

SUPREME COURT OF INDIA

Abani K. Debnath

Vs.

State of Tripura

Crl.A.No.734 of 1999

(H.K.Sema and R.V.Raveendran JJ.)

22.11.2005

JUDGMENT

H. K. Sema, J.

1. The two appellants, Abani Kumar Debnath (A-1) and Amar Debnath (A-5), father and son were put to trial along with other four accused for the offence punishable under Sections 148/302/149/325/149 IPC. In the course of investigation one accused died and, therefore, only five accused were charge-sheeted under the aforesaid sections of law. The trial court after conclusion of the trial acquitted three accused and convicted the appellants under Section 302/34 IPC and sentenced them to suffer imprisonment for life and a fine of Rs.1,000/-; in default six months RI. The appellants were also convicted under Section 323 IPC and sentenced to one year R.I. The sentences are, however, ordered to be run concurrently. On appeal being preferred by the appellants, the High Court has affirmed conviction and sentences passed by the learned Sessions Judge. Aggrieved thereby this appeal has been preferred by special leave.

2. We have heard the learned counsel for the parties at length. In view of the order that we propose to pass it may not be necessary to recite the entire facts of the prosecution case leading to the conviction. Suffice it to say that a genesis of the prosecution story discloses that the death has been preceded by a mutual fight over a trifle matter. The prosecution story as unfolded was that the quarrel between the accused Amar Debnath and Anil Das PW.1 ensued over grazing cows. The cow of the accused said to have entered into the field of PW.1 by breaking the fence. A-5 Amar Debnath picked up a stick of bamboo from the bamboo fencing and started beating Anil Das PW.1. On seeing PW.1 being beaten the unfortunate deceased Ranjit Das who was standing nearby place intervened to save Anil Das PW.1 from beating. In the quarrel ensued, it appears that there was a mutual fight between the accused and the prosecution party and both parties suffered simple injuries on their bodies. In the meantime, A-1 Abani Kumar Debnath rushed to the spot and stated to have dealt with dao blow on the occipital region of the deceased. This incident had taken place on 10.8.1990 and the succumbed to injury on 15.8.1990 in the hospital. The Doctor who conducted the postmortem and prepared the report has not been examined. However, from

the postmortem report it appears that the deceased had suffered external injuries over parital and occipital region measuring 3" x 1/2" bone deep. Haematoma with Echynosis on the left side of the neck below the left ear. There was swelling on the left eye. The Doctor opined that the cause of death was head injury and spinal injury in cervical region. According to the Doctor the death was homicidal.

3. Mr. P.K. Goswami, learned senior counsel appearing for the appellants does not dispute the incident. He also does not dispute that the death was homicidal. He, however, contended that since the original quarrel had taken place between A-5 Amar Debnath and PW.1 Anil Das, there cannot be any meeting of mind between the father A-1 and the son A-5 to commit the murder of deceased Ranjit Das. He further contended that the incident had taken place preceded by a quarrel and, therefore, the conviction under Section 302 IPC was not justified, inasmuch as there was no intention of the appellant A-1 to cause the death of Ranjit Das. Per contra, the learned counsel for the State contended that even after the dao blow dealt with by A-1 on the deceased Ranjit Das and after he fell down A-5 continued to beat the deceased with a stick and, therefore, there was a clear common intention to commit murder of Ranjit Das.

4. The common intention as is well known in criminal jurisprudence is the pre-mediated meeting of mind. No doubt the common intention can also be formed on the spot. But in the interest case since the original quarrel was between Anil Das PW.1 and Amar Denath A-5, in our view, it is difficult to say that there was common intention either pre-meditated or formed on the spot with regard to the murder of Ranjit Das. We have already noted that Ranjit Das was an intervenor to save Anil Das and in such a situation the incident appeared to have been in a spur of moment. By no stretch of imagination, it can be said that the murder of Ranjit Das can be said to be with the common intention of A-1 and A-5. From the evidence on record it clearly appears that the dao blow was dealt by only A-1. If at all a conviction under Section 302 IPC is maintained, the death was resulted by an independent act of A-1. In such a situation , A-5 cannot be roped with the aid of 34 IPC. We are clearly of the view that a conviction of A-5 under Section 302 IPC with the aid of 34 IPC is not sustainable and, therefore, conviction qua A-5 under Section 302/34 IPC is set aside.

5. This leads us to consider as to under what Section of law A-1 Abani K. Debnath is liable to be convicted in a given facts of the case. The prosecution evidence clearly discloses that the dao blow dealt by A-1 is preceded by a mutual quarrel. We have already noted that there was no common intention to kill Ranjit Das. From the nature of injuries it is disclosed that A-1 dealt only one dao blow perhaps in the spur of moment. The incident had taken place on 10.8.1990 and the deceased succumbed to injury on 15.8.1990 after a lapse of 7 days. Taking the prosecution evidence and medical evidence cumulatively we are of the view that the conviction of A-1 also cannot be fell under Section 302 IPC but at the most under Section 304 Part II. We accordingly convert the sentence of A-1 Abani K. Debnath under Section 302 IPC to that one under Section 304 Part II IPC and sentence him to suffer R.I. for five years. The fine amount imposed by the trial court and affirmed by the High Court is maintained. It is stated at the Bar that A-1 has undergone about 18 months' imprisonment, if that is so, he will be entitled to get the benefit of Section 428 Cr.P.C.

6. With regard to the conviction of Amar Debnath A-5 the evidence clearly discloses that he caused the injuries on the deceased as well as prosecution with a bambo stick. The opinion of medical Doctor is that all the injuries to other were simple in nature. His conviction under Section 323 IPC imposed by the trial court and affirmed by the High Court and sentence of one year R.I. is justified. His conviction is accordingly maintained. It is needless to say that A-5 is also entitled to the benefit of Section 428 Cr.P.C. It is stated that both the appellants are on bail, their bail bonds and sureties stand cancelled and they are directed to be taken back to custody to serve the remaining part of sentence.

7. The appeal is partly allowed in the above terms.