SHAIK CHINA BRAHMAM

v.

STATE OF A.P.

NOVEMBER 29, 2007

[G.P. MATHUR AND D.K. JAIN, JJ.]

Penal Code, 1860:

s.302 r.w. s.34—Common intention—Two accused, A-1 and A-2—Jointly reached the spot—A-1 stabbed deceased repeatedly with knife—A-2 caused injuries to deceased with iron rod—Acquittal by Sessions Judge—Conviction under ss.302/34 by High Court—Challenged by A-2 on the ground that he was armed with iron rod which did not cause fatal injury and main injuries were given by A-1—Held: Iron rod can also cause fatal injuries—Injuries sustained by A-2 while snatching back knife from deceased which deceased had snatched from A-1, show that A-2 shared common intention with A-1 to cause injuries to deceased—False implication ruled out as no enmity shown between eye-witness and accused—Essential conditions for application of s.34 having been established, accused persons rightly convicted under ss.302/34.

Prosecution case was that A-1 had borrowed Rs.300/- from the deceased. Accused did not repay the amount due to which their relations became strained. On the fateful day, the deceased and his cousin PW-1 were returning after attending the call of nature, when A-1 and A-2 suddenly appeared on the spot. A-1 stabbed the deceased repeatedly with a knife which he was carrying and A-2 caused injuries to the deceased with iron rod. After receiving injuries, the deceased died on the spot. The Sessions Judge acquitted both the accused A-1 and A-2. On appeal, High Court convicted accused under s.302 r.w. s.34 IPC. The appeal was filed only by A-2.

The appellant contended that he cannot be held liable under s. 302 r.w. s. 34 IPC as the main injuries were given by A-1, who was

A armed with a knife and he was responsible for injuries to trachea and occipital region which proved fatal and that the appellant A-2 was armed with an iron rod and he did not cause any fatal injury.

Dismissing the appeal, the Court

B HELD: 1. The testimony of PW.2, wife of deceased, establishes that there was dispute regarding borrowing of Rs.300/- between A-1 and the deceased. Two days prior to the occurrence, exchange of hot words had taken place between them at a tea stall where A-2 was also present and at that time A-1 had declared that he would C kill the deceased. This shows that there was motive on the part of the accused to assault the deceased. PW.1 had deposed that on the day of occurrence, he had gone along with deceased for answering the call of nature. While returning, A-1 armed with knife and A-2 armed with rod started assaulting the deceased. He has also deposed D that the deceased had snatched the knife from A-1, but A-1 snatched it back and again caused injuries from the same to the deceased. PW.1 gave immediate information about the occurrence to the family members including the wife of the deceased, PW.2, which is established from her testimony. Both the accused were sent for E medical examination and three incised wounds were found on the right and left palm of A-1 and one incised wound was found on the right palm of A-2. The injuries on the palm of A-1 and A-2 completely corroborate the version given by PW.1 that the deceased had snatched the knife from the hands of A-1, but accused again snatched F it back. The multiple injuries found on the body of the deceased, which are mostly cut injuries besides contusions, also corroborate the eye-witness account given by PW.1. [Para 11] [665-E, F, G; 666-A, B, C]

2. There is no evidence on record to show that there was any enmity between PW.1 and the accused, on account of which he may G falsely implicate them. In fact, the defence has given no suggestion in his cross-examination that he had any reason to falsely implicate the accused. Thus, from the evidence on record, the case of the prosecution is fully established. The High Court, therefore, rightly convicted both the accused. The Sessions Judge had committed

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manifest error of law in giving too much weight to some minor and insignificant contradictions. The Sessions Judge had also given undue importance to the timings deposed to by PW.1 in going from the place of occurrence to the house of the deceased, then going from there to the police station and getting the FIR scribed. As PW.1 was not a highly educated person, he was not expected to have a very accurate idea of timings. The view taken by the Sessions Judge being wholly perverse, was rightly set aside by the High Court and it was perfectly justified in convicting both the accused A-1 and A-2.

