SINGAPAGU ANJAIAH

v.

STATE OF ANDHRA PRADESH

(Criminal Appeal No. 1166 of 2010)

JULY 6, 2010

[G.S. SINGHVI AND C.K. PRASAD, JJ.]

Penal Code, 1860 – s.302 – Death due to assault on head with a crow bar – Conviction of accused-appellant u/ s.302 – Justification of – Held: Justified – Appellant chose crow bar as the weapon of offence – He further chose a vital part of the body i.e. head for causing the injury which had caused multiple fractures of skull – This clearly shows the force with which appellant had used the weapon – The cumulative effect of all these factors irresistibly lead to the conclusion that appellant intended to cause death of the victim.

Eight accused including the appellant were put on trial for the offences of rioting, attempt to commit murder, murder and causing hurt. The offences were allegedly committed by the accused persons in view of their previous enmity with the prosecution party.

According to the prosecution, while PWs 1 to 5 sustained various injuries on their person, one person died when appellant-accused hit him with a crow bar on his head. In the opinion of the autopsy surgeon, death had occurred due to laceration over the vertex of the scalp and multiple skull fractures.

The trial Court sentenced all the accused for offence under Section 302/149. However, on appeal, the conviction of all the accused except the appellant under Section 302/149 IPC was set aside by the High Court.

A **Hence the present appeal.**

Dismissing the appeal, the Court

HELD: In the present case, all the injured witnesses namely PWs 1 to 5 have consistently stated that the B **appellant assaulted the deceased with a crow bar on his head. As nobody can enter into the mind of the accused, its intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a** C **crow bar as the weapon of offence. He has further chosen a vital part of the body i.e. head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors** D **irresistibly lead to one and the only conclusion that the appellant intended to cause death of the deceased. [Paras 15, 16] [709-G-H; 710-A-C]**

Gurmail Singh & others v. State of Punjab **(1982) 3 SCC** E **185;** *Jagtar Singh v. State of Punjab* **(1983) 2 SCC 342 and** *Gurmukh Singh v. State of Haryana* **(2009) 15 SCC 635, distinguished.**

Case Law Reference:

F **(1982) 3 SCC 185**	**distinguished**	**Para 10**
(1983) 2 SCC 342	**distinguished**	**Para 11**
(2009) 15 SCC 635	**distinguished**	**Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal G No. 1166 of 2010.

From the Judgment & Order dated 31.3.2008 of the High Court of Judicature Andhra Pradesh at Hyderabad in Crl. Appeal No. 611 of 2006.

H

A.T.M. Rangaramanujam, Anu Gupta, Gouri K. Das, Rani Jethmalani for the Appellant. A

D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by B

C.K. PRASAD, J. 1. The sole petitioner, aggrieved by the judgment and order dated 31.03.2008 passed by the Division Bench of the Andhra Pradesh High Court in Criminal Appeal No.611 of 2006 affirming the judgment and order dated 6.4.2006 passed by the II Additional Sessions Judge (Fast Track Court), Mahabubnagar in Sessions Case No. 175 of 2003, has preferred this petition for grant of special leave to appeal. C

2. Leave granted. D

3. Altogether eight persons, including the appellant were put on trial for various offences punishable under Section 148, 307/149, 302, 302/149 and 324 of the Indian Penal Code.

4. The appellant, in particular, was charged for offences of rioting, attempt to commit murder of S. Ramulu (PW.1), murder of S. Ramalingam and causing hurt to S. Ramchandriah (PW.5), punishable under Section 148, 307, 302 and 324 of the Indian Penal Code respectively. The trial court acquitted all the accused persons for the offence under Section 307/149 of the Indian Penal Code but sentenced all of them for offence under Section 148, 324/149 and 302/149 and sentenced them to undergo imprisonment for life for the offence under Section 302/149 and rigorous imprisonment for nine months for the offence under Section 148 and 324/149 of the Indian Penal Code. On appeal, conviction of all the accused except the appellant under Section 302/149 of the Indian Penal Code was set aside. However, the conviction of other accused under other offences have been maintained to which we are not concerned in this appeal. Appellant's conviction and sentence under E F G H

A Sections 148, 324 and 302 of the Indian Penal Code has been maintained.

