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SELVAM

v.

THE STATE OF TAMIL NADU REP. BY INSPECTOR OF
POLICE

(Criminal Appeal No. 1857 of 2009 etc.

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OCTOBER 16, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

PENAL CODE, 1860:

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ss. 304 (Part-I) read with s.34 - Injuries on the head of victim by blunt side of 'aruval' and stick - Death of victim in hospital after 9 days - Held: The fact that the blunt side of the 'aruval' and a stick were used in the assault on the deceased would go to show that the accused did not have any intention to cause his death - Nonetheless, the injuries caused by the accused were all on the head of the deceased including the parietal and temporal regions - Accused, thus, had the intention of causing bodily injury as was likely to cause death and were liable to punishment for culpable homicide not amounting to murder u/s 304 (Part I) - After considering the oral and medical evidence and the fact that the deceased died after nine days of the assault, the conviction and sentence of the appellants u/s 302 is modified and instead they are convicted u/s 304 (Part-I) read with s. 34 and sentenced to rigorous imprisonment for seven years.

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ss. 33 and 34 - Explained.

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The appellants-accused nos. 1, 6, and 7 (A-1, A-6, A-7) along others were prosecuted for committing the murder of one 'Ch' (son of PW 2) and causing injuries to others. The prosecution case was that there was a land dispute between the families of the complainant-PW1 and A-1. On 15.11.2006, when the family of A-1 wanted to take

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a burial procession through the house street of the complainant family, the latter resisted it with the help of the village head and others; that on 16.11.2006, at about 15:00 Hrs., A-1 and his brothers A-2 to A-7 and others came to the family house of the complainant and attacked its inmates causing injuries to 'Ch' and others. 'Ch' was taken to the hospital, where he succumbed to his injuries on 25.11.2006. The trial court convicted A-1 u/s 302 IPC, A-6 and A-7 u/s 302 read with s. 34 IPC and A-4 u/s 324 IPC. The High Court declined to interfere.

In the instant appeals filed by A-1, A-6 and A-7, it was contended for the appellants that keeping in view the FIR, there was improvement in the statements of P Ws 1 and 2 before the court as regards the role attributed to A-7 and the nature of injuries stated to have been caused by A-1 and A-6; the victim died in the hospital after several days of the incident; and there being inconsistency in the ocular evidence and the medical evidence, it was a case where ocular evidence could not be believed.

Allowing the appeal in part, the Court

HELD: 1. The difference in the version in the FIR and the version in the evidence of PW-1 and PW-2 is not very material so as to create a reasonable doubt with regard to the participation of A-1, A-6 and A-7 in the assault on the deceased. In the FIR, it has been alleged that A-1 and A-6 delivered a cut on the deceased. PW-1, in his evidence, has stated that A-1 had delivered a cut on the centre of the head of the deceased and A-6 delivered a cut on the head of the deceased. Similarly, PW-2 has stated that A-1 delivered cut on the centre of the head of the deceased and A-6 snatched the 'aruval' from A-1 and delivered a cut on the centre of the head of the deceased. The FIR and the evidence of PW-1 and PW-2 are, thus, clear that A-1 and A-6 delivered cut injuries on the

A deceased. Regarding the participation of the A-7 in the
assault, in the FIR it is alleged that he assaulted on 'us'
with a stick. The evidence of PW-1 and PW-2 is that A-7
assaulted on the left side of the head of the deceased with
a stick. The word 'us' in the FIR cannot mean to exclude
B the deceased inasmuch as the deceased was the brother
of PW-1 and was the son of PW-2. There is evidence to
show that besides the deceased, PW-1 and PW-2 were
also injured and were treated at the hospital. A-7 has,
thus, used the stick not just against PW-1 and PW-2, but
C also against the deceased. Therefore, there is no material
difference between the version in FIR and in the evidence
of PW-1 and PW-2 on the role of A-7 in the assault. [para
10] [637-G-H; 638-A-E]

D 2. The evidence of PW-1 and PW-2 establishes
beyond reasonable doubt that A-1 used the aruval to
strike at the head of the deceased. From the evidence of
PW-1 and PW-2, it is also established beyond reasonable
doubt that A-6 snatched the aruval from A-1 and struck
E on the head of the deceased. The evidence of PW-1 and
PW-2 also establishes that A-7 struck at the head of the
deceased by a stick. The result of all these acts of
accused nos.1, 6 and 7 is the death of the deceased.
Section 34, IPC, states that when a criminal act is done
F by several persons in furtherance of the common
intention of all, each of such persons is liable for that act
in the same manner as if it were done by him alone.
Section 33, IPC, states that the word "act" denotes as well
G a series of acts as a single act. Thus, even though A-1,
A-6 and A-7 may have committed different acts, they have
cumulatively committed the criminal act which has
resulted in the death of the deceased and are liable for
the criminal act by virtue of s. 34, IPC. Therefore, it cannot
be said that A-7 was not liable for the same punishment
H as A-1 and A-6. [para 11] [638-E-H; 639-A-B]

