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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
B.R. GAVAI; J., PAMIDIGHANTAM SRI NARASIMHA; J.
CRIMINAL APPEAL NO. 2852 OF 2023; February 06, 2024

VELTHEPU SRINIVAS AND OTHERS

versus

STATE OF ANDHRA PRADESH (NOW STATE OF TELANGANA) AND ANR.

Indian Penal Code, 1860; Section 302, 304 (Part II) and 34 - The prosecution has failed to establish common intention of Accused 3 to commit murder of deceased. Held, merely based on the presence of Accused 3 near the scene of offence and his family relations with the other accused, common intention cannot be established. That the trial court and the High Court have mechanically drawn inference against Accused 3 under Section 34. Further, participation of Accused 3 in assault is confirmed. Appeal of Accused 3 is allowed by altering the conviction under Section 302 to Section 304 Part II of IPC due to lack of evidence of common intention to murder. (Para 31)

Commutation of Sentence - The lack of cogent evidence to prove that Accused 3 shared a common intention to commit murder is an important factor to commute a sentence from Section 302 to Section 304 Part II IPC. (Para 29)

Indian Penal Code, 1860 - Section 304 Part II is in two parts. The section provides for two kinds of punishment to two different situations: Firstly, if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the “intention”. Secondly, if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. Here the important ingredient is “knowledge”. (Para 28)

Camilo Vaz v. State of Goa, (2000) 9 SCC 1; referred.

For Appellant(s) Mr. Gaurav Agrawal, Sr. Adv. Mr. D. Abhinav Rao, AOR Ms. Prerna Robin, Adv. Mr. Devadipta Das, Adv. Mr. Rahul Jajoo, Adv.

For Respondent(s) Mr. Sirajuddin, Sr. Adv. Mr. G. Seshagiri Rao, Adv. Mr. Gaichangpou Gangmei, AOR Mr. Rahul Aggarwal, Adv. Mr. Amit Pratap Singh, Adv. Ms. Lothunbeni T. Lotha, Adv. Mr. Yimyanger Longkumer, Adv. Mr. Maitreya Mahaley, Adv. Mr. Sravan Kumar Karanam, Adv. Ms. Medha Singh, Adv. Mr. Santosh Kumar Puppala, Adv. Ms. Shireesh Tyagi, Adv. Mr. Rajiv Kumar Choudhry, AOR

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. This criminal appeal by appellants (accused 1 to 4) is against the concurrent conviction under Section 302 read with Section 34 and sentence for life imposed by the Trial as well as the Telangana High Court. For the reasons to follow, while we confirm the judgment and sentence with respect to A-1, A-2 and A-4, the conviction and sentence of A-3 is however modified to Section 304 Part II and sentenced to 10 years imprisonment. The details of the crime, trial, decisions of the Courts, followed by our analyses and conclusions are as follows.

2. The case of the prosecution is that the accused 1 to 4 belonging to the same family, and the deceased, come from the same village - Janda Venkatpur, Asifabad, Telangana. It is alleged that the sister of the deceased and the wife of A-4 were political aspirants and

they contested the Gram Panchayat elections. In the said elections, the sister of the deceased succeeded and the wife of A-4 lost and that, unfortunately, led to an animosity between the two groups, eventually leading to the murder of the deceased which is described as follows.

3. On 15.11.2001, at about 8AM, the deceased was going to Luxettipet on some work in an auto-rikshaw. In the same autorikshaw, one Sanga Swamy @ Thruputhi (PW-6) and Smt. Chetimala Rajitha (PW-9) were travelling as co-passengers. When the auto reached the house of A-4, it is alleged that A-1 stopped the auto-rickshaw and dragged the deceased out by pulling his legs. At the same time, A-2 joined A-1 and both the accused dragged the deceased towards the house of A-4. At that point, it is alleged that A-1 to A-4 attacked the deceased with an axe, a sword, a stone and a knife, thereby inflicting severe bleeding injuries leading to death of the deceased on the spot.

4. The son of the deceased, Kona Kiran Kumar, later examined as PW-1, being an eyewitness, proceeded to the police station and reported the incident at about 9PM by way of a complaint (Exhibit P-1). The Sub-Inspector of Police (PW-17), Luxettipet received the complaint and registered an FIR (Exhibit P-32), and took up the investigation. He then recorded the statement of PW-1.

5. In view of the gravity of the crime, the Circle Inspector of Police (PW-18) took up further investigation and immediately proceeded to the village to examine the scene of offence. He found the body of the deceased in the front yard of A-4's house. He enabled PW-15 to take photographs of the dead body (Exhibits P-21 to 30) and himself drew the sketch of the scene of offence (Exhibit P-37). He also conducted an inquest over the body of the deceased in the presence of PW-10 and PW-12 (panch witnesses). The inquest report was marked as Exhibit P-5. He also seized a stick (MO.4), control earth (MO.5), blood-stained earth (MO.6), cotton full shirt (MO.7) and a baniyan under cover of a panchnama. PW-18 recorded the statements of PWs 4, 5, 6, 7, 8, 9, and 15. The prosecution maintained that PWs 1, 3, 4, 6, 7 and 8 are eyewitnesses to the incident.

