

Rangaswami

Vs

State of Tamil Nadu

Criminal Appeal No. 50 of 1983

(S. Natarajan, A. M. Ahmadi JJ)

08.03.1989

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave has been preferred by accused 3 in Sessions Case No. 40 of 1978 on the file of the Sessions Judge, Pudukottai. The prosecution case was that an occurrence took place at about 11.45 a. m. on August 16, 1978 in the Big Bazar Street in Aranthangi town in which one Jayaraman was murdered by A1, PW 1 Kandaswamy was attempted to be murdered by A2 and PW 2 Mani was attempted to be murdered by A3. In respect of these offences, each of the three accused was directly charged for his overt act and constructively charged for the overt acts of the other accused. The Sessions Judge found all the charges proved against A1, A2 and A3 and accordingly convicted them. He imposed a sentence of death on A1 and a sentence of 8 years' RI on A2 and A3 for the offence of murder of Jayaraman. Insofar as the charges under Section 307 as well as under Section 307 read with Section 34 IPC are concerned, the Sessions Judge awarded varying terms of imprisonment to the three accused.

2. The Sessions Judge made a reference under Section 366 CrPC to the High Court for confirmation of the sentence of death awarded to A1. All the three accused preferred appeals to the High Court against their convictions and sentences. The High Court initiated a suo moto revision against A2 and A3 for enhancement of the sentence for their conviction under Section 302 read with Section 34 IPC since the Sessions Judge had wrongly awarded them a sentence of 8 years' RI only. All these matters were heard together by the High Court and by a common judgment the High Court confirmed the conviction of A1 under Section 302 IPC but modified the sentence of death to imprisonment for life. As regards A2 and A3, the conviction under Section 302 read with Section 34 IPC was confirmed and they were sentenced to imprisonment for life. The conviction of A2 under Section 307 IPC was modified to one under Section 324 IPC and consequently the conviction of A1 and A3 under Section 307 read with Section 34 IPC was also modified to one under Section 324 read with Section 34 IPC. The conviction of A3 under Section 307 was modified to one under Section 506 Part II IPC and consequently the conviction of A1 and A3 under Section 307 read with Section 34 IPC was also modified to one under Section 506 Part II IPC read with Section 34 IPC. By reason of the altered convictions the sentences were also modified but for the purpose of this appeal it is enough if we refer to the modified sentences awarded to A3, the appellant herein. For the convictions under Section 324 read with Section 34 IPC and Section 506 Part II IPC he was sentenced to undergo RI for 3 years and 2 years respectively, the sentences to run concurrently with the imprisonment for life awarded under Section 302 read with Section 34 IPC. While A1 and A2 do not appear to have preferred appeals to this Court, A3 alone has preferred this appeal to assail the convictions and sentences awarded to him.

3. The prosecution case was that on June 23, 1978 the eldest brother of A1 by name Dakshinamurthy had been done to death in the course of a quarrel between him and two bus drivers and a report was made to the police about his murder by another brother by name Gnanapanditham. A case was registered and investigated into and thereafter a charge-sheet was laid against deceased Jayaraman and PW 1 Kandaswamy, both of them being drivers of a tourist bus. In connection with that case deceased Jayaraman and PW 1 Kandaswamy, who were on bail, appeared at the Court of the Judicial Magistrate, Aranthangi at 11 a. m. on August 16, 1978. They were accompanied by PW 2 Mani, a friend of Jayaraman. As the committal enquiry was adjourned to August 30, 1978, Jayaraman and PW 1 bound themselves over to appear in court on that day and left the court premises. Thereafter they went along the Bazar Street accompanied by PW 2. At about 11.45 a. m. when they were near the shop of PW 3 Selladurai they were attacked by the accused in order to avenge the murder of Dakshinamurthy.

4. The attack began with A1 inflicting an incised injury 16 cms x 3 cms x bone deep on the left side of the neck and face of deceased Jayaraman with a bill-hook. On receipt of the cut Jayaraman dropped dead on the road. The attack on Jayaraman was followed by A2 inflicting a semi-circular incised wound 5 cms x 0.5 cm x bone deep over the scalp of PW 1 Kandaswamy with a bill-hook. On receipt of the cut injury PW 1 ran to the shop of PW 4 Nathar and took shelter. Lastly A3 attempted to cut PW 2 Mani with his bill-hook but PW 2 Mani escaped sustaining injuries by running away. All the three accused then went away from the scene of occurrence carrying with them their weapons.

5. PW 1 went to the police station forthwith and gave a report Ex. P 1 to PW 11 the Sub-Inspector of Police and on the basis of it, a case was registered against A1 to A3. PW 12 Nambiar Inspector of Police promptly proceeded to the scene of occurrence and held inquest over the dead body of Jayaraman. After sending the dead body to the hospital for post-mortem examination. PW 12 returned to the police station. Soon after his return, A1 to A3 appeared before him and surrendered themselves and produced their respective bill-hooks. The three accused were arrested and their weapons were seized. PW 6 Dr. Devarajan examined the injury on PW 1 and also performed the autopsy on the dead body of Jayaraman and he certified that PW 1 and Jayaraman would have sustained the injuries on their person due to being attacked with bill-hooks and that Jayaraman's death was on account of shock and haemorrhage resulting from the injuries sustained by him.