[Para 11] [666-C, D, E, F]

3. It has come in evidence that the pipe with which A-2 was armed was in the shape of an iron rod and could also cause fatal injuries. When a criminal act is done by several persons in furtherance of common intention of all, the other offenders are liable for that act in the same manner as the principal offender as if the act was done by such offenders also. In this case, both the accused went jointly to a place where the deceased had gone for attending the call of nature and they jointly assaulted him. The fact that A-2 also received injuries in his palm shows that he took active part in snatching the knife from the hands of the deceased when he had succeeded in snatching it from A-1. This clearly shows that A-2 shared the common intention with A-1 to cause injuries to the deceased. The essential conditions for the application of s. 34 IPC are common intention to commit an offence and participation by all the accused in doing act or acts in furtherance of that common intention. If these two ingredients are established, all the accused shall be liable for the said offence. In the present case both the ingredients are fully established and, therefore, A-2 is also liable for commission of the offence. A-2 is guilty of the offence under s.302 read with s. 34 IPC and the High Court rightly convicted and sentenced him for the said offence. [Para 12] [667-A, B, C, D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 927 of 2006.

From the Judgment & Order dated 2.3.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No. 116/

2004.

I.V. Narayana, T.N. Rao, Manjeet Kirpal and Paramjeet Singh for the Appellant.

Altaf Fathima and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. This appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 has been preferred against the judgment and order dated 2.3.2006 of Andhra Pradesh High Court, by which the appeal filed by the State was allowed and the judgment and order dated 24.9.2002 of the learned Sessions Judge, Guntur acquitting the two accused in Sessions Case No.466 of 2000 was set aside. The High Court by the impugned judgment and order convicted both the accused Shaik Khasim Saida (A-1) and Shaik China Brahmam (A-2) under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life and a fine of Rs.200/- each.

2. The case of the prosecution, in brief, is that Shaik Khasim Saida (A-1) had borrowed Rs.300/- from the deceased Shaik Masthan Vali some time back, but he did not repay the amount due to which their relations became strained. At about 4.00 p.m. on 6.4.1999, the deceased Shaik Masthan Vali and his cousin Shaik Baba Vali (PW.1) were returning to the village from northern side of Chandravanka rivulet after attending the call of nature. Both the accused suddenly appeared on the spot. A-1 stabbed the deceased Shaik Masthan Vali repeatedly with a knife which he has carrying and A-2 caused injuries to the deceased with iron pipe. After receiving injuries the deceased fell down dead on the spot. PW.1 Shaik Baba Vali lodged an FIR at P.S. Macherla at 6.30 p.m. on the same day. On the basis of the FIR a crime was registered as Case Crime No.55 of 1999 under Section 302 read with Section 34 IPC at the police station.

3. After the case had been registered at the police station, PW.8 K. Babu Rao, Inspector of Police, P.S. Macherla commenced investigation of the case. He arrested A-1 and A-2 and went to the scene of occurrence and prepared a site plan. After recording statement of

witnesses, he submitted charge-sheet against both the accused A-1 and A-2. The prosecution in order to establish its case examined nine witnesses and filed some documentary evidence. The learned Sessions Judge, Guntur, by the judgment and order dated 24.9.2002 acquitted both the accused A-1 and A-2. Feeling aggrieved by the order of the learned Sessions Judge, the State filed appeal in the High Court, which was allowed and accused were convicted under Section 302 read with Section 34 IPC and were sentenced to imprisonment for life and a fine of Rs.200/- each. The present appeal has been filed only by Shaik China Brahmam (A-2). It appears that Shaik Khasim Saida (A-1) has not preferred any appeal against his conviction and sentence.

4. We have heard Mr. I.V. Narayana, learned counsel for the appellant and Ms. Altaf Fathima, learned counsel for the State of Andhra Pradesh and have perused the record.

