SUPREME COURT OF INDIA

Chinnaiah

Vs.

State

Crl.A.No.550 of 2003

(N. Santosh Hegde and B. P. Singh JJ.)

18.09.2003

JUDGEMENT

Santosh Hegde, J.

1. Ten accused persons including the appellant in this appeal were sent up for trial before the Sessions Court, Pasumpon Muthuramalinga Devar District, Sivaganga in Sessions Case No. 16 of 1993 for various offences, principal of which was one punishable under S. 302, IPC. The trial Court as per its judgment dated 23-12-1994 convicted all the accused under various sections including for an offence punishable under S.302, IPC and sentenced them to undergo imprisonment for life. He also sentenced them to lesser period of imprisonment on other charges. In appeal, the High Court confirmed the conviction of A-1 under S. 302, IPC along with convictions under other charges and confirmed the sentences awarded by the trial Court. It convicted A-3 under S. 304, Part I, IPC and sentenced him to undergo RI for 7 years on that count, it also convicted A-3 for various other offences for which lesser punishments were awarded. It also convicted A-8 for an offence punishable under S. 307 read with 149, IPC and sentenced him to undergo 7 years' imprisonment on that charge and for other lesser offences separate sentences were awarded but directed those sentences to run concurrently. Other appellants before the High Court were sentenced for lesser offences, particulars whereof are not necessary to be mentioned for the purpose of disposal of this appeal. Suffice it to say that it is only the present appellant before us in this appeal, challenging his conviction, as stated above.

2. It will be sufficient to mention for the disposal of this appeal that the prosecution had alleged that all the accused persons and six other unnamed accused who were not sent up for trial, formed themselves into an unlawful assembly and with the common object of causing the murder of PW-1 went to the house of PW-22 in the earlier morning of 24-8-1999 where PW-1 had gone to help PW-22 in his agricultural operations and caused injuries to P.Ws. 1, 3, 5 and 6 with lethal weapons and also caused the death of one Manimaran who, according to the prosecution, tried to prevent the accused persons from attacking PW-1. Even according to the prosecution case, the accused had no grievance or motive against said Manimaran when they came to attack PW-1 and it is only because he prevented them from attacking PW-

1. Said Manimaran was attacked by the accused causing his death. In this attack the prosecution alleged that the accused caused one oblique spindle shaped wound 5 x 2 cms. on the left chest 6 inches below the nipple.

3. Prosecution alleged that A-2 who is not an appellant before us also caused an oblique spindle shaped wound 5 x 2 cms. on the middle of the neck. The cause of death, according to the doctor, was the two wounds caused by the appellant and A-2.

4. As noted above, the trial Court found all the accused guilty of having committed the murder of the deceased and with the aid of S. 149, I. P. C. But the High Court isolated A-1 alone for convicting him of an offence punishable under S. 302, IPC while in regard to A-2, the High Court found him guilty of an offence punishable under S. 304, Part I, IPC. The High Court has not given any reason whatsoever for distinguishing the act of A-1 from that of A-2. According to the medical evidence it is the act of the appellant together with the act of A-2, was the cause of death of the deceased.

5. It is in the above background, Mr. Siddarth Dave, learned counsel appearing for the appellant, though originally argued against the finding of guilt recorded by the Courts below against the appellant, alternatively contended that at any rate the act of appellant, cannot be held to be anything more than the act of A-2 who was convicted for an offence under S. 304, Part I, IPC only. The High Court was not justified in convicting the appellant for an offence under S. 302, IPC.

6. We have heard learned counsel for the parties and also perused the records. Though there may be some merit in the argument of learned counsel for the appellant that the evidence of PW-1 cannot be believed to base a conviction on the appellant, we are of the opinion that the evidence of PW-6 who is the brother of the deceased who is not in any manner inimically disposed towards the appellant, cannot be rejected on any ground, therefore, the factum of the appellant causing the injuries to the deceased attributed to him by the Courts below, in our opinion, is justified. The question then is whether the High Court was justified in differentiating between the act of the appellant and A-2. We have noticed that the death of the deceased is not attributed solely to the act of the appellant. The doctor concerned has opined that the cause of death was due to the cumulative effect of the injuries caused by the appellant and A-2, therefore, there is no basis to differentiate between the acts of the appellant and A-2 while examining the nature of offence committed by them. As a matter of fact, the High Court has not even tried to do that. In the course of its judgment, the High Court observed:

> "The evidence of P. W. 7 Doctor would go to show that the injury Nos. 1 and 2 were fatal, ... From the post-mortem certificate marked as Ex. P9, it would be clear that the deceased would have died of shock and haemorrhage due to injuries to vital organs and multiple injuries. P.W. 7 Doctor has clearly opined that the external injury Nos. 1 and 2 and the corresponding internal injuries were fatal....."

7. In the latter part of the judgment the High Court while rejecting the prosecution case in regard to the application of S. 149, IPC, it observed :

> "..... they had no common object or intention to kill or attack him. There was no consensus among the accused or meeting of mind among them in that regard. Nowhere it is found that A-1 made any utterance directing any of the accused to attack the deceased. ...... Under such circumstances, it cannot be held that there was any unlawful assembly, having the common object of killing or attacking the deceased Manimaran."

8. Then the High Court abruptly comes to the following conclusion:

> "..... in view of the reasons stated and discussions made above, the first appellant/A-1 is found guilty under S. 302 of I. P. C., while the third appellant A-3 is found guilty under the S. 304, Part I of I. P. C. "

9. We have carefully perused the judgment to find out whether the High Court in its preceding paragraphs of the judgment has anywhere given any reason for making a distinction between the acts of the appellant and A-2 but we find none.

10. In such circumstances, we think it appropriate to modify the conviction recorded by the High Court under S. 302, IPC against the appellant to one under S. 304, Part I, IPC, for which offence we award a sentence of 7 years' RI to the appellant. We maintain all other convictions and sentences awarded by the High Court to this appellant but direct the substantive sentences to run concurrently. The sentence undergone by the appellant shall be given remission. With the said modification, this appeal is partly allowed.

Appeal partly allowed.