3.1 The medical evidence of the doctor (PW-11) is clear that all the injuries of the deceased were most probably as a result of an assault by a blunt weapon and the deceased appears to have died due to head injuries. PW-11 has also admitted in her cross-examination that she did not see any incised injuries during the post mortem examination and had a sickle been used it would have caused incised wounds. Thus, it appears that A-1 and A-6 had used not the sharp side but the blunt side of the aruval and A-7 had used the stick in the assault on the deceased. The fact that the blunt side of the aruval and a stick were used in the assault on the deceased would go to show that A-1, A-6 and A-7 did not have any intention to cause his death. Nonetheless, the injuries caused by the accused A-1, A-6 and A-7 were all on the head of the deceased, including the parietal and temporal regions. A-1, A-6 and A-7, thus, had the intention of causing bodily injury as was likely to cause death and were, thus, liable to punishment for culpable homicide not amounting to murder u/s 304 (Part I), IPC. [para 12] [639-C-F]

State of Punjab v. Tejinder Singh & Anr. 1995 (2) Suppl. SCR 856 =1995 (3) Suppl. SCC 515 - relied on

3.2 In the instant case, the assault on the deceased was on 16.11.2006 and the deceased died in the hospital after nine days on 25.11.2006. In Abani K. Debnath's case this Court, after considering the nature of the injuries as well as the fact that the deceased succumbed to the injury after a lapse of seven days, took the view that the conviction of the accused in that case cannot fall u/s 302, IPC. [para 14] [640-D-E]

Abani K. Debnath and Another v. State of Tripura (2005) 13 SCC 422 - relied on

A **3.3 After considering the evidence of PW-1 and PW-2, the medical evidence of PW-11 and the fact that the deceased died after nine days of the assault, this Court is of the considered opinion that the trial court and the High Court were not right in convicting the appellants u/**
 B **s 302 and they should have been convicted instead u/s 304 (Part-I) read with s.34. Accordingly, the conviction and sentence on the appellants u/s 302 is modified and instead they are convicted u/s 304 (Part-I) read with s. 34 and sentenced to rigorous imprisonment for seven years.**
 C **[para 15] [640-E-G]**

Kalyan and Others v. State of U.P. 2007 (5) SCR 1053 = 2007 (9) SCC 513 = (2001) 9 SCC 632 2001 (3) Suppl. SCR 407 = 2001 (9) SCC 632; *B.N. Kavatakar and Another v. State of Karnataka* 1994 Supp. (1) SCC 304 - cited
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Case Law Reference:

	2007 (5) SCR 1053	cited	para 5
E	2001 (3) Suppl. SCR 407	cited	para 5
	1994 Supp.(1) SCC 304	cited	para 6
	(2005) 13 SCC 422	relied on	para 6
	1995 (2) Suppl. SCR 856	relied on	para 13

F **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1857 of 2009.**

G **From the Judgment & Order dated 12.12.2008 of the Madurai Bench of Madras High Court in CrI. A. (MD) Nos. 200 & 201 of 2008.**

WITH

Criminal Appeal Nos. 1667-1668 of 2012.

H **S.B. Sanyal, S. Mahendran, K.K. Mani, Abhishek Krishna**

for the Appellant.

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B. Balaji, M. Anbalagan for the Respondent.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. Leave granted in S.L.P. (Crl.) Nos. 575-576 of 2010. Page 2

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2. These Criminal Appeals are against the judgment dated 12.12.2008 of the Madras High Court, Madurai Bench, in Criminal Appeal Nos.200-201 of 2008.