5. The case basically rests on the testimony of PW.1 Shaik Baba Vali. He has deposed that his house is situate near Chennakesava Swamy Temple in Macherla and both the accused viz. A-1 and A-2 are also residents of the same place. The deceased Shaik Masthan Vali was also resident of Macherla. The deceased had informed him that A-1 had borrowed money from him and had not returned the same and due to this their relations had become strained. At about 4.00 p.m. on 6.4.1999, he and deceased Shaik Masthan Vali had gone to the field by the side of Chandravanka rivulet for answering the call of nature. Thereafter, they were returning home and the deceased was little behind him. Suddenly he saw that A-1 had caught hold of the deceased by putting his arm around his neck and then he started giving him repeated blows by a knife. A-2 also assaulted the deceased with an iron pipe. The deceased raised an alarm. When PW.1 tried to save the deceased, both the accused threatened him that they would also assault him. The deceased Shaik Masthan Vali snatched the knife from the hands of A-1, but A-1 again snatched back the knife from the deceased and gave him several blows. In the process of snatching the knife, the hands of A-1 also got cut injuries. PW.1 then went to the house of the deceased Shaik Masthan Vali and informed his wife and other relations about the incident. Thereafter, he went to P.S. Macherla and presented a written report. He got the report scribed by a

A person who was sitting outside the police station. He identified the knife M.O. 1 and the iron pipe M.O. 2, which were shown to him in Court. He also identified the clothes, which the deceased was wearing viz. M.O. 3 the blood stained shirt, M.O. 4 the blood stained banian, M.O. 5 the blood stained dhoti, M.O. 6 the chappal which the deceased was wearing B and M.O. 7 the towel which the deceased was having on his body. In his cross-examination, he has stated that his house and that of the deceased were situate in the same ward and in side-by-side streets. The accused A-1 and A-2 were staying in a parallel streets. The distance between the house of the deceased and the police station is about 3 C furlongs. He clarified that M.O. 2 is an iron pipe.

6. PW.2 Sk. Masthan Bee is the wife of the deceased Shaik Masthan Vali. She deposed that her house is by the side of Chennakesava Swamy Temple in Macherla and the house of PW.1 Shaik Baba Vali was near her house and the houses of the accused were situate at some D distance. She further deposed that PW.1 Shaik Baba Vali came to her house and informed that A-1 and A-2 had killed her husband. There was some dispute between her husband and the accused on account of borrowing of Rs.300/- and two days prior to the incident an altercation had taken place between them at the tea stall of Achari, which she had E also seen. At that time A-1 had said loudly that he would kill her husband. After learning about the incident from PW.1 she rushed to the scene of occurrence and saw the dead body of her husband lying there. She denied the defence suggestion that A-1 had not loudly said two days back that he would kill her husband or that PW.1 had not informed her that A-1 F and A-2 had killed her husband.

7. PW.5 Dr. P. Rajasekhara Reddy was working as Civil Assistant Surgeon in Community Health Centre, Macherla from October 1997 to 4.1.2001. He conducted postmortem examination over the body of Shaik G Masthan Vali from 11.00 a.m. onwards on 7.4.1999 and found the following injuries on the same :-

"1. A cut injury over the anterior aspect of neck, cutting the trachea and carotids, 14 cm x 5 cm.

2. A cut injury over the right temple, 3 cm x 1 cm, dark brown H

in colour.

3. A cut injury over the nape, 10 cm x 4 cm.
4. Two cut injuries over the occipital area, each 3 cm x 1 cm side by side.
5. Another cut injury over the occipital area, 2" above the wound no.4 semi circle, 7 cm x 3 cm, exposing the brain matters.
6. A cut injury over the left parietal area above the left ear, 3 cm x 1 cm.
7. A cut injury behind the left ear, 4 cm x 1 cm.
8. A cut injury below the left year, 2 cm x 1 cm.
9. A cut injury on the right ear, 5 cm in length.
10. A cut injury on the right thumb 2 cm x 2 mm.
11. A cut injury on the right little finger, 1 cm x 2 mm.
12. A cut injury over the right wrist on flexor side, 4 cm x 2 cm.
13. A cut injury over the right scapular area, 2 cm x ½ cm.
14. A contusion over the left scapular area, 3 cm in diameter, brown in colour.
15. A contusion on the right axilla, 4 cm x 1 cm, brown in colour.
16. A cut injury over the left thumb, circling the both surfaces, 3 cm x 1 mm.
17. Two small cut injuries on the left index finger, each 1 cm x 1 mm 1 cm apart.
18. A contusion on the left forearm 3 cm x 4 cm.
19. Scrotum was swollen.
20. On opening the body all viscera are normal and pale.

