SUPREME COURT OF INDIA

Bavisetti Kameswara Rao @ Babai

Vs.

State of A.P.

Crl.A.No.547 of 2008

(S.B.Sinha and V.S.Sirpurkar,JJ.)

25.03.2008

JUDGMENT

V.S. Sirpurkar, J.

(Arising out of SLP (Crl.) No. 6903 of 2007)

1. Leave granted.

2. The appellant, Bavisetti Kameswara Rao original accused no. 1 (A-1) has approached this Court challenging the judgment of the Andhra Pradesh High Court, confirming his conviction (accused no. 1) for an offence under Section 302 IPC.

3. Initially, as many as eight persons were tried by the Additional Sessions Judge (Fast Track Court) for various offences under Sections 147, 148 and 302 read with Section 149 etc. The allegation is that all the accused persons along with some others formed themselves into an unlawful assembly and in pursuance of the common object of that assembly; they committed murder of one Samudrala Pandu Rangarao @ Rayalam Rangadu. According to the prosecution, on 28th July 2007, at about 11 P.M., the deceased along with his friend Tamarapalli Subba Rao had visited mini lorry supply office of the first accused and he wanted to consume alcohol there. The first accused refused to let him have the alcohol there and on this, there was a wordy altercation in between the first accused and the deceased, and they also had the physical altercation with each other and in this melee, the first accused has sustained a wound on his hand. They were pacified by the people gathered there and at that juncture, both the first accused as well as the deceased sworn towards each others life. The prosecution alleged that in pursuance of this, the first accused had a discussion with the second accused and with the other seven accused persons and hatched up a plan to do away the deceased and were waiting for an opportunity. On 30th July 2000, all the accused formed into an unlawful assembly in the mini lorry office of the first accused at about 10 P.M. in pursuance of their pre-plan. The first accused was armed with the screw driver and the second accused had a pen knife. At around 10.30 P.M. on that day, the deceased came there on his Yamaha Motor cycle bearing registration no. AP-37 A-7569 and on seeing the

deceased, A-1 and A-2 abused him filthily. When the deceased questioned their behavior, A-1 and A-2 in pursuance of their intention, attacked the deceased with their weapons, wherein, the first accused stabbed the deceased below the left side chest with screw driver causing him a deep bleeding injury. A-2 also attacked the deceased with his pen knife, but the deceased tried to protect himself. However, the deceased suffered two incised wounds on his palm.

4. It was the further case of the prosecution that the other accused persons also attacked the deceased and assaulted him with hands. The deceased somehow or the other, escaped when he was given a hot chase by all the accused. The deceased straightaway went to Bhimavaram II Town Police Station and reported the matter to the sub-inspector of police on duty, Sh. K.V.N. Vara Prasad, LW.23. Since the deceased required immediate medical help, he was tried to be taken to Government Hospital, Bhimavaram. However, in the way itself, the deceased breathed his last. Accordingly, an offence under Section 302 read with Section 34 was recorded vide Cr. No. 97/2000 by the LW.23. The investigations started and the accused came to be rounded up and on completion of the investigations, a charge sheet was filed against as many as eight accused persons, who were tried before the Additional Sessions Judge (Fast Track Court), Bhimavaram. The Additional Sessions Judge at Bhimavaram, however, convicted only A-1 and A-2 and convicted both of them for the offence under Section 302 while acquitting the rest of the accused persons. Both of them were sentenced to suffer rigorous imprisonment of life and also to pay fine of Rs.4, 000/- in default, to suffer a further imprisonment for one year.

5. On appeal, however, the conviction of appellant (herein) was confirmed for an offence under Section 302 but A-2 was acquitted of that offence and was convicted for an offence under Section 324 and his sentence was brought down to the rigorous imprisonment for two years. It is this appellate judgment, which has been challenged before us. This Court, however, on 15th January 2008 issued a notice confined to the question of sentence. As the appeal was delayed, a notice was also sent on delay.

6. Considering the circumstances under which the appeal was filed, we condone the delay.

7. Insofar as the first accused-appellant Bavisetti Kameswara Rao is concerned, the learned counsel urged before us that this was a case of single injury that too, the weapon used was a screw driver which was in the regular use of the accused as a tool, the accused-appellant being a motor mechanic. It was but natural that he would use the said screw driver in the regular course of his occupation and since he had not used any other weapon, it could not be said that his intention was to cause death of the deceased or also to cause such bodily injury as would be sufficient to cause death of the deceased. The learned counsel for the accused submitted that it was only a single injury and, therefore, even if in the knowledge of the accused that such injury was likely to cause the death of the deceased, the offence at the most would be under Section 304 Part II of the IPC. As an alternative argument, the learned counsel contended that at the most that this was a sudden quarrel and the altercation took without a pre-plan, as such, the offence at the most could have been under Section 304 Part I and, therefore, the High Court and the trial Court were not justified in convicting the accused

for an offence under Section 302 and sentencing him to suffer rigorous imprisonment for life.

