

Abdul Mazid

Vs.

State of Assam

Criminal Appeal No. 605 of 1984

(K. Jayachandra Reddy, G. N. Ray JJ)

30.03.1993

### JUDGMENT

1. The appellant, Abdul Mazid (original accused No. 1) was tried along with his three sons for offences punishable under S. 302 read with S. 34, I.P.C. for causing the death of Mahabbat Ali with a dagger and under S. 326 read with 34, I.P.C. for causing injuries to PW-3 and other witnesses. The trial Court convicted all the four accused. But the High Court confirmed the conviction of A-1 under S.302 and acquitted A-2 and A-3 of the murder charge but convicted them under S. 324, I.P.C. and sentenced them for causing injuries to the witnesses, to the period already undergone, A-4 was, however, completely acquitted since the evidence of the eye-witnesses did not establish his participation. The High Court while convicting A-1 took to the view that it was he who caused the fatal injury to the deceased.

2. The occurrence happened on the day of Ramjan i.e. on 19-9-74 at about 9.00 p.m. Because of some disputes a quarrel took place in the afternoon between the accused and the brother of the deceased on the issue of grazing the cattle. On the same day at about 7.30 p.m. there was again a quarrel and during that the appellant A-1, the father and three sons got enraged and hit Mohabbat Ali, deceased with a battery torch. During the course of the same incident, A-2 handed over a dagger to A-1 with which he stabbed the deceased on the neck. The other accused are alleged to have assaulted the deceased and PW-3 witnessed the occurrence. The people gathered there and caught the accused and they were taken into the custody. A report was given to the Police and the case was registered. The inquest was held on the dead body and it was sent for post-mortem. The doctor who conducted the post-mortem noticed one incised wound on the left side of the neck; one incised .wound. on the left shoulder; one incised wound on the lower part of the chest and one incised wound on the left forearm. On internal examination he found that right and left lung were torn and they were corresponding to external injuries Nos. 3 and 4. The doctor opined that external injuries Nos. 2 and 3 combined together proved fatal and in general way the death was due to shock and haemorrhage as a result of the injuries sustained. The High Court acquitted A-4 on the ground that the evidence of the eyewitnesses, if accepted, in general does not establish his participation. A-2 and A-3 were acquitted on the ground that their participation was not spoken by the eye-witnesses in the murderous attack and convicted them under S. 324, I. P. C. for causing the hurt to the injured witnesses. The High Court, however, held that A-1's participation in the murder was established and accordingly convicted him under S. 302, I.P.C.

3. The learned counsel submits that the High Court grossly erred in holding that A-2 caused the fatal injury which is not supported by the medical evidence and that it was a sudden quarrel and initially A-1 was not armed with any weapon when A-2 handed over a dagger to him and he inflicted that injury and unless injuries were proved to be sufficient in the ordinary course of nature to cause

death clause (3) of S. 300, I.P.C. is not attracted and he would be liable for his individual act namely causing the injury on the neck. His further submission is that clause (1) of S. 300, I.P.C. is not attracted because there was no pre-determination and the very fact that A-1 was not even armed could rule out the applicability of Clause (1) of S. 300, I.P.C. We see force in the submissions. We find all the four accused were there but the fact that three others were acquitted would go to show that the High Court took the view that the appellant whose specific overt act is proved should be convicted alone for his individual act. Having examined the evidence of the eye-witnesses we find only one overt act was attributed to the appellant and he inflicted the injury on the neck which is at the most could be grievous hurt or one which is likely to cause death cumulatively with the other injuries. But the doctor has categorically admitted that it is only injuries Nos. 2 and 3 which proved fatal and he did not say that injury No. 1 was sufficient in the ordinary course of nature to cause death or grievous hurt. He generally stated that all the injuries cumulatively could cause death. But he definitely stated that only injuries Nos. 2 and 3 individually fatal.

4. The surrounding circumstances would also show that this is not a premeditated murder. The appellant was armed with only a torch and during the quarrel it happened that A-2 gave a dagger and the version given by the defence shows that there was a scuffle among the accused and the deceased and it is also difficult to hold that the appellant intended to cause that particular injury. At any rate that the injury caused by the accused was sufficient in the ordinary course of nature to cause death has not been objectively proved, in the absence of such a proof clause (3) of Section 300 I.P.C. is not attracted. Therefore, the conviction under Section 302 IPC cannot be sustained. However, the appellant must be attributed knowledge that by inflicting such an injury on the neck he was likely to cause the death. Doctor's general opinion was that all the injuries cumulatively caused the death. In that view of the matter the offence committed by the appellant is one which is punishable under Section 304 Part-II IPC. Accordingly we set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict him under Section 304 Part-II IPC and sentence him to undergo seven years' rigorous Imprisonment. The appeal is allowed to the extent indicated hereinabove.

5. If the appellant has already served out the sentence he need not be arrested and sent back to the Jail. This. is subject to the verification. Appeal allowed.

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