

**2023 LiveLaw (SC) 546 : 2023 INSC 627**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.  
CRIMINAL APPEAL NO.1750 of 2023; July 19, 2023  
BOINI MAHIPAL AND ANR. *versus* STATE OF TELANGANA**

**Indian Penal Code,1860; Section 34 - In the absence of any incriminating material or other corroborative evidence pointing to the participation of appellants in the incident, the conviction of appellants under Section 323 read with Section 34 of IPC cannot be sustained. (Para 12)**

*For Appellant(s) Ms. Prity Kumari, Adv. Ms. Neha Singh, AOR Mr. B Laxman, Adv.*

*For Respondent(s) Mr. Sriharsha Peechara, Adv. Mr. Rajiv Kumar Choudhry, AOR Ms. Pallavi, Adv. Ms. Kriti Sinha, Adv. Mr. Duvvuri Subrahmanya Bhanu, Adv. Ms. Kriti Sinha, Adv.*

**J U D G M E N T**

**Aravind Kumar, J.**

1. The short point that arises for our consideration in this appeal is:

"Whether the Judgment and Order of sentence convicting the petitioners (accused No. 3 and 4) is to be sustained or set aside."

2. Facts shorn of unnecessary details as laid by the prosecution before the jurisdictional court are to the following effect:

On 13.04.2012 at 08:10 a.m. a complaint came to be lodged before Koheer Police Station alleging that on 08.04.2012 at 09:00 p.m., A-1 to A-6 came to their house and assaulted Smt. Anjamma (deceased) with hands and A-1 kicked forcefully in her stomach due to which she fell down to the ground. It was further alleged that initial treatment was given to her at Government hospital, Zaheerabad and subsequently at Osmania Hospital Hyderabad which was not fruitful and she succumbed to the injuries sustained by her on 12.04.2012 at 09:00 p.m.

3. The said complaint came to be registered in Crime No.27 of 2012 for the offences punishable under Section 302, 303, 504 read with Section 34 of IPC and on conducting investigation, chargesheet was laid against the accused persons for the offence punishable under Section 302 read with section 34 IPC. After trial, Learned Sessions Judge by judgment dated 15.11.2012 convicted A-1 to A-4 and A-6 for the offence punishable under Section 323 read with Section 34 IPC and acquitted them for the offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for six months and to pay a fine of Rs. one thousand each and in default to undergo simple imprisonment for a period of two months.

4. Aggrieved by the said judgment, appellants herein filed appeal in Criminal Appeal No.1168 of 2012. The High Court by common judgment dated 11.01.2023 dismissed the appeals. Hence, this appeal has been filed by Accused Nos.3 and 4. We have heard the arguments of Ms. Neha Singh, Ms. Prity Kumari and Shri B. Laxman, Learned Counsels appearing for the appellants and Shri Sriharsha Peechara, Shri Rajiv Kumar Choudhry, Ms. Pallavi and Mr. D. S. Bhanu, Learned Counsels appearing for the respondent.

5. It is a contention of the Learned Counsel appearing for the appellants that courts below failed to appreciate the fact that PW-5 was a distant relative of deceased and he has clearly admitted in his testimony that no overt act could be attributed to the appellants

and it is only accused No.1 who had kicked the deceased. He would also draw our attention to his admission whereunder PW-5 has admitted that family members of deceased and accused had formed a crowd and mere presence of the appellants at the scene of crime did not establish the common intention or their participation to constitute vicarious liability under Section 34 of IPC. She would also submit that Sessions Judge has not recorded any finding as to how the ingredients of Section 34 of IPC had been satisfied and based on vague statements and even in absence of corroborative material appellants have been convicted which cannot be sustained. She would further submit that no injury certificate of any of the relatives of the deceased were produced by the prosecution to establish the injuries alleged to have been sustained by them.

6. She would elaborate her submissions by contending that post-mortem report which has been relied upon by the courts below to convict the appellants do not incriminate the appellants herein. She would also contend that contradictions in the testimonies of prosecution witnesses more particularly PW-1 to PW-4 has not been taken note of and on this ground also the conviction is reliable to be set aside. Hence, she prays for appeal being allowed.

7. Per contra Shri Sriharsha Peechara, Shri Rajiv Kumar Choudhry, Ms. Pallavi and Shri D. S. Bhanu, the Learned Counsel appearing for the respondent would support the orders of the courts below and pray for dismissal of the appeal.

#### **Findings and Conclusion on points Formulated above:**

8. At the outset it requires to be noticed that Learned Sessions Judge while appreciating the evidence tendered by the prosecution has opined as under:

“17. From the above evidence, xxx in the incident. The evidence of PW-5 shows that A-1 kicked the deceased with his leg **and the remaining accused were beating the family members of PW-2.** But his evidence that he could not clearly make out the specific overacts of the accused, as the family members of PW-2 and the accused formed into a crowd, can be taken into consideration, not for concluding that the other accused did not beat the deceased, but xxx circumstances.

(Emphasis supplied)

9. From the above finding it would clearly emerge that there was no cogent and positive evidence available to prove or establish the fact that appellants herein (A-3 and A-4) having assaulted the deceased. On the other hand the prosecution has attempted to project the case that relatives of the deceased were beaten or assaulted by the appellants herein. If it were to be so, nothing prevented the relatives of deceased, namely, PW-2 to PW-5 who had accompanied the deceased to the hospital to get themselves treated for any purported or alleged injuries sustained by them, if at all, they had received any medical treatment for said injuries. However, no evidence is forthcoming in this regard. In the absence of the same, on hypothesis conviction of the appellants cannot be sustained.

10. It is the consistent stand of these witnesses (PW-2 to PW-5) that accused No.1 had kicked the deceased on her stomach. Nowhere they have whispered about any overt acts of appellants herein. In fact, appellate court while re-appreciating evidence has observed as under:

“20. Even though the learned counsel xxx place of incident, **a careful scrutiny of the cross-examination of PWs 2 and 5 reveals that it is only A-1, who kicked the deceased with his legs and not the others. The other witnesses have not attributed any overt acts to the other accused accept making a bald statement that all the accused beat the deceased.** Even though PWs 1 to 4 xxx beatings of the accused. In the absence of any cogent and convincing

evidence to prove that the rupture of ileum is only due to the injuries inflicted by the accused, the death of the deceased cannot be attributed to the accused. (Emphasis supplied)

**11.** The prosecution has thus failed to drive home the guilt of the accused beyond reasonable doubt and we say so for the simple reason that courts below itself had found that evidence tendered by the prosecution did not clearly establish two facts namely:

- (1) The appellants herein having assaulted the deceased;
- (2) The alleged injuries sustained by PW-2 to 5 had remained as a bald statement without proof.

**12.** In the absence of any incriminating material or other corroborative evidence pointing the participation of appellants-accused in the incident, the conviction of appellants under Section 323 read with Section 34 of IPC cannot be sustained.

**13.** For the reasons afore-stated we allow the appeal by setting aside the Judgment and order of sentence passed by the courts below against appellants and acquit the appellants. Appellants are ordered to be released forthwith, if not required in any other case. Their bail bonds stand discharged. Surety Bonds, if any, having been executed, stand discharged.

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