5. Sole appellant has preferred this appeal against the order of conviction and sentence.

B 6. According to the prosecution, PWs. 1 to 5 and accused persons are close relatives and they are residents of village Tirumalairi. There was a dispute between the prosecution party and the accused persons over a pathway for which an altercation took place earlier between them and a case bearing C Crime No.15 of 1997 was registered at the Police Station Balanagar under Section 324 of the Indian Penal Code. S. Ramulu (PW.1) and his brothers were prosecuted in the said case and ultimately they were found guilty and sentenced to pay a fine of Rs.100/-. According to the prosecution, accused D persons were annoyed on account of their conviction and waiting for an opportunity to take revenge.

7. According to the prosecution, on 9.7.2002 at 7 A.M., S. Ramulu (PW.1)was on way to his newly constructed house situated at the end of the village. He noticed one of the accused E and two other persons at the house of S. Thirumalaiah (PW.6). One of the persons at the house of PW.6 was Bichya Naik who happened to be the Chairman of Watershed Committee. One of the accused and said Bichya Naik requested PW.6 to provide chairs for the school to which S. Ramulu (PW.1) replied F that the chairs purchased by the Sarpanch could be spared for the purpose. The said accused did not like that and abused PW.1 for which the later admonished him. At this, according to the prosecution, the said accused assaulted PW.1. In the meanwhile, according to the prosecution, the appellant herein G came from behind, held his head and threw him down.

8. According to the prosecution, accused persons assaulted S. Ramulu (PW.1), S. Narsimha (PW.2), S. Nagaiah (PW.3), S. Anjaiah (PW.4) and S. Ramchandriah (PW.5,)and H all of them have sustained various injuries on their person. The

present appellant, according to these injured persons, hit the deceased with a crow bar at his head causing serious injury. A report of the incident was given by PW.1-S.Ramula to PW.11-Rajender Kulkarni, the Station House Officer of Balanagar Police Station and on that basis, crime no. 147 of 2002 was registered. Rajender Kulkarni, Sub-Inspector of Police sent all the injured to the Government Hospital, Shadnagar but Ramalingam succumbed to the injuries on way to the hospital. All the injured witnesses, namely PW.1 to PW.5 were examined by Dr. Govind Waghmare (PW.9), Civil Assistant Surgeon who found several injuries on person of each of those witnesses. Dr. Govind Waghmare (PW.9) also held autopsy on the dead body of the deceased S. Ramalingam and he found presence of bleeding from left ear and laceration into bone deep over the vertex in the scalp. He further found multiple skull fractures on the person of the deceased and in his opinion, the death was caused due to the haematoma of the brain and multiple skull fractures.

9. The police, after usual investigations, submitted the charge-sheet and all the accused persons including the appellant were put on trial. They denied to have committed the offence and claimed to be tried. The prosecution, in support of its case, examined altogether 12 witnesses besides various documentary evidences were produced. The Trial Court as well as the Appellate Court relying on the evidence of the prosecution witnesses, convicted and sentenced the appellant as above.

10. Shri A.T.M. Ranga Ramanujam, learned Senior Counsel appearing on behalf of the appellant submits that even if the case of the prosecution is accepted in its entirety, no offence under Section 302 of the Indian Penal Code is made out. According to him, the allegation proved utmost makes out the case under Section 304 Part II of the Indian Penal Code and accordingly he submitted that conviction under Section 302 be altered to that of 304 Part II and appellant be sentenced to

A the period already undergone by him. In support of the submission, he has placed reliance on a judgment of this Court in the case of *Gurmail Singh & others vs. State of Punjab* (1982) 3 SCC 185 and our attention has been drawn to the following passage from para 7 of the judgment :

B

> "7.....We are of the opinion that in the facts found by the High court, it could not be said that accused 1 Gurmail Singh intended to cause that particular bodily injury which in fact was found to have been caused. May be, the injury inflicted may have been found to be sufficient
> C in the ordinary course of nature to cause death. What ought to be found is that the injury found to be present was the injury that was intended to be inflicted. It is difficult to say with confidence in the present case keeping in view the facts found by the High court that accused 1 Gurmail Singh
> D intended to cause that very injury which was found to be fatal."

