

PARUSURAMAN @ VELLADURAI AND OTHERS

v.

STATE OF TAMIL NADU

SEPTEMBER 11, 1991

[KULDIP SINGH AND M.M. PUNCHHI, JJ.]

Penal Code, 1860—Sections 304 Part I, 34—Conviction under—Nature of injuries caused—Intention of accused—Offence committed to be u/ss. 325, 34—Sentence modified—Fine collected from accused to be paid to deceased's father/mother/sister.

Three charges were framed against the appellants - A1 to A7. A7 was charged under Section 302 read with Section 109, I.P.C. for instigating A1 to 6 to commit the murder. A1, A2, A4, A5 and A3, A6 were tried under Sections 147 and 148 I.P.C., respectively and the third charge under section 302 read with Section 149, I.P.C. was against A1 to A6 on the allegations that A1, A2, A4 and A5 armed with sticks, A3 armed with aruval (bill-hook) and A6 armed with vel-stick (spear-stick), attacked the deceased at about 8.30 A.M. on January 28, 1977 and caused him multiple injuries, as a result of which he died on the same day.

All the accused persons were acquitted by the learned Trial Judge, against which when appeal was filed, the High Court maintained the acquittal of A4 to A7 but reversed the findings in respect of A1 to A3 and were convicted under Section 304 Part I read with Section 34, I.P.C. and were sentenced to undergo rigorous imprisonment for five years, against that, this appeal was filed by the appellants—A1 to A3 via Special Leave Petition.

Disposing the appeal, by modifying the sentence, this Court,

HELD: 1. Thirteen external injuries were found on the dead body of the deceased. Out of these 11 were on lower legs and arms. The intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of Section 325, I.P.C. Keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the offence committed by the appellants comes within the mischief of Section 325 read with 34, I.P.C. and convicted them under Section 325, I.P.C. read with Section 34, I.P.C. imposing the sentence of imprisonment already undergone by them, and the sentence of Rs. 7,000 each as fine, to be deposited before the Trial Court, within four months, which be paid to the father/mother of deceased.

- A In the event of non payment of fine the appellants shall undergo rigorous imprisonment for five years. [3A, 3D-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 393 of 1979.

- B From the Judgment and Order dated 26.4.1979 of the Tamil Nadu High Court in Criminal Appeal No. 197 of 1978 and Crl. Revision Case No. 833 of 1977.**

U.R. Lalit and K.R. Choudhary for the Appellants.

- C K.V. Venkataraman for the Respondent.**

The Judgment of the Court was delivered by

- D KULDIP SINGH, J. Parusuraman @ Velladurai, Karuppaiah, Nagasundaram and four others (hereinafter referred to as A1 to A7) were tried for the murder of one Jawahar. Three charges were framed against them. A7 was charged under Section 302 read with Section 109, I.P.C. for instigating A1 to 6 to commit the murder. The second charge related to rioting wherein A1, A2, A4, A5 and A3, A6 were tried under Sections 147 and 148 I.P.C. respectively. The third charge under Section 302 read with Section 149, I.P.C. was against A1 to A6 on the allegations that A1, A2, A4 and A5 armed with sticks, A3 armed with aruval (bill-hook) and A6 armed with vel-stick (spear-stick), attacked Jawahar at about 8.30 A.M. on January 28, 1977 and caused him multiple injuries as a result of which he died on the same day. All the accused persons were acquitted by the learned Trial Judge. On appeal the High Court maintained the acquittal of A4 to A7 but reversed the findings in respect of A1 to A3. Believing the prosecution evidence, the High Court came to the conclusion that the commission of offence by A1 to A3 was proved. They were convicted under Section 304 Part I read with Section 34, I.P.C. and were sentenced to undergo rigorous imprisonment for five years. This appeal by A1 to A3 via special leave petition is against the judgment of the High Court. While granting special leave to appeal this Court by its order dated August 10, 1979 allowed bail to the appellants.**

- H We have heard learned counsel for the parties. We agree with the High Court that the participation of the appellants in the occurrence which resulted in the death of Jawahar has been proved beyond doubt. We are, however, of the view that keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the**

offence committed by the appellants come within the mischief of Section 325 read with 34, I.P.C. Thirteen external injuries were found on the dead body of Jawahar. Out of those 11 were on lower legs and arms. The High Court while considering the nature of offence observed as under:-

"These accused and their associates who be set themselves on Jawahar could never have intended to cause the death of Jawahar for, if such was their intention, they could have certainly killed him especially after carrying him into the cholam field and left him dead there instead of merely causing simple and grievous injuries to him. Even with reference to the aspect whether the accused persons could have, intended to cause such injuries as would be sufficient, in the ordinary course of nature, to cause death, we are not able to give a finding in favour of the prosecution. Even according to Jawahar's statement (Exhibit P-6) all that first accused had remarked was that the attack on him was in retaliation for the injuries Jawahar had caused on the first accused a few weeks earlier."

Agreeing with the above observations of the High Court we are of the opinion that the intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of Section 325, I.P.C. We, therefore, set aside the conviction and sentence of the appellants under Section 304 Part I, I.P.C. read with Section 34, I.P.C. and instead convict them under Section 325, I.P.C. read with Section 34, I.P.C. We impose the sentence of imprisonment already undergone by the appellants. We also impose the sentence of Rs. 7,000 each as fine on the appellants. The appellants shall deposit Rs. 7,000 each before the Trial Court within four months from today. In the event of non payment of fine the appellants shall undergo rigorous imprisonment for five years. The amount of Rs. 21,000 realised as fine from the appellants be paid to the father/mother of deceased Jawahar. In the event of none of them surviving the amount shall be paid to Indra sister of deceased Jawahar. The appeal is disposed of in the above terms.

V.P.R

Appeal disposed of.