

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

Petition(s) for Special Leave to Appeal (Crl.) No. 1139/2001

(From the judgement and order dated 12/09/2000 in CRLA 54/91
of The HIGH COURT OF MADRAS)

RAMASAMY GOUNDER

Petitioner (s)

VERSUS

STATE OF TAMILNADU

Respondent (s)

(With Appln(s). for exemption from filing O.T. & bail & office
report)

(For Final Disposal)

Date : 28/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s) Mr. S Sivasubramaniam, Sr. Adv.
Mr. R. Nedumaran, Adv.

For Respondent (s) Mr. TL Vishwanatha Iyer, Sr. Adv.
Mrs. Revathy Raghavan, Adv.

UPON hearing counsel the Court made the following
O R D E R

...L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.

The appeal is partly allowed in terms of the signed
order.

The appellant, if not required in connection with any
other case, be released forthwith.

.SP1

(D.L. Chugh)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.996 OF 2001.
(Arising out of SLP (Crl) No.1139 of 2001.

Ramasamy Gounder

& Appellant

Versus

State of Tamilnadu

& Respondent

O R D E R

Leave granted.

This appeal has been filed against the judgment and order dated 12.9.2000 passed by the High Court of Madras in Criminal Appeal No.54 of 1991. On 26.3.2001, when the matter came up for admission hearing, after considering the finding of fact against accused no.3, namely Rajendran son of Ramasamy Gounder, his petition was rejected. Further, in this appeal only question which requires consideration is - whether Appellant (original Accused No.2) could be convicted for the offence punishable under Section 326 read with 34 I.P.C.

It is the prosecution version that four accused faced trial on the allegation that on 19th September, 1989 in the morning accused no.1 had tied his cow in the lands allotted to the deceased Chinnasamy. Accused no.1 and deceased were brothers. The deceased immediately made a complaint to his mother. On the previous day of the occurrence also the accused went for tying the cow in the land of the deceased. It is alleged that when deceased went to the land, PW1 also followed him. At that time accused nos.1 to 4 were at a distance of about five feet from where the cow was tied. All the four accused surrounded the deceased and there was quarrel. Then accused no.2 hit the deceased on his left chest with his right elbow. Accused no.3 hit the deceased on the back of his head with the spade handle. It is also alleged that accused no.1 hit the deceased on his left face with the fire wood and accused no.4 gave fist blow on the chest of the deceased. Thereafter, deceased fell down and subsequently died. After completing the necessary investigation accused were charge-sheeted for the offence punishable under Section 302 IPC. The Sessions Court by its judgment and order dated 3.12.1999 convicted accused no.1 for offence punishable under Section 323 IPC and acquitted accused no.4. Accused nos.2 and 3 were convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment.

Against that order, the convicted accused preferred an appeal. The High Court arrived at a conclusion that accused nos.2 and 3 were required to be convicted for the offence punishable under Section 326 read with Section 34 IPC and sentenced them to rigorous imprisonment for five years. Against that judgment and order this appeal is filed.

Learned counsel for the appellant submitted that considering the prosecution version as it is, it would be difficult to hold beyond reasonable doubt that appellant who gave push by his elbow to the deceased is required to be punished for the offence punishable under Section 326 IPC on the ground that the said injury had caused fracture of 3rd and 4th ribs of the deceased. He submitted that in any case, it is the prosecution version that accused no.4 has also given fist blows on the chest of the deceased and if that be accepted then it is likely that fist blows given by accused no.4 might have caused fracture of the ribs. Finally, he submitted that at present accused is aged about 66

years and he has undergone sentence at least more than 8 months and, therefore, sentence may be reduced appropriately.

Considering the facts stated above, in our view, it would be difficult to hold that the prosecution has proved its case beyond reasonable doubt that by giving elbow blow to the deceased, the appellant has caused fracture of 3rd and 4th ribs of the deceased, particularly, in view of the evidence of the prosecution witnesses that accused no.4 gave fist blows to the deceased. It is to be stated that the trial court has arrived at the conclusion that accused nos.1 to 4 had no common intention to commit murder of Chinnasamy. After arriving the said conclusion, the Court convicted accused nos.2 and 3 for the offence punishable under Section 302 IPC. That order was rightly set aside by the High Court. But the High Court erroneously arrived at the conclusion that accused no.2 was liable to be punished for the offence under Section 326 read with 34 IPC. Once it is held that all of a sudden quarrel took place and at that time accused no.2 was unarmed and had only given elbow push to the deceased, it would be difficult to hold that he shared common intention with accused no.3 who gave spade handle blow on the head of the deceased. Hence, at the most accused no.2 can be convicted for the offence punishable under Section 323 IPC and the sentence of 8-months already undergone by him is more than sufficient for the said offence.

In the result, the appeal is partly allowed. The impugned order passed by the High Court is modified accordingly. The appellant, if not required in connection with any other case, be released forthwith.

& & & & & & & & ..J.
(M.B. SHAH)

& & & & & & & ..& & J.
(ASHOK BHAN)

New Delhi,
September 28, 2001