MANOJ AND ANR. A

*v.*

STATE OF KARNATAKA

(Criminal Appeal No. 852 of 2013)

JULY 5, 2013 B

**[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]**

*Penal Code, 1860 – ss. 302 and 325 – Prosecution of two accused u/ss. 302 and 506 r/w. s.34 – Conviction by trial court – High Court confirmed the conviction u/s. 302/34 but* C *acquitted the accused u/s. 506/34 – On appeal, held: Prosecution case proved its case as regards the sequence of events leading to death of the deceased, beyond reasonable doubt – The witnesses, including the eye-witness, medical evidence as well as FSL report support the* D *prosecution case – However, in absence of evidence that appellant No.2 intended to cause death or shared intention to cause death with appellant No.1, he cannot be convicted u/s.302/34 – Conviction of appellant No.1 u/s. 302 upheld – Conviction of appellant No.2 altered to s.325 and his sentence* E *altered to already undergone.*

**The two appellants-accused were prosecuted u/ss. 302 and 506 r/w. s.34 IPC. the prosecution case was that the deceased did not like coming of accused to his house and suspected him having illicit relationship with his wife.** F **On the day of the incident, pursuant to verbal altercation between the deceased and the accused persons, appellant No.2 threw a stone at the deceased with a sword. Trial court convicted both the accused u/ss.302 and 506 r/w. s. 34 IPC and sentenced them to life** G **imprisonment u/s. 302/34 and to SI for one year with fine under s. 506/34. High Court affirmed the conviction u/ s.302/34, but set aside the conviction u/s.506/34. Hence the present appeal.**

 H

A Dismissing the appeal of appellant No.1 and partly allowing that of appellant No.2, the Court

HELD: 1.1. The three witnesses namely PWs 8, 18 and 16 have clearly testified about the sequence of events leading to the death of the deceased which version has been found to be reliable by the courts below. There is no reason to strike a discordant note, for there is hardly any infirmity in the depositions of the above-mentioned witnesses, which have stood the test of lengthy cross-examination by the defence. The fact that the deceased suspected his wife's fidelity and an illicit intimacy with appellant No.1, is sufficiently proved from the deposition of the widow of the deceased (PW-16), and the other two witnesses (PWs 8 and 18). It is also evident from the said depositions that the deceased had forbidden appellant No.1 from coming to his house and threatened to kill him in case he did so again. This happened shortly before the incident in question. The mutual relationship between the deceased and appellant No.1 was thus embittered. On the date of the occurrence, the presence of the deceased around the bus stand where the occurrence took place has also been sufficiently proved by the deposition of the witnesses including the police witnesses who have prepared the site plan and made seizures from the spot. So, also the presence of the two eye witnesses on the spot at the time of occurrence in a place like a bus stand is in no way abnormal to cast any doubt about their credibility. [Para 14] [881--E-H; 882-A-B]

1.2. The medical evidence adduced at the trial, too supports the ocular version. The doctor has clearly reported that the crush injury on the face of the deceased could be caused by the stone (MO.2) inflicted by appellant No.2, while the other injury could have been inflicted by the sword which appellant No.1 was allegedly carrying

H

at the time of the incident. The presence of human blood on these two objects sufficiently supports the prosecution case that the said weapons were used for the commission of the offence. [Para 14] [882-C]

2. As per the evidence of PW-8, in the course of the verbal altercation between the accused and the deceased, appellant No.2 appears to have hurled a stone towards the deceased which hit and injured him, but there is nothing to show that the injury was by itself sufficient to cause death in the ordinary course nor is there anything to show that there was any pre-concert between the appellant No.1 and his father (appellant No.2) to kill the deceased. In the absence of any evidence, to show that appellant No.2 intended to cause death or shared the intention to cause death with his son, his conviction for murder punishable under Section 302 of the IPC cannot be sustained. The prosecution has not even alleged a motive against appellant No.2. The motive based on illicit relationship between appellant No.1 and the wife of the deceased, could hardly be attributed to appellant No.2, no matter, the incident started with an altercation in which even he got involved. The sudden fight between the appellants on the one hand and the deceased on the other, escalated into a tragedy for the deceased but the responsibility for the gruesome assault, cannot be shifted from appellant No.1 who used a dangerous weapon like a sword to fatally injure the deceased. The stone thrown by appellant No.2 may have triggered the incident to its ugly end but beyond that appellant No.2 cannot be attributed the responsibility of murder with or without the assistance of Section 34 of the IPC. Appellant No.2 can at best be held guilty of causing grievous hurt to the deceased punishable under s.325 of the IPC. The conviction of appellant No.2 is altered from s. 302 r/w. s.34 IPC to s.325 IPC. Appellant No.2 has been in jail for nearly 3½ years now which sentence should suffice. Appellant

A **No.2 is accordingly sentenced to imprisonment already undergone by him. [Paras 15 and 16] [882-F-H; 883-A-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 852 of 2013

B From the Judgment and Order dated 15.11.2011 of the High Court of Karnataka, Ciruit Bench at Gulbarga Criminal Appeal No. 3643 of 2009.