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3. The facts very briefly are that on 16.11.2006 at 21:00 Hrs. a First Information Report (for short 'FIR') was lodged in Ganesh Nagar Police Station pursuant to a statement of Meyyappan recorded by the SubInspector of Police. In this FIR, it is stated thus: Mayyappan lived at the Thethampatti, Thiruvarangulam, alongwith his family and that there was a dispute pending between his family and the family of Arangan over land. On 15.11.2006 at 11.00 a.m. Mariappan, who belongs to the family of Arangan, died and the family of Arangan wanted to take the burial procession through house street of Meyyappan and his family members but Meyyappan's younger brother Chinnadurai and his father Rengaiah appealed to the important persons of the village saying that there was a separate public pathway for taking the dead body to the cremation ground and the village head and other villagers accordingly requested the members of the family of Arangan to carry the dead body of Mariappan through that public pathway. On 16.11.2006 at about 15:00 Hrs. Arangan and his brothers, Meyyappan, Murugan, Subbaiah, Chidambaram, Senthil, Selvam and others, armed with aruvals and sticks came to the family house of Meyyappan and asked his family members to come out and thereafter Arangan and Senthil delivered a cut on Chinnadurai and Selvam and others assaulted them with sticks and Chinnadurai was first taken to the government hospital and thereafter to the Thanjavur Medical

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A College Hospital for treatment.

4. On the basis of this statement of Meyyappan, Ganesh Nagar Police Station Crime No. 795/06 under Sections 147, 148, 323, 324 and 307 of the Indian Penal Code, 1860 (for short 'the IPC') was registered. Chinnadurai died at the hospital on 25.11.2006. Investigation was conducted and a charge-sheet was filed. Charges were framed against Arangan (accused no.1) under Sections 148 and 302 of the IPC, against Meyyappan (accused no.2) under Sections 148 and 307 of the IPC, against Subbaiah (accused no.3) under Sections 147 and 307 of the IPC, against Chidambaram (accused no.4) under Sections 148 and 326 of the IPC, against Murugan (accused no.5) under Sections 148 and 326 of the IPC, against Senthil (accused no.6) under Sections 148 and 302 read with Section 34 of the IPC, against Selvam (accused no.7) under Section 147, 302 read with Section 34 and Section 325 of the IPC, against Thilak (accused no.8) under Sections 147 and 325 of the IPC and against Marthandam (accused no.9) under Sections 147 and 302 read with Section 34 of the IPC. The Trial Court convicted accused no.1 under Section 302 of the IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.3000/- and in default, to further undergo rigorous imprisonment for a period of six months. The Trial Court also convicted accused nos. 6 and 7 under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.3000/- and in default, to further undergo rigorous imprisonment for a period of six months. The Trial Court convicted the accused no.4 under Section 324 of the IPC and sentenced him to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1000/- and in default, to further undergo rigorous imprisonment for a period of two months. Accused nos. 1, 4 and 6 filed Criminal Appeal no. 200 of 2008 and accused no.7 filed Criminal Appeal no. 201 of 2008 before the High Court against their conviction and sentences, but by the impugned judgment the High Court sustained the conviction and the

sentences. Accused no.7 has filed Criminal Appeal no. 1857 of 2009 and accused nos. 1 and 6 have filed the other Criminal Appeal arising out of SLP (Crl.) Nos. 575-576 of 2010. A

5. Mr. S.B. Sanyal, learned senior counsel appearing for the accused No.7, submitted that in the FIR it is alleged by the informant that the accused No.7 had assaulted persons other than Chinnadurai with stick. He submitted that the informant was examined before the Trial Court as PW-1 and he has given an entirely different version in his evidence and has said that the accused no.7 assaulted on the left side of the head of Chinnadurai. He further submitted that the father of Chinnadurai, namely, Rengaiah, has also been examined before the Trial Court as PW-2 and he has deposed that the accused no.7 assaulted on the left side of the head of Chinnadurai with stick. He submitted that PW-1 and PW-2 have improved upon the role of the accused No.7 in the assault on the deceased after coming to know of the opinion of the doctor in the post mortem report about the injuries on the deceased. He argued that where there is such variance between the version in the FIR and the version of PW-1 and PW-2 before the Court with regard to the exact role of the accused no.7 in the assault on the deceased, the accused No.7 cannot be convicted under Section 302 read with Section 34 of the IPC. He cited *Anil Prakash Shukla v. Arvind Shukla* [(2007) 9 SCC 513] in which this Court has taken a view that where the witnesses have improved their version given in the FIR after coming to know of the medical report, benefit of doubt must be given to the accused. He also relied on *Kalyan and Others v. State of U.P.* [(2001) 9 SCC 632] where benefit of doubt has been given to the accused on account of variance between the FIR and the deposition made in the court. B
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6. Mr. Sanyal next submitted that PW-11, who conducted the post mortem on the dead body of the deceased, is clear in his opinion that the injury on the head of the deceased was a 'contusion' and medical dictionary by P.H. Collin describes H

