SUPREME COURT OF INDIA

Selvam

Vs.

The State of Tamil Nadu rep. by Inspector of Police

Crl.A.No.1857 of 2009

(A. K. Patnaik and Swatanter Kumar,JJ.)

16.10.2012

JUDGMENT

A. K. Patnaik,J.

1. Leave granted.

2. These Criminal Appeals are against the judgment dated 12.12.2008 of the Madras High Court, Madurai Bench, in Criminal Appeal Nos.200-201 of 2008.

3. The facts very briefly are that on 16.11.2006 at 21:00 Hrs. a First Information Report (for short 'FIR') was lodged in Ganesh Nagar Police Station pursuant to a statement of Meyyappan recorded by the Sub¬Inspector of Police. In this FIR, it is stated thus: Mayyappan lived at the Thethampatti, Thiruvarangulam, alongwith his family and that there was a dispute pending between his family and the family of Arangan over land. On 15.11.2006 at 11.00

a. Mariappan, who belongs to the family of Arangan, died and the family of Arangan wanted to take the burial procession through house street of Meyyappan and his family members but Meyyappan's younger brother Chinnadurai and his father Rengaiah appealed to the important persons of the village saying that there was a separate public pathway for taking the dead body to the cremation ground and the village head and other villagers accordingly requested the members of the family of Arangan to carry the dead body of Mariappan through that public pathway. On 16.11.2006 at about 15:00 Hrs. Arangan and his brothers, Meyyappan, Murugan, Subbaiah, Chidambaram, Senthil, Selvam and others, armed with aruvals and sticks came to the family house of Meyyappan and asked his family members to come out and thereafter Arangan and Senthil delivered a cut on Chinnadurai and Selvam and others assaulted them with sticks and Chinnadurai was first taken to the government hospital and thereafter to the Thanjavur Medical College Hospital for treatment.

4. On the basis of this statement of Meyyappan, Ganesh Nagar Police Station Crime No. 795/06 under Sections 147, 148, 323, 324 and 307 of the Indian Penal Code, 1860 (for short 'the IPC') was registered. Chinnadurai died at the hospital on 25.11.2006. Investigation was conducted and a charge-sheet was filed. Charges were framed against Arangan (accused no.1) under Sections 148 and 302 of the IPC, against Meyyappan (accused no.2) under Sections 148 and 307 of the IPC, against Subbaiah (accused no.3) under Sections 147 and 307 of the IPC, against Chidambaram (accused no.4) under Sections 148 and 326 of the IPC, against Murugan (accused no.5) under Sections 148 and 326 of the IPC, against Senthil (accused no.6) under Sections 148 and 302 read with Section 34 of the IPC, against Selvam (accused no.7) under Section 147, 302 read with Section 34 and Section 325 of the IPC, against Thilak (accused no.8) under Sections 147 and 325 of the IPC and against Marthandam (accused no.9) under Sections 147 and 302 read with Section 34 of the IPC. The Trial Court convicted accused no.1 under Section 302 of the IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.3000/- and in default, to further undergo rigorous imprisonment for a period of six months. The Trial Court also convicted accused nos. 6 and 7 under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.3000/- and in default, to further undergo rigorous imprisonment for a period of six months. The Trial Court convicted the accused no.4 under Section 324 of the IPC and sentenced him to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1000/- and in default, to further undergo rigorous imprisonment for a period of two months. Accused nos. 1, 4 and 6 filed Criminal Appeal no. 200 of 2008 and accused no.7 filed Criminal Appeal no. 201 of 2008 before the High Court against their conviction and sentences, but by the impugned judgment the High Court sustained the conviction and the sentences. Accused no.7 has filed Criminal Appeal no. 1857 of 2009 and accused nos. 1 and 6 have filed the other Criminal Appeal arising out of SLP (Crl.) Nos. 575-576 of 2010.

5. Mr. S.B. Sanyal, learned senior counsel appearing for the accused No.7, submitted that in the FIR it is alleged by the informant that the accused No.7 had assaulted persons other than Chinnadurai with stick. He submitted that the informant was examined before the Trial Court as PW-1 and he has given an entirely different version in his evidence and has said that the accused no.7 assaulted on the left side of the head of Chinnadurai. He further submitted that the father of Chinnadurai, namely, Rengaiah, has also been examined before the Trial Court as PW-2 and he has deposed that the accused no.7 assaulted on the left side of the head of Chinnadurai with stick. He submitted that PW-1 and PW-2 have improved upon the role of the accused No.7 in the assault on the deceased after coming to know of the opinion of the doctor in the post mortem report about the injuries on the deceased. He argued that where there is such variance between the version in the FIR and the version of PW-1 and PW-2

before the Court with regard to the exact role of the accused no.7 in the assault on the deceased, the accused No.7 cannot be convicted under Section 302 read with Section 34 of the IPC. He cited *Anil Prakash Shukla v. Arvind Shukla*[1] in which this Court has taken a view that where the witnesses have improved their version given in the FIR after coming to know of the medical report, benefit of doubt must be given to the accused. He also relied on *Kalyan and Others v. State of U.P*[2] where benefit of doubt has been given to the accused on account of variance between the FIR and the deposition made in the court.