6. The Judicial Magistrate First-Class (PW-16) also recorded the statements of PWs 1 to 9 under Section 164 of the CrPC. The Postmortem over the dead body of the deceased was conducted by Dr Victor Dinesh (PW-11) at 3PM on 15.11.2001 at the Government Civil Hospital. PW-11, in his report, found 8 incised wounds, 3 partial amputations and 1 deep lacerated wound. It was his opinion that the cause of death was due to cardio-pulmonary arrest due to transaxion spinal cord at atlanto occipital joint.

7. The Sub-Inspector (PW-17) is said to have apprehended all the accused on 23.11.2001 and produced them before PW-18 in his office. PW-18 recorded the confessional statement of the accused in the presence of PW-13 and PW-14 (panch witnesses). In pursuance of the confession, all the accused led him and the panch witnesses to the field of one Mr. Appani Gangaiah at Laximpur Shivar. There, A-1 recovered and showed an axe, A-2 a sword and A-4 a knife which were all hidden behind the bushes in the field. PW-18 seized these objects in front of PW-11 to PW-13, later came to be marked as Exhibits MOs 1 to 3. PW-18 also recovered a lungi belonging to A-1 and one belonging to A-2 (Exhibit MO's 9 and 10, respectively). These material objects were sent to a Forensic Lab in Hyderabad, the report of which is marked as Exhibit P-16.

8. After completion of the above referred investigation, a chargesheet was filed on 09.01.2002. The Judicial First-Class Magistrate, Luxettipet took cognizance of the offence under Section 302 read with Section 34 of IPC, against all the accused. On production of the accused, the Magistrate furnished copies of the charge-sheet and other connected

documents and committed the case to the Court of Sessions and the Learned Sessions Judge numbered the trial as Sessions Case No. 523 of 2003. After the charges were framed, the accused pleaded not guilty and sought trial.

9. At the trial, the prosecution examined 18 witnesses being PW-1 to PW-18, and marked 37 documents and 10 Material Objects (MO's). After the closure of evidence, the accused were examined under Section 313 CrPC with reference to the incriminating material found against them in the evidence of the prosecution witnesses, and they denied the same. There are no defence witnesses.

10. The Trial Court, by its elaborate judgment dated 24.02.2005, found all four accused guilty for the murder of the deceased and convicted them under Section 302 read with Section 34 of the IPC. Accordingly, they were sentenced to undergo imprisonment for life and to pay a fine of Rs. 500 each, in default, to undergo simple imprisonment of one month. All the accused appealed to the High Court.

11. For the completeness of narration, we may indicate that the High Court initially acquitted all the accused by its judgment dated 21.06.2007, but in appeal to this Court, their conviction and sentences were set-aside, and the criminal appeal was remanded back to the High Court for fresh consideration. It is in this background that the order impugned came to be passed by the High Court.

12. After remand, the High Court confirmed the judgment of the Trial Court and dismissed the criminal appeals. The Special Leave Petition filed by the accused was admitted on 01.08.2022 and this is how we have heard Shri Gaurav Agrawal, learned counsel for the appellants and Shri Krishan Kumar Singh learned counsel for the State and Shri Sirajudeen, learned senior counsel for the respondent No. 2.

13. **Findings of the Trial Court:** The Trial Court had examined the credibility of the Prosecution witness in great detail. According to the Trial Court, PWs 1, 3, 4, 6, 7 and 8 were eyewitnesses to the incident and their testimonies were consistent. Among them, PW6's testimony was a clinching piece of evidence as he was privy to the incident from the very beginning. He was subjected to intense cross-examination with respect to his residence and other details about the incident. Except for minor variations, the Trial Court found his testimony unshaken, being consistent and natural. The Trial Court found the testimonies PW-1, PW-3, PW-4, PW-7, PW-8 corroborating the incident of stopping an auto, dragging the deceased out, and subsequently assaulting the deceased with various weapons.

14. Collectively, the witnesses reiterated that A-1 stopped the auto-rickshaw and pulled the deceased out and A-2 attacking the deceased's hands with a sword. As they reached A-4's house, A-4 took the sword from A-2 and struck the deceased on his head. A-4 also inflicted injuries by a knife. The common account about A3 is that he hit the deceased on the head with a stone. Accused No. 1 continued the attack and hit the deceased with an axe. Largely, these witnesses recounted a consistent narrative of the attack, identifying the weapons used and the roles of each accused.