Patient died about 18 to 22 hours prior to postmortem examination."

In the opinion of the doctor, the deceased had died on account of shock and haemorrhage due to multiple injuries and cardio-pulmonary

A arrest. Injury no.1 caused on the anterior aspect of the neck cutting the trachea and carotids and injury no.5 i.e. the injury on the occipital area were fatal. He further opined that injury no.1 and injury no.5 were sufficient to cause instantaneous death.

B 8. PW.9 Dr. S. Sakunthala was Civil Assistant Surgeon at Government Hospital, Macherla. She examined Shaik Khasim Saida (A-1) at 7.55 p.m. on 6.4.1999 and found the following injuries on his body:

"1. Incised wound 4 x ½ cm, over right palm, bleeding present, red.

C 2. Incised wound 3 x ½ cm, over right palm, 1 cm. below no.1 injury, bleeding present, red.

3. Incised wound ½ x ¼ cm, over left index, ring, middle, little fingers except thumb, over palm inner side, red."

D In the opinion of the doctor, the injuries were simple in nature and were caused due to a sharp object. The duration of injuries was 3 to 4 hours.

9. On the same day, i.e., on 6.4.1999 at 7.30 p.m. PW.9 Dr. S. Sakunthala also examined Shaik China Brahmam (A-2) and found the E following injuries on his body :-

"Incised wound 1 cm x ¼ cm over right index finger, over palm side."

F The doctor opined that the injury was simple in nature and was caused due to a sharp object. The duration of injury was 3 to 4 hours.

10. PW.7 T.A. Rambabu was Head Constable, P.S. Macherla. He has deposed that on 6.4.1999, when he was attending to his duties in the police station, he received information that a murder had taken place near G Chandravanka Vagu (rivulet). He went to the office of Inspector of Police and informed him about the same. At about 6.30 p.m. PW.1 Shaik Baba Vali came to the police station and presented a written report Ex.P1. He registered the same as Case Crime No.55 of 1999 under Section 302 IPC and sent copies of the FIR to all concerned. Thereafter, the Police H Inspector came to the police station at 6.40 p.m. along with two persons

who were having injuries on their hands. He sent them for medical examination. PW.8, K. Babu Rao was Inspector of Police, P.S. Macherla. He deposed that about 5.30 p.m. on 6.4.1999, he heard a rumour that a murder had taken place near Chandravanka Vagu. He immediately left for the scene of occurrence along with some police personnel which was between Macherla and Jammalamadaka near the field of one Pathu Sahab and saw a dead body there. He also received information about the presence of the accused near Jasmine Garden. He proceeded there with his staff. He saw A-1 and A-2 and arrested them. They had injuries on their hands. They were taken to the police station from where they were sent for medical examination. As it had become dark, he did not conduct any further investigation which he commenced on the next day at 7.00 a.m. He prepared a site plan. He also seized the knife M.O. 1 and the iron pipe M.O.2. He also seized M.O. 6 and M.O. 7 belonging to the deceased. He held inquest over the body of the deceased at 8.00 a.m. After recording statements of the witnesses under Section 161 Cr.P.C. and preparing other relevant papers, he submitted charge-sheet against the two accused viz. A-1 and A-2.