6. Mr. Sanyal next submitted that PW-11, who conducted the post mortem on the dead body of the deceased, is clear in his opinion that the injury on the head of the deceased was a 'contusion' and medical dictionary by P.H. Collin describes 'contusion' as a bruise, a dark painful area on the skin, where blood has escaped into the tissues, but not through the skin, following a blow. He submitted that PW-11 has also stated in her cross¬examination that she did not see any incised injury during the examination of the dead body. He submitted that as a matter of fact the deceased died in the hospital after several days of the incident. According to Mr. Sanyal, this was therefore not a case where accused no. 7 could be said to have any intent to cause the death of the deceased and therefore he was not guilty of the offence of murder under Section 302 of the IPC. In support of this submission, he relied on *B.N. Kavatakar and Another v. State of Karnataka*[3] in which this Court has held after considering the opinion of the medical officer and after considering the fact that the deceased died after five days of the occurrence that the offence would be punishable under Section 326 read with Section 34 of the IPC. He also cited *Abani K. Debnath and Another v. State of Tripura* [4]where the deceased succumbed to injuries after lapse of seven days of the occurrence and this Court has converted the sentence as against accused no.1 from one under Section 302, IPC to one under Section 304 Part-II, IPC, and sentenced him to suffer rigorous imprisonment for five years.

7. Mr. Sanyal finally submitted that the High Court has In the impugned judgment treated the case of the accused no.7 in parity with accused nos. 1 and 6, but the facts of the case clearly establish that the role of the accused no.7 was different from that of accused nos. 1 and 6 in the occurrence and the accused no.7 should have been awarded lesser punishment than accused Nos. 1 and 6.

8. Mr. K. K. Mani, learned counsel appearing for the accused nos. 1 and 6 in Criminal Appeal arising out of S.L.P. (Crl.) Nos.575-576 of 2010, adopted the arguments of Mr. Sanyal. He further submitted that both PW-1 and PW-2 had deposed that accused no.1 and accused no.6 had given cut injuries on the deceased by aruval, but the medical evidence of PW-11 is clear that a blunt weapon had been used in assaulting the deceased. He submitted

that this is, therefore, a case where the ocular evidence cannot be believed because of its inconsistency with the medical evidence.

9. Mr. B. Balaji, learned counsel appearing for the State, in reply, submitted that PW-1 and PW-2 are injured eyewitnesses and cannot be disbelieved by the Court. He submitted that the contention of learned counsel for the appellants that the version given by PW-1 in the FIR and the version given before the Court are at variance is misconceived. He argued that in the FIR, PW-1 has stated that accused no.7 and others assaulted 'us' with stick and by the word 'us', PW-1 meant not only himself but also the deceased. He submitted that the evidence of PW-1 and PW-2 clearly establish that accused nos.1, 6 and 7 delivered the injuries on the head of the deceased, on account of which he fell unconscious and ultimately died. He submitted that the presence of accused nos.1, 6 and 7 at the spot and their role in assaulting the deceased are not in doubt and they are all liable for the offence under Section 302 read with Section 34, IPC. He finally submitted that this is not a fit case in which this Court should interfere with the concurrent findings of facts of the Trial Court and the High Court.

10. We have considered the submissions of learned counsel for the parties and we find that the difference in the version in the FIR and the version in the evidence of PW-1 and PW-2 is not very material so as to create a reasonable doubt with regard to the participation of accused nos.1, 6 and 7 in the assault on the deceased. In the FIR, it has been alleged that the accused nos.1 and 6 delivered a cut on the deceased. In his evidence, PW-1 has stated that accused no.1 had delivered a cut on the centre of the head of the deceased and accused no.6 delivered a cut on the head of the deceased. Similarly, in his evidence PW-2 has stated that accused no.1 delivered a cut on the centre of the head of the deceased and accused no.6 snatched the aruval from accused no.1 and delivered a cut on the centre of the head of the deceased. The FIR and the evidence of PW-1 and PW-2 are, thus, clear that accused no.1 and accused no.6 delivered a cut injuries on the deceased. Regarding the participation of the accused no.7 in the assault, in the FIR it is alleged that accused no.7 assaulted on 'us' with a stick. The evidence of PW-1 and PW-2 is that accused no.7 assaulted on the left side of the head of the deceased with a stick. The word 'us' in the FIR cannot mean to exclude the deceased inasmuch as the deceased was the brother of PW-1 and was the son of PW-2. There is evidence to show that besides the deceased, PW-1 and PW-2 were also injured and were treated at the hospital. Hence, accused no.7 has used the stick not just against PW-1 and PW-2, but also against the deceased. We, therefore, do not find any material difference between the version in FIR and in the evidence of PW-1 and PW-2 on the role of accused No.7 in the assault.