6. During the trial of the case PW 1 Kandaswamy turned hostile to the prosecution even though he was one of the victims of the attack and he was the person who had laid the first information report Ex. P. 1. The case, therefore, rested upon the direct evidence of the remaining eye-witness PW 2 Mani. Besides, the prosecution also relied upon the evidence of PW 12 regarding the surrender of A1 to A3 at the police station within hours after the occurrence and the handing over of their weapons by them. Reliance was also placed on the evidence of PW 6 the doctor who had examined PW 1 Kandaswamy and also conducted the autopsy on the dead body of Jayaraman. The plea of all the three accused was one of the total denial of their complicity in the alleged offences.

7. The Sessions Judge accepted the prosecution case and awarded convictions and sentences to the three accused in the manner set out above. The High Court affirmed the conviction insofar as the murder of Jayaraman is concerned, but modified the sentence of death imposed upon A1 to imprisonment for life and enhanced the sentence for A2 and A3 to imprisonment for life from the sentence of 8 year', RI awarded by the Sessions Judge. As regards the charges pertaining to the attempted murder of PW 1 Kandaswamy and PW 2 Mani, the High Court altered the sections of offence and the sentences therefor in the manner already set out above.

8. Mr. Ratnaparkhi, learned counsel for the appellant (A 3), took us through the relevant portions of the evidence of the main witnesses and also the judgments of the Session Judge and the High Court. Realising the fact that A1 and A2 have not preferred appeals against their conviction, the counsel restricted his arguments to contend that even if A1 and A2 are the assailants of deceased Jayaraman and PW 1 Kandaswamy respectively, the appellant ought not to have been constructively held liable for their acts and convicted under Section 302 read with Section 34 IPC and under Section 324 read with Section 34 IPC. The argument of the learned counsel was that from the mere presence of the appellant at the scene of occurrence along with A1 and A2, it cannot be concluded that the appellant must have known beforehand that A1 and A2 had planned to attack deceased Jayaraman and PW 1 Kandaswamy on the Bazar Street and that he had shared a common intention with them for the two victims being attacked in the manner it was done. The learned counsel also contended that no adverse inference should be drawn against the appellant either because of his carrying a bill-hook, inasmuch as he was an agriculturist or because of his appearing at the police station along with A1 and A2 and producing his bill-hook. Mr. Ratnaparkhi stated that the appellant would have thought that if he failed to appear at the police station when A1 and A2 were themselves going there, he would be laying himself open to greater suspicion and it was because of that he should have gone to the police station along with A1 and A2. His last contention was that even the conviction of A3 under Section 506 Part II IPC was not called for because on seeing the unexpected attack on Jayaraman and PW 1 by A1 and A2, his reaction would have been to run away from the scene at once rather than tarry there and threaten to cut PW 2 Mani.

9. Controverting the arguments of the appellant's counsel. Mr. Mohan, learned counsel for the State argued that the conduct of A3 in accompanying A1 and A2 on the day in question and his attempting to cause injury to PW 2 Mani and his subsequent conduct in appearing at the police station along with A1 and A2 and surrendering himself clearly proved A3's complicity in the offences committed by A1 and A2 besides establishing his own guilt for the offence committed against PW 2 Mani. Mr. Mohan, therefore, contended that A3 has been rightly convicted for the offence committed by him as well as for the offences committed by A1 and A2.

10. We have given the matter our careful consideration and we find considerable force in the contentions of Mr. Ratnaparkhi. While the evidence on record clearly establishes the presence of A3 along with A1 and A2 at the scene of occurrence, the evidence is certainly not adequate to hold that A3 had shared a common intention with A1 and A2 in the commission of the offences by them against Jayaraman and PW 1 Kandaswamy respectively or that in the course of the transaction he had threatened to cut PW 2 Mani. It is no doubt true that A3 had accompanied A1 and A2 on the day in question but there is no material on the basis of which it can be held that A3 had done so full well knowing that deceased Jayaraman and PW 1 Kandaswamy would be attending the Magistrate's court on that day and that A1 and A2 had planned to attack them after they had appeared at the court and it was for that purpose he had accompanied A1 and A2 to the Bazar Street. Except that he was on friendly terms with A1, A3 had no scores to settle with Jayaraman or PW 1 Kandaswamy. A3 had not assisted A1 and A2 in any manner in the attack made by them on deceased Jayaraman and PW 1 Kandaswamy. He had not even uttered any words of instigation when the two persons were cut. As regards the subsequent conduct of A3 in surrendering at the police station, it cannot warrant a conclusion that there was a prior meeting of minds between A3 on the hand and A1 and A2 on the other and it was on account of a consensus reached between them, the victims had been attacked at the Bazar Street and thereafter all the three of them went together to the police station to surrender themselves. It may well be that A3 may have thought that if he did not go to the police station when A1 and A2 were themselves going, he would be incurring their displeasure and also inviting the suspicion of the police authorities about his complicity in the offences. In such circumstances,

A3 cannot be held constructively liable for the acts of A1 and A2.

11. Even as regards his conviction under Section 506 Part II, the prosecution evidence affords room for doubt. PW 2 Mani is the only witness to speak about the threat uttered by A3. It is highly unlikely that either A3 or Mani would have remained at the scene even for a few minutes after seeing the attack on Jayaraman and PW 1 Kandaswamy instead of each one taking to his heels forthwith. While attempting to run away it is likely A3 may have raised his bill-hook in order to make good his escape and this may have been mistakenly construed as an attempt by him to cut PW 2 Mani. In such circumstances, we are of the view that A3 is entitled to the benefit of doubt in respect of the conviction under Section 506 Part II IPC also.

12. For the aforesaid reasons the conviction of A3 under all the three charges framed against him cannot be sustained. Consequently, we allow the appeal and set aside the conviction of A3 of all the offences held proved against him and acquit him of the concerned charges and set him free. As A3 has already been released on bail his bail bond will stand cancelled.

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