A SHIVAPPA BUDAPPA KOLKAR @ BUDDAPPAGOL

v.

STATE OF KARNATAKA AND ORS.

SEPTEMBER 29, 2004

B [P. VENKATARAMA REDDI AND P.P. NAOLEKAR, JJ.]

Penal Code, 1860:

Sections 300, 302 and 304 Part II—Murder—Injuries inflicted likely to C *cause death—But no intention to cause death—The deceased objected to the bullock cart of the accused from proceeding further—Thereupon, accused inflicted injury with an axe on the occipital region of the deceased resulting in depressed fracture of the skull bone—Trial court acquitted the accused—But the High Court convicted the accused under S-302—Correctness of—Held: There was no premeditated or prearranged plan to attack the* D *deceased—No motive was established by the prosecution—Only one Injury was inflicted by the accused—Under these circumstances, it is not safe to draw the conclusion that the injury inflicted by the accused, if at all it was intended to be inflicted, by itself would be sufficient, in the ordinary course of nature, to cause death—Hence, accused liable to be convicted under S.* E *304, Part II.*

According to the prosecution, the deceased objected to the bullock cart of the appellant-accused from proceeding further. Thereupon, the appellant inflicted an injury with an axe on the occipital region of the deceased resulting in depressed fracture of the skull bone.

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The trial court acquitted the appellant. However, the High Court convicted the appellant under Section 302 of the Penal Code, 1860. Hence the appeal.

G **On behalf of the appellant, it was contended that the appellant was only liable to be convicted for a lesser offence under Section 304 Part II IPC.**

Allowing the appeal in part, the Court

H **HELD: 1. There was no premeditated or prearranged plan to attack**

the deceased. The trial court held that the motive was not established. On the aspect of motive the High Court did not give any definite finding except saying that the appellant has some cause to be aggrieved by certain past acts of the deceased in relation to a land dispute. However, the prosecution evidence does not establish that when the appellant and the other accused came in the cart on the way to their fields, they were actuated by the intention to attack the deceased. The obstruction by the deceased and the quarrel that ensued as a sequel thereof is something which could not have been anticipated by the accused or the prosecution party. [884-E-F-G-H]

2. Only one blow with an axe was dealt with and no other injury was inflicted on the deceased by the appellant. Having regard to the background in which the incident was triggered off and the conduct of the appellant and in view of the very findings recorded by the High Court, the appellant cannot be imputed with the intention to cause the death of the deceased. [885-D-E]

3. The next line of enquiry is whether the case falls under clause thirdly of S. 300 IPC. There is no doubt that injury inflicted on the deceased is a severe injury on the vital part and in all likelihood, it could cause death. Yet, it is difficult to extricate the impact of an equally severe injury, which was found to be present on internal examination and which cannot be attributed to the appellant. In these circumstances, it is not safe to draw a conclusion that the injury inflicted, by itself would be sufficient in the ordinary course of nature to cause death. On the state of the medical evidence it is not possible to draw such a definite conclusion. Considering the nature of the injury and the weapon used and the circumstances in which the injury came to be inflicted, the appellant shall be imputed with the knowledge that the injury inflicted by him was likely to cause death. The appellant is, therefore, liable to be convicted under Section 304 Part II of the Penal Code, 1860. [885-E-F; 887-C-D-E]

Virsa Singh v. *State of Punjab,* [1958] SCR 1495, relied on.

Modi's Medical Jurisprudence and Toxicology Ed. 21, Chapter XV Regional Injuries-Lungs, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 672/2002.

A From the Judgment and Order dated 18.10.2001 of the Karnataka High Court in Crl. A. No. 852 of 1996.

WITH

B SLP (CRL.) @ CRL. M.P. No. 4951/2002.

K.B. Sounder Rajan and Sudarshan Rajan for the Appellant.

Anil Kumar Mishra, Mallikarjun Reddy and Sanjay R. Hedge for the respondents.

