

A MURUGAN & ORS.
v.
STATE THROUGH INSPECTOR OF POLICE, TAMIL NADU

DECEMBER 4, 2007

B [S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Penal Code, 1860; Ss. 302 & 324:

C *Murder—Testimony of eyewitnesses—Accused and accomplice
armed with weapons forming unlawful assembly attacked deceased
and others resulting in death of deceased and injury to others—Trial
Court found accused-appellant No.1 guilty of committing murder
convicting him w/s. 302 IPC and sentencing him to life imprisonment
D and found accused Nos. 8, 9 & 10 of committing offence w/s. 324 and
sentencing them to one year rigorous imprisonment—Affirmed by High
Court—On appeal, Held: Prosecution witnesses not only described the
incident in detail but also identified the crime weapons which were
seized at the instance of accused persons—No cogent reasons advanced
E by accused to disprove trustworthiness of PWs.—Their evidence
believed by Courts below—Intention to commit murder of the deceased
and bodily injury to others by accused gathered from the backdrop of
events and circumstances attending thereto—Infliction of single injury
on the deceased by itself is not a relevant factor to hold that assailant
F had no intention to commit murder of the deceased—Hence, there exist
no reason to differ with the order of the Courts below—Criminal trial—
Testimony of prosecution witnesses—Trustworthiness.*

According to the prosecution, on the fateful day, when a
procession was taken out by the people in the village for celebrating
G a festival, the accused persons who were 11 in number allegedly
formed an unlawful assembly with an object of committing murder
of PW5 and others to take revenge from them, as earlier one of them,
the deceased, had instituted a criminal case against the accused
persons. They were carrying weapons. Accused No.1 and accused

No.3 had instigated others to commit murder of PW-5. Accused No.4 attacked PW-5 with a stick causing a fracture on his right hand. When the deceased intervened, accused No.4 instructed accused No.2 to kill him also. Consequently, accused No.2 caught hold of the hands of the deceased, whereas accused No.6 caught hold of his shoulders, and accused No.7, appellant No.1 stabbed him with a knife on his chest and also caused an injury on PW-1, whereas accused No.8 attacked PW-1 with a cycle chain causing an injury on his head. Appellant No.3- accused No.9 attacked PW-3 with a knife on his nose and head whereas accused No.10 attacked PW-3 with a cycle chain and caused injuries to him. A First Information Report was lodged immediately after the occurrence by the victims. Out of 11 accused, only accused No.7 and 8 to 10 were convicted and sentenced by the trial Court. Accused No.7 was convicted for committing the offence punishable u/s.302 IPC and sentenced to undergo life imprisonment; accused Nos. 8 to 10 were convicted for committing the offence punishable u/s. 324 IPC and they were sentenced to undergo 1 year rigorous imprisonment. Appeal filed thereagainst was dismissed by the High Court. Hence the present appeals.

Counsel for the accused-appellants contended that appellant No.1 having inflicted only one blow with a knife on the deceased, the offence, if any, committed by him falls under Section 304 Part II of the Indian Penal Code and not under Section 302 thereof; and that all the other accused having caused only simple injuries, sentence of one year's rigorous imprisonment is on the higher side.

Dismissing the appeal, the Court

HELD: 1.1. The nature of evidence of the eye-witnesses to the occurrence whereupon strong reliance has been placed by both trial Court as also the High Court in identical in nature.

[Para 6] [858-B]

1.2. PW1, in his statement before the trial Court, not only described the incident in great details but also identified the material objects which were seized at the instance of the accused persons being the weapons of offence. Evidences of PW-2 and other

A witnesses are also on the same vein. [Para 8] [858-H; 859-A]

B 1.3. Appellants had a motive. They came in a group. All of them were armed. Both parties are related to each other. An occurrence had taken place earlier giving rise to initiation of a criminal case by the deceased against the accused. Accused persons, with a view to take revenge, caused murder of the deceased and injuries on some of the prosecution witnesses. The prosecution witnesses were injured witnesses. [Para 9] [859-B]

C 1.4. No cogent argument has been advanced by counsel of the accused so as to enable him to hold that the prosecution witnesses are not trustworthy. They have been believed by the courts below. Nothing has been pointed out to this Court to differ with the findings of the Courts below. [Para 10] [859-C]

D 2.1. Intention on the part of a person to commit murder must be gathered from the backdrop of events and the circumstances attending thereto. [Para 11] [859-D]

Virsa Singh v. State of Punjab, (1958) AIR SC 465, relied on.