H. Chandra Sekhar for the Appellants.

C

C.B. Gururaj, V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

**T.S. THAKUR, J.** 1. Leave granted.

D

2. This appeal by special leave arises out of a judgment and order dated 15th November, 2011 passed by the High Court of Karnataka, Circuit Bench at Gulbarga, whereby Criminal Appeal No.3643 of 2009 filed by the appellants has been partially allowed upholding their conviction and sentence E under Section 302 read with Section 34 IPC, but setting aside their conviction under Section 506 read with Section 34 of the IPC.

3. Briefly stated the prosecution case is that the deceased F Sadashiv was unhappy about appellant No.1-Manoj visiting his house and associating with his wife for he suspected an illicit intimacy between the two. He had, therefore, forbidden Manoj from coming to his house and in case he did so he had threatened to kill him. The prosecution story is that on 30th G August, 2006 at about 12 noon appellant No.1-Manoj and his father-appellant No.2 assaulted the deceased while the latter was in front of a shop owned by one Khilari near Babanagar bus stand within the limits of Tikota Police Station. While appellant No.2 is alleged to have assaulted the deceased with

H

a stone on his head appellant No.1-Manoj is said to have given several blows to the deceased with a sword injuring him on his neck, head and face. The incident, was allegedly seen by five eye witnesses, some of whom carried the injured to the Police Station from where he was referred to the District Hospital for treatment. The deceased, however, passed away before reaching the hospital leading to the registration of a case against the father and the son under Sections 302 and 506 read with Section 34 of the IPC. A charge-sheet was in due course filed against the two accused persons before the jurisdictional Magistrate who committed the accused to face trial before the Principal District and Sessions Judge, Bijapur. At the trial, the prosecution examined as many as 22 witnesses apart from placing reliance upon several documents marked as Exs.P1 to P24 and material objects MOs1 to 12. In their statements recorded under Section 313 of the Cr.P.C., the accused persons denied the charges and pleaded innocence. No evidence was, however, adduced by them in defence. The trial Court eventually came to the conclusion that prosecution had brought home the guilt of the accused persons for offences punishable under Sections 302 and 506 read with Section 34 of the IPC.

4. The appellants were accordingly sentenced to undergo imprisonment for life besides a fine of Rs.10,000/- each for offence punishable under Section 302 read with Section 34 of the IPC and a sentence of simple imprisonment for one year and a fine of Rs.2,000/- each under Section 506 read with Section 34 of the IPC.

5. Aggrieved by their conviction and the sentence, the appellants appealed to the High Court of Karnataka, Circuit Bench at Gulbarga who has in terms of the judgment impugned in this appeal affirmed the conviction and the sentence under Section 302 read with Section 34 IPC awarded by the trial Court but set aside the conviction and sentence under Section 506 read with Section 34 IPC, as noticed above. The present

A appeal assails the correctness of the said judgments and orders of the Courts below.

6. We have heard at some length learned Counsel for the parties who have taken us through the evidence adduced at the trial. Out of 22 witnesses examined at the trial by the prosecution, PWs-4, 5, 7, 17 and 19 have turned hostile. No support is available from the deposition of the said witnesses to the prosecution story. PW-8-Shrishail Shettappa Shelannavar and PW-18-Mahadev have, however, fully supported the prosecution version. PW-16-Padawwa-wife of the deceased has also appeared to support the prosecution case. We shall briefly refer to the depositions of these witnesses especially because the judgments delivered by the trial Court and the High Court have found the same to be credible and placed reliance upon them for holding the appellants guilty.

