

Mariadasan and Others

Vs

State of Tamil Nadu

And

Varuvel and Others

Vs

State of Tamil Nadu

Criminal Appeal No. 14 of 1975 etc.

(Syed M. Fazal, A. D. Koshal JJ)

17.01.1980

#### JUDGMENT

1. This is an appeal under Section 2 of the Enlargement of Supreme Court (Appellate) Jurisdiction Act, by the Appellant Mariadasan who was accused 2 in the trial Court. The other four accused persons, namely A1(Varuvel), A3(Ambrose), A4(Prakasan) and A5(Maria Sebasthiyan) have filed a petition for special leave against the order of conviction and sentence recorded by the High Court. The trial Court acquitted the accused of all the charges, namely Sections 302/149, 307/149, 148, 147, etc. The State filed an appeal before the High Court which reversed the judgment of the trial Court and convicted Mariadasan, accused 2, under Section 302 to imprisonment for life, under Section 324/149 to 3 years' RI, under Section 148, also to three years' RI (sentence to run concurrently).
2. So far as the other accused were concerned the High Court convicted accused 1 under Section 324 to three years' RI and to the same sentence under Section 148; accused 3, under Section 324/149 to three years' RI. Accused 4 was also convicted similarly. A5 was convicted under Section 147 to two years' RI and under Section 324/149 to 3 years. The special leave petition filed by accused 1, 3, 4 and 5 were ordered to be heard along with this appeal and we hereby grant special leave so that the applications of A1, A3, A4 and A5 may be disposed of also by this judgment.
3. We have heard the counsel for the parties and have also gone through the judgment of the trial Court and the High Court. Mr. B. P. Singh with his usual fairness, brevity and ingenuity has frankly conceded that in the state of evidence it is not possible for him to press the case of accused 1 and so far as accused 2 was concerned he argued that conviction under Section 302 was wrong as his case squarely falls under Section 304, Part I or Part II of IPC.
4. As regards accused 4 and 5, the learned counsel submitted that there was no legal evidence against them. The occurrence took place on December 27, 1970 and was a result of an earlier dispute between the parties in which certain threats are said to have been given. A report was made regarding the threats before the police station and some time in the afternoon, while PW1 was

returning from the church he was surrounded by the five accused but nothing of much consequence happened at that time. In the evening, at 6 p.m. on the date of occurrence, it appears that there was a sudden altercation between PW 1 and the accused in which the deceased Francis tried to intervene as a result of which A 2 assaulted him with knife on several parts of the body and caused a serious injury on the chest. According to the evidence, A 1 is said to have assaulted PW 1 with knife and inflicted knife injuries to him. According to the evidence of PW 1, A 3 had beaten him on the shoulder with a stick and A 4 had given a beating to PW 1 on the left knee. No overt act was ascribed to A 5. Reading the evidence of PW 1 as also the allegations made in the FIR we are satisfied that there was no satisfactory evidence to prove the formation of any unlawful assembly at any time with the common object of assaulting or killing either the deceased Francis or PW 1. The whole fight started suddenly on the spur of the moment in a heat of passion and therefore, the accused could only be liable for the individual acts committed by them. For these reasons therefore, we agree with Mr. Singh that there is no evidence to support the conviction of rioting under Sections 149, 148 or 147, IPC as recorded by the High Court.

5. Coming to the individual acts, so far as A2 is concerned the medical evidence of PW 9 shows that one of the injuries caused by A2 was on the chest which cut a part of the thoracic aorta which was main portion of the heart and also, fractured 8th and 9th rib on the right side of the chest. According to the doctor this injury was sufficient in the ordinary course of nature to cause death. Having regard, therefore, to the nature of the injury and the vital and delicate part of the body at which it was aimed, we are unable to agree with Mr. Singh that the act of A2 could in any way fall under Section 304, Part I or Part II. The High Court was, therefore, absolutely correct in holding that A2 was guilty of committing murder of the deceased Francis particularly in view of the brutal injury caused on the chest of the deceased.

6. As regards A1, Mr. Singh conceded that if the charge of unlawful assembly failed he would be only liable for having caused simple hurt by sharp cutting instrument, namely knife and would have to be convicted under Section 324. In fact his conviction under Section 324 by the High Court and sentences of 3 years' RI has not been challenged by the learned counsel for the appellant and we uphold the same.

7. As regards A3, there is clear evidence of PW 1 which is supported by other witnesses also that A3 had beaten him on the back and shoulder with stick. The doctor also found the injuries on the back and shoulder PW 1 only in the nature of abrasions and were, therefore, simple.

8. We, therefore, uphold the conviction of A3 under Section 323 but reduce the sentence to the period already served and in lieu of the sentence remitted we impose a fine of Rs. 500 and in default one month's rigorous imprisonment. The entire fine, if realised shall be paid to PW 1 as compensation.

9. As regards A4 and A5, there is really no evidence to connect them with the assault either on the deceased or on the injured witness PW 1. No overt act has been ascribed to A5. So far as A4 is concerned it is alleged by PW 1 that he had beaten him a stick on he left knee but the doctor does not find any such injury. In the FIR also PW 1 did not at all mention that he was assaulted by A4 on the knee. For these reasons, therefore, we agree with Mr. Singh that accused 4 and 5 cannot be convicted. In view of our finding that there is no evidence to substantiate the charge regarding the existence of an unlawful assembly of the accused persons, we acquit all of them of the charges under Sections 149, 148, and 147. A4 and A5 are also acquitted of all the charges. Conviction and sentence of A2 under Sections 302, IPC are affirmed and those of A1 under Section 324, IPC, are

also confirmed. Appeals arising out of special leave petitions are accordingly allowed in part and the appeal is disposed of accordingly.

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