E 2.2. The intention to cause the bodily injury, if proved, the rest of the enquiry would be purely objective and the only question is whether as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

[Para 11] [860-C]

F *Virsa Singh v. State of Punjab*, (1958) AIR SC 465, relied on.

G 2.3. Infliction of a single injury by itself is not a relevant factor to hold that the assailant had no intention to cause murder of the deceased. What is important in a case of this nature is to consider the entire circumstances to arrive at one conclusion or the other. When a group of people come with an intention to assault particular person(s), with dangerous weapon, the same would attract to principles laid down in the case of *Virsa Singh v. State of Punjab*. Prosecution witnesses testified in regard to their intention. Under the circumstances, it cannot be said that appellant No.1 had no

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intention to cause death of the deceased.

[Para 13 and 14] [861-B-D]

Virsa Singh v. State of Punjab, (1958) AIR SC 465 and *Anil v. State of Haryana*, (2007) 7 SCALE 56, relied on.

3.1. Although, in this case, there was enough material to convict other appellants for commission of an offence under Section 302/34 of the Indian Penal Code. However, the appellants, other than the first appellant, have been only convicted under Section 324 of the Indian Penal Code. As the State did not prefer any appeal thereagainst, this Court is unable to alter the judgment of conviction and sentence. [Para 14] [861-D-E]

3.2. The trial judge appears to have committed more than one mistake in his judgment. He while analysing the evidence of DW-1, who was examined on behalf of appellant No.2 (accused No.8) to prove alibi on his part, although came to the conclusion that the said evidence was not acceptable, arrived at the finding that the said accused has not committed the offence under Section 324 of the Indian Penal Code. Evidently, a typographical error has crept in as otherwise he could not have convicted him along with appellants No.3 and 4 for commission of an offence under Section 324 of the Indian Penal Code; that whereas in the beginning of the judgment, he recorded the sentence imposed upon appellants No.2 to 4 to undergo rigorous imprisonment for three years, in the operative part of the judgment, he directed that they were sentenced to undergo rigorous imprisonment for one year only. There is no other option but to hold that later part of the judgment should be taken to be correct. [Para 15] [861-F-H; 862-A]

3.3. So far as the purported plea of alibi of appellant No.2 is concerned, a clear finding has been arrived at that DW-1 has manipulated Exhibit D-3 just to help the said accused. The High Court also agreed with the said view. There exists no reason to differ with the views of the trial Court as also the High Court.

[Para 16] [862-B]

A From the Judgment and final Order dated 14.10.2004 of the High Court of Madras in C.A. No. 115 of 1997.

Shekhar Naphade, T. Raja, Gopal Singh, Atulesh Kumar and Vishal Jogdand for the Appellants.

B V. Kanakaraj, V.G. Pragasam, S. Joseph Aristotle and S. Prabu Ramasubramanian for the Respondent.

The Judgment of the Court was delivered by

C **S.B. SINHA, J.** 1. This appeal is directed against a judgment and order dated 14.10.2004 passed by a Division Bench of the Madras High Court, Madurai Bench in Criminal Appeal No.115 of 1997 whereby and whereunder the appeal preferred by the appellants herein against a judgment of conviction and sentence dated 10.2.1997 passed by the Additional District & Sessions Judge-cum-Chief Judicial Magistrate, D Ramanathpuram convicting the accused No.7 under Section 302 of the Indian Penal Code and sentencing him to undergo life imprisonment and accused Nos.8, 9 and 10 under Section 324 of the Indian Penal Code and sentencing them to undergo one year's rigorous imprisonment was dismissed.

E 2. A quarrel ensued between the prosecution party and the accused on 10.7.1973 in regard to drawing of water from a well. Accused were said to have been bearing grudge towards the deceased as a criminal case was instituted against them at Kumuthi Police Station. On 4.8.1993, at about 6.15 pm, a procession of villagers was taken out for celebrating a festival known as "Mulaipari" festival. It started at village Keelamathupatti. F When the procession reached near the village known as Gandaru, with a view to commit murder of PW-5, Nagarajan and other persons, the accused persons who were 11 in number allegedly formed an unlawful assembly with weapons like knife, cycle chains and sticks in their hands. G Accused No.1, Subramanian, and accused No.3, Selvaraj, are said to have instigated others to commit murder of PW-5 Nagarajan consequent whereupon accused No.4, Ramu, attacked him with a stick causing a fracture on his right hand. When deceased Kannan tried to obstruct him from doing so, accused No.4, Ramu, instructed accused No.2, Selvaraj, H to kill him also. Consequently, accused No.2, Selvaraj, caught hold of