7. PW-8-Shrishail Shettappa Shelannavar deposed that the incident leading to the death of the deceased-Sadashiv took place near a hotel at Babanagar at 11:30 a.m. in the morning. According to the witness, he had come out of the hotel (the witness means a roadside Dhaba) after taking tea only to find that a verbal altercation was going on between the accused on the one hand and the deceased-Sadashiv on the other. It was in the course of this altercation that appellant No.2-Amagond threw a stone at Sadashiv which hit the latter on his head. On receiving the injury the deceased fell to the ground whereupon appellant No.1-Manoj inflicted injuries on his neck and other parts of the body with a sword. Seeing the assault on the deceased, people from the hotel vicinity started running helter-skelter. The deceased was removed from the site in a vehicle after the appellants escaped from the place of occurrence. The witness identified the sword and the stone with which the deceased was assaulted by the appellants.

8. In cross-examination, the witness stood by his version and stated that he often goes to the hotel (dhaba) situate near

Babanagar bus stand whenever he does not have to attend to any urgent work. The witness further stated that he had cordial relations with the accused persons but did not question them about the reason for the assault on the deceased. None of those on the spot had come to the rescue of Sadashiv who was sitting alone before the assault started. The witness denied being a relative of the deceased Sadashiv or that he was deposing falsely. There is nothing in the cross-examination of this witness that may lend any support to the defence nor has the deposition of the witness been shattered in cross-examination.

9. Coming then to the statement of PW-18-Mahadev, the witness stated that the deceased was his elder brother and lived four to five houses away from his house at Babanagar. The appellants were also known to the witness whom he identified. The witness stated that appellant-Manoj used to visit the house of Sadashiv giving rise to a suspicion in his mind that his wife had illicit intimacy with said appellant. The deceased had warned appellant-Manoj in that regard and asked him not to visit his house. Such warnings were given to the deceased nearly fifteen days before the date of the incident despite which the appellant-Manoj had come to the house of Sadashiv two days prior to the occurrence whereupon the deceased had threatened Manoj that he would kill him if he visited again.

10. On the date of occurrence at about 12 noon the witness and PW-8-Shrishail Shettappa Shelannavar were sitting in front of the dhaba belonging to one Allisab after taking tea. The deceased was at that time sitting in front of the dhaba of one Suresh and smoking a beedi on the opposite side of the road. It was then that the appellants came to the spot. Manoj was armed with a sword while appellant No.2-his father had a stone. He threw the stone towards the deceased that hit him on his head. Because of the injury the deceased fell down whereafter the Appellant-Manoj gave to the deceased four to five blows with the sword that he was carrying. The witness and Shrishail

A Shettappa Shelannavar tried to rescue the victim but Manoj threatened to kill them if they intervened. After the incident, the appellants ran away from the spot thinking that Sadashiv was dead. The witness then brought water for the deceased to save his life as he was bleeding profusely from the head and neck. B They took the deceased to the Tikota Police Station in a Tom Tom vehicle wherefrom they were referred to a District Hospital at Bijapur with a constable deputed to accompany them. While going to the hospital the deceased succumbed to his injuries whereupon they returned to the Police Station to lodge a report C about the incident. The witness identified the sword and the stone used by the appellants in the course of the incident.

11. We may also at this stage refer to the deposition of PW-16-Padawwa-wife of the deceased. This witness has supported the prosecution version inasmuch as she stated that D the appellant-Manoj used to visit her house to talk to her on account of which her husband entertained a suspicion about her fidelity. The deceased had admonished the appellant and asked him not to come to his house and if he did so he would kill him. On the date of the occurrence the deceased left his E house for the bus stand in the morning but around 12:30 p.m. some people residing in the neighbourhood informed her that the appellant- Manoj had assaulted the deceased with a sword while appellant No.2 had inflicted an injury upon his head with a stone. She rushed to the spot to find that the deceased was F alive and water was being poured in his mouth by the people present including Mahadev, Gopal and Shrishail who took the deceased to Tikota Police Station. The witness also accompanied them.

G 12. The medical evidence adduced in the case comprises the deposition of Dr. Nandini who conducted the post mortem examination on the deceased and opined that the death was due to hemorrhagic shock secondary to hypovolemic shock. The following external injuries were found on the body of deceased which were certified by him to be ante-mortem:

H

*"(a) Cut lacerated wound of about 4 x 1 cm deep present over right angle of eye frontal bone fracture seen.*

*(b) Crush injury on left cheek 3'x half inch deep.*

*(c) Cut lacerated wound over left angle of mouth 4' x half inch deep.*

*(d) Cut lacerated wound 5 cm present over extensor surface of wrist on medial side.*

*(e) CLW of about 5 x 2 and half inch present over upper neck of leftside, C2 vertebra fracture present."*

13. The witness opined that these injuries were sufficient to cause death in the ordinary course of nature. The witness further stated that while the crush injury noted by him on the dead body could be caused with stone MO.2 the other injuries could be caused by MO.1 Hatiyar (sword). The FSL report (Ex.P.19) which was also pressed into service by prosecution proved that the blade portion of sword (MO.1) and stone (MO.2) were blood stained.

