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BASKAR @ KANNAN

v.

STATE OF TAMIL NADU

(Criminal Appeal No. 1249 of 2006)

JANUARY 20, 2009

B

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

PENAL CODE, 1860:

C

Sections 302, 304 Part II – Murder – Appellant-accused convicted under s.302 by Trial Court while convicting other accused under s.304 Part II – Upheld by High Court – On appeal, Held: Trial Court and High Court rightly found the appellant guilty relying on the evidence of witnesses related to the deceased – Reasoning given therefore does not suffer from any infirmity.

D

Appellant-accused was convicted u/s 302 IPC and the other accused u/s 304 Part II IPC by the Trial Court. The conviction of the appellant was upheld by the High Court. Hence the appeal.

E

Dismissing the appeal, the Court

F

HELD: 1. It is to be noted that PW-1 was not only an eye witness but also an injured witness. Merely because PWs 1 to 4 were related to the deceased that cannot be a ground to cast a doubt on the authenticity of their evidence. What was required was the closer scrutiny of the evidence. PW-1 has narrated the entire incident in Ext.P-1 which was lodged immediately while he was admitted in the Government Hospital for treatment. In the Ext.P-1 PW-1 has categorically stated about the presence of A-1 to A-7. He had also stated that A-1, A-2, A-3 A-4, A-5, and A-6, the present appellant were armed with aruvals.

H

He had also given a detailed description of the overt acts attributable to each one of them, and as to how they attacked the deceased. His evidence in Court is to similar effect. The evidence of PWs 2 to 4 is also in similar lines. [Para 5] [405-F-H]

2. The High Court noted that after there was a quarrel A-1 went to his village and brought all the accused persons with him. On the facts of the case the High Court noted that there was absence of common object. What was to be expected was an assault. Accordingly, it was held that A-2 to A-7 were guilty of offence punishable under Section 304 Part II, IPC. The Trial Court and the High Court have rightly found the appellant guilty. The reasoning given by the High Court to find the appellant guilty does not suffer from any infirmity. [Para 6] [406-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1249 of 2006.

From the Judgment and Order dated 21.7.2006 of the High Court of Madras, Bench at Madurai in CrI. Appeal No. 1473 of 2003.

A.T.M. Rangaramanujam, P.N. Ramalingam, Pugazhenlhi and Balamurugan, for the Appellant.

R. Sundaravaradhan, S. Thananjayan and R. Nedumaran, for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court upholding the conviction of the appellant for offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC'). The accused persons are described as A-1, A-2 etc. as described by the Trial Court. A-1 by the impugned

A judgment of the High Court was held guilty of offence punishable under Section 302 IPC, while A-2 to A-7 including the present appellant were found guilty under Section 304 Part II, IPC and each was sentenced to undergo rigorous imprisonment for five years. A-3 to A-7 were found guilty of offence under Section B 324 IPC and each was sentenced to under RI for two years. A-1 to A-7 were acquitted of the other charges leveled against them. A-9 and A-10 were acquitted of the charges levelled against them. Fifteen persons faced trial, out of whom the trial C as noted above, the High Court directed acquittal of A-9 and A-10.

2. The prosecution version as unfolded during trial is as follows:

D PW-1 is the native of Thugli Periyar Nagar. PWs 2, 3, 4 5 and 6 all belonged to the same place. PWs 2, 3 and 4 were originally employed in Ambika Sugar Mills, Kottur. P.Ws. 6 and 7 are also the residents of the said place and all were carrying on agricultural operations. P.W.8 belonged to kealathur village, E where he was serving as village menial. P.W.9 belonged to Keezhasuriya Moolai village, where he was serving as village assistant community. A-1 to A-11 and A-13 to A-15 belong to Hindu Padayachi out of whom, A-1 and A-2, though belonged to Hinduism originally, switched over to Muslim faith. A-12 F belonged to another community. P.Ws. 1 to 4 belonged to scheduled caste and they were all employed at the time of occurrence under one Bhaskar.

On 26.3.2001 at about 5.00 p.m., after finishing work, P.Ws. 1 to 4 came out of the sugar factory and went to a nearby G tea stall for taking tea. At that time, A-1 was plying auto on the road. On seeing sugarcane on the road, P.Ws. 1 to 4 were able to proceed on the middle of the road. When A-1 came nearby he uttered "you add four more persons and lie on the road". In reply, P.W.1 told him "on hearing the horn of the Auto, we gave H way and even then, why are you scolding". There arose a

quarrel. In that, A-1 took casurine stick and tried to attack P.W.1. The other witnesses, namely P.Ws. 2 to 4 held the accused and stopped him from attacking. This was also witnessed by Thangeraj (hereinafter referred to as deceased), who was taking tea in a nearby tea stall. He suddenly intervened and pacified them.