11. Reliance has also been placed a decision of this Court in *Jagtar Singh vs. State of Punjab* (1983) 2 SCC 342 and
E our attention was drawn to para 8 of the judgment which reads as follows :

> "8. The next question is what offence the appellant is shown to have committed? In a trivial quarrel the appellant wielded a weapon like a knife. The incident
> F occurred around 1.45 noon. The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a
> G knowledge that he was likely to cause an injury which was likely to cause death. Therefore, the appellant is shown to have committed an offence under Section 304 Part II of the IPC and a sentence of imprisonment for five year will meet the ends of justice."

H

12. Yet another decision relied on is in the case of *Gurmukh Singh vs. State of Haryana* (2009) 15 SCC 635 and our attention was drawn to para 21 and 22 of the judgment which read as follows :

> "21. In the instant case, the occurrence had taken place on the spur of the moment. Only the appellant Gurmukh Singh inflicted a single lathi-blow. The other accused have not indulged in any overt act. There was no intention or premeditation in the mind of the appellant to inflict such injuries to the deceased as were likely to cause death in the ordinary course of nature. On consideration of the entire evidence including the medical evidence, we are clearly of the view that the conviction of the appellant cannot be sustained under Section 302 IPC, but the appropriate section under which the appellant ought to be convicted is Section 304 Part II IPC.
>
> 22. Before we part with the case, we would like to clearly observe that we are not laying down that in no case of single blow or injury, the accused cannot be convicted under Section 302 IPC. In cases of single injury, the facts and circumstances of each case have to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted under Section 302 IPC or under Section 304 Part II IPC."

13. Smt. D. Bharathi Reddy, learned counsel appeared on behalf of the State.

14. We do not find any substance in the submission of Shri Ramanujam and the decisions relied on are clearly distinguishable.

15. In view of the submissions made, we do not deem it expedient to narrate the entire evidence on record. Suffice it to say that all the injured witnesses namely P.W. 1 to 5 have consistently stated that the appellant assaulted the deceased

A with a crow bar on his head. According to the autopsy surgeon, Dr. Govind Waghmare, death had occurred due to laceration over the vertex of the scalp and multiple skull fractures.

16. In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the weapon B used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crow bar as the weapon of offence. He has further chosen a vital part of the body i.e. head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which C the appellant had used the weapon. The cumulative effect of all these factors irresistibly lead to one and the only conclusion that the appellant intended to cause death of the deceased.

17. Now referring to the decision of this Court in the case D of *Gurmail Singh* (Supra), the same is clearly distinguishable. In the said case, on fact, it was found that the accused did not intend to cause the injury which in fact was found to have been caused and in the said background, it was held that the accused did not intend to cause death, which is not the situation E here.

18. In the case of *Jagtar Singh* (Supra), the incident was preceded by a sudden and chance quarrel and in that background, the Court held the allegation proved to be under Section 304 Part II of the IPC. F

19. In the case of *Gurmukh Singh* (Supra), the injury found on the deceased was only depression of skull bone and the occurrence had taken place in the spur of the moment. In the background of the aforesaid facts, infliction of single lathi blow G was not found enough to infer the intention of the accused to cause death of the deceased. Here, as pointed out above, the three important factors enumerated above, clearly lead to the conclusion that appellant intended to cause death.

H 20. Hence, all these decisions are clearly distinguishable.

21. In the present case, as pointed out above, weapon used, the part of the body chosen for assault and the intensity with which the appellant assaulted the deceased clearly go to show that he intended to cause the death of the deceased. A

22. We do not find any merit in this appeal. It is dismissed accordingly. B

B.B.B Appeal dismissed.