14. There is, in our opinion, no manner of doubt that the three witnesses referred to earlier have clearly testified about the sequence of events leading to the death of Sadashiv which version has been found to be reliable by the Courts below. We see no reason to strike a discordant note for there is hardly any infirmity in the depositions referred to above which have stood the test of lengthy cross-examination by the defence. That the deceased suspected his wife's fidelity and an illicit intimacy with appellant-Manoj is sufficiently proved from the deposition of the widow of the deceased, Shreshiala and Mahadev the other two witnesses referred to above. It is also evident from the said depositions that the deceased had forbidden the appellant-Manoj from coming to his house and threatened to kill him in case he did so again. This happened shortly before the incident in question. The mutual relationship between the

A deceased and the appellant-Manoj was thus embittered. On the date of the occurrence the presence of the deceased around the bus stand where the occurrence took place has also been sufficiently proved by the deposition of the witnesses including the police witnesses who have prepared the site plan and B made seizures from the spot. So, also the presence of the two eye witnesses on the spot at the time of occurrence in a place like a bus stand is in no way abnormal to cast any doubt about their credibility. The medical evidence adduced at the trial too supports the ocular version. The doctor has clearly reported that C the crush injury on the face could be caused by the stone (MO.2) while the other injury could have been inflicted by the sword which appellant-Manoj was allegedly carrying at the time of the incident. The presence of human blood on these two objects sufficiently supports the prosecution case that the said D weapons were used for the commission of the offence.

15. Learned Counsel for the appellants, however, argued that even though appellant-Manoj was alleged to have used the sword to inflict injuries on the deceased, the role played by appellant No.2 was restricted to throwing a stone towards the E deceased. Even when the stone had caused an injury there was nothing to show that it was intended to kill the deceased especially when it is not the case of the prosecution that even after the stone had hit the deceased the assault was continued by appellant No.2 with or without the help of appellant No.1- F Manoj. There is considerable merit in that submission. Even according to PW-8-Shrishail Shettappa Shelannavar when he stepped out of the dhaba, he found a verbal altercation going on between the deceased and the accused persons. In the course of that altercation appellant No.2 does appear to have G hurled a stone towards the deceased which hit and injured him but there is nothing to show that the injury was by itself sufficient to cause death in the ordinary course nor is there anything to show that there was any pre-concert between the appellant-Manoj and his father to kill the deceased. In the absence of any

H

evidence, let alone evidence that is reliable and cogent, to show that appellant No.2 intended to cause death or shared the intention to cause death with his son, it is difficult to sustain his conviction for murder punishable under Section 302 of the IPC. The prosecution has not even alleged a motive against appellant No.2. The motive based on illicit relationship between appellant-Manoj and the wife of the deceased, could hardly be attributed to appellant No.2, no matter, the incident started with an altercation in which even he got involved. The sudden fight between the appellants on the one hand and the deceased on the other, escalated into a tragedy for the deceased but the responsibility for the gruesome assault, cannot be shifted from Manoj who used a dangerous weapon like a Sword to fatally injury the deceased. The stone thrown by appellant No.2 may have triggered the incident to its ugly end but beyond that appellant No.2 cannot be attributed the responsibility of murder with or without the assistance of Section 34 of the IPC. Appellant No.2 can at best be held guilty of causing grievous hurt to the deceased punishable under Section 325 of the IPC.

16. In the result, we dismiss this appeal insofar as appellant-Manoj is concerned and uphold his conviction under Section 302 IPC and the sentence awarded to him. The conviction of appellant No.2 is, however, altered from Section 302 read with Section 34 IPC to Section 325 IPC. Appellant No.2 has been in jail for nearly 3½ years now which sentence should, in our opinion, suffice. Appellant No.2 is accordingly sentenced to imprisonment already undergone by him. He shall be released from custody if not otherwise required in connection with any other case. The sentence of fine imposed upon the said appellant shall however remain unaltered.

Kalpana K. Tripathy Appeals disposed of.