8. We have given very deep consideration to the contentions raised. It is found from the medical evidence that the deceased suffered the following injuries at the hand of the accused. The injuries have been proved by PW.15 D. Varahalaraju, who was himself a Civil Surgeon. He had conducted the post-mortem and examination on the dead body of the deceased and found the following injuries:

> "1. An inside wound on lateral aspect of left palm 2cm x =cm x 2 cm, black in colour.
>
> 2. An inside wound above wound no. 1 on lateral aspect of left palm, 2cm x =cm x 2 cm, black in colour.
>
> 3. An incised wound on epigastria region of abdomen just below xiphi sternum 2cm x 1cm x 12cm (length, breadth, depth respectively).
>
> 4. An abrasion on from of right upper arm above elbow joint 5 x 4cm, black in colour.
>
> 5. An abrasion on medical aspect of left leg, 2cm x =cm, black in colour.
>
> 6. Another abrasion on front of left leg, 1cm x =cm, black in colour. Internal Examination:
>
> Head: Brain pale, neck, hyoid bone intact, thyroid cartilage-NAD. Thorax: Lungs-both Jungs pale. Heart: chambers empty, palce. Abdomen: liver- an incised wound on left lobe of liver 3cm x 2cm x 3 cm pale. Spleen: an incised wound on medial aspect of spleen, 3cm x 2cm x 2cm pale. Kidneys: both kidneys pale. Stomach: empty. Bladder: above 200 ml of urine present in bladder, above 900 ml of fluid blood present in abdominal cavity."

9. According to the Doctor, the post-mortem was done on 31st July 2000 and was completed on that day at 3.15 P.M. He gave opinion that the deceased had died of hemorrhagic shock due to injuries to liver and spleen. A glance at these injuries would suggest that it was injury no. 3 which was fatal injury and it was in the region of abdomen which was a vital part of the body of the deceased. The injury was 1cm x 1cm x 12cm (length, breadth and depth respectively). In the internal examination, it was found that there was an incised wound on liver as well as spleen. The incised would on liver was 3cm x 2cm x 3cm in measurement, while on the spleen, the measure of the injury was 3cm x 2cm x 2cm. There is hardly any cross-examination of this Doctor excepting that injuries no. 5 and 6 could be possible by a fall, however, the seriousness of injury no. 3 was not and could not be questioned in the cross-examination. We have, therefore, no doubt that this injury with depth of 12 cm which was sufficient to cause the death. We also cannot ignore that the screw driver used had the sharp end and the sufficient length to cause the injury having the depth of 12cm. It was,

therefore, clear that the eye-witnesses have attributed this injury to the first accused-appellant and there could be no other intention, excepting to cause death.

10. When the screw driver was plunged into the vital part of the body of the deceased, it cut his liver and spleen. Therefore, this was a case where the act was done with intention of causing bodily injury and the body injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, covered by Thirdly of Section 300 of Indian Penal Code. The act of the accused-appellant would, therefore, clearly come within the definition of murder under Section 300 of the Indian Penal Code.

11. We cannot forget that when the deceased came up to the office of the accused, there was exchange of abuses and then, he was thrashed by the accused persons. There is hardly any cross-examination of the eye-witnesses to dispute the authorship of this particular injury. We have scanned the evidence very closely only to find that the authorship of the injury could not be disputed and nor the manner in which the single injury was inflicted. Therefore, under the circumstances, even if there was a single injury caused, it was with such a force and on such vital part of the body that it caused almost instantaneous death. The deceased, after he was injured went up to the police station and before he could be reached to the hospital, breathed his last.

12. It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of a single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was pre-meditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screw driver, the learned counsel urged that it was only the accidental use at the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screw driver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

13. In *State of Karnataka v. Vedanayagam*[1] this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury. However, after the detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the reported decision in Virsa Singh v. State of Punjab [AIR 1958 SC 465], the court set aside the acquittal under Section 302 IPC and convicted the accused for that

offence. The Court relied on the observation by Justice Bose in Virsa Singhs case to suggest that: With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap.The further observation in the above case were:The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question, and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as in turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact.(emphasis supplied). Their Lordships then referred to the decision of this Court in *Jagrup Singh v. State of Haryana*[2] where this Court observed: There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negative the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause 1stly or clause 3rdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.(Emphasis supplied). Their Lordships also referred the case of *Tolan v. State of T.N*[3].

14. In the present case we do not have any reason to take any different view of the matter. Here was the case where a long screw driver having a sharp end was plunged into the abdomen of the deceased with such savage force that it caused injury which was 12 cm. deep cutting liver and spleen. This is apart from the fact that the deceased also suffered other injuries. The deceased was unarmed and there was a heated exchange of words before the

incident. After the incident also the deceased was chased. Therefore, we find that this is not the case where conviction could be for the offence committed under Section 304 Part II IPC.

15. We also do not accept the contention of the learned counsel for the defence which was raised only by way of a desperate argument that the incident was sudden and it was without any pre-meditation, thereby the learned counsel wanted to bring the evidence under Section 304 Part I. In short the counsel aimed at Exception I of Section 300 IPC. Exception 4 was also brought to be relied upon. We do not think the evidence available would warrant the offence covered by Exception 1 as there was no such grave and sudden provocation on the part of the deceased. Similarly it was not a case of sudden fight in the heat of passion nor was it a case of sudden quarrels when the offender having taken undue advantage or acted in a cruel or unusual manner. There is evidence on record to suggest that there was a previous altercation and the accused persons were seething in anger to take the revenge of the incident which had taken place on 27th of the same month. Further it was only after the deceased came in front of the shop of the accused on his motorbike, first there was an exchange of abuses and it was then that the incident took place where not only the accused but even the second accused is proved to have attacked the deceased. This could not, therefore, be a case of a sudden fight. Therefore, the question of application of Section 304 Part I is also ruled out.

16. Under the circumstances, we would be constrained to hold that the Courts below were right in convicting this accused-appellant for an offence under Section 302. We, therefore, find no reason to take any different view and confirm the conviction and sentence of this accused also.

17. In the result, the appeal has no merits, and it is dismissed.

Judgment Referred.

[1]*(1995) 1 SCC 0326*
[2]*(1981) 3 SCC 0616*
[3]*(1984) 2 SCC 0133*