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BENJAMIN

v.

STATE REP. BY INSPECTOR OF POLICE

(Crl. A. No. 76 of 2006)

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JANUARY 11, 2008

[S.B. SINHA AND H.S. BEDI, JJ.]

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Penal Code, 1860 – s. 302 – Murder – By three accused- Multiple and severe injuries on the deceased – Enmity between parties – Eye-witness to the occurrence – Ocular evidence corroborated by medical evidence – No delay in lodging of FIR and commencing of investigation – Trial court convicting all the accused – High Court convicting one, but acquitting rest of the accused – On appeal, held: Conviction of the accused by High Court is correct – In view of number and nature of injuries and the medical evidence intention of the accused is proved.

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Criminal Law – ‘Mens rea’ – Determination of – Held: It should be determined in the facts of each case.

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Appellant-accused No. 1, alongwith accused Nos. 2 and 3 was prosecuted for having caused death of a person. According to prosecution case, there existed enmity between the parties. The accused had been causing various kinds of mischief against the deceased on various occasions. Few months before the occurrence in question also, they allegedly put the haystack of the deceased on fire. When the deceased and PW-1 were coming on a bicycle, somebody flashed torchlight on the deceased. PW-1 also flashed his torchlight and saw the appellant. Appellant assaulted the deceased, accused No. 3 caught hold of the deceased and accused No. 2 threatened PW-1 on the point of a knife. FIR was lodged. Trial Court convicted all the accused. High Court upheld the conviction of appellant-accused, but acquitted

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accused Nos. 2 and 3. Hence the present appeal.

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Dismissing the appeal, the Court

HELD: 1. Keeping in view the number of injuries inflicted on the deceased as also the nature thereof and furthermore in view of the opinion expressed by the doctor, there cannot be any doubt whatsoever that the appellant had the intention to kill the deceased. [Para 18] [662-F]

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2. The High Court while mentioning about the conduct of the appellant, meant overt acts attributed on the part of the appellant. The High Court merely opined that in view of the number of injuries inflicted upon the deceased, he had an intention to kill him. Intention to kill a person must be determined having regard to the factual scenario involved in each case. The doctor (PW-3) has clearly stated that the injuries suffered by the deceased could have been caused by the log of wood, which was marked as M.O.1. Medical evidence, thus, corroborated the ocular evidence. [Para 17] [662-C-E]

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3. PW-1 and PW-4 have proved enmity between the parties. Veracity of statements of the said witnesses to that effect was not tested in the cross-examination. The fact that an incident had occurred a few days prior to the incident in question is also not in dispute. [Para 11] [661-C]

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4. The investigation commenced immediately after the lodging of the First Information Report. It is not a case where an undue delay in lodging the First Information Report took place. [Para 12] [661-E]

5. PW-1, although may be son of the deceased, but it is difficult to disbelieve his statement that he had witnessed the occurrence. The cycle and the torch used by PW-1 had no connection with the commission of the offence. If they had not been seized by the police, for one reason or the other, the same by itself would not be a

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A **ground to disbelieve the statement of PW-1. [Para 15]
[661-H; 662-A]**

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 76 of 2006.

B From the final Order dated 18.1.2006 of the High Court of
Madras in Criminal Appeal No. 142 of 1997.

T. Raja for the Appellant.

C V. Kanakaraj, V.G. Pragasam, S. Joseph Aristotle and S.
Prabhu Ramasubramanian for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

D 2. This appeal is directed against the judgment and order
dated 18th January, 2006 passed by a Division Bench of the
Madras High Court in Criminal Appeal No.142 of 1997 whereby
and whereunder the appeal filed by the appellant against an
order of conviction dated 30th January, 1997 passed by the
Principal Sessions Judge, Dindigul Anna District, was
E dismissed.

F 3. Appellant with Jesu Raj and Arokiyam were proceeded
against for commission of an offence under Section 302 of the
Indian Penal Code. The first and second accused were charged
for commission of an offence punishable under Section 302 of
the Indian Penal Code whereas the third accused was charged
for commission of an offence under Section 302 of the Indian
Penal Code read with Section 34 thereof.

G 4. Enmity between the parties is admitted. There were
instances to show that the accused had been causing various
kinds of mischief. The incident in question occurred on 26th
November, 1994. Two years prior thereto, accused Nos. 1 and
3 assaulted the deceased and PW-4, Viyakula Mary. Four
months thereafter, the appellant (accused No.1) is said to have
caused damage to the pipeline of the water of the house of the
H deceased. A few months before the incident in question,

allegedly the haystack of the deceased was put on fire. A

Two weeks prior to the incident again, the deceased was assaulted resulting in initiation of a criminal proceeding against the accused.

