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Crl.A.No. 1285 OF 1998
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ITEM No.103 Court No.5 SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.1285/1998@@
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Allarakha K. Mansuri Appellant (s)

VERSUS

State of Gujarat Respondent (s)
(With office report)
(with directions)

Date : 14/08/2001 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Appellant (s) Mr. HA Raichura, Adv.

For Respondent(s) Ms. Hemantika Wahi, Adv.

UPON hearing counsel the Court made the following
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Learned counsel for the appellant submits that no document is with him including the translated copies of the trial court judgment and the depositions of the material witnesses. He wants three weeks time to make up these records. Learned counsel for the State submits that State has no objection to meet the expenses so incurred in this regard.

List after three weeks.
.SP1

Hemalatha (HK Bhatia)
Court Master

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1284 of 1998@@
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Kannusami Appellant (s)

VERSUS

State of T.N. Respondent (s)

With

CRIMINAL APPEAL NO.77 of 1999@@
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O R D E R@@
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.SP2

Three persons were convicted for the murder of one Vasu and all of them were sentenced to imprisonment for life for the offence under Section 302 read with Section 34 of the IPC. The High Court on appeal filed by the three convicted persons confirmed the conviction and sentence and dismissed the appeal. They have come up before this Court by special leave.

The incident happened on 14.6.87 around 6.30 A.M. in the field of the father of deceased Vasu. The prosecution case, in brief, is the following. Vasu is the son of PW1 - Muniyandi Konar, and his wife PW2 - Kaliammai. The son of A1 Sengiah had married the sister of Vasu by name Tamilzharasi but skirmishes occurred in that married life and she was deserted by A1s son. The said desertion was followed by the death of another son of A1. A criminal complaint was filed by A1 against the deceased Vasu, his father and some others alleging that

they were responsible for the death of that son of A1 but the police did not take any action on the said complaint. The incident in this case happened in the above backdrop.

Deceased Vasu went to the field for some agricultural operation during the morning hours, followed by his parents. It was then that the three accused neared the deceased. Initially there was altercation between the accused and the deceased Vasu. A3 beat him with stick on the shoulder of Vasu. Thereafter A1 with a chopper and A2 with a knife inflicted cut injuries on Vasu. Even after Vasu fell down A1 and A2 continued to inflict blows with a chopper and the knife. He sustained large number of cut injuries many of them on the neck itself. The major blood vessels on the neck were cut and Vasu had died almost instantaneously.

The information about the occurrence was conveyed by PW1 - Muniyandi to PW6 - who was the village administrative head from whom PW7 got the news. An FIR was lodged by PW7 at 11.00 A.M. with the police station.

Two witnesses who supported the above prosecution case are PW1 - Muniyandi and PW2 - Kaliammai. They have spoken in full length of the details of the prosecution story. They were cross-examined at great length. The

trial court found their evidence acceptable and hence relied on it and reached the conclusion that death of Vasu was at the hands of the three accused persons.

Mrs.V. Mohana, learned counsel who argued for A1 and A2 contended that PW1 and PW2 would not have been present at the scene of occurrence. In support of the said contention she tried to highlight two points. One is that the clothes of the two parents were not smeared with even a stain of blood. Second is that the information about the occurrence had reached the police station only several hours thereafter.

At the first blush we felt that Ms. Mohana had a strong point on the first aspect of absence of blood on the clothes but the details of evidence showed that neither PW1 nor PW2 moved forward to catch hold of their son. Ms. Mohana contended that the above is not the natural conduct of the parents when seeing their son in such a situation. True, that in such a situation some parents might fall on the injured son but to say that such a conduct should necessarily have been exhibited by the parents as a natural conduct is not possible. There is no set pattern of natural conduct in a situation like this. It is equally possible that the parents who saw their son being butchered by cutting on the neck would

have become startled , benumbed and dumb found. Their mobility would have been very much impaired and their moving forward to hold their son was not possible. We cannot rule out the above possibility and therefore we cannot now say that the conduct of the parents was not natural.

Regarding the delayed FIR, we have noticed that PW1 conveyed the information to the village head by 8.00 A.M. and PW7 boarded the bus at 9.30 A.M. and covered a distance of 12 Kms for reaching the police station. The FIR was lodged at 11.30 A.M. The overall picture narrated above would indicate that there could have been any possibility of PW1 deliberating himself for that purpose of concocting a case against the three accused.

Ms. Mohana then made an attempt to show that death of the deceased would have happened a few hours prior to 6.30 A.M. For that purpose she cited the post-mortem appearance recorded by PW3 doctor that rigour mortis passed off from the hands. Unfortunately this aspect has not been utilised by the defence counsel in the trial court so that PW3 - doctor would have been confronted with the situation. Even no text book on medical jurisprudence could cited before us to show that

disappearance of rigour mortis on the hands would necessarily lead to an inference that death would have happened a couple of hours prior to 6.30 A.M. which is shown as the time of occurrence in this case.

Ms. Mohana lastly contended that the possibility of the second accused also being ..... implicated cannot be ruled out. PW1 and PW2 would have been nurturing vengeance towards the family of A1. Even

that possibility is not enough for us to discard the testimony of PW1 and PW2 which was found reliable by the High Court and the courts below.

Mr. S. Nandakumar, learned accused appearing for the third accused contended that even accepting the entire version put forward by PW1 and PW2, the third accused cannot be fastened with the liability under Section 302 by resorting to Section 32 of the IPC. All that he did, according to the prosecution version, was to inflict a blow with a stick on the right shoulder. The description of the incident shows that the blow given by the third accused was preceded by a wordy altercation between the deceased and the third accused. After the first and the second accused started inflicting blows with lethal weapons the third accused did not do anything against the deceased. Even after the deceased fell down

the first and the second accused continued to inflict blows on him, but still the third accused did not do anything.

From the above conspectus of the details of the occurrence it is possible for us to believe that A3 would not have intended to inflict an assault on the deceased. It is not necessary an inference that A3 would have shared common intention with A1 and A2 for killing the deceased. At any rate there is an area of doubt on that score. We are inclined to extend the benefit of that doubt to A3. He can therefore be convicted only for the offence under Section 324 of the IPC.

In the result we confirm the conviction and sentence on A1 Sengiah and A2 - Marimuthu. We alter the conviction of A3 from 302 read with 34 to Section 324 of the IPC. We are told that A3 had already undergone imprisonment for nearly three years. In the circumstances we deem it fit to impose a sentence for the offence under Section 324 for rigourous imprisonment for

the period already undergone by him. This means that A3 shall be st at liberty forthwith unless he is otherwise required in any other case.

The appeal is disposed of accordingly.

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.....J
(K.T. Thomas)

New Delhi .....J

August 14,2001 (K.G.Balakrishnan)