

CASE NO.:
Appeal (crl.) 1276 of 2005

PETITIONER:
Murugan & Ors

RESPONDENT:
State through Inspector of Police, Tamil Nadu

DATE OF JUDGMENT: 04/12/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO.1276 OF 2005

S.B. Sinha, J.

1. This appeal is directed against a judgment and order dated 14.10.2004 passed by a Division Bench of the Madras High Court, Madurai Bench in Criminal Appeal No.115 of 1997 whereby and whereunder the appeal preferred by the appellants herein against a judgment of conviction and sentence dated 10.2.1997 passed by the Additional District & Sessions Judge-cum-Chief Judicial Magistrate, Ramanathpuram convicting the accused No.7 under Section 302 of the Indian Penal Code and sentencing him to undergo life imprisonment and accused Nos.8, 9 and 10 under Section 324 of the Indian Penal Code and sentencing them to undergo one year's rigorous imprisonment was dismissed.

2. A quarrel ensued between the prosecution party and the accused on 10.7.1973 in regard to drawing of water from a well. Accused were said to have been bearing grudge towards the deceased as a criminal case was instituted against them at Kumuthi Police Station. On 4.8.1993, at about 6.15 pm, a procession of villagers was taken out for celebrating a festival known as "Mulaipari" festival. It started at village Keelamathupatti. When the procession reached near the village known as Gandaru, with a view to commit murder of PW-5, Nagarajan and other persons, the accused persons who were 11 in number allegedly formed an unlawful assembly with weapons like knife, cycle chains and sticks in their hands. Accused No.1, Subramanian, and accused No.3, Selvaraj, are said to have instigated others to commit murder of PW-5 Nagarajan consequent whereupon accused No.4, Ramu, attacked him with a stick causing a fracture on his right hand. When deceased Kannan tried to obstruct him from doing so, accused No.4, Ramu, instructed accused No.2, Selvaraj, to kill him also. Consequently, accused No.2, Selvaraj, caught hold of the hands of Kannan, whereas accused No.6 caught hold of his shoulders. Taking advantage of the said situation, the appellant No.1 herein (accused No.7 - Murugan) is said to have stabbed him with a knife on his chest. Appellant No.1 is said to have caused an injury on PW-1, Chithiraichamy, also with his knife, whereas accused No.8 attacked PW-1 with cycle chain and caused an injury on his head thereby. Appellant No.3- Selvaraj, (accused No.9) is said to have attacked PW-3, Kathirvel, with a knife on his nose and head whereas accused No.10, Boomi, attacked PW-3 with a cycle chain and caused injuries to him. PW-2, Murugesan was also attacked with a stick.

3. A First Information Report was lodged immediately after the said occurrence. Out of 11 accused, however, only accused No.7 and 8 to 10, were convicted and sentenced in the manner, as noticed hereinbefore, whereas others were acquitted. An appeal preferred thereagainst by the appellants herein has been dismissed by reason of the impugned judgment.

4. Mr. Naphade, learned senior counsel, in support of the appeal, would,

inter alia, submit :

(1) Appellant No.1 having inflicted only one blow with a knife on the deceased, the offence, if any, committed by him falls under Section 304 Part II of the Indian Penal Code and not under Section 302 thereof.

(2) Appellant No.2 (accused No.8), having examined defence witnesses to prove his plea of alibi, the learned Sessions Judge, as also the High Court, committed a serious error in recording a judgment of conviction against him.

In this connection our attention has been drawn to the following purported findings of the learned Sessions Judge :

"The 8th accused has not committed the offence punishable under Section 324 IPC".

(3) All the other accused having caused only simple injuries, sentence of one year's rigorous imprisonment is on the higher side.

5. Mr. V. Kanakaraj, learned senior counsel appearing on behalf of the State, on the other hand, supported the impugned judgment.

6. The prosecution, in support of its case, examined twenty one witnesses.

The nature of evidence of the eye-witnesses to the occurrence whereupon strong reliance has been placed by both the learned Sessions Judge as also the High Court being identical in nature, we would notice the deposition of PW-1, Chithiraichamy, only. He spoke about the incident which took place on 4th August, 1993. A complaint was made to him by a woman named Malathi. She was reprimanded by him stating that there should not quarrel over drawing of water. She was sent back to her home. Malathi was the daughter of the accused No.2. While the deceased and the injured persons including the said PW-1 had been participating in the said procession, accused No.1 to 3 came and gave an exhortation to cut and kill Nagrajan. Accused No.4, Ramu, is said to have assaulted in his right forearm. The deceased Kannan intervened. He asked them not to do so, whereupon accused No.2 gave an exhortation to kill him, pursuant whereto accused No.6, Challaiah caught hold of both his shoulders as a result whereof, he could not make a move. Appellant No.1, Murugan, stabbed him on the left side of his chest. While PW-1 asked the assailants not to do so, Appellant No.1 attempted to stab him also on his neck with a knife but as he turned his neck on the right side, a laceration was caused on the right side of his neck. Accused No.8 also attacked him with a cycle chain on his head.

7. He wanted to cause an injury to appellant No.2 (accused No.8) with a small knife but he was prevented from doing so by one Palaniammal as a result whereof Palaniammal suffered a laceration in his right hand.

