, when they came, were already armed with any weapons. In fact, according to them, the swordstick was tugged in the Lungi of accused No. 1 and was also not visible till the same was taken out by him.

23. The direct evidence, in our opinion, is highly discrepant and conflicting on material particulars and since we are prone to discard the same the consideration of the medical evidence becomes unnecessary. Before we proceed to consider the medical evidence which again, in our opinion, does not corroborate the account of the occurrence as given by these witnesses, it may be pointed out that there was a bleeding head-injury sustained by the accused No. 1 which could be caused by any hard-blunt object and the prosecution had no explanation to offer as to how he came to sustain the same.

24. Shri Habibuddin the learned A.G.P., submitted that the omission of the name of accused No. 3 in the F.I.R. has been duly explained by the maker of the same, namely, Suresh, and that the discrepancies pointed out in the evidence of these three eye-witnesses are natural. It is true that variations on the fringes, discrepancies in details or contradictions in narration should not militate against the veracity of the course of testimony of a witness, but then under such circumstantial variety, there must appear an impress of some substantial truth. *Falsus in uno falsus in omnibus* is an exploded theory, no doubt, and the Courts are required to sift evidence and pick out the grain from the chaff, but this depends on what is the admixture of truth with falsehood. Where the admixture of falsehood is such as to change entirely the aspect of the case, the stuff has to be rejected. It is very aptly remarked in *Ramlal v. State* : AIR1958MP380 (Para 21) :-

Not being endowed like the legendary swan with the capacity of extracting drops of milk from a pot of water, courts have necessarily to reject the whole evidence where the false additions are overwhelmingly large.

25. The Supreme Court in *Balaka Singh v. State of Punjab* : 1975CriLJ1734 finding that the prosecution could go to the extent of implicating four innocent persons, remarked (Para 8):

Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court will have to

reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle would not apply. If the case against the four accused failed, then the entire prosecution would have to be discarded and it would not be possible for Supreme Court to make out a new case to convict the appellants as had been done by the High Court.

26. We find with reference to the evidence of Dr. Murkute (P. W. 5), who performed the autopsy, that injury No. 6 was an abrasion over the medial side of middle right leg. He stated that no other injury, except this one, could be caused by iron-bar (Article 5). But he then admitted that it was a minor abrasion and an injury like this could not be caused by this weapon (Article 5). Injuries 5, 7, 8 and 9 are also the injuries on the right leg. Injury Nos. 5, 7 and 8, according to Dr. Murkute, could be caused by push or sliding onward on any portion of a hatchet. The ocular evidence is that accused No. 3, who wielded the hatchet, delivered two forcible blows on the head, probably as a wood-cutter does with a log of wood. The existence of these injuries, therefore, does not accord with the oral evidence. Injury No. 9, no doubt, caused a complete fracture of both the bones of the right leg and the doctor in his examination-in-chief itself says that this injury could be caused by a hatchet or also by a swordstick Gupti. Thus, use of a hatchet by accused No. 3 in the manner as prescribed by prosecution witnesses is not fully corroborated by the medical evidence and there is every reason to believe that accused Nos. 2 and 3 have been falsely involved. With the false involvement of these accused, the very fabric and texture of prosecution story stands discredited.

27. To sum up, therefore, apart from the discrepancies already pointed out in the evidence of Suresh, his version that accused No. 2 went to the shop and brought the iron-rod for assaulting Baiju after he had fallen down, is not corroborated by other two witnesses. The overt act or the role ascribed to accused No. 2 is disbelieved by the learned Sessions Judge and rightly, but his conviction with the aid of Section 34 of the Indian Penal Code only because he was present at the scene of offence, was wrong. According to Suresh, all the three accused came together, but he did not state that accused No. 3 came armed with an axe. According to Prakash (P. W. 3), accused No. 3 appeared last. The overt act of accused No. 3 as described by the witnesses is not borne out by the medical evidence. The omission of the name of accused No. 3 in the F.I.R. by Suresh in the circumstances of the case is grave and significant. When the prosecution story is one of a joint and consolidated attack by all the three accused and when it appears that the involvement of two of them is false and purposeful, the testimony of the witnesses as a whole gets tainted and blemished and it is difficult, nay, hazardous to excise a part of it as true and dependable. When the evidence, as a whole, is redolent with such grave doubts and suspicion, the benefit of it must go to the accused No. 1 as well.

28. In the result, therefore, we are inclined to allow the appeal, set aside the conviction and sentence of all the three appellants and to set them at liberty.

29. The appeal is allowed. The conviction and sentence of all the three appellants are hereby set aside and they are acquitted of the charge levelled against them. They shall be set at liberty forthwith unless they are required in respect of any other offence.