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LOKESH SHIVAKUMAR

v.

STATE OF KARNATAKA

(Criminal Appeal No.1326 of 2005)

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FEBRUARY 10, 2012

[AFTAB ALAM AND ANIL R. DAVE, JJ.]

Penal Code,1860: s.302 r/w s.34 - Death by fatal blow - A-1 had borrowed money from victim-deceased - On the C *fateful day, A-1 took the deceased out of the house on the pretext of payment of money - All the accused surrounded the deceased - A-2-appellant picked up a gobbaly tree wood piece lying nearby and struck on the head of deceased with it which caused his death - Conviction of appellant along with* D *the other three accused - High Court while acquitting A-3 and A-4 affirmed the conviction of appellant and A-1 - On appeal, held: There was no discrepancy between the ocular evidence and the medical evidence - Since prosecution case was established by reliable ocular evidence coupled with medical* E *evidence, the issue of motive was not of any significance - Common intention can form and develop even in course of the occurrence, therefore, the fact that appellant had not brought any weapon with him was of no relevance - It was the appellant who struck the first blow on the head of deceased* F *and according to post-mortem report that blow itself caused his death - Appellant rightly convicted u/s.302 r/w s.34.*

Criminal law: Motive - Relevance of - Held: If the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive G *loses practically all relevance.*

The prosecution case was that the victim-deceased was engaged in the business of money lending. Accused No.1 had borrowed Rs.10,000/- from the deceased. The

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deceased went to jail in connection with some case, authorizing his younger brother (informant-PW.1) to realise the money from his debtors in his absence. PW1 tried to realise the loan amount from accused No.1 but was unsuccessful. On a fateful day, when the deceased and his brother (PW.1) were in their house, accused No.1 came there and asked the deceased to go out with him saying that he wanted to pay back the money that he had borrowed from him. The deceased went along with him but did not return. After about half an hour, PW1 along with two of his associates PW.2 and PW.14 went looking for him. On reaching near the house of accused no.3, they saw the deceased surrounded by accused no.2-appellant and accused nos.1, 3 and 4. At that point, the appellant picked up one gobbaly tree wood piece which was lying there and swinging it like a club hit the deceased with it on the right side of his head. Accused No.1 then picked up a large stone and flung it on the head of the deceased. The deceased got severe bleeding injuries on his head, face and nose. He was taken to hospital where he was declared dead.

The trial court convicted all the four accused under section 302/34, IPC and sentenced them to life imprisonment and a fine of Rs.500/- each. On appeal, the High Court held that there was no evidence that accused Nos. 3 and 4 shared the common intention of causing the death of the deceased. It, accordingly, acquitted them of the charge but maintained the conviction and sentence of the appellant and accused No.1. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

Held: 1.1 As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue

A of motive loses practically all relevance. In this case, the ocular evidence led in support of the prosecution case was wholly reliable and there was see no reason to discard it. The submission, therefore, that the appellant had no motive for the commission of offence is not of any B significance. All the three eye witnesses, namely, PWs.1, 2 and 14 deposed that the appellant picked up a gobbaly tree wood piece and struck on the right side of the head of the deceased with it. The first external injury recorded in the post-mortem report that caused the compound C fracture of underlying frontal bone was on the right frontal region and according to the doctor, it could have been caused by the piece of wood (MO.2). There was no discrepancy between the medical evidence and the ocular evidence. On the contrary, the medical evidence corroborated the eye witness account of the occurrence. D The third submission that the appellant had not brought any weapon with him was equally without substance, as it is well settled that common intention can form and develop even in course of the occurrence. It is true that the appellant had not brought with him any weapon but E it is equally true that in the gobbaly tree wood piece lying at the place of occurrence he found one and used it with lethal effect. It was the appellant who struck the first blow on the right side of the head of the deceased and according to the post-mortem report that blow itself might F have caused his death. Therefore, the facts of the case clearly attracted section 34, IPC in so far as the appellant is concerned. [Paras 8, 15] [902-F-H;. 903-A-C; 907-B-C]

Y. Venkaiah v. State of Andhra Pradesh (2009) 12 SCC G 126: 2009 (3) SCR 915; *Jagannath v. State of Madhya Pradesh* (2007) 15 SCC 378: 2007 (9) SCR 1097; *Laxmanji and another v. State of Gujarat* (2008) 17 SCC 48: 2008 (17) SCR 171; ***State of Punjab v. Bakhshish Singh and others*** (2008) 17 SCC 411: 2008 (14) SCR 742; *Sripathi and others* H *v. State of Karnataka* (2009) 11 SCC 660: 2009 (5) SCR 309;

Akaloo Ahir v. State of Bihar **(2010) 12 SCC 424: 2010 (4) SCR 604 - held inapplicable** A

Case Law Reference:

2009 (3) SCR 915	**held inapplicable**	**Para 9**
2007 (9) SCR 1097	**held inapplicable**	**Para 9, 10**
2008 (17) SCR 171	**held inapplicable**	**Para 9, 11**
2008 (14) SCR 742	**held inapplicable**	**Para 9, 12**
2009 (5) SCR 309	**held inapplicable**	**Para 9, 13**
2010 (4) SCR 604	**held inapplicable**	**Para 9, 14**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1326 of 2005.