5. On 26th November, 1994 at about 9.00 p.m. while the deceased and the informant - Kolandaisamy (PW-1) were proceeding towards their house from Nilakkottai Market on their bicycles, somebody had flashed torch light on the deceased. Deceased questioned thereabout. At that time PW-1 also flashed light from his torch towards the opposite direction and saw the appellatant. Appellant assaulted the deceased with a wood log which was marked as M.O.1. He saw the accused No.3 catching hold of the deceased. He was threatened with dire consequences, if he intervened, by the accused No.2 with a knife. The deceased fell down but still was repeatedly assaulted. PW-1 ran from the spot. He was chased. He allegedly hid himself in a bush. B C D

6. PW-1 met PW-2 Saveriar and informed him about the incident that had taken place. They rushed to their village. They came back to the scene of occurrence and found that the deceased had expired. E

7. PW-1 went to Nilakottai police station. A First Information Report was lodged at about 1.00 A.M. on 27th November, 1994. The Investigating officer reached the place of occurrence at about 2.00 A.M. He recovered blood stained earth and a blue shawl. Inquest of the dead body was conducted between 3.00 a.m. and 5.00 a.m. He had also examined some witnesses being PWs. 1, 2, 5 and 6. The body was sent for post-mortem examination. Autopsy was conducted at about 11.15 a.m. on 27th November, 1994. The following anti mortem injuries were found on the person of the deceased :- F G

"1. On the back side of the head a bruise of the size 3 cm x 2 cm was found.

2. on the back of the left side of the head a bruise of size 3 cm x 2 cm was found. H

- A 3. On the upper portion of the head a swelling of the size 3 cm x 3 cm was found.
4. On the front side of the head a swelling of size 3 cm x 3 cm was found.
- B 5. On the right side of the eye brow a bruise of size 2 cm x 1 cm was found.
6. Below the right eye a bruise of size 2 cm x 2 cm was found. Right eye was closed. Outside the right was totally blackened.
- C 7. a swelling of the size 6 cm x 4 cm was found on the right cheek.”
8. The learned Sessions Judge relying on or on the basis of the material brought on record accepted the deposition of
- D PW-1, Kolandaisamy. All the accused were held guilty of the charges leveled against them. On an appeal preferred by the accused before the High Court, it while upholding the conviction and sentence of the appellant herein, it recorded a judgment of acquittal so far as accused Nos. 2 and 3 are concerned. It was
- E opined that accused No.2 being father in law of he appellant, might not have any motive to cause the murder of the deceased. Besides, no incised injury has been found on the deceased. As regards accused No.3, it was held that there was no cogent material to connect him with the crime.
- F 9. Mr. T. Raja, learned counsel appearing on behalf of the appellant in support of the appeal, inter alia would submit :-
- 1) That the High Court committed a serious error in drawing presumption on the basis of the appellant's
- G conduct, to hold that he had the requisite intention to kill the deceased. Such a presumption, learned counsel would contend, is not available in law.
- 2) The cycle and torch used by PW-1 having not been
- H seized, which were material for the purpose of corroborating his statement, the impugned judgment

is liable to be set aside.

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- 3) If the articles which PW-1 had bought, could be seized, there was absolutely no reason as to why the cycle and the torch used by PW-1 could not have also been seized.

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10. Mr. V. Kanakaraj, learned senior counsel appearing on behalf of the State, on the other hand, supported the impugned judgment.

11. PW-1 and PW-4 have proved enmity between the parties. Veracity of statements of the said witnesses to that effect was not tested in the cross-examination. The fact that an incident had occurred a few days prior to the incident in question is also not in dispute.

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12. The First Information Report was received by the Investigating officer, PW-10, at 1.00 a.m. on 27th November, 1994. He immediately came to the site. The distance between the place of occurrence and Nilakkottai Police Station is about 3 kms. The Investigating Officer reached the place of occurrence at about 2.00 a.m. Thus, the investigation commenced immediately after the lodging of the First Information Report. It is not a case where an undue delay in lodging the First Information Report took place.

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13. Homicidal death of Maria Michel stands undisputed. It is also evident from the post-mortem examination report that the injuries on the deceased could have been caused by a log of wood which was marked as M.O.1. The deceased suffered atleast three fractures on his head.

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14. PW-1, although may be a son of the deceased, but it is difficult to disbelieve his statement that he had witnessed the occurrence.

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15. We have been taken through the entirety of his deposition and do not find any reason to differ with the views of the learned Sessions Judge as also the High Court. The cycle

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A and the torch used by PW-1 had no connection with the commission of the offence. If they had not been seized by the police, for one reason or the other, the same by itself would not be a ground to disbelieve the statement of PW-1.

B 16. The following finding of the High Court had been commented upon by Mr. Raja.

“From the conduct of the first accused, it can be presumed that the first accused had the intention to kill the deceased and therefore the prosecution has proved its case in so far as the first accused is concerned.”

C 17. The High Court while mentioning about the conduct of the appellant, meant overt acts attributed on the part of the appellant. The High Court merely opined that in view of the number of injuries inflicted upon the deceased, he had an intention to kill him. Intention to kill a person must be determined having regard to the factual scenario involved in each case. The doctor PW-3, K. Subramaniam, has clearly stated that the injuries suffered by the deceased could have been caused by the log of wood, which was marked as M.O.1. Medical evidence, D thus, corroborated the ocular evidence. E

F 18. Keeping in view the number of injuries inflicted on the deceased as also the nature thereof and furthermore in view of the opinion expressed by the doctor, there cannot be any doubt whatsoever that the appellant had the intention to kill the deceased.

19. For the reasons abovementioned we do not find any merit in this appeal which is accordingly dismissed.

G K.K.T.

Appeal dismissed.