

# SUPREME COURT OF INDIA

Swaminathan

Vs.

State of T.N.

Crl.A.No.294 of 2003

(Harjit Singh Bedi and Chandramauli Kr.Prasad,JJ.,)

12.01.2011

## ORDER

1. At about 9.30 a.m. on the 5th April, 1994 A.1 Ramasamy came to the wine shop of PW.3 Muthu Selvin and enquired if his uncle Velan was present in the wine shop. At that time Palanisamy deceased came riding a bicycle and dashed against A.1. The same evening at about 3.00 p.m.

2. Palanisamy was going towards the field of Alagesan and as he was passing in front of the house of A.1., A.1 came out and shouted at him and thereafter lifted a stick and hit him on the head. A.2 Swaminathan and A.3 Raman who were standing close by picked up stones lying on the spot and hit the deceased on the cheek and forehead respectively.

3. The incident was witnessed by PW.1 Narayanan. He went and informed Ganesan, the brother of the deceased, and thereafter returned to the place of incident and found that Palanisamy was dead. He accordingly lodged the report at Police Station Theevattipatti, and case under Section 302 was registered at about 4.30 p.m. The dead body was also subjected to a post mortem examination and nine injuries -2- were detected thereon, seven allegedly caused by a lathi and two by stones. The Doctor also opined that the death had been caused by a lathi injury and that the fatal injury was injury No.1. The Trial Court relying on the evidence of PW.1 (Narayanan), the only eye-witness, convicted the accused A.1 under Section 304 Part II and sentenced him to undergo three years' rigorous imprisonment. A.2 and A.3 were convicted and sentenced for the same offence and term with the aid of Section 34 of the IPC. An appeal was thereafter taken to the High Court which has confirmed the conviction and sentence awarded by the Trial Court.

4. The present appeal has been filed by A.2 and A.3 alone.

5. Mr. K.K.Mani, the learned counsel for the appellants has raised only one argument before us. He has urged that even accepting the prosecution story in its entirety the vicarious liability under Section 34 of the IPC could not be fastened on A.2 and A.3 as the facts did not indicate so. He has pointed out that the incident had happened all of a sudden when

Palanisami was passing by the house of A.1 and there was absolutely no pre-planning and that he too had caused several blows after picking the lathi from the spot. It has also been submitted that the common intention on the part of A.2 and A.3 had also not made out as they -3- had come to the spot by chance and there was no prior meeting of minds, and they had caused one simple injury each on the person of the deceased with stones picked up from the site. He has accordingly submitted that the conviction of the two appellants with the aid of Section 34 was not called for. We have heard the learned counsel for the parties and also gone through the evidence. Concededly, as per the post mortem report, injury No.1 on the person of the deceased was the fatal injury and had been caused by A.1 with a lathi. There is also no reference whatsoever to any involvement of A.2 and A.3 in the incident in the morning. It appears that A.2 and A.3 who had been either passing by or were near the spot picked up stones on the spur of the moment and caused a simple injury each. It is therefore evident that A.2 and A.3 could not have had the knowledge of involvement of A.1 in a situation where death could be caused. We therefore feel that the conviction of A.2 and A.3 with the aid of Section 34 was not called for. We accordingly allow the appeal and order their acquittal. Their bail bonds shall stand cancelled.