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From the Judgment & Order dated 3.6.2004 of the High Court of Karanataka at Bangalore in Crl. A. No. 1129 of 2000.

Naresh Kumar for the Appellant.

V.N. Raghupathy for the Respondent. E

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. The appellant who was accused No.2 before the trial court is convicted under section 302 read with section 34 of the Penal Code and is sentenced to rigorous imprisonment for life and a fine of Rs.500/- with the default sentence of rigorous imprisonment for a week. F

2. According to the prosecution case, one Dharamaraj, the deceased was engaged in the business of money lending and G accused No.1 Madhu @ Mahadeva had borrowed from him Rs.10,000/-. Dharamaraj went to jail in connection with some case, authorizing his younger brother Mallesha (informant-PW.1) to realise the money from his debtors in his absence. Mallesha tried to realise the loan amount from Madhu but was H

A unsuccessful. On July 18, 1997, when Dharamaraj came out from the jail, Mallesha told him that Madhu had not refunded the money due to him. Dharamaraj said that he would himself get back the money from Madhu. It is further the prosecution case that on July 21, 1997, there was a festival in the village
B and in the evening at about 5:45 PM, the deceased and his brother Mallesha (PW.1) were in their house. At that time Madhu came to them and asked Dharamaraj to go out with him saying that he wanted to pay back the money that he had borrowed from him. Dharamaraj went along with him but, as he
C did not return after about half an hour, Mallesha along with two of his associates (Mahesh PW.2) and (Mukunda PW.14) went looking for him in the direction of Madhu's house. On reaching near the house of Shivanna (accused No.3) they saw Dharamaraj surrounded by Madhu, the appellant and Shivanna
D and Thomas (accused nos.3 & 4 respectively). Shivanna and Thomas were hitting him with fists as a result of which he fell down. At that point, the appellant picked up one *gobbaly* tree wood piece which was lying there and swinging it like a club hit Dharamaraj with it on the right side of his head. Madhu then
E picked up a large stone and flung it on the head of Dharamaraj. Dharamaraj got severe bleeding injuries on his head, face and nose. He was taken to a hospital but was declared brought dead.

3. Before the trial court, PWs.1, 2 and 14 were examined
F as eye witnesses, who fully supported the prosecution case. The doctor who had conducted the post-mortem on the dead body of Dharamaraj was examined as PW.11. He proved the post-mortem report. According to the doctor, he found a number of external injuries on the body of Dharamaraj which
G he described as follows:-

"1. Obliquely situated lacerated wound on the right frontal region measuring 2-1/2" x ½" x bone deep with the compound fracture of underlying frontal bone.

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2. Obliquely situated lacerated wound on the lateral aspect of the right eye brow; 1-1/2" x ½" into bone deep with fracture of underlying bone.

3. Compromise at the root of the nose with fracture on nasal bone."

4. Lacerated wound on the right side of the lower lip ½" x ¼".

5. Abrasion on the anterior aspect of the right leg ½" x ¼"."

On dissection, the external injuries were found corresponding to the following internal injuries:

1. Fracture of right side of the frontal bone of the skull, fracture of right orbit, fracture of nasal bone with crushing of right eye ball.

2. The membrane of the frontal region was returned.

3. Brain matters of right anterior part of the brain was crushed.

4. The *gobbaly* tree wood piece used by the appellant and the stone piece that Madhu had flung on the head of the deceased were also produced before the court as MO.2 and MO.1 respectively. On being shown the two material objects, the doctor stated that the injuries found on the dead body were possible if the person was assaulted with the club MO.2 and the stone MO.1. Further, replying to a question in cross-examination the doctor said that injuries Nos.2 & 3 found on the external examination of the body as recorded in the post-mortem report could have been caused if the deceased was hit with a stone and the other injuries could have been caused with the club or on coming into contact with a hard surface.

5. The trial court convicted all the four accused under

A section 302/34 of the Penal Code and sentenced them to life imprisonment and a fine of Rs.500/- each.

