

CASE NO.:
Appeal (crl.) 380 of 1997

PETITIONER:
Muthusamy & Anr.

RESPONDENT:
State of Tamil Nadu

DATE OF JUDGMENT: 11/12/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The family of the appellants herein and that of the deceased Bose owned neighbouring agricultural lands in Lakshmipuram Village within the jurisdiction of Veerapandy Police Station, Tamilnadu. Both the lands were irrigated by one common well, in regard to which there was some dispute between the two families. The family of the appellants had installed a water pump and also had spent some money on deepening the said well, in regard to which there was a Panchayat which held that the family of the deceased could install its own pump for the purpose of irrigating their land but must pay its share of expenditure incurred in deepening the well.

It is the case of the prosecution that on 10.11.1984 while the deceased and his brother PW-2 were trying to install their pump, there was an argument between the appellants and the deceased for the non-payment of dues. Hence, during the said argument, the first appellant threatened the deceased and his brother that the family of the deceased could install the electric pump only after he (A-1) was dead. The further case of the prosecution is that on 10.11.1984 when PW-1 and the deceased were returning back from the well after placing the pipes and other accessories near the well at about 11.30 a.m. near the house of one Chinnamottaisamy, the appellants herein along with the father of A-3, by name, Chellandy confronted them. At that time, A-1 was armed with aruvel, A-2 (since deceased) with stick and A-3 with soori knife and at the instigation of A-1 to kill them, A-3 is said to have stabbed the deceased with soori knife on the ingunial region and A-1 cut the deceased with aruvel and A-2 hit with a stick which fell on the right wrist of the deceased. The further case of the prosecution is that when PW-1 raised a hue and cry the accused attacked him also causing certain simple injuries on him, consequent to the said attack the brother of PW-1 Bose died. A complaint in this regard was lodged at about 2.30 p.m. in Veerapandy Police Station, wherein PW-14 the Sub-Inspector of Police recorded the complaint and registered a case for offences punishable under Sections 302 and 307 IPC both read with Section 34 IPC. After the investigation, the three accused persons out of whom two are before us in this appeal, were charged for offences, as stated above.

During the course of trial, the prosecution through the evidence of PW-9, the Medical Officer, established the fact that the deceased had suffered as many as three injuries out of which injury No.1 which had cut the femoral artery and

vein as well as the head injury which caused cerebral haemorrhage caused the death of the deceased due to shock and haemorrhage. The prosecution through the other medical evidence of PW-7 established the fact that PW-1 had suffered as many as 7 injuries though the said injuries were simple. It is on the basis of this medical evidence coupled with the evidence of PW-1 who is the injured eye-witness as well as that of PW-2 who happened to come to the place of incident at the time of attack, as also based on the defence taken by the accused, the trial court convicted the accused persons for offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life. It also convicted them for an offence punishable under Section 307 read with Section 34 IPC for having attempted to commit the murder of PW-1 and sentenced them to undergo R.I. for a period of 7 years and directed the sentences to run concurrently.

An appeal filed by the convicted accused to the High Court of Judicature at Madras came to be dismissed, confirming the judgment and conviction made by the learned Sessions Judge.

The convicted accused filed the SLP before this Court and during the pendency of that petition, A-2 died and this Court granted leave to appeal only to the present appellants. In this appeal, Shri A.T.M. Sampath, learned counsel appearing for the appellants contended that the incident in question, as narrated by the prosecution, has not been proved by the prosecution. He also contended that the oral evidence led by the prosecution in this regard being that of the interested persons only the same ought not to have been accepted by the courts below. He also contended assuming that the incident had taken place, from the prosecution case itself, it is clear that it had occurred during a fight arising out of the dispute in sharing water from a common well, therefore, no intention to cause death or attempt to cause murder could ever be attributed to the accused persons. At any rate, he submitted since the injury caused by A-1 is inconsequential, he cannot be convicted for an offence punishable under Section 302 read with Section 34 IPC or for an offence punishable under Section 307 read with 34 IPC and at the most he could only be guilty of an offence punishable under Section 323 IPC.

Shri A.T.M. Rangaramanujam, learned senior counsel appearing for the respondent-State supported the judgments of the two courts below.

Having heard the learned counsel for the parties and perused the records, we find no merit in this appeal. The appellants in clear terms have admitted the incident in question though not as projected by the prosecution. It is their case that the deceased and PW-1 were the aggressors and they only defended themselves without there being any intention to cause any fatal injury to deceased or PW-1. In this background, we will have to examine the fact whether the courts below were justified in coming to the conclusion that the overt act of the appellants establish their intention to cause fatal injuries to the deceased and also whether the accused attempted to commit the murder of PW-1.

From the nature of the injuries caused to the deceased, it is clear that they are so grave and are caused to such vital part of the body that there can be no doubt that the intention of the appellants was atleast to cause such bodily injury which would lead to death. Therefore, the argument that there was no intention on the part of the accused to commit the murder or that the offence is one that does not fall under

Section 302 IPC for conviction cannot be accepted. So also the argument of the learned counsel that A-1 did not share the common intention of the other two accused persons especially that of the appellant No.2 herein to cause the death cannot also be accepted because it is established beyond reasonable doubt that apart from the fact that he was armed with a very dangerous weapon like aruvel he had also exhorted the other two accused to kill the deceased and his brother. We also notice that appellant No.2 herein (A-3) caused a serious injury on the deceased on a vital artery in the leg, and thereafter the first accused proceeded to attack the deceased which indicates that all the accused persons including A-1 shared the common intention of each other to cause the death of the deceased and PW-1, in the process they could succeed in killing the deceased and could only cause injuries to PW-1.

In such circumstances, we find no reason to interfere with the findings of the two courts below. The appeal fails and the same is dismissed.