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the hands of Kannan, whereas accused No.6 caught hold of his shoulders. A
Taking advantage of the said situation, the appellant No.1 herein (accused
No.7 - Murugan) is said to have stabbed him with a knife on his chest.
Appellant No.1 is said to have caused an injury on PW-1, Chithiraichamy,
also with his knife, whereas accused No.8 attacked PW-1 with cycle chain
and caused an injury on his head thereby. Appellant No.3- Selvaraj, B
(accused No.9) is said to have attacked PW-3, Kathirvel, with a knife
on his nose and head whereas accused No.10, Boomi, attacked PW-3
with a cycle chain and caused injuries to him. PW-2, Murugesan was also
attacked with a stick.

3. A First Information Report was lodged immediately after the said C
occurrence. Out of 11 accused, however, only accused No.7 and 8 to
10, were convicted and sentenced in the manner, as noticed hereinbefore,
whereas others were acquitted. An appeal preferred thereagainst by the
appellants herein has been dismissed by reason of the impugned judgment. D

4. Mr. Naphade, learned senior counsel, in support of the appeal,
would, inter alia, submit :

(1) Appellant No.1 having inflicted only one blow with a knife on
the deceased, the offence, if any, committed by him falls under E
Section 304 Part II of the Indian Penal Code and not under
Section 302 thereof.

(2) Appellant No.2 (accused No.8), having examined defence
witnesses to prove his plea of alibi, the learned Sessions Judge,
as also the High Court, committed a serious error in recording F
a judgment of conviction against him.

In this connection our attention has been drawn to the
following purported findings of the learned Sessions Judge :

“The 8th accused has not committed the offence punishable
under Section 324 IPC”. G

(3) All the other accused having caused only simple injuries,
sentence of one year's rigorous imprisonment is on the higher
side.

5. Mr. V. Kanakaraj, learned senior counsel appearing on behalf of H

A the State, on the other hand, supported the impugned judgment.

6. The prosecution, in support of its case, examined twenty one witnesses.

The nature of evidence of the eye-witnesses to the occurrence
B whereupon strong reliance has been placed by both the learned Sessions
Judge as also the High Court being identical in nature, we would notice
the deposition of PW-1, Chithiraichamy, only. He spoke about the incident
which took place on 4th August, 1993. A complaint was made to him
by a woman named Malathi. She was reprimanded by him stating that
C there should not quarrel over drawing of water. She was sent back to
her home. Malathi was the daughter of the accused No.2. While the
deceased and the injured persons including the said PW-1 had been
participating in the said procession, accused No.1 to 3 came and gave
an exhortation to cut and kill Nagrajan. Accused No.4, Ramu, is said to
D have assaulted in his right forearm. The deceased Kannan intervened. He
asked them not to do so, whereupon accused No.2 gave an exhortation
to kill him, pursuant whereunto accused No.6, Challaiah caught hold of both
his shoulders as a result whereof, he could not make a move. Appellant
No.1, Murugan, stabbed him on the left side of his chest. While PW-1
E asked the assailants not to do so, Appellant No.1 attempted to stab him
also on his neck with a knife but as he turned his neck on the right side,
a laceration was caused on the right side of his neck. Accused No.8 also
attacked him with a cycle chain on his head.

7. He wanted to cause an injury to appellant No.2 (accused No.8)
F with a small knife but he was prevented from doing so by one Palaniammal
as a result whereof Palaniammal suffered a laceration in his right hand.
Appellant No.3, Sathiah (accused No.9) stabbed Kathirvelu in his hand
with a knife as a result whereof he received an injury. Accused No.10,
Boomi, assaulted Kathirvelu with a cycle chain on his head resulting in
G causing bleeding injury on his head and the right side nose. Accused No.11
Ramamoorthi (accused No.4) assaulted witness Murugasan with a stick
on his right upper arm whereupon all persons shouted whereafter the
accused ran away.