11. We have given above the gist of the evidence adduced by the prosecution. The testimony of PW.2, Sk. Masthan Bee wife of deceased Shaik Masthan Vali establishes that there was dispute regarding borrowing of Rs.300/- between A-1 and the deceased. Two days prior to the occurrence, exchange of hot words had taken place between them at the tea stall of Achari, where A-2 was also present and at that time A-1 had declared that he would kill the deceased Shaik Masthan Vali. This shows that there was motive on the part of the accused to assault the deceased. PW.1 Shaik Baba Vali had deposed that at about 4.00 p.m. on 6.4.1999 he had gone along with deceased across Chandravanka Vagu for answering the call of nature. While returning A-1 armed with knife and A-2 armed with rod started assaulting the deceased Shaik Masthan Vali. He has also deposed that the deceased had snatched the knife from A-1, but A-1 snatched it back and again caused injuries from the same to the deceased. PW.1 gave immediate information about the occurrence to the family members including the wife of the deceased, PW.2 Sk. Masthan Bee, which is established from her testimony. The most important feature of the case is that PW.8 K. Babu Rao, Inspector of P.S. Macherla,

A received information at about 5.30 p.m. that a murder had taken place near Chandravanka Vagu. He left for the scene of occurrence and found the dead body there. He also received information about the presence of the accused near Jasmine Garden and arrested them at about 6.40 p.m. Both the accused were sent for medical examination and three incised B wounds were found on the right and left palm of A-1 and one incised wound was found on the right palm of A-2. The injuries on the palm of A-1 and A-2 completely corroborate the version given by PW.1 Shaik Baba Vali that the deceased had snatched the knife from the hands of A-1, but accused again snatched it back. The multiple injuries found on the C body of the deceased, which are mostly cut injuries besides contusions, also corroborate the eye-witness account given by PW.1 Shaik Baba Vali. It may be mentioned here that there is no evidence on record to show that there was any enmity between PW.1 Shaik Baba Vali and the accused, on account of which he may falsely implicate them. In fact, the defence D has given no suggestion in his cross-examination that he had any reason to falsely implicate the accused. Thus, from the evidence on record, the case of the prosecution is fully established. The High Court, therefore, rightly convicted both the accused. The learned Sessions Judge had committed manifest error of law in giving too much weight to some minor E and insignificant contradictions. The learned Sessions Judge had also given undue importance to the timings deposed to by PW.1 in going from the place of occurrence to the house of the deceased, then going from there to the police station and getting the FIR scribed. He is not a highly educated person and he was not expected to have a very accurate idea F of timings. The learned Sessions Judge disbelieved the prosecution case on grounds which were not even worth taking notice of and were completely divorced from reality. The view taken by the learned Sessions Judge being wholly perverse, was rightly set aside by the High Court and it was perfectly justified in convicting both the accused A-1 and A-2.

G 12. Learned counsel for the appellant has next submitted that the appellant herein viz. Shaik China Brahmam (A-2) cannot be held liable under section 302 read with Section 34 IPC as the main injuries were given by Shaik Khasim Saida (A-1), who was armed with a knife and he was responsible for injuries to trachea and occipital region which proved H fatal. He has submitted that the appellant Shaik China Brahmam (A-2)

was armed with an iron pipe and he did not cause any fatal injury. We are unable to accept the submission made. It has come in evidence that the pipe with which A-2 was armed was in the shape of an iron rod and iron rod can also cause fatal injuries. When a criminal act is done by several persons in furtherance of common intention of all, the other offenders are liable for that act in the same manner as the principle offender as if the act was done by such offenders also. In this case, both the accused went jointly to a place where the deceased had gone for attending the call of nature and they jointly assaulted him. The fact that A-2 also received injuries in his palm shows that he took active part in snatching the knife from the hands of the deceased when he had succeeded in snatching it from A-1. This clearly shows that A-2 shared the common intention with A-1 to cause injuries to the deceased. The essential conditions for the application of Section 34 IPC are common intention to commit an offence and participation by all the accused in doing act or acts in furtherance of that common intention. If these two ingredients are established, all the accused shall be liable for the said offence. We have no doubt that in the present case both the ingredients are fully established and, therefore, A-2 is also liable for commission of the offence. We are, therefore, clearly of the opinion that A-2 is guilty of the offence under Section 302 read with Section 34 IPC and the High Court rightly convicted and sentenced him for the said offence.

13. In the result, the appeal fails and is hereby dismissed.

D.G. Appeal dismissed.