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ANTAR SINGH

v.

STATE OF MADHYA PRADESH

NOVEMBER 30, 2006

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860—Sections 302/34—Common intention—Deceased with her daughter—Surrounded by accused persons equipped with deadly weapons—Inflicted with injuries in quick succession—Held: It can be inferred that accused had common intention to kill deceased.

Prosecution case was that appellant and three others entered the house of deceased, armed with deadly weapons. Deceased and her daughter PW-1 were in the house at that time. Eight other persons D surrounded the house. Badri assaulted the deceased. Deceased suffered as many as eight injuries. Sessions Judge convicted appellant, Badri and two others under Section 302 IPC r/w. Section 449 IPC. On appeal, High Court upheld the order subject to modification that the appellants were held liable to conviction under Section 302/34 I.P.C. instead of Section 302 I.P.C. Special Leave Petition of Badri was dismissed. The present appeal E is filed by appellant.

Appellant contended that having regard to the fact that P.W.1 in her deposition attributed overt acts on the part of Badri, the appellant cannot be said to have any common intention to kill the deceased.

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Dismissing the appeal, the Court

HELD: 1.1. The question whether in a given situation, the accused persons had shared common intention to commit the murder or not, must be judged having regard to the facts and circumstances of each case. No G hard and fast rule can be laid down. The deceased suffered as many as eight injuries. The manner in which she was done away with was cruel in nature. She was murdered in her own house. For this purpose, twelve persons had assembled. Eight persons had surrounded her house while other four persons with deadly weapons entered therein. [902-G-H]

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1.2. In a situation of this nature, the common intention on the part of all accused persons who had entered into the house can be safely inferred. The manner in which the occurrence had taken place itself would show that the accused had intention to kill the deceased. There was no provocation. There was no sudden quarrel. The deceased was an old lady and her daughter PW.1 was 15 years old girl. PW.1 could not have resisted the appellant nor could the deceased herself offer any resistance to the murderer. Within a short time, eight injuries were inflicted on her person in quick succession. All the accused persons committed the said offence by going into her house. It was, therefore, not a case where this Court can differ with the opinion of the trial Court and that of the High Court that the appellant had no common intention to kill the deceased alongwith Badri and other. [903-A-D] A
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 904 of 2000.

From the final Judgment and Order dated 10-8-1999 of the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 787/1994. D

Syed Ali Ahmad, Syed Tanweer Ahmad, Girdhar G. Upadhyay, Ms. Vinita G. Upadhyay, Awadesh Kumar Singh, S.S. Bandyopadhyay, Ms. Shabana Saifi, R.D. Upadhyay and Shivpati B. Pandey for the Appellant. E

Ms. Vibha Datta Makhija for the Respondent. F

The Judgment of the court was delivered by

S.B. SINHA. J. Appellant with one Badri has preferred this appeal aggrieved by and dissatisfied with the judgment of conviction and sentence date 10.8.1999 passed by a Division Bench of the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 787/1994 whereby and whereunder the judgment of learned Sessions Judge dated 22.11.1994 passed in Sessions. Trial No. 385/93 convicting the accused-appellants under Sections 302 and 449 of the I.P.C. and sentencing them to imprisonment for life for the said offence was upheld subject to the modification that the appellants herein were convicted under Section 302/34 I.P.C. Instead of Section 302 I.P.C. G

The occurrence took place on 6th July, 1993 at about 4 p.m. The deceased was a lady named Keshrabai. She and her daughter-Annuabai (P.W.1) H

A aged about 15 years at the relevant time were in their house. The appellant herein and three others entered in to their house armed with axe, phaliya, lathies bow & arrows etc. Eight other persons had surrounded the entire house. They were also armed with deadly weapons. Allegedly, Badri assaulted the deceased. Indisputably, the deceased suffered as many as eight injuries as would appear from the deposition made by Doctor R.C. Hanotiya - P.W. 11 who had conducted the postmortem examination on the dead body of the deceased-Kesharbai on 8.7.1993. He found the following injuries on the persons of the dead body:

C ".... Incised wound on the back side of the right elbow left side of the stomach, right side of the chest, on the front of the head and behind the head and found her neck completely cut off...."

D The learned Sessions Judge fully relying on the evidence of the eye witness - Annubai, who examined herself as P.W.-1 before the learned sessions Judge, while acquitting eight of those accused persons, who were said to have waited outside the house and who had not been named in the First Information Report recorded a judgment of conviction and sentence against the appellant, Badri, Devsingh and Varsingh.

E The appellant herein as also the said Badri preferred and appeal before the High Court. The said appeal was dismissed by reason of the impugned judgment. The special leave petition filed by Badri was dismissed on 16.12.1999. The appellant alone is thus before us.

F The short question which arises for consideration is as to whether on the basis of the facts found by the learned Sessions Judge and as upheld by the High Court, the appellant herein can be said to have developed a common intention to kill the deceased-Kesharbai along with Badri and others.

G Mr. Syed, learned counsel appearing for the appellant would submit that having regard to the fact that Annubai- P.W.1 in her deposition attributed overt acts on the part of Badri, the appellant cannot be said to have any common intention to kill the deceased.

H The question is as to whether in a given situation, the accused persons had shared common intention to commit the murder or not, must be judged having regard to the facts and circumstances of each case. No hard and fast rule can be laid down therefor. As noticed hereinbefore, the deceased suffered as many as eight injuries. The manner in which she was done away with was

cruel in nature. She was murdered in her own house. For the aforementioned purpose, twelve persons had assembled. Eight persons had surrounded her house while other four persons with deadly weapons entered therein. A

In a situation of this nature, we are of the opinion that common intention on the part of all accused persons who had entered into the house can be safely inferred. The manner in which the occurrence had taken place itself would show that the accused had intention to kill the deceased. There was no provocation. There was no sudden quarrel. The deceased was a old lady and her daughter Annubai - P.W. 1 was 15 year old girl. P.W.1 could not have resisted the appellant nor could the deceased herself offer any resistance to the murderer. Within a short time, it will bear repetition to state, eight injuries were inflicted on her person in quick succession. All the accused persons committed the said offence by going into her house. It was, therefore, not a case where this Court can differ with the opinion of the learned trial Court and that of the High Court that the appellant had no common intention to kill the deceased along with Badri and other. B

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For the aforesaid reasons, we do not find any merit in this appeal. The appeal is dismissed accordingly. If the appellant is on bail the bail bond shall stand cancelled and he shall surrender forthwith. D

D.G.

Appeal dismissed.