Appellant No.3, Sathiah (accused No.9) stabbed Kathirvelu in his hand with a knife as a result whereof he received an injury. Accused No.10, Boomi, assaulted Kathirvelu with a cycle chain on his head resulting in causing bleeding injury on his head and the right side nose. Accused No.11 Ramamoorthi (accused No.4) assaulted witness Murugasan with a stick on his right upper arm whereupon all persons shouted whereafter the accused ran away.

8. He, not only, thus, described the incident in great details but also identified the material objects which were seized at the instance of the accused persons being the weapons of offence. Evidence of PW-2 and other witnesses are also on the same vein.

9. Appellants had a motive. They came in a group. All of them were armed. Both parties are related to each other. An occurrence had taken place which took place on 10th July, 1993 giving rise to initiation of a criminal case. They, with a view to take revenge, caused murder of Nagarajan and injuries on some of the prosecution witnesses. The prosecution witnesses were injured witnesses.

10. No cogent argument has been advanced by Mr. Naphade so as to enable him to hold that of the said witnesses are not trustworthy. They have been believed by the courts below. Nothing has been pointed out to us as to why we should differ with the said findings.

11. Intention on the part of a person to commit murder must be gathered

from the backdrop of events and the circumstances attending thereto.

A similar question came up for consideration before this Court in Virsa Singh v. State of Punjab [1958 AIR SC 465], wherein this Court, upon a detailed analyses of the provisions of Sections 299 and 300 of the Indian Penal Code opined that in order to attract "thirdly" contained Section 300 of the Indian Penal Code, it must be established :

"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

Once the aforementioned factors are established, absence of any knowledge that an act of that kind would likely to cause death become immaterial. The intention to cause the bodily injury, if proved, the rest of the enquiry would be purely objective and the only question is whether as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

12 The medical evidence, emanating from the deposition of PW-12, Dr., Meenakshisundaram, reveals :

"I found the following external injuries on the body. (1) A cut injury measuring 1 x > x 3" on the left side chest. It was in the outer aspect of the 6th left side rib bone between the middle of the collar bone. On opening the wound, the wound has injured the intercostals muscles and blood vessels in the middle rib bones. It has punctured the left ventricle. The injury was slanting and upwards and forwards. It has pierced the left ventricle. There was 1= litres of colour changed blood in the thorasic cavity. The internal injuries were as follows :

There was no fracture of the head and rib bones. Heart was empty and pale and was weighing 250 grams. The left ventricle was punctured. The lungs was pale and was weighing 500 grams, and was wet when pressed. Abdomen was normal stomach was containing digested food. Liver weighed 1450 grams and was pale and was wet when pressed. Spleen was also wet when pressed and weighed 165 grams, and was pale. Kidneys were pale and moist on pressure. Intestines empty. Bladder empty. There was no fracture on the pelvis. Hyoid bone was intact and the skull was also intact. Skull membranes were intact. Brain

was pale and weighed 1450 grams. There was no intra-cranial haemorrhage in the brain and was weighing 1250 grams. There was no fracture in the spinal chord."

13. Infliction of a single injury by itself is not a relevant factor to hold that the assailant had no intention to cause murder of the deceased. What is important in a case of this nature is to consider the entire circumstances to arrive at one conclusion or the other. When a group of people come with an intention to assault particular person(s), with dangerous weapon, the same would attract to principles laid down in Virsa Singh (supra). Prosecution witnesses testified in regard to their intention.

Virsa Singh's case has been followed by this Court in Anil v. State of Haryana [2007 (7) SCALE 56].

14. We, therefore, are unable to accede to the submissions of Mr. Naphade that appellant No.1 had no intention to cause death of Nagarajan.

Although, in this case, there was enough material to convict other appellants for commission of an offence under Section 302/34 of the Indian Penal Code, unfortunately, the appellants, other than the first appellant, have been only convicted under Section 324 of the Indian Penal Code. As the State did not prefer any appeal thereagainst, this Court is unable to alter the judgment of conviction and sentence.

15. The learned Trial Judge appears to have committed more than one mistake in his judgment. He, while analysing the evidence of DW-1, who was examined on behalf of appellant No.2 (accused No.8) to prove alibi on his part, although came to the conclusion that the said evidence was not acceptable, as indicated hereinbefore, arrived at the finding that the 8th accused has not committed the offence under Section 324 of the Indian Penal Code. Evidently, a typographical error has crept in as otherwise he could not have convicted him along with appellants No.3 and 4 for commission of an offence under Section 324 of the Indian Penal Code. We may also notice that whereas in the beginning of the judgment, he recorded the sentence imposed upon appellants No.2 to 4 to undergo rigorous imprisonment for three years, in the operative part of the judgment, he directed that they were sentenced to undergo rigorous imprisonment for one year only. We have, however, no option but to hold that the later part of the judgment should be taken to be correct.

16. So far as the purported plea of alibi of appellant No.2 is concerned, a clear finding has been arrived at that DW-1 has manipulated Exhibit D-3 just to help the said accused. The High Court also agreed with the said view.

We do not see any reason to differ with the views of the learned Sessions Judge as also the High Court.

17. For the aforementioned reasons, we do not find any merit in this appeal. It is dismissed accordingly.