C The Judgment of the Court was delivered by

The first accused in the Sessions Case No. 217/1994 on the file of Prl. Sessions Judge, Bijapur at Bijapur is the appellant before us.

D The appellant together with three other accused, who are petitioners in SLP(Crl.) Crlmp 4951/2002, were charged under Section 302 read with Section 34 of the Indian Penal Code for committing the murder of Hanamant Basappa Byali at about 4.30 p.m. on 4.9.1994 at Sankanal village, Bijapur district. The victim was killed in his fields. The accused were also charged for the offence punishable under Section 324 read with Section 34 I.P.C. for E causing hurt to the wife of the deceased and to the brother of the deceased, who is an informant in the case. The accused were also charged under Section 506 read with Section 34 I.P.C.

After trial the accused were acquitted by the Sessions Judge. On an F appeal filed by the State, the High Court reversed the verdict of acquittal and convicted the appellant herein under Section 302 I.P.C. and sentenced him to life imprisonment. The other accused were convicted under Section 324 I.P.C. Accused - Buddappa Sabanna was convicted, in addition, for an offence under Section 323 I.P.C.

G As regards the Special leave petition preferred by the three accused (other than the appellant), learned counsel for the petitioners has stated at the outset that the three accused convicted under Section 324 and Section 323 have already served the period of imprisonment and the counsel made it clear that he is not pressing the special leave petition. Hence, the special leave H petition is dismissed as not pressed.

Coming to the appeal filed by the appellant, the only point which is seriously urged before us is in regard to the nature of offence, that is to say, whether the appellant is liable to be convicted under Section 302 or for a lesser offence under Section 304 I.P.C. Nevertheless, the broad facts need to be set out briefly. The prosecution case is that the deceased Hanamant Basappa Byali was doing agricultural operations in his fields close to the village along with PW-1 and PW-2, PW-1 being the brother of the deceased. The trouble started when the appellant and the other accused tried to take their bullock card through the fields of the deceased so as to reach the fields of the first accused. It appears from the evidence on record that the way through the fields of the deceased is a short-cut to reach the lands of the accused and the appellant had been driving his bullock cart through this path since considerable time. On the crucial day, the deceased objected for the cart being taken through his fields especially for the reason that there was crop on the land. On this an altercation ensued. The quarrel went on for some time with abuses hurled against each other. Suddenly the appellant took the axe kept on the cart and hit the deceased-Hanamant on the occipital region which resulted in depressed fracture of the skull bone. The other accused also inflicted injuries with clubs resulting in fracture of the bones of left forearm and a lacerated wound on the outer aspect of the thigh. An injury was also inflicted on PW-1 by the appellant on his left arm. According to the medical evidence, it was a simple injury. PW-1 thereafter run away from the place, PW-2, an agricultural labourer was observing the incident from some distance. After the attack ended and the deceased fell down, PW-4 the wife of the deceased came to the spot and when she protested she was kicked by the accused Buddappa Sabanna. At that time PW-12 also came to the spot. After some time accused Nos. 2 and 3 took another bullock cart from the village and carried the deceased in that cart and left the cart at the place opposite to the house of PW-6. PW-1 lodged the complaint to the police at about 7.45 p.m. The inquest and investigation followed, the details of which it is not necessary to state. The blood stained axe was recovered from the appellant pursuant to the disclosure made by him. The postmortem examination was done on the next day morning by PW-3 who is the Medical Officer attached to the Government hospital, Bagewadi. We will advert to the details of postmortem report a little later.

The High Court rightly accepted the testimony of injured eye *witness* PW-1 and PW 2 corroborated by the evidence of other witnesses including PWs 4, 5 and 12. The trial Court rejected the testimony of the eye witnesses

on flimsy and ill founded doubts. That is why, the learned counsel for the appellant has not chosen to assail the findings of the High Court in regard to the actual occurrence and participation of the appellant in the attack.

