



48 of 2004 on the file of the learned Additional Sessions Judge (Fast Track Court), Virudhunagar are the appellants in these appeals. These appellants were tried along with five other accused for the offence punishable under Section 148, 149 and 302 read with Section 34 of the Indian Penal Code (in short 'the IPC') for having committed the murder of one Kumarandi on 20th January, 2002 at about 12 noon on a place called Kariapatti. The Trial Court acquitted the accused Nos. 5, 6 and 7 and convicted the appellants herein along with A-1 and A-2. All the convicted accused preferred the appeals in the High Court. The High Court confirmed the conviction and sentence of all the four accused and maintained the sentence of life imprisonment.

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The incident had taken place on 20th January, 2002 at Kariapatti. The victim was admitted to the Government Hospital at Maduria on 20th January, 2002 at about 2.15 p.m. The Sub-Inspector of Police reached the hospital between 2.15 p.m. and 2.45 p.m. and examined the victim and found that the victim was not in a position to give any statement but recorded the statement of PW-1. The victim died on 20th January, 2002 between 2.15 p.m. and 2.45 p.m.

Initially the first information report was registered against all the seven accused for the offence punishable under Sections 148, 149 and 307 IPC but later converted into one of Section 302 IPC at about 4.30 p.m. on the same day.

According to P.W.6 Dr. G. Natarajan who conducted the post mortem examination on the body of the deceased altogether found the following injuries :-

1. An oblique cut injury of 14 x 2 cm on the right front side of the head portion, at 4 cm below the

right ear and to the depth of the brain. On  
dissection, below that, the skull was cut  
completely of 14 cm to 2 cm and below that a cut  
injury of 11 x 1 x 1 cm on the brain tissue and on  
right front brain portion was seen.

2. An oblique cut injury of 15 x 2 cm was seen below  
the right ear on the right cheek.

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3. One Oblique cut injury of 10 x 2 cm of bone deep  
at 3 cm below the second injury on the right  
cheek.

4. One oblique cut injury of 8 x 2 cm of bone deep in  
the middle portion of the nose.

5. On the back side of the right forehead an oblique  
cut injury of 14 x 4 cm of bone deep. On  
dissection, the tissues below that and the  
arteries and nerves were seen cut and the bones  
below that were seen cut.

6. One oblique cut injury of 9 x 3 cm on the outer  
portion on the right palm.

7. One oblique cut injury of 8 x 1 cm of bone deep on  
the upper portion of right hand.

8. On the left chest front portion a small injury of  
5 x 1 cm of skin deep.

9. On the left chin a small injury of 3 x 1 cm of  
skin deep was seen.

He gave his opinion that the said injuries could be  
caused by the sickle and those injuries in the ordinary  
course caused death of the deceased. However, he  
specifically observed that injury No. 1 was very fatal  
and the deceased may have died due to that external  
injury No.1 and also on account of all the cumulative  
effect of other injuries.

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PW-1 is the eye witness to the incident.

The

Trial Court as well as the Appellate Court relying upon

his evidence convicted the appellants herein for the offence punishable under Section 302 read with Section 34 IPC. The Trial Court itself acquitted the appellants herein and others of all the charges punishable under Sections 148 and 149 IPC. It is clear from the evidence of PW-1 that on 20th January, 2002 he along with his brother Kumarandi and his son, Mayakrishnan appeared at Aviyur Police Station at 10.00 a.m and signed the register in connection with the pending proceedings and left to buy household things in the market. PW-1 and Mayakrishnan at about 10.00 a.m. left his brother Kumarandi in front of a cloth shop in Kariapati and proceeded to purchase the household goods. When they were returning back at about 12 noon after buying household goods they have seen that Accused No.1 - Periasami, son of Pichai shouting at the deceased Kumarandi and cutting Kumarandi with a sickle on the right cheek several times. Simultaneously, Accused No.2, Nagarajan, son of Periasami cut his brother's right side of the head and Accused No.3 - Raman, son of Kanthan cut the right hand of his brother by sickle whereas Accused No.4 - Kanthan son of Muthuveeran cut his brother's right hand with a sickle.

It is not necessary to notice rest of the evidences

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since the presence of the appellants and other accused and their occurrence is not seriously disputed before us.

Dr. V.P. Appan, learned counsel for the appellants relying on the opinion of PW-6 - Dr. G. Natarajan who conducted the post mortem on the body of the deceased contended that at the most the case attributed to the appellants herein may fall under Section 304 Part II IPC and not under Section 302.

We have carefully examined and scrutinized the

evidence of PW-6 Dr. G. Natarajan along with evidence of PW-1 and PW-2. PW-1 in his evidence, which we have referred to herein above, clearly stated that it is Accused No.1 Periasami and not the appellant before us who shouted at the deceased Kumarandi and went on cutting him with his sickle on his right cheek several times.

The appellants herein are alleged to have inflicted the injuries on the right hand of his brother with sickle. Those injuries which are attributed to the appellants herein are to the following effect :-

On the back side of the right forehead an oblique cut injury of 14 x 4 cm of bone deep. On

dissection, the tissues below that and the arteries and

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nerves were seen cut and the bones below that were seen

cut and one oblique cut injury of 8 x 1 cm of bone deep

on the upper portion of right hand. As has been

noticed herein above, in the opinion of the doctor, the deceased could have been died due to external injury

No.1 and due to the internal injuries and to the cumulative effect of other injuries. It is thus

obvious that the injuries attributed to the appellants

herein not have resulted in the death of the victim.

There is no evidence suggesting that the appellants

shared common intention of causing murder of the deceased. This becomes relevant in view of the

acquittal of all the accused for the offence punishable under Sections 148 and 149 IPC.

There is no common intention of committing

culpable homicide amounting to murder but at the same

time the case of the appellants may fall under Section

304 Part II IPC and not under Section 302 IPC.

Their

sentence of life imprisonment is accordingly, set

aside. However, we find the appellants to be guilty of

offence punishable under Section 304 Part II IPC and accordingly, sentenced to suffer rigorous imprisonment for a period of seven years.

The appellants are stated to be in jail for more than four years. They shall remain in jail to

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serve out the remaining sentence.

The appeals are accordingly, partly allowed.

.....J.  
(B.SUDERSHAN REDDY)

.....J.  
(SURINDER SINGH NIJJAR)

New Delhi,  
February 15, 2011