A-1 turned the Auto and took the same to Keezhasuriyamoolai village. P.Ws. 1 to 4 went to Muniyendi Vilas for taking tea. Forty five minutes later, at about 6.00 p.m., when the witnesses along with Thangaraju were at the place of occurrence, A-1, A-2, A-4 to A-6 armed with aruvals, A-3 armed with an iron rod and A-7 armed with a knife and the other accused armed with casurina sticks, came there. The deceased Thangaraju tried to pacify them. A-1 cut the deceased on the left side of the neck. Again A-1 cut the deceased below the left ear. A-4 cut him on the left side of the hip. A2 cut him with aruval on the left shoulder. A-5 cut the deceased on the waist. A-7 stabbed him with the knife on the left armpit and the deceased fell down. A-3 beat PW-1 on the head with the iron rod. A-4 cut P.W.1 on the left waist. The rest of the accused surrounded P.W.1 and cut P.W.1 on the right arm, left shoulder, right thigh and on the back respectively and they fled away from the place of occurrence.

One Mohan took P.W.1 to the Government Hospital, Kumbakonam, where he was admitted by P.W.10, the Doctor, at about 7.00 p.m. He issued Ex.P.11, the wound certificate. A communication was received by P.W. 13, the Head Constable, attached to Kumbakonam East Police Station at 19.30 hours, who in turn informed the same to Penthenellur Police Station, within whose jurisdiction the occurrence has taken place. On receipt of the intimation on 26.3.2001 at 1930 hours, P.W.16, the Sub. Inspector of Police proceeded to the Government Hospital, Kumbakonam at 2030 hours. He recorded the statement of P.W.1, which was marked as Ex.P.1, on the strength of which a case came to be registered in Crime No.

A 72 of 2001 under Sections 147, 148, 324, 307 and 302 IPC and Section 3(2)(v) of SC/ST Act. Ext. P17 the FIR was dispatched to the Court.

B P.W.19, the Deputy Superintendent of Police, on receipt of the copy of the FIR on 26.03.2001 at about 11.00 p.m., proceeded to the place of occurrence and made an inspection in the presence of two witnesses. He prepared Ex.P.2, the observation mahazar and Ex.P.35, the rough sketch. He conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and prepared C Ex.P.35, the inquest report. Following the same, the dead body was sent to the Government Hospital, Thiruvaidaimarudur for the purpose of post-mortem.

D The autopsy of the dead body was conducted. During investigation A-5 gave confessional statement voluntarily and the same was recorded in the presence of witnesses. Following the same A-5 produced five aruvals, one iron rod and one knife in the presence of witnesses. After completion of investigation, charge sheet was filed. Since the accused persons pleaded E innocence trial was held. Prosecution examined 20 witnesses. As noted above, the trial Court found the appellants to be guilty and awarded punishments.

F Before the High Court the primary stand related to acceptability of so called eye witnesses PWs 1 to 4, particular emphasis was made on the evidence of PW-1 to show that there could not have been a common object to murder the deceased or attempt to murder PW-1. It was also submitted that it is highly unbelievable that twenty persons were involved in such an attempt. It was, therefore, highlighted that in a group G clash PWs 1 to 4 could not identify the assailants properly. The High Court did not find any substance in the stand taken by the appellant. The High Court did not accept the stand of the prosecution regarding applicability of Section 302 read with Section 149 IPC. It was held that in respect of the respective H acts committed by each one of them the matter is required to

be considered. From the post mortem certificate it was noticed that the first injury was caused by A-1 with aruval on the neck and the corresponding injuries caused the death. At the same time, A-2, A-4, A-5 and A-6 were armed with aruval, A-7 with knife and A-3 with iron rod and they have attacked the deceased and contributed corresponding injuries. Therefore, it was held that A-1 had to be convicted in terms of Section 302 IPC. So far as others are concerned the acts attracted Section 304 Part II IPC.

3. In support of the appeal, learned counsel for the appellant submitted that the High Court has erred in discarding the stand of the appellants before it. So far as the present appellant is concerned there was no specific role attributed to him. Therefore, his conviction as maintained by the High Court cannot be sustained.

4. Learned counsel for the respondent-State on the other hand submitted that this is a case where clearly Section 302 IPC read with Section 149 was applicable. He however conceded that no appeal has been filed by the State questioning the judgment of the High Court.

5. It is to be noted that PW-1 was not only an eye witness but also an injured witness. Merely because PWs 1 to 4 were related to the deceased that cannot be a ground to cast a doubt on the authenticity of their evidence. What was required was the closer scrutiny of the evidence. PW-1 has narrated the entire incident in Ext.P-1 which was lodged immediately while he was admitted in the Government Hospital for treatment. In the Ext.P-1 PW-1 has categorically stated about the presence of A-1 to A-7. He had also stated that A-1, A-2, A-3 A-4, A-5, and A-6, the present appellant were armed with aruvals. He had also given a detailed description of the overt acts attributable to each one of them, and as to how they attacked the deceased. His evidence in Court is to similar effect . The evidence of PWs 2 to 4 is also in similar lines.

- A 6. The High Court noted that after there was a quarrel A-1 went to his village and brought all the accused persons with him. On the facts of the case the High Court noted that there was absence of common object. What was to be expected was an assault. Accordingly, it was held that A-2 to A-7 were guilty of offence punishable under Section 304 Part II, IPC. We find that the trial Court and the High Court have rightly found the appellant guilty. The reasoning given by the High Court to find the appellant guilty does not suffer from any infirmity. The appeal is without merit and is dismissed accordingly.
- B
- C G.N. Appeal dismissed.