11. The evidence of PW-1 and PW-2, in our opinion, establishes beyond reasonable doubt that accused no.1 used the aruval to strike at the head of the deceased. From the evidence of

PW-1 and PW-2, it is also established beyond reasonable doubt that accused no.6 snatched the aruval from accused no.1 and struck on the head of the deceased. The evidence of PW-1 and PW-2 also establish that accused no.7 struck the head of the deceased by a stick. The result of all these acts of accused nos.1, 6 and 7 is the death of the deceased. Section 34, IPC, states that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. Section 33, IPC, states that the word "act" denotes as well a series of acts as a single act. Thus, even though accused nos.1, 6 and 7 may have committed different acts, they have cumulatively committed the criminal act which has resulted in the death of the deceased and are liable for the criminal act by virtue of Section 34, IPC. We, therefore, do not find any merit in the submission that accused No.7 was not liable for the same punishment as accused Nos. 1 and 6.

12. The next question which we have to decide is whether the criminal act committed by accused nos.1, 6 and 7 amounts to murder under Section 300, IPC, or some other offence. The medical evidence of PW-11 is clear that all the injuries of the deceased were most probably as a result of an assault by a blunt weapon and in the opinion of PW-11, the deceased appears to have died due to head injuries. PW-11 has also admitted in her cross-examination that she did not see any incised injuries during the post mortem examination and had a sickle been used it would have caused incised wounds. Thus, it appears that accused no.1 and accused no.6 had used not the sharp side but the blunt side of the aruval and accused no.7 had used the stick in the assault on the deceased. The fact that the blunt side of the aruval and a stick was used in the assault on the deceased would go to show that accused nos.1, 6 and 7 did not have any intention to cause the death of the deceased. Nonetheless, the injuries caused by accused nos.1, 6 and 7 were all on the head of the deceased, including his parietal and temporal regions. Accused nos.1, 6 and 7, thus, had the intention of causing bodily injury as is likely to cause death and were liable for punishment for culpable homicide not amounting to murder under Section 304 Part I, IPC.

13. On similar facts, where injuries were caused by a blunt weapon, this Court in State of *Punjab v. Tejinder Singh & Anr*[5] held in para 8:

> " In view of our above findings we have now to ascertain whether for their such acts A-1 and A-2 are liable to be convicted under Section 302 read with Section 34 IPC. It appears from the evidence of PW 4 and PW 5 that the deceased was assaulted both with the sharp edge and blunt edge of the gandasas and the nature of injuries also so indicates. If really the appellants had intended to commit murder, they would not ha.ve certainly used the blunt edge when the task could have been expedited and assured with the sharp edge. Then again we find that except one injury on the head, all

other injuries were on non- vital parts of the body. Post-mortem report further shows that even the injury on the head was only muscle-deep. Taking these fa.cts into consideration we are of the opinion that the offence committed by the appellants is one under Section 304 (Part I) IPC and not under Section 302 IPC."

14. In this case, the assault on the deceased was on 16.11.2006 and the deceased died in the hospital after nine days on 25.11.2006. In Abani K. Debnath and Another v. State of Tripura (supra) this Court, after considering the nature of the injuries as well as the fact that the deceased succumbed to the injury after a lapse of seven days, took the view that the conviction of the accused in that case cannot fall under Section 302, IPC.

15. After considering the evidence of PW-1 and PW-2, the medical evidence of PW-1 and the fact that the deceased died after nine days of the assault, we are of the considered opinion that the Trial Court and the High Court were not right in convicting the appellants under Section 302, IPC, and the appellants should have been convicted instead under Section 304 Part-I read with Section 34, IPC. We accordingly allow these appeals in part, modify only the conviction and sentence on the appellants under Section 302, IPC, and instead order that the appellants (namely, accused nos.1, 6 and 7) are convicted under Section 304 Part-I read with Section 34, IPC, and sentenced to rigorous imprisonment for seven years. The fine amount imposed by the Trial Court and affirmed by the High Court is affirmed.

Judgment Referred

[1]*(2007) 9 SCC 0513*
[2]*(2001) 9 SCC 0632*
[3]*1994 Supp.(1) SCC 0304*
[4]*(2005) 13 SCC 0422*
[5]*1995 Supp (3) SCC 0515*