SUPREME COURT OF INDIA

Sheik Rafi

Vs.

State of Andhra Pradesh

S.L.P.(Crl.) No. 5952 of 2006

(S.B. Sinha and Markandey Katju JJ.)

24.04.2007

JUDGMENT

S.B. SINHA, J.

Leave granted.

Appellant herein and the deceased said Shaik Baji were brothers.

PW-3 (Abdul Munaff) and PW-4 (Shaik Abdul Ghouse) were also brothers.

PW-2 is the mother of the appellant and the deceased. They are resident of village Nandula Peth, in the town of Tenali in the State of Andhra Pradesh.

The family was owner of a shopping complex. Deceased was running his pump repairing business in one of the shop rooms situated at the first floor of the said Complex. Deceased was allegedly insisting for partition of the joint property. In the morning of the fateful day i.e. 9.11.1998, he allegedly picked up a quarrel with PW-2 in regard to his share in the property. On refusal to do so, she was allegedly assaulted. A quarrel also allegedly took place by and between the deceased and the appellant at about 5 p.m. on the said day. Appellant chased him with a knife. The deceased ran and came in front of the casualty room of the hospital at Tenali, whereafter Appellant is said to have caught and inflicted injuries by stabbing him indiscriminately.

PW-1 (P. Subbarao), a constable working in Pattabipuram Police Station, while going to attend to his duties, found some people gathered on the street, and saw the appellant stabbing the deceased with a knife. A driver attached to the Sub-Divisional Police Officer named Konduri Sridhar (PW-7) also came to the scene of occurrence. PW-1 caught hold of the appellant, and snatched away the knife from his hands. Officers of the Police Station were informed by Sridhar (PW-7) about the incident.

The deceased, was treated by the casualty staff of the hospital.

However, PW-1 came to learn there about his death about 10 minutes.

Thereafter, Shri K. Venkatarao, PW-15, In charge of the Tenali Police Station, thereafter visited the place of occurrence. Appellant was handed over to him and a written complaint was lodged by PW-1. The knife with which the offence was committed was also seized. In regard to the said

occurrence, the First Information Report was recorded at about 6.30 p.m.

Upon completion of investigation, the Investigating Officer submitted the chargesheet and the appellant was ultimately put to trial. He was found to be guilty of commission of an offence under Section 302 of the Indian Penal Code.

The incident was also witnessed inter alia by PW-5 (Kota Bosu Babu) and PW-7 (Konduri Sridhar). Their presence at the scene of occurrence and being eye witnesses thereto is not in dispute. Brothers of the appellant as also PW-3 and PW4 and also their mother PW-2, however, did not support the prosecution case, the reason wherefor, is obvious.

The High Court also found the appellant guilty of commission of the said offence and dismissed his appeal.

This Court had issued a limited notice in regard to the nature of the offence.

Mr. P.H. Parekh, learned counsel appearing on behalf of the appellant would submit that the appellant cannot be said to have committed an offence under Section 302 of the Indian Penal Code, but only under Part- II of Section 304 thereof. Backdrop of the events for the purpose of determining the nature of the offences, it was urged, must be kept in mind and in this behalf emphasis been laid on the fact that the deceased picked up quarrel with his mother in the morning and with the appellant in the evening in regard to partition of the property. It was also pointed out that the deceased was a rowdy element.

The learned counsel appearing on behalf of the State, however, would support the impugned judgment.

The short question which arises for consideration before us, therefore, is as to whether in the facts and circumstances of this case, the appellant was guilty of commission of an offence only under Part-II of Section 304 of the Indian Penal Code and not Section 302 thereof.

Although, in a given case, the number of injuries on the person of the deceased may not be the determinative factor, the same, however, is relevant. 19 injuries have been inflicted by the appellant, as had been found by the autopsy surgeon, which are ;