Now, we wish to proceed to discuss whether the offence under Section 300 has been made out so as to warrant the conviction of the appellant under Section 302 I.P.C. The High Court, without much of discussion, observed that the appellant had the intention to cause the death of Hanamant. This intention was deduced solely on the basis of the severity of the injury inflicted with a dangerous weapon. While considering the question of intention, the High Court failed to consider the very facts adverted to in the earlier portion of its judgment. The facts that emerge from the record which have been noted by the High Court are as follows :

> "The entire incident appears to have taken place at the spur of the moment when the bullock cart of the accused persons was obstructed from proceeding further by the deceased."

Earlier it was observed by the High Court that the Accused No. 1 (appellant herein) all of a sudden assaulted the deceased with an axe on his head. No doubt, these observations were made by the High Court in the context of considering the question whether A-2 to A-4 share common intention to kill Hanamant. However, the same observations/findings will be of relevance in assessing the intention of the appellant to kill the victim. First, we must take note of the fact that there was to premeditated or prearranged plan to attack the deceased. The trial Court discussed the question of motive and held that the motive was not established. On the aspect of motive the High Court did not give any definite finding except saying that the appellant had some cause to be aggrieved by certain past acts of the deceased in relation to a land dispute. However, the prosecution evidence does not establish that when the appellant and the other accused came in the cart on the way to their fields, they were actuated by the intention to attack the deceased. The obstruction by the deceased and the quarrel that ensured as a sequel thereof is something which could not have been anticipated by the accused or the prosecution party. In order to probe further into the aspect of intention, we may also advert to the evidence of PW-2. PW-2 described the incident as follows :

> "First the exchange of words took place. They abused each other

and the accused assaulted Hanamant.....the quarrel went on for about one hour....."

One hour may be an exaggeration, yet, the quarrel did go on for considerable time. It is also relevant to refer to the evidence of PW-12, who is a neighbouring land holder. PW-12 stated that while he was in the fields he noticed PW-1 with an injury on his left hand. He was informed by PW-1 that the accused persons were assaulting his brother. He further stated that PW-1 was scared to go along with him to the spot. Then he alone went to the scene of occurrence and found the appellant standing near the deceased-Hanamant who was on the ground with injuries. The appellant was asking him to get up and to smoke a beedi. The offer of beedi seems to be a mark of hospitality in these rural areas and perhaps the appellant, who is an illiterate, might be having a notion that smoking of beedi would energise or refresh the deceased. It only shows that the appellant did not reconcile himself to the situation that had happened. Instead of continuing his aggressive posture, he became repentent. Another circumstance which deserves notices is that only one blow with axe was dealt with and no other in injury was inflicted on the deceased by the appellant. Having regard to the background in which the incident triggered off and the conduct of the appellant and in view of the very findings recorded by the High Court, we are of the view that the appellant cannot be imputed with the intention to cause the death of Hanamant.

The next line of inquiry should be whether the case falls under clause thirdly of Section 300 because it is under this clause the respondent-State endeavoured to bring the offence. Even if the intention to cause death is absent, if the appellant had the intention to cause the particular bodily injury and such bodily injury is objectively found to be sufficient in the ordinary course of nature to cause death, clause thirdly of Section 300 is attracted. The lucid exposition of law as to the scope and nuances of clause (3) of Section 300 by Vivian Bose J. speaking for the three judge bench in the celebrated decision in *Virsa Singh* v. *The State of Punjab,* [1958] SCR 1495 relieves us from the need to say anything further on the subject. There was some debate on the question whether the appellant had the intention to cause the particular injury on the occipital region. It is, however, unnecessary to delve into this aspect further for the reason that we are satisfied that the 2nd part of clause (3) is not attracted in the instant case having regard to the nature of injuries and the medical evidence.

A It is now time to refer to the medical evidence. PW-3 the Medical Officer noticed the following three external injuries :

(1) An incised wound on the right side of occipital region, transverse in position 3" x 1/2" Bone deep. There is depressed fracture of the skull bone under the wound.

