

A

MUNUSWAMY AND ORS.

v.

STATE OF TAMIL NADU

AUGUST 14, 2002

B

[N. SANTOSH HEGDE AND BISHESHWAR PRASAD SINGH, JJ.]

Penal Code, 1860:

C

Sections 302/109 and 341—Murder and abetment thereof—Conviction by courts below—Plea that two of the accused could not be convicted as injury was caused only by third accused—On appeal, held—In the facts and circumstances of the case, the act of third accused cannot be said to be his individual act—Hence the other two accused also guilty of the offence—It is a case of abetment by conspiracy in which all the conspirators participated at the execution of the plan.

D

E

Sections 302 and 304—Murder—Conviction under Section 302 by courts below—Plea to convert the conviction under Section 302—Held, injuries on deceased grievous in nature at vital organs—Incident not proved to have taken place at spur of moment—Hence conviction cannot be converted to one under Section 304.

F

Appellants were tried for having committed the offences under Sections 341, 302 read with Section 109 IPC for having caused death of the deceased. The case of the prosecution was that appellant Nos. 2 and 3 followed the deceased to the spot of incident where appellant No. 1 was already waiting. All the three chased the deceased and over powered him. While appellants 1 and 2 held the hands of a deceased, appellant No. 3 stabbed him on the exhortation of appellant No. 1. As per the evidence of doctor, deceased died due to injury on vital organs. Trial Court as well as High Court convicted the appellants of the offences charged.

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In appeal to this Court appellants contended that appellants Nos.1 and 2 could not be held guilty of the offence under Sections 302/109 IPC as deceased was stabbed only by appellant No. 3; and that even appellant No. 3 could be punished only under Section 304 IPC as he did not intend to kill the deceased, the knife used for stabbing being only a pen knife.

H

Dismissing the appeal, the Court

HELD: 1. Appellant No. 3 is guilty of the offence under Section 302 IPC. It will not be possible to bring his case under any of the exceptions and to record his conviction and sentence under Section 304 IPC. Having regard to the nature of the injuries and their location, it would be difficult to say that the person who assaulted the deceased with a knife did not intend to cause his death of the deceased. Evidence on record show that this is not a case where the appellants accidentally met the deceased with whom they had enmity of some sort, and at the spur of the moment the assault took place.

[554-F; 554-B; 553-F]

2. Appellants 1 and 2 have been rightly found guilty of the offence under Section 302/109 IPC. The evidence leaves no room for doubt that the appellants had entered into a conspiracy for killing the deceased and pursuant thereto appellant No.1 waited at the spot while appellants 2 and 3 followed the deceased on their bicycle. All of them chased the deceased. After he was over-powered by appellants 1 and 2, on the order of appellant No.1, appellant No.3 stabbed him. It cannot be said in the facts and circumstances of the case that the act of appellant No.3 was merely his individual act, and that appellants 1 and 2 cannot be held guilty of the offence under Section 302/109 IPC. On the facts found this is a case of abetment by conspiracy in which all the conspirators were present and actively participated when the plan was executed. The appellants came to the place of occurrence in a planned manner. The facts clearly disclose a pre-concerted plan to assault the deceased at the place selected by the appellants. [554-G, H; 555-A; 554-B-C-D]

3. Appellant No. 1 is said to have exhorted his son to stab the deceased. Obviously he knew, that his son was carrying a knife or some such weapon, otherwise the word 'stab' would not have been used by appellant No.1. He may have merely exhorted his son to assault the deceased. This itself is a clear indication of the fact that accused No.1, the father, knew that his son was carrying a knife. [554-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 988 of 2001.

From the Judgment and Order dated 22.9.2001 of the Chennai High Court in Crl. A. Nos. 293 of 1990.

R. Sundaravardhan, Ramesh N. Keswani, Ram Lal Roy and Shivakumaran,

A for the Appellants.

R. Venkataramani, Ms. Revathy Raghavan and Ms. Shweta Garg for the Respondent.

The Judgment of the Court was delivered by

B

BISHESHWAR PRASAD SINGH, J. This appeal is directed against the judgment and order of the High Court of Madras dated 21st September, 2002 passed in Criminal Appeal. No.293 of 1990 filed by the appellants against the judgment and order of the Sessions Judge dated 3rd August, 1990 whereby appellants 1 and 2 were found guilty of the offences under Sections 341, 302/109 IPC and appellant No.3 was found guilty of the offence under Section 341 and 302 IPC. The appellants have been sentenced to 6 months rigorous imprisonment under Section 341 IPC and life imprisonment under Section 302/109 and 302 IPC. The High Court by the impugned judgment and order dismissed the appeal and affirmed the judgment and order of the trial court.

D

Special leave was granted limited to the question as to whether the offence proved falls under Section 304 IPC and whether the conviction and sentence under Sections 302, 302/109 IPC calls for modification.

