

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 889 OF 2004

NACHIMUTHU & ANR.

.....

APPELLANTS

VERSUS

STATE OF TAMIL NADU

.....

RESPONDENT

O R D E R

1. We have heard learned counsel for the parties.
2. The present is a case of fratricide, the deceased was the brother of accused No. 1. Accused No. 2 is the wife of Accused No. 1. As per the prosecution story a dispute had arisen between the two brothers and their families on account of their land holdings with the result that they were not on talking terms. On the 7th October, 1989, accused No. 1 armed with the handle of a spade and accused No. 2 with a stick caused injuries to the deceased after they had intercepted him in the fields and after they had shouted out that they would teach him a lesson for wanting his share in the property. This incident was seen by P.W. 1, the daughter of the deceased. She ran away from the spot and while doing so, she came across

P.W. 2, her mother and her younger sister, running towards the scene of occurrence as they had been attracted by the noise that had come about. At that stage, both P.W. 1 and P.W. 2 saw the accused again beating the deceased which led to his immediate death. The accused were ultimately arrested and were charged for an offence punishable under Section 302 of the Indian Penal Code. The trial court relying on the evidence of P.Ws. 1 and 2, the primary witnesses, as also going through the nature and extent of the injuries caused, convicted the accused under the aforesaid Section and sentenced them to life imprisonment.

3. An appeal was thereafter taken to the High Court. The High Court has modified the conviction to an extent observing that as it was difficult to fix the fatal injury on either of the two accused both the accused were liable to be convicted under Section 302 read with Section 34 of the IPC. A Special leave Petition was filed at the instance of the two accused before this Court wherein leave was granted on the 16th August, 2004.

4. We have heard Mr. Ratnakar Dash, the learned senior counsel for the appellants and Mr. S. Thananjayan, the learned counsel for the respondent-

State of Tamil Nadu. We find that the evidence of the two witnesses P.W. 1, the daughter, and P.W. 2 the wife of the deceased, cannot be faulted. The eye witness account is also corroborated by the medical evidence and the report of the Serologist which reveals that the blood found on the handle of the spade was human blood of blood group 'O' which was the blood group of the deceased.

5. Faced with this situation, Mr. Dash has argued that the case would fall within the definition of murder but fell within the ambit of Section 304 Part I or Part II of the IPC and that in any case it was only accused No. 1 who had caused the injuries on the person of the deceased. He has pointed out that in the facts of the case Section 34 was not applicable insofar as accused No. 2 was concerned. We have examined these arguments very carefully but find them to be wholly without substance. The injuries on the deceased are reproduced below:

"External:

1. Abrasion with contrusion present on the left index and middle fingers.
2. Bleeding right ear present.
3. Both upper forearms fracture present.
4. A lacerated injury 1X1X5 cm. Present over the upper 2/3 and lower 1/3 of the right leg. Abrasion on the right knee present.
5. A lacerated injury present over the left leg at the level of upper 2/3 and 1/3 measuring 1x1cm. Bone depth.
6. Abrasion present on the both right and left

foot.

7. Abrasion present on the left elbow joint.

Internal

1. On opening of the skull fracture present on the right temporal lobe of the skull.
2. A lacerated injury present on the right temporal lobe of the brain.
3. 100ml. Of blood present in the cranial cavity.
4. On opening of the thorax No. 1 abdomen, no evidence of injury.
5. On opening of the right forearm, fracture present in the radius and ulna bone at the level of upper $\frac{3}{2}$ and lower $\frac{1}{3}$.
6. On opening of the left forearm, fracture present on the both radius and ulna bone present.
7. On opening of the both left, fracture present on the both tibiae and fibula bone at the level of upper $\frac{1}{3}$ and lower $\frac{2}{3}$.
8. Fracture present on the left index and middle fingers."

6. It is obvious that the fracture on the right temporal lobe of the skull and the lacerated injury on the right lobe of the brain are to be co-related to each other. Likewise 100ml of blood was found in the cranial cavity indicating the severity and intensity of the attack. We also see that there are several fractures on the dead body. It is also clear that the incident had happened in two instalments, and two sets of beatings had been administered to the deceased prior to his death. To submit, therefore, that the case would fall under Section 304(I) or 304(II) of the IPC is not acceptable.

7. Likewise, we find that accused No. 2 was equally involved with accused No. 1, her husband. It is quite evident that she had been armed with a stick and she too had used it on the person of the deceased with telling effect. The High Court has observed that it was difficult to decipher as to who had caused injury No. 1 which was the fatal injury and for that reason modified the conviction from Section 302 IPC simplicitor to Section 302 read with Section 34 IPC thereof. It is true that there is no charge under Section 302 read with Section 34 but to our mind no prejudice can be claimed by the two accused on this account as they were fully aware of the circumstances that were present against them. For the reasons recorded above, we find no merit in the appeal. Dismissed.

8. The accused are on bail. Their bail bonds are cancelled. They shall be taken into custody forthwith.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
JANUARY 13, 2011.