

JAGEBAR ALI @ SETTU
v.
STATE OF TAMIL NADU
(Criminal Appeal No. 38 of 2007)

JANUARY 20, 2009

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

PENAL CODE, 1860:

ss. 302 and 302 (part-II) – Main accused causing fatal injuries to victim with 'aruval' – Others joining him in attack – Conviction of main accused u/s 302 and co-accused u/s 304 (part-II) – Affirmed by High Court – HELD: High Court has indicated reasons for which main accused was treated differently – In view of findings of trial court and High Court, there is no merit in the appeal filed by main accused – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.3(2)(v).

The appellant (A-1) and 14 others were prosecuted for commission of offences punishable u/ss 147, 148, 307 and 302 IPC and s.3(2)(v) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution case was that on the day of incident at about 5 p.m. a quarrel took place between A-1 on the one side and PW-1 to PW-4 on the other and one 'J' pacified them. At about 6 p.m. when PW-1 to PW-4 and 'J' went to take tea, A-1, A-2, A-4 to A-6 armed with 'aruvals', A-3 armed with an iron rod, A-7 with a knife and other accused with casurina sticks attacked PWs 1 to 4. 'T' tried to pacify them but A-1 attacked him with 'aruval', A-2, A-5 and A-7 also joined A-1 in causing injuries to 'T' with their respective arms; A-3 and A-4 attacked PW-1 with their respective weapons, the rest of the accused also

A surrounded PW-1 and attacked him. 'T' died at the spot and PW-1 was taken to the hospital. During investigation A-5 made a confession and produced five 'aruvals, one iron road and one knife. The trial court convicted A-1 of the offence punishable u/s 302 IPC, A-2 to A-7 u/s 304 (part-II) IPC, A-9 and A-10 u/s 307 and acquitted A-8 and A-11 to A-15. On appeal, the High Court acquitted A-9 and A-10.

C In the appeal filed by A-1, it was contended for the appellant that he could not have been treated differently and convicted u/s 302 IPC whereas his co-accused were convicted u/s 304 (part-II) IPC.

Dismissing the appeal, the Court

D HELD: The High Court has indicated the reasons for which the appellant's case was treated differently. The trial court and the High Court have noted that the appellant had given a fatal blow on the neck of the deceased with aruval and the injury caused by such act proved fatal. In view of the findings recorded by the trial court and the High Court, there is no merit in the appeal. [Para 3 and 4] [412-D-F]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 38 of 2007.

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.

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

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

H 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 convicting A-1, the present appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). A-2 to A-7 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 324 IPC and each was sentenced to undergo RI for two years. A-1 to A-7 were acquitted of the other charges levelled against them. A-9 and A-10 were acquitted of the charges levelled against them. Fifteen persons faced trial, out of them the trial Court acquitted A-8, A-11 to A-15. By the impugned judgment, 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:

PW-1 is the native of Thugli Periyar Nagar. PWs 2, 3, 4 5 and 6 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 were carrying on agricultural operations. P.W.8 belonged to Kealathur village, 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 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 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 went near 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

A him "on hearing the horn of the Auto, we gave 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 restrained P.W.1. The other
witnesses, namely P.Ws. 2 to 4 held the accused and stopped
B him from attacking. This was also witnessed by the Thangaraju
(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
C 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 Thangaraj 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
D 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
E 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.

F 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,
G 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
H 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. 72 of 2001 under Sections 147, 148, 324, 307 and 302 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ext. P17 the FIR was dispatched to the Court. A 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 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. C D

The autopsy of the dead body was conducted. During investigation A-5 gave confession 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 innocence trial was held. Prosecution examined 20 witnesses. As noted above, the trial Court found the appellants to be guilty and awarded punishments. E F

Before the High Court the primary stand related to acceptability of so called eye witnesses PWs 1 to 4. Particularly the emphasis was made on the evidence of PW-1 to show that there could not have 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 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 G H

A regarding applicability of Section 304 Part II read with Section 149 IPC. It was held that in respect of the respective 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 injury 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. Learned counsel for the appellant has submitted that while others were convicted for offence punishable under Section 304 Part II, IPC he alone has been convicted under Section 302 IPC. According to him, there is a parity between the co-accused persons. The High Court has indicated the reasons for which the appellant's case was treated differently. The trial Court and the High Court have noted that the appellant had given a fatal blow on the neck with aruval and the injury caused by such act proved fatal. Therefore, there is no substance in the plea of the appellant that he stood on similar footing as that of co-accused persons.

4. In view of the findings recorded by the trial Court and the High Court we find no merit in this appeal which is accordingly dismissed.

R.P.

Appeal dismissed.