6. On appeal, the High Court found and held that there was no evidence that accused Nos. 3 & 4 shared the common
B intention of causing the death of Dharamaraj. It, accordingly, acquitted them of the charge but maintained the conviction and sentence of the appellant and accused No.1, Madhu.

7. Against the judgment of the High Court, the appellant has come in appeal. Mr. Naresh Kumar, learned counsel
C appearing for the appellant strenuously argued that like the other two accused acquitted by the High Court, there could be no application of section 34 of the Penal Code in the case of the appellant as well and his conviction under section 302 of the Penal Code with the aid of that section was wholly
D unsustainable. Learned counsel submitted that the appellant had no motive to commit the offence since he did not owe any money to the deceased and it was only Madhu who owed him Rs.10,000/- and, thus, could be said to have the motive to kill him. Secondly, according to the learned counsel, there was
E discrepancy between the ocular evidence and the medical evidence and thirdly the appellant had not brought any weapon for commission of the offence. All these circumstances cumulatively ruled out his sharing the common intention to kill Dharamaraj.

F 8. As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance. In this case, we find the ocular evidence led in support of the prosecution case wholly reliable and see
G no reason to discard it. The submission, therefore, that the appellant had no motive for the commission of offence is not of any significance. As to any discrepancy between the ocular evidence and the medical evidence, we find none. All the three eye witnesses, namely, PWs.1, 2 and 14 deposed that the
H appellant picked up a *gobbaly* tree wood piece and struck on

the right side of the head of Dharamaraj with it. It is seen above that the first external injury recorded in the post-mortem report that caused the compound fracture of underlying frontal bone was on the right frontal region and according to the doctor, it could have been caused by the piece of wood (MO.2). We, therefore, fail to see any discrepancy between the medical evidence and the ocular evidence. On the contrary, the medical evidence tends to corroborate the eye witness account of the occurrence. The third submission that the appellant had not brought any weapon with him is equally without substance, as it is well settled that common intention can form and develop even in course of the occurrence. It is true that the appellant had not brought with him any weapon but it is equally true that in the *gobbaly* tree wood piece lying at the place of occurrence he found one and used it with lethal effect.

9. In support of the submission that section 34 of the Penal Code shall have no application to the case of the appellant, learned counsel relied upon a number of decisions of this Court, namely, *Y. Venkaiah v. State of Andhra Pradesh*, (2009) 12 SCC 126, *Jagannath v. State of Madhya Pradesh*, (2007) 15 SCC 378, *Laxmanji and another v. State of Gujarat*, (2008) 17 SCC 48, *State of Punjab v. Bakhshish Singh and others*,(2008) 17 SCC 411, *Sripathi and others v. State of Karnataka*, (2009) 11 SCC 660 and *Akaloo Ahir v. State of Bihar* (2010) 12 SCC 424. Of the many cases cited by the learned counsel, *Venkaiah's* case has no application to the facts of the case in hand but the other decisions relied upon in support of the contention would need some explaining.

10. In *Jagannath* (supra), two brothers, namely, Dhoomsingh and Ramsingh (the deceased) had collected drift wood from a river that flowed by the side of their house. The appellant, Jagannath, and one Prabhudayal stole the wood collected by the two brothers on which an altercation took place between the two sides. In course of the altercation, Prabhudayal gave an axe blow on the head of Ramsingh that

led to his death. The appellant, Jagannath, according to the prosecution case, caused some injuries to the informant (PW-11) and another witness, Naval Singh (PW-2), who had come on the site of occurrence. The injuries caused by the appellant Jagannath to the two witnesses were all simple in nature. It is, thus, to be noted that the occurrence took place in course of an altercation. The appellant Jagannath did not cause any injury to the deceased and caused only some simple injuries to the two prosecution witnesses. It was in those facts and circumstances that this Court held that he could not be said to have shared the common intention with the other accused to cause the death of Ramsingh.

11. In *Laxmanji* (supra), the appellants before the Court were accused Nos. 2 and 3. According to the prosecution case, they along with accused No. 1, who was carrying a *Rampuri* knife and accused No. 4, who had a stick, went to the house of the deceased, Bhamraji. The two appellants (accused 2 and 3) caught hold of the deceased while accused No. 1, who was having a knife, inflicted knife blows on the right hand side region of the abdomen and the thigh region of the deceased. As a result of the injuries, he fell down and later died. The trial court convicted accused No. 1 under section 302 and the two appellants (accused 2 and 3) under section 302 read with section 34 of the Penal Code. It acquitted accused No. 4. The High Court maintained the appellants' conviction. This Court, in the facts of the case, held that no common intention can be attributed to the appellants to cause the murder of the deceased. Though, it is not clearly spelled out but what seems to have weighed with the Court is that the appellants had merely caught hold of the deceased and had caused no injury to him.