15. **Judgment of the High Court:** According to the High Court, the accounts of PWs 1, 3, 4, 6, 7 and 8, who witnessed the incident, converge and are consistent with the injuries, weapons and motive for the murder of the deceased. The High Court correctly relied on the evidence of PW-6 who was in an auto-rickshaw along with the deceased on the day of the incident. PW6's evidence that he boarded the auto-rickshaw of PW-5, followed by the deceased and Rajitha (PW-9) joining him, was believed by the High Court.

16. The account of PW6 being corroborated by the evidence of PWs 1, 3, 4, 7 and 8, the High Court held that the evidence conclusively establishes the guilt of the accused beyond reasonable doubt. The High Court also noted the submission relating to the contradictions in the Complaint (Ex. P1) and the testimonies of PWs 1, 3, 4, 6, 7 and 8, specifically relating to the acts of assault, however, the High Court came to the conclusion that they were minor in nature.

17. Though the High Court saw that the trial court extensively examined the evidence and considered all the submissions, it has nevertheless considered the evidence afresh and after a detailed examination, arrived at the same conclusion. We have given our anxious consideration and have scrutinised the evidence of all the eye-witnesses in detail. We are in full agreement with the decision of the Trial Court and the High Court. Their analyses and conclusions are based on correct appreciation of evidence and law. However, there is one aspect which stands out in the aboveresferred analyses of the Trial Court and the High Court, and that pertains to the conclusion on the culpability of A-3 for murder. We will now examine the evidence as against A-3.

18. **Evidence against Accused No.3:** To commence with, the FIR states that A-3 hit the deceased on the head, thereby causing death. The Chargesheet states that A3 used a stone to do the same. However, no further details have been provided. Further as we examine the testimonies of all the eyewitnesses the following picture emerges. PWs 1, 3, 4 and 6 state that the A-3 had used a stone to hit the deceased's head. PW-7 and PW-8 do not speak about his role.

19. PW-1, in his examination-in-chief and cross-examination, has respectively stated as follows:

Chief - *"When I was trying to go near the deceased, A-3 threatened me saying that if I go there he would kill me. A-3 hit the deceased with a stone."*

Cross - *"I read Ex. P-1 complaint and it does not show that A-1 and A-3 threatened me and other eye witnesses to kill if we tried to rescue the deceased"*

20. PW-3, in his examination-in-chief and cross-examination, has respectively stated as follows:

Chief - *"After hearing the cries of the said Rajitha and Swamy I, PW1, Kona Mallesh Akireddy Ramesh, T. Odaiah rushed to the spot. By the time we reached the spot the deceased was lying on ground with injuries and on seeing us A-3 took a stone and gave threats to us saying that he would hit us if we go there."*

Cross - *"It is not true to say that I did not state before the police that when land other eye witnesses were going near the place of the incident A-3 armed with a stone threatened to kill us. It is not true to say that for the first time before this court I am deposing that A-3 armed with a stone threatened me and other witnesses to kill"*

21. P.W. 4, in his examination-in-chief, has stated as follows:

"A-3 took a stone and hit on the head of the deceased."

22. P.W. 6, in his examination-in-chief, has stated as follows:

"A-3 took a stone and hit on the head of the deceased."

23. A reading of the judgment and order passed by the Trial as well as the High Court would indicate that neither the prosecution or defence, nor the court, have focussed on the role of A-3 as evidenced by the oral and documentary evidence. There is nothing to attribute A-3 with the intent to murder the deceased. In fact, both the Courts have

mechanically drawn an inference against A3 under Section 34 of the Act merely based on his presence near the scene of offence and his familial relations with the other accused.

24. As per the *post-mortem report*, the cause of death is “*cardio pulmonary arrest due to transaction spinal cord at atlanto occipital joint*”. The atlanto occipital joint is at the back of the neck, which is the exact place where A-1 assaulted the deceased with the help of an axe. This axe was then taken by A-2 and thereafter, by A-4, who also assaulted the deceased. All the eye-witnesses are clear in this account. In other words, it was only A-3 who never took the axe in his hand. He only used a stone to assault the deceased.

25. Considering the statements of the eye-witnesses, coupled with the post-mortem report, it is not possible to contend that A-3 would have had the intention to commit the murder of the deceased and as such, he cannot be convicted under Section 302 IPC.

26. In fact, Victor Dinesh (PW-11), who gave the post-mortem report had indicated the injuries as under:

“1. Incised wound extending from right ear to left cheek 19 cm long 6 cm deep 2 mm wide grievous sharp weapon, Ante mortem.