H 8. He, not only, thus, described the incident in great details but also

identified the material objects which were seized at the instance of the accused persons being the weapons of offence. Evidence of PW-2 and other witnesses are also on the same vein. A

9. Appellants had a motive. They came in a group. All of them were armed. Both parties are related to each other. An occurrence had taken place which took place on 10th July, 1993 giving rise to initiation of a criminal case. They, with a view to take revenge, caused murder of Nagarajan and injuries on some of the prosecution witnesses. The prosecution witnesses were injured witnesses. B

10. No cogent argument has been advanced by Mr. Naphade so as to enable him to hold that of the said witnesses are not trustworthy. They have been believed by the courts below. Nothing has been pointed out to us as to why we should differ with the said findings. C

11. Intention on the part of a person to commit murder must be gathered from the backdrop of events and the circumstances attending thereto. D

A similar question came up for consideration before this Court in *Virsa Singh v. State of Punjab*, (1958) AIR SC 465, wherein this Court, upon a detailed analyses of the provisions of Sections 299 and 300 of the Indian Penal Code opined that in order to attract "thirdly" contained Section 300 of the Indian Penal Code, it must be established : E

"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly";

First, it must establish, quite objectively, that a bodily injury is present; F

Secondly, the nature of the injury must be proved; These are purely objective investigations. G

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the H

A enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

Once the aforementioned factors are established, absence of any knowledge that an act of that kind would likely to cause death become immaterial. The intention to cause the bodily injury, if proved, the rest of the enquiry would be purely objective and the only question is whether as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

12. The medical evidence, emanating from the deposition of PW-12, Dr., Meenakshisundaram, reveals :

“I found the following external injuries on the body. (1) A cut injury measuring 1 x ¾ x 3” on the left side chest. It was in the outer aspect of the 6th left side rib bone between the middle of the collar bone. On opening the wound, the wound has injured the intercostals muscles and blood vessels in the middle rib bones. It has punctured the left ventricle. The injury was slanting and upwards and forwards. It has pierced the left ventricle. There was 1½ litres of colour changed blood in the thorasic cavity. The internal injuries were as follows :

There was no fracture of the head and rib bones. Heart was empty and pale and was weighing 250 grams. The left ventricle was punctured. The lungs was pale and was weighing 500 grams, and was wet when pressed. Abdomen was normal stomach was containing digested food. Liver weighed 1450 grams and was pale and was wet when pressed. Spleen was also wet when pressed and weighed 165 grams, and was pale. Kidneys were pale and moist on pressure. Intestines empty. Bladder empty. There was no fracture on the pelvis. Hyoid bone was intact and the skull was also intact. Skull membranes were intact. Brain was pale and weighed 1450 grams. There was no intra-cranial haemorrhage in

the brain and was weighing 1250 grams. There was no fracture in the spinal chord.” A

13. Infliction of a single injury by itself is not a relevant factor to hold that the assailant had no intention to cause murder of the deceased. What is important in a case of this nature is to consider the entire circumstances to arrive at one conclusion or the other. When a group of people come with an intention to assault particular person(s), with dangerous weapon, the same would attract to principles laid down in *Virsa Singh* (supra). Prosecution witnesses testified in regard to their intention. B

Virsa Singh's case has been followed by this Court in *Anil v. State of Haryana*, (2007) 7 SCALE 56. C

14. We, therefore, are unable to accede to the submissions of Mr. Naphade that appellant No.1 had no intention to cause death of Nagarajan. D

Although, in this case, there was enough material to convict other appellants for commission of an offence under Section 302/34 of the Indian Penal Code, unfortunately, the appellants, other than the first appellant, have been only convicted under Section 324 of the Indian Penal Code. As the State did not prefer any appeal thereagainst, this Court is unable to alter the judgment of conviction and sentence. E

15. The learned Trial Judge appears to have committed more than one mistake in his judgment. He, while analysing the evidence of DW-1, who was examined on behalf of appellant No.2 (accused No.8) to prove alibi on his part, although came to the conclusion that the said evidence was not acceptable, as indicated hereinbefore, arrived at the finding that the 8th accused has not committed the offence under Section 324 of the Indian Penal Code. Evidently, a typographical error has crept in as otherwise he could not have convicted him along with appellants No.3 and 4 for commission of an offence under Section 324 of the Indian Penal Code. We may also notice that whereas in the beginning of the judgment, he recorded the sentence imposed upon appellants No.2 to 4 to undergo rigorous imprisonment for three years, in the operative part of the judgment, he directed that they were sentenced to undergo rigorous imprisonment F G

A for one year only. We have, however, no option but to hold that the later part of the judgment should be taken to be correct.

B 16. So far as the purported plea of alibi of appellant No.2 is concerned, a clear finding has been arrived at that DW-1 has manipulated Exhibit D-3 just to help the said accused. The High Court also agreed with the said view.

We do not see any reason to differ with the views of the learned Sessions Judge as also the High Court.

C 17. For the aforementioned reasons, we do not find any merit in this appeal. It is dismissed accordingly.

S.K.S.

Appeal dismissed.