12. In *Bakhshish Singh* (supra), it was the case of the prosecution that while a certain Kabul Singh (PW-4) and his nephew, Mangal Singh (the deceased), were returning from the fields along with Swinder Kaur (PW-5), mother of Mangal Singh, they were accosted by the accused, namely, Bakhshish Singh

and Balbir Singh, both of them being armed with a dang and Balraj Singh, who was armed with a chhavi. Gurmeet Kaur, the mother of Balraj Singh, raised a *lalkara* saying that Kabul Singh and Mangal Singh should not be allowed to escape as they had damaged their crops. Bakhshish Singh and Balbir Singh caught Mangal Singh and threw him down on the ground while accused Balraj Singh, at the instigation of his mother Gurmeet Kaur, inflicted a chhavi blow on the head of Mangal Singh, causing a single injury that led to his death. The trial court relying upon the evidence of PW-4 and PW-5 convicted Bakhshish Singh and Balbir Singh under section 302 with the aid of section 34 of the Penal Code. In appeal, the High Court found that the evidence did not establish the role purportedly played by Gurmeet, Balbir and Bakhshish. The High Court also noted that one single blow was given by Balraj and that too in course of a sudden quarrel. It, accordingly, acquitted Gurmeet, Balbir and Bakhshish and modified the conviction of Balraj from section 302 to section 304 Part I of the Penal Code. In appeal, preferred by the State of Punjab against the judgment of the High Court, this Court declined to interfere.

13. In *Sripathi* (supra), once again in the course of an altercation accused No.4 inflicted a stab injury on the abdomen of the deceased while the other three accused held him at different parts of the body. This Court held against the applicability of section 34 of the Penal Code in so far as accused Nos.1 to 3 were concerned observing in Paragraph 8 of the judgment as follows:–

> "Coming to the plea regarding the applicability of Section 34 PC, we find that the evidence is not very specific as regards the role played by A-1, A-2 and A-3. It is prosecution version that *A-4 had the knife in his pocket which he suddenly brought out* and stabbed the deceased."
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> (emphasis added)

A 14. In *Akaloo Ahir* (supra), the deceased Kishore Bhagat was fired upon first by one Garju, but the shot missed him. Thereafter, the appellant Akaloo Ahir came on the scene and he also fired a shot at Kishore Bhagat which too missed its target. Following that attack, two other accused came on the
B scene. One of them handed over a cartridge to the other who fired a shot with his gun which hit Kishore Bhagat on his chest and stomach killing him on the spot. Akaloo Ahir and Garju were convicted by the trial court and the High Court under section 302 read with section 34 of the Penal Code. This Court,
C however, acquitted Akaloo Ahir under section 302/34 and convicted him under section 307 of the Penal Code (Garju had died in the meanwhile). The reason why this Court held that section 34 was not applicable in the case of Akaloo Ahir appears to be that all the four accused who took shots on the
D deceased in turn had not come to the place of occurrence together and at the same time but they came there one after the other. In paragraphs 8 and 9 of the judgment this Court observed as follows:–

"8. It has also to be noticed that the accused were all living
E in close proximity to each other and could have been attracted to the spot on account of the noise that had been raised on account of the first attack by Garju Ahir. It has come in evidence that both the parties were residents of Pokhra Tola which consisted only of 25 houses, all
F bunched up together. The possibility therefore, that they had been attracted to the place of incident on account of noise and had not come together with a pre-planned objective to commit murder cannot be ruled out.

G 9. It has been suggested by Mr. Chaudhary that Akaloo Ahir and Brij Mohan Ahir had come out from the same heap of straw which showed a pre-planned attack and a prior meeting of minds. We, however, see from the evidence of PW 5, Rama Shankar Yadav an eye witness, that there were two different heaps of straw near the place
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and the two accused had come out from behind different heaps. In any way there is no evidence to suggest that there was any prior meeting of minds." A

15. The facts of the case in hand are quite different. It is seen above that it was the appellant who struck the first blow on the right side of the head of Dharmaraj and according to the post-mortem report that blow itself might have caused his death. We have, therefore, no doubt that the facts of the case clearly attract section 34 of the Penal Code in so far as the appellant is concerned. B C

16. In light of the discussions made above, we find no merit in the appeal. It is, accordingly, dismissed.

17. This Court by its order dated October 7, 2005 granted bail to the appellant. His bail bonds shall stand cancelled. He shall be taken into custody forthwith to serve out his remainder sentence. D

D.G. Appeal dimissed.