

Parusuraman alias Velladurai and others

Vs

State of T.N.

Criminal Appeal No. 393 of 1979

(Kuldip Singh, M. M. Punchhi JJ)

11.09.1991

JUDGEMENT

KULDIP SINGH, J.:-

1. Parusuraman alias Valladurai, Karuppaiah, Nagasundaram and four others (hereinafter referred to as A1 to A7) were tried for the murder of one Jawahar. Three charges were framed against them. A7 was charged under S. 302 read with, S. 109, I.P.C. for instigating A1 to 6 to commit the murder. The second charge related to rioting wherein A 1, A2, A4, A5 and A3, A6 were tried under Ss. 147 and 148, I.P.C. respectively. The third charge under S. 302 read with S. 149, I.P.C. was against A1 to A6 on the allegations that A 1, A2, A4 and A5 armed with sticks, A3 armed with aruval "(bill-hook) and A6 armed with vel-stick (spear-stick); attacked Jawahar at about 8.30 a.m. on January 28, 1977 and caused him multiple injuries as a result of which he died on the same day. All the accused persons were acquitted by the learned Trial Judge. On appeal the High Court maintained the acquittal of A4 to A7 but reversed the findings in respect of A1 to A3. Believing the prosecution evidence, the High Court came to the conclusion that the commission of offence by A1 to A3 was proved. They were convicted under S. 304 Part I read with S. 34, I.P.C. and were sentenced to undergo rigorous imprisonment for five years. This appeal by A1 to A3 via special leave petition is against the judgment of the High Court. While granting special leave to appeal this Court by its order dated August 10, 1979 allowed bail to the appellants.

2. We have heard learned counsel for the parties. We agree with the High Court that the participation of the appellants in the occurrence which result in the death of Jawahar has been proved beyond doubt. We are, however, of the view that keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the offence committed by the appellants comes within the mischief of S. 325 read with S. 34, I.P.C. Thirteen external injuries were found on the dead body of Jawahar. Out of those 11 were on lower legs and arms. The High Court while considering the nature of offence observed as under:

"These accused and their associates who be set themselves on Jawahar could never have intended to cause the death of Jawahar for, if such was their intention, they could have certainly killed him especially after carrying him into the cholam field and left him dead there instead of merely causing simple and grievous injuries to him. Even with reference to the aspect whether the accused persons could have, intended to cause such injuries as would be sufficient, in the ordinary course of nature, to cause death, we are not able to give a finding in favour of the prosecution. Even according to Jawahar's statement (Exhibit P6) all that first accused had remarked was that the attack on him was in retaliation for the injuries Jawahar had

caused on the first accused a few weeks earlier."

3. Agreeing with the above observations of the High Court we are of the opinion that the intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of S. 325, I.P.C. We, therefore, set aside the conviction and sentence of the appellants under S. 304, Part I, I.P.C. read with S. 34, I.P.C. and instead convict them under S. 325, I.P.C. read with S. 34, I.P.C. We impose the sentence of imprisonment already undergone by the appellants. We also impose the sentence of Rs. 7,000 /- each as fine on the appellants. The appellants shall deposit Rs. 7,000/- each before the Trial Court within four months from today. In the event of non payment of fine the appellants shall undergo rigorous imprisonment for five years. The amount of Rs. 21,000/- realised as fine from the appellants be paid to the father/mother of deceased Jawahar. In the event of none of them surviving the amount shall be paid to Indra sister of deceased Jawahar. The appeal is disposed of in the above terms.

Order accordingly.

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