E

Appellant No.1 Munuswamy is the father of appellants 2 and 3, namely Kumaresan and Selvam. It is the case of the prosecution that on 28th April, 1989 at about 3.00 p.m. while PW.3 Adhimoolam was drying beedi leaves, appellant No.1 came at about 4.00 p.m. and waited by the side of the road. About half an hour later deceased Ravi came on a bicycle. He was followed by appellants 2 and 3 who also reached the place of occurrence following him. Appellant No.1 stopped the deceased while appellants 2 and 3 who came from behind dashed their bicycle against the bicycle of the deceased. The deceased left his bicycle and started running away chased by the appellants. Ultimately the accused over-powered him and while appellant No.1 caught hold of the right hand of the deceased, accused No.2 caught hold of the left hand of the deceased. Appellant No.1 ordered that the deceased should be stabbed and immediately appellant No.3 took out a pen knife from his hip and stabbed the

F

deceased on the right side of his chest. They dragged the deceased and made him lie down near the road. This incident was also witnessed by Ravi, PW. 4 who was grazing his cattle near the scene of occurrence. They reported the matter to the father of the deceased who went to the police station and lodged the complaint. After investigation, the appellants were put up for trial and

G**H**

were ultimately found guilty of the offences as earlier noticed.

The medical evidence on record disclosed the following injuries on the body of the deceased :- A

1. An incised gaping wound 8 cm x 3 cm over (R) interior aspect of chest at the level of right nipple with exposing muscle and rib (4th) beneath.
- (2) A lacerated wound 3 cm x 2 cm x bone depth seen over (R) side of parietal region. B
- (3) An abrasion 3 cm x 2 cm seen over (R) leg.
- (4) An abrasion 4 cm x 3 cm seen over (R) buttock region. C

On Internal examination : Thorax : An incised wound 6 cm x 2 cm x lung beneath seen on the anterior aspect of pleura with 1200 ml. of bloody fluid in the (R) Throacic cavity. Lungs : Right lung 510 g. wt. An incised wound 2 cm in breadth over the edge of medical aspect of upper lobe of right lung. C/s. normal appearance and pale. Left Lung : 500 gms. wt. C/s. normal appearance and pale. D

Heart : 340 g. wt. Great vessels on the anterior aspect of the Aorta a cm x cm punctured like wound seen at the root of Aorta with clotted blood coming out. On pressure from the Aorta."

According to PW.2, the doctor who conducted the post mortem examination on the body of the deceased, the deceased died of shock and hemorrhage due to injury on vital organs. It is also the case of the prosecution that the deceased died almost instantaneously. E

We have carefully perused the evidence on record and we find that this is not a case where the appellants accidentally met the deceased with whom they had enmity of some sort, and at the spur of the moment the assault took place. F

It was sought to be contended on behalf of the appellants that appellant No.1 had merely caught the hand of the deceased and appellant No.2 also did the same. It was only appellant No.3 who stabbed the deceased. According to learned counsel, appellants 1 and 2 can only be held guilty of the offence under Section 341 IPC while the appellant No.3 can at best be said to have committed an offence punishable under Section 304 IPC. They never intended to commit the murder of the deceased since the knife used by appellant No.3 G H

A was only a pen knife. Learned counsel, however, could not controvert the fact that the knife had a long blade enough to cause the injuries of the nature found. It is also worth noticing that apart from two abrasions there was also an incised gaping wound on the chest and a lacerated wound over the right side of parietal region.

B Having regard to the nature of the injuries and their location, it would be difficult to accept the submission that the person who assaulted the deceased with a knife did not intend to cause the death of the deceased.

C The appellants came to the place of occurrence in a planned manner. The evidence is clear that appellant No.1 came first and waited by the side of the road. Thereafter appellants 2 and 3 came on a bicycle closely following the deceased. Appellant No.1 stopped the deceased and appellants 2 and 3 made sure that the deceased did not escape by dashing their bicycle against his bicycle with the result that the deceased had to abandon his bicycle and run for his life. Even thereafter they chased him and while appellants 1 & 2 caught hold of his hands, appellant No. 3 stabbed him with the knife. These facts clearly disclose a pre-concerted plan to assault the deceased at the place selected by the appellants.

E Appellant No.1 is said to have exhorted his son to stab the deceased. Obviously he knew that his son was carrying a knife or some such weapon, otherwise the words 'stab' would not have been used by appellant No. 1. He may have merely exhorted his son to assault the deceased. This itself is a clear indication of the fact that accused No. 1, the father, knew that his son was carrying a knife.

F In the facts and circumstances of the case we are satisfied that so far as appellant No.3 is concerned, he is guilty of the offence under Section 302 IPC. It will not be possible to bring his case under any of the exceptions and to record his conviction and sentence under Section 304 IPC.

G So far as appellants 1 & 2 are concerned, they have also been rightly found guilty of the offence under Section 302/109 IPC. The evidence leaves no room of doubt that the appellants had entered into a conspiracy for killing the deceased and pursuant thereto appellant No.1 waited at the spot while appellants 2 and 3 followed the deceased on their bicycle. All of them chased the deceased. After he was over-powered by appellants 1 & 2, on the order of appellant No.1, appellant No.3 stabbed him. It cannot be said in the facts

and circumstances of the case that the act of appellant No.3 was merely his individual act, and that appellants 1 and 2 cannot be held guilty of the offence under Section 302/109 IPC. On the facts found this is a case of abetment by conspiracy in which all the conspirators were present and actively participated when the plan was executed. A

We therefore, find no merit in this appeal and the same is accordingly dismissed. B

K.K.T.

Appeal dismissed.