A 'contusion' as a bruise, a dark painful area on the skin, where blood has escaped into the tissues, but not through the skin, following a blow. He submitted that PW-11 has also stated in her cross-examination that she did not see any incised injury during the examination of the dead body. He submitted that as a matter of fact the deceased died in the hospital after several days of the incident. According to Mr. Sanyal, this was therefore not a case where accused no. 7 could be said to have any intent to cause the death of the deceased and therefore he was not guilty of the offence of murder under Section 302 of the IPC. In support of this submission, he relied on *B.N. Kavatakar and Another v. State of Karnataka* [1994 Supp.(1) SCC 304] in which this Court has held after considering the opinion of the medical officer and after considering the fact that the deceased died after five days of the occurrence that the offence would be punishable under Section 326 read with Section 34 of the IPC. He also cited *Abani K. Debnath and Another v. State of Tripura* [(2005) 13 SCC 422] where the deceased succumbed to injuries after lapse of seven days of the occurrence and this Court has converted the sentence as against accused no.1 from one under Section 302, IPC to one under Section 304 Part-II, IPC, and sentenced him to suffer rigorous imprisonment for five years.

7. Mr. Sanyal finally submitted that the High Court has in the impugned judgment treated the case of the accused no.7 in parity with accused nos. 1 and 6, but the facts of the case clearly establish that the role of the accused no.7 was different from that of accused nos. 1 and 6 in the occurrence and the accused no.7 should have been awarded lesser punishment than accused Nos. 1 and 6.

8. Mr. K. K. Mani, learned counsel appearing for the accused nos. 1 and 6 in Criminal Appeal arising out of S.L.P. (Crl.) Nos.575-576 of 2010, adopted the arguments of Mr. Sanyal. He further submitted that both PW-1 and PW-2 had deposed that accused no.1 and accused no.6 had given cut injuries on the deceased by aruval, but the medical evidence

of PW-11 is clear that a blunt weapon had been used in assaulting the deceased. He submitted that this is, therefore, a case where the ocular evidence cannot be believed because of its inconsistency with the medical evidence.

9. Mr. B. Balaji, learned counsel appearing for the State, in reply, submitted that PW-1 and PW-2 are injured eyewitnesses and cannot be disbelieved by the Court. He submitted that the contention of learned counsel for the appellants that the version given by PW-1 in the FIR and the version given before the Court are at variance is misconceived. He argued that in the FIR, PW-1 has stated that accused no.7 and others assaulted 'us' with stick and by the word 'us', PW-1 meant not only himself but also the deceased. He submitted that the evidence of PW-1 and PW-2 clearly establish that accused nos.1, 6 and 7 delivered the injuries on the head of the deceased, on account of which he fell unconscious and ultimately died. He submitted that the presence of accused nos.1, 6 and 7 at the spot and their role in assaulting the deceased are not in doubt and they are all liable for the offence under Section 302 read with Section 34, IPC. He finally submitted that this is not a fit case in which this Court should interfere with the concurrent findings of facts of the Trial Court and the High Court.

10. We have considered the submissions of learned counsel for the parties and we find that the difference in the version in the FIR and the version in the evidence of PW-1 and PW-2 is not very material so as to create a reasonable doubt with regard to the participation of accused nos.1, 6 and 7 in the assault on the deceased. In the FIR, it has been alleged that the accused nos.1 and 6 delivered a cut on the deceased. In his evidence, PW-1 has stated that accused no.1 had delivered a cut on the centre of the head of the deceased and accused no.6 delivered a cut on the head of the deceased. Similarly, in his evidence PW-2 has stated that accused no.1 delivered a cut on the centre of the head of the deceased and accused no.6

- A snatched the aruval from accused no.1 and delivered a cut on the centre of the head of the deceased. The FIR and the evidence of PW-1 and PW-2 are, thus, clear that accused no.1 and accused no.6 delivered a cut injuries on the deceased. Regarding the participation of the accused no.7 in the assault,
- B in the FIR it is alleged that accused no.7 assaulted on 'us' with a stick. The evidence of PW-1 and PW-2 is that accused no.7 assaulted on the left side of the head of the deceased with a stick. The word 'us' in the FIR cannot mean to exclude the deceased inasmuch as the deceased was the brother of PW-
- C 1 and was the son of PW-2. There is evidence to show that besides the deceased, PW-1 and PW-2 were also injured and were treated at the hospital. Hence, accused no.7 has used the stick not just against PW-1 and PW-2, but also against the deceased. We, therefore, do not find any material difference
- D between the version in FIR and in the evidence of PW-1 and PW-2 on the role of accused No.7 in the assault.

