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ATMARAM ZINGARAJI
v.
STATE OF MAHARASHTRA

AUGUST 13, 1997

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[M.K. MUKHERJEE AND D.P. WADHWA, JJ.]

Indian Penal Code, 1860 :

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D
S. 302 and 326—Nine persons including the appellant prosecuted for offences u/s. 147, 148, 302/149 and 341/149—Trial Court Acquitted—High Court convicted the appellant u/s. 302 (simplicitor)—Held, evidence on record indicates that the deceased sustained injuries by other weapons also and his death was the outcome of all the injuries—Appellant would, therefore, be guilty of offence u/s. 326 as he caused a grievous injury to the deceased—Conviction u/s. 302 set aside—Appellant convicted u/s 326 and sentenced to rigorous imprisonment for 6 years.

Krishna v. State of Maharashtra, AIR (1963) SC 1413, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 118 of 1994.

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From the Judgment and Order dated 19.8.92 of the Bombay High Court in Crl.A. No. 225 of 1988.

V.N. Ganpule, Ms. Sushma Manchanda for the Appellant.

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D.M. Nargolkar for the Respondent.

The following Order of the Court was delivered :

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Nine persons including Atmaram Zingaraji, the appellant before us, were placed on trial before the Additional Sessions Judge, Akola, to answer the following charges :

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"That on or about the 5th day of June, 1987 at about 3.00 pm at village Swali, you accused nos. 1 to 9 were member of an unlawful assembly and in prosecution of the common object of such assembly committed the offence of rioting and thereby committed an offence punishable under Section 147 of the Indian Penal Code.

Secondly, on the above day date, time and place you accused Nos. 1 to 9 were a member of an unlawful assembly and did in prosecution of the common object of such assembly, viz., to cause death of Pralhad Mahadu Ingole, committed the offence of rioting and the time you were armed with deadly weapons like sticks, axes, daggers etc. and thereby committed an offence punishable under Section 148 of the Indian Penal Code. A B

Thirdly, on the above day date and time and place, you accused nos. 1 to 9 in furtherance of your common object caused the death of Pralhad Mahadu Ingole by intentionally or knowingly assaulting him with weapons like stick, axe, dagger and there by committed murder, as offence punishable under Section 302 of I.P.C. read with Section 149 I.P.C. C

Fourthly, on the above day, date and time and place you accused nos. 1 to 9, in furtherance of your common object wrongfully restrained Hiranman, deceased Pralhad and his mother Kamalabai from going to the police station and thereby committed an offence punishable under Section 341 r/w 149 of I.P. Code." D

On conclusion of the trial, the learned Judge acquitted them of all the charges and aggrieved thereby the respondent - State of Maharashtra preferred an appeal. The High Court disposed of the appeal by setting aside the acquittal of the appellant and convicting him under Section 302 I.P.C. (simpliciter) and affirming the acquittal of the eight others. Hence this statutory appeal at the instance of the appellant. E

On going through the impugned judgment of the High Court we find that it has reappraised the entire evidence and given cogent and convincing reasons for arriving at the conclusion that the findings of the trial court, so far as they related to the acquittal of the appellant, were perverse. With the above conclusion of the High Court we are in complete agreement. As regards the other accused persons, the High Court held that the claim of the eye-witnesses that they also took place in the murder was an improvement and that the trial court was fully justified in acquitting them. F G

The next question that falls for our determination is whether, after having affirmed the acquittal of all others, the High Court could convict the appellant under Section 302 I.P.C. (simpliciter). The charges framed H

A against the accused (quoted earlier) and the evidence adduced by the prosecution to bring them home clearly indicate that according to its case, the nine persons arraigned before the trial court - and none others, either named or unnamed, (totalling minimum five or more person) - formed the unlawful assembly, Consequent upon the acquittal of the other eight the appellant could not be convicted with the aid of Section 149 I.P.C. more particularly, in view of the concurrent findings of the learned Courts below that the other eight persons were not in any way involved with the offences in question.

C The same principle will apply when person are tried with the aid of Section 34 I.P.C. In the case of *Krishna v. State of Maharashtra*, AIR (1963) SC 1413 a four Judge Bench of this Court has laid down that when four accused persons are tried on a specific accusation that only they committed a murder in furtherance of their common intention and three of them are acquitted. the fourth accused cannot be convicted with the aid of Section 34 I.P.C. for the effect of law would be that those who were with him did not conjointly act with the fourth accused in committing the murder.

E In either or the above situations therefore the sole convict can be convicted under Section 302 I.P.C. (simpliciter) only on proof of the fact that his individual act caused the death of the victim. To put it differently, he would be liable for his own act only. In the instant case, the evidence on record does not prove that the injuries inflicted by the appellant alone caused the death; on the contrary the evidence of the eye witnesses and the evidence of the doctor who held the post mortem examination indicate that the deceased sustained injuries by other weapons also and his death was the outcome of all the injuries. The appellant, therefore, would be guilty of the offence under Section 326 I.P.C. as he caused a grievous injury to the deceased with the aid of a *jambia* (a sharp cutting instrument).

G For the foregoing discussion we set aside the conviction and sentence recorded against the appellant under Section 302 I.P.C., convict him under Section 326 I.P.C. and sentence him to suffer rigorous imprisonment for six years. The appeal is, thus, disposed of.

R.P.

Appeal disposed of.