2. Incised wound on the right eye brow (4cms) simple sharp weapon Ante mortem.

3. Incised wound on the left side of fore head about 9 cms above left eye brow measuring 8 cms sharp weapon Ante mortem.

4. Incised wound on left shoulder measuring 4 cm long 3mm wide. Sharp weapon ante mortem.

5. Incised wound on right should of 8 cm long 1 ½ cm wide sharp weapon, ante mortem.

6. 5 cm x 6 Incised wound (slice) on the vertex. Sharp weapon ante mortem.

7. 8 cms long incised wound backs of left wrist, sharp weapon ante mortem.

8. 12 cms incised wound on the front of left hand, sharp weapon, ante mortem.

9. Partial amputation of middle 3 fingers of left hand, ante mortem.

10. Partial amputation of right thumb. Measuring 2 cms sharp weapon ante mortem.

11. Partial amputation of right index finger measuring 3 cms sharp weapon, ante mortem.

12. Deep lacerated wound on the back of neck measuring 18 cms 7 cms with complete transaction of spinal card and Atlanta occipital joint. Blunt weapon, ante mortem.”

27. It is evident from the evidence of PW-11 that the deceased suffered 12 injuries, of which 10 are caused by sharp-edged weapons. The 11th injury is a partial amputation of the middle 3 fingers of left hand. The final injury is a lacerated wound on the back of neck measuring 18 cms x 7 cms with complete transaction of spinal cord and atlanto occipital joint. The Trial Court and the High Court have not analysed the evidence as against A-3. They have proceeded to convict him along with others under Section 302 with the aid of Section 34. The cumulative circumstances in which A-3 was seen participating in the crime would clearly indicate that he had no intention to commit murder of the deceased for two clear reasons. Firstly, while every other accused took the axe used by A1 initially and contributed to the assault with this weapon, A-3 did not wield the axe at any point of time. Secondly, A-3 only had a stone in his hand, and in fact, some of the witnesses said that he merely threatened in case they seek to intervene and prevent the assault. Under these circumstances, we hold that A-3 did not share a common intention to commit the murder of the deceased. Additionally, there is no evidence that A-3 came along with the other accused evidencing a common intention. The description of the incident is that when the

deceased came to the scene of occurrence, A-1 dragged him to the house of A-4, and the other accused joined A-1. In this context, A-3 picked up a stone to assault the deceased.

28. Even though, A-3 might not have had the common intention to commit the murder, nevertheless, his participation in the assault and the wielding of the stone certainly makes him culpable for the offence that he has committed. While we acquit A-3 of the offence under Section 302 read with Section 34 of the IPC, he is liable for the offence under 304 Part II IPC. The law on Section 304 Part II has been succinctly laid down in **Camilo Vaz v. State of Goa, (2000) 9 SCC 1**, where it was held that:

14. This section is in two parts. If analysed, the section provides for two kinds of punishment to two different situations: (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the "intention"; (2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on a vital part of the body with such force that the person hit meets his death, knowledge has to be imputed to the accused....

29. In the past, this Court has considered factors such as lack of medical evidence to prove whether the act/injury was individually sufficient to cause death¹, a single blow on head with a hammer² and lack of cogent evidence of the eye-witnesses that the accused shared a common intention to commit murder³ as some factors to commute a sentence from Section 302 to Section 304 Part II IPC.

30. Returning back to the facts of the case, there is certainly no escape from coming to the conclusion that A-3 should have had the knowledge that the use of a stone to hit the head of the deceased is likely to cause death. However, as demonstrated before, the evidence is insufficient to deduce a conclusion that he shared a common intention with the other accused to commit the murder of the deceased. Considering the role that A-3 has played, we hold him guilty of the offence under Section 304 Part II IPC.

31. The perusal of the evidence would reveal that it is not the case of the prosecution that A-3 was along with the other accused while the deceased was dragged to the house. The deposition would reveal that after the other accused assaulted the deceased with sword, A-3 came thereafter and assaulted the deceased with stone lying there. We, therefore, find that the prosecution has not been in a position to establish that A-3 shared the common intention with the other accused to cause the murder of the deceased.

32. For the reasons stated above, we uphold the conviction and sentence of A-1, A-2 and A-4 under Section 302 read with Section 34 IPC and dismiss their Criminal Appeal No. 2852 of 2023 against the judgment of the High Court of Telangana in Criminal Appeal No. 308 of 2005 dated 26.04.2022. We acquit A-3 of the conviction and sentence under Section 302 read with Section 34 and convict him under Section 304 Part II and sentence him to undergo imprisonment for 10 years. To this extent, the appeal of A-3 is allowed by altering the conviction under Section 302 to Section 304 Part II IPC.

33. Pending applications, if any, are disposed of.

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¹ Bawa Singh v. State of Punjab, 1993 Supp (2) SCC 754.

² Sarup Singh v. State of Haryana, (2009) 16 SCC 479.

³ Ghana Pradhan & Ors. v. State of Orissa, 1991 Supp (2) SCC 451.