11. The evidence of PW-1 and PW-2, in our opinion, establishes beyond reasonable doubt that accused no.1 used the aruval to strike at the head of the deceased. From the
- E evidence of PW-1 and PW-2, it is also established beyond reasonable doubt that accused no.6 snatched the aruval from accused no.1 and struck on the head of the deceased. The evidence of PW-1 and PW-2 also establish that accused no.7 struck the head of the deceased by a stick. The result of all
- F these acts of accused nos.1, 6 and 7 is the death of the deceased. Section 34, IPC, states that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. Section 33, IPC, states
- G that the word "act" denotes as well a series of acts as a single act. Thus, even though accused nos.1, 6 and 7 may have committed different acts, they have cumulatively committed the criminal act which has resulted in the death of the deceased and are liable for the criminal act by virtue of Section 34, IPC.
- H We, therefore, do not find any merit in the submission that

accused No.7 was not liable for the same punishment as accused Nos. 1 and 6. A

12. The next question which we have to decide is whether the criminal act committed by accused nos.1, 6 and 7 amounts to murder under Section 300, IPC, or some other offence. The medical evidence of PW-11 is clear that all the injuries of the deceased were most probably as a result of an assault by a blunt weapon and in the opinion of PW-11, the deceased appears to have died due to head injuries. PW-11 has also admitted in her cross-examination that she did not see any incised injuries during the post mortem examination and had a sickle been used it would have caused incised wounds. Thus, it appears that accused no.1 and accused no.6 had used not the sharp side but the blunt side of the aruval and accused no.7 had used the stick in the assault on the deceased. The fact that the blunt side of the aruval and a stick was used in the assault on the deceased would go to show that accused nos.1, 6 and 7 did not have any intention to cause the death of the deceased. Nonetheless, the injuries caused by accused nos.1, 6 and 7 were all on the head of the deceased, including his parietal and temporal regions. Accused nos.1, 6 and 7, thus, had the intention of causing bodily injury as is likely to cause death and were liable for punishment for culpable homicide not amounting to murder under Section 304 Part I, IPC. B
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13. On similar facts, where injuries were caused by a blunt weapon, this Court in *State of Punjab v. Tejinder Singh & Anr.* [1995 Supp (3) SCC 515] held in para 8: F

“8. In view of our above findings we have now to ascertain whether for their such acts A-1 and A-2 are liable to be convicted under Section 302 read with Section 34 IPC. It appears from the evidence of PW 4 and PW 5 that the deceased was assaulted both with the sharp edge and blunt edge of the gandasas and the nature of injuries also so indicates. If really the appellants had intended to commit murder, they would not have certainly used the blunt edge H
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A when the task could have been expedited and assured with
the sharp edge. Then again we find that except one injury
on the head, all other injuries were on nonvital parts of the
body. Post-mortem report further shows that even the injury
on the head was only muscle-deep. Taking these facts into
B consideration we are of the opinion that the offence
committed by the appellants is one under Section 304
(Part I) IPC and not under Section 302 IPC.”

C 14. In this case, the assault on the deceased was on
16.11.2006 and the deceased died in the hospital after nine
days on 25.11.2006. In *Abani K. Debnath and Another v. State
of Tripura* (supra) this Court, after considering the nature of the
injuries as well as the fact that the deceased succumbed to the
injury after a lapse of seven days, took the view that the
conviction of the accused in that case cannot fall under Section
D 302, IPC.

E 15. After considering the evidence of PW-1 and PW-2, the
medical evidence of PW-1 and the fact that the deceased died
after nine days of the assault, we are of the considered opinion
that the Trial Court and the High Court were not right in
convicting the appellants under Section 302, IPC, and the
appellants should have been convicted instead under Section
304 Part-I read with Section 34, IPC. We accordingly allow
these appeals in part, modify only the conviction and sentence
F on the appellants under Section 302, IPC, and instead order
that the appellants (namely, accused nos.1, 6 and 7) are
convicted under Section 304 Part-I read with Section 34, IPC,
and sentenced to rigorous imprisonment for seven years. The
fine amount imposed by the Trial Court and affirmed by the High
G Court is affirmed.

R.P.

Appeals partly allowed.