A AMBARAM

v.

STATE OF M.P.

APRIL 27, 2007

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

Penal Code, 1860:

ss.302/34—Murder—Common intention—Filthy language used by C *Appellant and other accused while taking drinks—Deceased's sister objected, on which she was assaulted—At this stage deceased intervened but he was also assaulted—Appellant assaulted deceased with axe—He acted on exhortation made by others—At least one injury received by deceased attributed to Appellant—Common intention may develop at the spot—* D *Appellant rightly convicted under ss.302/34.*

According to the prosecution, Appellant and the other accused were taking drinks near the house of PW9. They started hurling filthy abuses and were creating nuisance when PW9 came out of her house and asked them to behave themselves. But the accused started assaulting PW9. When one E **accused hurled a stone at PW9, her brother intervened but he was caught by the accused. Appellant who was carrying an axe, inflicted a blow on his head from its blunt side. Another accused shot an arrow at deceased. He fell down unconscious and later succumbed to his injuries. Trial Court held Appellant and other accused guilty under Section 302/149 IPC. High Court convicted** F **Appellant and two other accused under Section 302 r/s 34 IPC. Hence the present appeal.**

Dismissing the appeal, the Court

HELD: 1.1. At least one of the ante-mortem injuries received by deceased G **attributed to the appellant. The injuries found on the person of the deceased both by the Doctor in his injury report as also in the post-mortem report, support the prosecution case. [Para 12] [869-D, E]**

1.2. Appellant, took an active part in assaulting the deceased. From the

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materials on record, it appears that he actively associated himself in the entire episode. Appellant and a co-accused assaulted the deceased with axe whereas another accused shot an arrow. They have been allegedly shouting 'kill-kill'. Apart from that, it appears that the appellant has also assaulted another person on his head. There was absolutely no reason as to why the appellant together with others would assemble for taking drinks in front of the house of the deceased and that too armed with such lethal weapons. They were merely asked not to create a nuisance and to behave themselves as they had been hurling abuses in filthy languages. It was not a case where PW-9 gave any provocation. She was unarmed. She was a lady, still then she was assaulted. Intervention by the deceased being her brother at that stage cannot be said to be unusual. It is, therefore, not a case where injuries were caused on a sudden provocation or in a fit of angler. Appellant does not claim a right of private defence. He is said to have been injured but no medical certificate was produced.

[Para 13] [869-E, F, G; 870-A]

1.3. In any event, appellant was carrying common intention. Common intention may develop at the spot. Appellant acted on exhortation made by others. He participated in the entire occurrence. He was carrying a dangerous weapon. He assaulted not only the deceased but also another person.

[Para 19] [872-C]

Shajahan & Ors. v. *State of Kerala and Anr.*, (2007) 7 SCALE 618 and *Raj Pal and Ors.* v. *State of Haryana*, [2006] 9 SCC 678, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 637 of 2007.

From the Final Judgment and Order dated 19.05.2006 of the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 1239 of 1998.

Anis Ahmed Khan and Shoaib Ahmed Khan for the Appellant.

Dr. N.M. Ghatate, C.D. Singh and Morusagar Samantaray for the Respondent.

The Judgment of the Court was delivered by

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

2. Appellant herein was convicted for commission of an offence under

A Sections 148, 302/149 of the Indian Penal Code alongwith several other persons namely Hukum, Girdhari, Patiram, Narayan and Prahlad.

3. Prosecution case shortly stated is as under:-

Savitribai and other members of her family were sitting in the courtyard
B of the former's house at about 4 p.m. on 2.3.1991. Prahladsingh, Ambaram, Patiram, Hukum, Narayan and Girdhari were drinking liquor. They started hurling filthy abuses. Savitribai came out from her house and asked them to behave themselves. They adopted a hostile stance. They started assaulting her, causing injuries inter alia by throwing stones. When Accused Hukum hurled a stone at her, Prem Singh, brother of Savitribai intervened. He was
C caught by them. Hukum pelted a stone at him causing injury on his head. Ambaram, who was carrying an axe, inflicted a blow on his head from its blunt side. Other accused persons entered her house. Patiram brought a bow and arrow and shot an arrow at Premsingh. He fell down unconscious. One Chandrakalabai pulled out that arrow. Others who were returning from the
D weekly market intervened. At least six of them namely Himmatsingh, Gendalal, Mansingh, Kamalasingh, Savitribai and Phool Singh were injured by the appellants.

