SUPREME COURT OF INDIA

Daulat Trimbak Shewale

Vs.

State of Maharashtra

Crl.A.No.663 of 1998

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

29.04.2004

JUDGEMENT

Santosh Hegde, J.

1. The appellants herein were tried for offences punishable under Sections 302, 325 and 324 read with Section 34, I.P.C. for having committed the murder of one Keshav and having caused injury to his brother Baburao (PW-1). The trial Court found the appellants guilty of offence punishable under Section 302 read with 34, I.P.C. and sentenced them to undergo imprisonment for life. It convicted appellants Nos. 2 and 4 also for an offence punishable under Section 324 read with 34, I.P.C. for which three months simple imprisonment was awarded.

2. The appellants herein unsuccessfully challenged the said conviction and sentence before the High Court of Bombay, Nagpur Bench, Nagpur, consequently they are before us in this appeal.

3. Brief facts necessary for the disposal of this appeal are as follows:

> "The appellants and the deceased and his family owned neighbouring lands in the Village Koyali, Tehsil Risod in Akola District of Maharashtra. There was some dispute in regard to the boundary between these two properties because of which the appellants had filed a civil suit and had obtained an injunction against the deceased and his family from sowing the disputed area of the land. But before the injunction could be obtained the deceased and his family had already sown Moong crop in the disputed area sometime in July of 1992. It is the case of the prosecution that Moong crop sown by the deceased and his family was ready for harvesting sometime in September, hence, anticipating the harvesting of the crop by the deceased and his family the appellants had sought for police help to prevent the same, but such help was not given by the police. Therefore, it is stated that on 4-9-1992 at about 10 a.m. when deceased and his brother were harvesting the crop, the appellants came to the field armed with deadly weapons and assaulted the deceased and his brothers,

consequent to which deceased Keshav died and his brothers Baburao and Bahurao suffered injuries. A complaint in this regard was lodged by PW-1 in Shirpur Police Station and on the basis of the said complaint a case was registered against the appellants, as stated above. In the meanwhile the appellants herein also approached the same police station and lodged a complaint that they were assaulted by the party of the deceased. Said complaint was also accepted and a separate case was registered against the deceased and his brothers."

4. In the case filed by the brother of the deceased, the police after investigation filed a charge-sheet for offences, as stated above and the trial Court convicted the appellants which conviction was confirmed by the High Court. Since we are not concerned with the complaint filed by the appellants in this appeal and since there is no material in regard to the fate of that complaint on record it is not necessary for us to deal with the facts pertaining to that complaint except to the extent the same is taken as a defence by the appellants in this case.

5. Shri M. R. Daga, learned counsel appearing for the appellants contended that by virtue of the injunction granted by the Civil Court the appellant were in possession of the land in question and it is the complainants side which tried to interfere with their possession and in the course of protecting the possession of the property the deceased and others including the appellants suffered injuries. Therefore, the offence if at all committed by the appellants would come under Explanation 4 to Section 300, hence, they cannot be held guilty of any of the charges framed against them. This argument of the learned counsel proceeds on the assumption that the appellants had proved before the Courts below that they were in possession of the disputed property. On the contrary the finding of the two Courts below is that the appellants were not in possession of the property and by virtue of the injunction obtained by the appellants they did not get the possession of the suit property. The trial Court noticed in the averments made in the application filed for the grant of injunction before the Civil Court by the appellants wherein the appellant had admitted that the deceased and his brothers had already sown Moong crop on the land in question. Therefore, the trial Court came to the conclusion that the crop that was ready for harvesting was the crop sown by the deceased and his party hence, the appellants contention that they were in possession of the property was incorrect. The High Court has agreed with the said finding of the trial Court and we find no reason whatsoever to differ from the said finding more so in the background of the fact that the appellants themselves had admitted in the injunction application that the deceased and his party had already sown the Moong crop. Therefore, the argument of the learned counsel that the appellants were only defending their rightful possession of the property has to fail.

6. Learned counsel then contended that assuming that the appellants did assault Keshav there is no material to show that the accused persons had any intention to cause death of the deceased and there being no charge under Section 149, I.P.C., the Courts below erred in convicting the appellants with the aid of Section 34, I.P.C., more so because of the fact that the prosecution has failed to establish who actually caused the fatal injury. He also submitted that there is absolutely no material to show that all the nine accused appellants before us shared the intention of any one of those who caused the fatal injuries, hence they are entitled

for acquittal. We do not agree with the learned counsel that the trial Court was not justified in relying upon Section 34 to convict the accused persons because on the material available on record it could be seen that there was a dispute between the parties and on the fateful day the deceased and his brothers were harvesting the crop and the appellants having failed to obtain police assistance came armed and assaulted the deceased and his brothers, during which assault the deceased died and some persons on the assailant's side and some persons on the deceased's side suffered injuries. The factum of the appellants coming armed with deadly weapons to the field where the deceased and his party were harvesting the crop itself shows that the appellants did share the common intention.

7. From the above facts, the two Courts below have come to the conclusion that the common intention of the appellants was to cause the death of the deceased. This finding is given by the Courts below because of the number of injuries found on the body of the deceased and the nature of weapons used in the assault.

8. We are in agreement with the finding of the Courts below that the appellants did share a common intention. But question for our consideration is: what was the common intention? Is it to murder the deceased as held by the two Courts below or was it to merely assault in an attempt to take possession of the disputed land. An overall consideration of the material on record like the motive, nature of injuries caused, and the fact that there were also injuries on the accused indicates that there was a fight between the two groups of people during which fight the deceased suffered the injuries. It is difficult to come to the conclusion that the appellants went and assaulted the deceased with the intention to kill him. If that was the intention there would have been many more injuries on other vital parts of the body, as also the fact that no attempt was made to kill the other two brothers of the deceased even though they were out numbered. The fact that the appellants had sought police help also indicates that they did not intend to take the law into their own hands in the first instance. Further the fact that though many of the appellants carried axes the doctor who conducted the post-mortem found only one incised wound on the forehead. This also indicates that the accused persons did not really intend to kill the deceased. At the same time, it is to be noted that the prosecution has not been able to identify who really caused Injury No. 12 which caused the death of the deceased. In such circumstances, we think it is not safe to infer that the appellants shared a common intention of causing the death of the deceased, but it would be more appropriate to hold the appellants guilty of causing grievous hurt an offence which is punishable under Section 326, I.P.C.

9. For the reasons stated above, while partly allowing the appeal we modify the conviction recorded by the two Courts below to one punishable under Sections 326 read with 34, I.P.C. and direct the appellants to undergo R.I. for a period of 7 years. We maintain the conviction imposed on appellants Nos. 2 and 4 awarded by the Courts below under Section 324 read with Section 34, I.P.C. but direct the said sentence to run concurrently.

10. If the appellants have served any part of the sentence, set off shall be given for the same. We are informed that the appellants are on bail, their bail bonds are cancelled and they shall surrender and serve out the sentence, as stated above. Appeal partly allowed.