1. Incised wound present 5" above the front of the right wrist size of 1" x =" x <" Horizontal and Antemortem.

2. Incised wound present 2" below the right elbow on back side in a size of 5" x 2" x =" horizontal antemortem.

3. Incised wound present 2" below the right elbow joint front side of 2" x 1" x 1/2" oblique antemortem.

4. Incised wound present upper half of right arm insize of 2" x 1" x 1" horizontal antemortem.

5. Incised wound present in right Epigastric region in a size of 2" x =" x =" oblique antemortem.

6. An incised wound present 2" below the right knee 4" x 2" x 2" horizontal antemortem.

7. Incised wound present middle of the back of right thigh 4" x 2" x 2" vertical antemortem.

8. An incised wound present right lumbar region 3" x 2" x 1" oblique antemortem.

9. An incised wound present posterior aspect of right knee joint 2" x2" x 1/2" vertical antemortem.

10. An abrasion is present on left hand thumb 1" x 1/2" antemortem.

11. An incised wound present in between left index and middle finger 2" x 2" antemortem.

12. An incised wound present medial aspect of middle left forearm 1" x 1" horizontal antemortem.

13. An incised wound present back of the left shoulder 2" x 1/2" x 1/2" antemortem.

14. Incised wound present left side of the chest above and nipple 1"x1/2" x2 horizontal antemortem penetrating type.

15. Incised wound present below left axilla >" x 1/2" x 1/2" vertical.

16. Incised wound present left epigastric region with protrusion intestines antemortem.

17. An incised wound present left inguinal region 3" x 1" x 2" vertical antemortem.

18. An incised wound present lower half of left thigh 3" above left knee. 4" x 2" x 1" vertical antemortem.

19. Incised wound present lateral aspect of left thigh 1" x 1/2" x 1/2" vertical antemortem. "

Nature of the injuries and the different parts of the body of the deceased whereupon the same were inflicted in our opinion clearly go to show that the knife was indiscriminately used. Injuries had been caused to vital parts of the body of the deceased namely chest, abdomen. His lung and lever were also damaged.

Deceased evidently intended to cause grievous injuries to the deceased. He put resistance thereto as far as possible and in the process suffered injuries on his arms, finger and thigh.

The deceased was unarmed. He was merely resisting infliction of injuries on him by a knife and in the process the appellant also received minor injuries and that too on his thigh, palm and shoulder. Such minor injuries received by the appellant were not required to be explained by the prosecution.

Incident did not take place at or near the house of the appellant.

Deceased might have picked up quarrel with his mother in the morning, but the same by itself cannot be treated to be relevant for the purpose of determining the nature of the offence. Distinction between Section 299 and Section 300 of the Indian Penal Code is well known. What would amount to a "murder" is stated in Section 300 of the Indian Penal Code. What is necessary for attracting the said provision inter alia would be that if the person committing the act, knew that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

Exceptions to the said rule would be attracted only when the offender is deprived of his power of

self control which is caused by grave and sudden provocation by the deceased or any other person, or by mistake or accident.

Exceptions appended to Section 300 are subject to the provisos contained therein. Vivian Bose, J. in Virsa Singh v State of Punjab [AIR 1958 SC 465], stated the law thus;

"(12) To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300, "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

---Secondly, the nature of the injury must be proved; These are purely objective investigations.

---Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

---Once these three elements are proved to be present, the enquiry proceeds further and, ---Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

(13) Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300, "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional. "

In Vadla Chandraiah v State of A.P. [2006 (14) SCALE 108], this Court stated the law, thus, "13. The issue as to whether the case would fall under Section 302 IPC or under Section 304 Part-II thereof or not should be judged keeping in view the aforementioned factual backdrop. For the said purpose, the term 'evidence brought on records' must be considered in its entirety."

See also Chandrappa & Ors. v State of Karnataka [2007 (3) SCALE 90].

Each case, therefore, must be judged on its own facts.

Strong reliance has been placed by Mr. Parekh on Sukhbir Singh v State of Haryana [(2002) 3 SCC 327], wherein this Court held as under:- "The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have

inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner."

Apparently the said decision was rendered on its own facts. We may, however, notice that it came to be considered in Vadla Chandraiah (supra), The distinctive feature herein are the injuries which have been caused in a cruel and unusual manner. Apart from the purported quarrel picked up by the deceased with his mother, there is no other immediate provocation which can be said to be the immediate cause leading to the assault. The deceased was chased and the injuries have been inflicted on a main road and that too before a hospital. It was caused in the evening before a large number of persons. He could have been caught and disarmed only by a constable.

Evidently others including PW-5 and PW-7 who had been witnessing the occurrence, did not even dare to do so.

Nineteen injuries caused in quick succession cannot be said to have been caused as a result of grave and sudden provocation. The very fact that so many injuries were caused in quick succession and particularly where the deceased being unarmed and in a helpless situation, is sufficient to indicate that Sec. 300 "Thirdly" is attracted in this case.

Reliance has also been placed by Mr. Parekh on Ram Swarup and Others v State of Haryana etc. [1993 Supp. (4) SCC 344]. That was a case where a plea of right of self defence was raised. In that case a fight between two parties took place. Keeping in view the evidences brought on record, this Court opined that the High Court adopted a wrong approach for judging the case of bilateral clash in regard to the question as to which party was the aggressor. Having regard to the nature of defence raised therein, viz. right of self defence, number of injuries were found to be not a relevant factor for determination as to whether prosecution party or the accused party was the aggressor. This Court merely laid down that the question must be determined on the factual matrix of each case. The ratio of the said decision, therefore, is clearly not attracted.

We, therefore, are of the opinion that the prosecution has brought materials on record to prove the charge of murder against the appellant.

Therefore, there is no merit in this appeal. It is dismissed accordingly.