4. Some of the accused persons in the process also appeared to have suffered injuries. It is alleged that not only the aforementioned persons
E suffered injuries at the hands of the accused, even the tiles of the roof of Savitribai's house were also damaged.

5. Prem Singh succumbed to his injuries on 3.3.1991.

6. Homicidal nature of death of Prem Singh is not disputed. The learned
F Sessions Judge upon consideration of the materials brought on record by the prosecution held the appellants guilty of commission of an offence under Section 302/149 of the Indian Penal Code. The High Court, however, convicted only Ambaram, Hukum and Prahlad under Section 302/34 of the Indian Penal Code. Appellant Girdhari was convicted under Section 324 of the Indian Penal
G Code.

7. Only appellant Ambaram is before us.

8. A limited notice was issued by this Court in regard to the nature of offence.

H 9. Mr. Anis Ahmed Khan, learned counsel appearing on behalf of the

appellant would submit that keeping in view the fact that the appellant has assaulted merely with the blunt portion of the axe, whereby no vital injury was caused; only an offence under part II of the Section 304 of the Indian Penal Code is made out.

10. Dr. N.M. Ghatate, learned senior counsel appearing on behalf of the respondent, on the other hand, would submit that the appellant and others having been armed with various lethal weapons and having not only caused the death of one person but injuries to six others, it is not a case where clause fourthly appended to Section 300 of the Indian Penal Code would be applicable.

11. The deceased Prem Singh received the following ante-mortem injuries;-

> "I. A punctured wound in his abdomen 2" below umbilical region measuring 1" x ¾" x cavity deep. The wound has punctured the small intestine and caused injury of the size ¾" x ½" x through and through. Omentum and small intestine had also come out.
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> II. Two Lacerated wound on the occipital region measuring 1"x ½ x ¼" and another wound 1"x ½" x ¼". "

12. At least one of the injuries is attributed to the appellant. The injuries found on the person of the deceased both by Dr. N.K. Pancholi in his injury report as also in the post-mortem report, support the prosecution case.

13. Appellant, took an active part in assaulting the deceased Prem Singh. From the materials on record, it appears that he actively associated himself in the entire episode. Ambaram and Prahlad assaulted the deceased with axe whereas Patiram shot an arrow. They have been allegedly shouting 'kill-kill'. Apart from that, it appears that Ambaram, the appellant had also assaulted Himmat Singh on his head. There was absolutely no reason as to why the appellant together with others would assemble for taking drinks in front of the house of the deceased and that too armed with such lethal weapons. They were merely asked not to create a nuisance and to behave themselves as they had been hurling abuses in filthy languages. It was not a case where PW-9, Savitribai gave any provocation. She was unarmed. She was a lady, still then she was assaulted. Intervention by the deceased being her brother at that stage cannot be said to be unusual. It is, therefore, not a case where injuries were caused on a sudden provocation or in a fit of anger. Appellant does not claim a right of private defence. He is said to have been

injured but no medical certificate was produced.

14. We may, therefore, for the purpose of this case, notice the relevant provisions of Section 299 and Section 300.

Section 299	*Section 300*
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done -
	Intention
(a) with the intention of causing death ; or	(1) with the intention of causing death ; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
	Knowledge
(c) with the knowledge that the act is likely to cause death	(4) with the knowledge that the act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

15. Whereas Clause (b) of Section 299 refers to clauses secondly and thirdly of Section 300, the distinctive feature of the said provisions are well-known. A

16. Mr. Anis Ahmed Khan, submitted that only one injury was inflicted by the appellant. A similar question came up for consideration recently in *Shajahan & Ors.* v. *State of Kerala & Anr.*, (2007) 3 SCALE 618 wherein it was held that number of injuries is not decisive. How and in what manner injuries have been caused would be a relevant factor. B

17. Reliance has been placed by *Mr. Anis Ahmed Khan on Raj Pal and Ors.* v. *State of Haryana,* [2006] 9 SCC 678. In that case, it was held; C

> "17. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special fraity of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. *The word "likely" in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury .... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard* D E F G H

A *to the ordinary course of nature.*

18. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Kalarimadathil Unni* v. *State of Kerala* is
B an apt illustration of this point. "

(Emphasis Supplied)

18. The said decision does not support Mr. Ahmed's contention. It runs counter thereto.

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19. In any event, appellant was held to be carrying common intention. Common intention may develop at the spot. Appellant acted on exhortation made by others. He participated in the entire occurrence. He was carrying a dangerous weapon. He assaulted not only the deceased but also another.

D 20. We therefore, are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is dismissed accordingly.

B.B.B. Appeal dismissed.