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(2) A lacerated would on the outer aspect of the left thigh 3" above the knee joint ½" by ½" muscle deep. Bruise around the wound present it is 4" in diameter, black in clour.

C (3) Fracture of the both bones of left forearm 1" proximal to the left wrist joint. Bones are broken into many pieces. It is a closed fracture.

PW-3 stated that the injury No. 1 can be caused by sharp edged exe. Injury Nos. 2 and 3 are ascribed to the attack by the clubs. We may recall D that clubs were wielded by the other accused. Injury No. 1 alone is attributed to the appellant. PW-3 categorically stated that he found no other external injury on the dead body. The cause of the death, as noted in the postmortem report (Exb. P-3) and reiterated by PW-3 in his deposition, is said to be coma as a result of injury to vital organs viz, *brain and lungs* (emphasis supplied). E The persual of the postmortem report makes an interesting revelation which unfortunately has not been noted by both the courts below. On internal examination of the head, PW-3 found an incised wound on the occipital region causing a depressed fracture under the wound. Apart from that, the internal examination of thorax disclosed that there was fracture on second and third ribs on the right side at the anterior axillary portion. Pleure was F found to be lacerated, right lung was also lacerated and collapsed and a considerable quantity (2 litres) of collapsed blood was found in the right side of thorax. Curiously, no external injury corresponding to this internal injury in thorax region was noted by the Doctor. In fact he made it clear in his deposition before the Court that he found no other external injury. At the G same time his opinion is clear that the death resulted on account of both these internal injuries, namely, to the skull and to the lungs. The internal thorax injury could not have been caused by the axe without there being an external incised or cutting injury. If at all, the injury caused to the ribs and lungs should have been the result of beating with sticks or clubs and PW-3 would not have noticed the corresponding lacerations or contusions. In this context, H we find a passage in Modi's Medical Jurisprudence and Toxicology Ed. 21,

Chapter XV Regional Injuries - Lungs) which reads as follows : A

> "Contusions or lacerations of the lungs may be produced by blows from a blunt weapon or by compression of the chest even without fracturing the ribs or showing marks as external injury."

We need not dilate further on this aspect as it is not the prosecution case B that the appellant was responsible for causing any injury other than the injury No. 1. If so, it is fairly clear that the injuries to occipital region as well as the thorax injury which caused damage to the ribs and lungs are both severe injuries and according to the medical evidence both these injuries cumulatively caused death. There is no evidence of the medical expert to the effect that C injury No. 1 by itself would have caused instantaneous death as has happened in this case or that injury No. 1 by itself was sufficient in the ordinary course of nature to cause death. No doubt injury No. 1 is a severe injury on the vital part and in all likelihood, it could cause death. Yet, it is difficult to extricate the impact of an equally severe injury which was found to be present on internal examination. In these circumstances, it is not safe to draw a D conclusion that the injury inflicted by the appellant, if at all it was intended to be inflicted, by itself would be sufficient in the ordinary course of nature to cause death. On the state of medical evidence we have, it is not possible to draw such definite conclusion. Considering the nature of the injury and weapons used and the circumstances in which injury came to be inflicted, E we are of the view that the appellant shall be imputed with the knowledge that the injury inflicted by him was likely to cause death. He is therefore liable to be convicted under Section 304, Part-II.

Considering the facts and circumstances of the case, we feel that the imprisonment for a period of five years and a fine of Rs. 7,000 would meet F the ends of justice. The impugned order is modified to the extent that the appellant shall stand convicted under Section 304 Part II and he shall undergo rigorous imprisonment for a period of five years and a fine of Rs. 7,000. Out of the fine amount of Rs. 7,000, Rs. 6,000 should be paid over to the wife (PW-4) of the deceased. The learned Sessions Judge shall take necessary G steps in this behalf. In default of payment of fine, there shall be imprisonment for a further period of one year. The appeal is allowed to the extent stated above.

V.S.S. Appeal partly allowed.