CASE NO.:
Appeal (crl.) 897 of 1997

PETITIONER:
State of Andhra Pradesh

RESPONDENT:
K. Srinivasulu Reddy and Anr.

DATE OF JUDGMENT: 18/12/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT,J.

By the impugned judgment a Division Bench of the Andhra Pradesh High Court altered the conviction of the respondents (hereinafter referred to as the 'accused') from Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') to Section 326 IPC. The State of Andhra Pradesh has questioned legality of the judgment.

Background facts as culled out from the judgment of the trial Court and the High Court are essentially as follows:

The accused are residents of Pamarru village and they are close associates. A-1 and A-2 are brothers. A-4 is wife of A-2 and A-3 is Sarpanch of Pamarru village. One Dandipati Gangi Reddy (hereinafter referred to as 'the deceased') was also a resident of Pamarru. PW-1 Lakshmi Reddy is his brother, PW-2 Chandra Sekhara Reddy, is his son. One Bommareddy Venkata Reddy is maternal uncle of PW-1 Lakshmi Reddy and the deceased. A-1 and A-2 are sons of one Suramma, who is sister of wife of Bommareddy Venkata Reddy, namely Bullemma, who was not in good terms with her husband and they had no issue. Bommareddy Venkata Reddy was having 18 acres of land and house sites. Bullemma insisted that her husband should give their property to her sister's sons i.e. A-1 and A-2; but Venkata Reddy was in a mood to give the property to PW-1 and the deceased, who were his sister's sons, since he was having more affection and love towards them. Due to these differences, Bullemma and Venkata Reddy were separated and Venkata Reddy was paying maintenance to his wife as per Court orders. Subsequently Venkata Reddy executed a 'Will' bequeathing his properties to PW-1 Lakshmi Reddy and the deceased. After the death of Venkata Reddy, the deceased and PW-1 were looking after the properties and paying maintenance to Bullemma till she died. A-1 and A-2 bore grudge against the deceased and PW-1, since Venkata Reddy did not bequeath any property to them. Therefore, disputes arose and civil suit was filed and the same was decreed in favour of PW-1 and the deceased about three years prior to the date of occurrence and they took possession of the properties of Venkata Reddy. Against the said decree, A-2 preferred appeal to the High Court and the matter at the relevant point of time was pending before the High Court. The deceased and PW-1 filed another suit in Subordinate Judge's Court of Gudivada in O.S. 138/86 and three months prior to the incident in this case, the Court passed a decree in favour of PW-1 and the deceased. Thus, the grudge of A-1 and A-2 became more acute. A-3 who was Sarpanch of Pamarru allegedly had illicit intimacy with the younger sister of Bullemma. Therefore, he supported the wife of Venkata Reddy and A-1 and A-2. Due to these prolonged litigations, A-1 and A-2 almost became penniless.

Being vexed with the Civil Court litigations and due to Court orders in favour of deceased and PW-1, the accused persons hatched a

plan to kill the deceased. About one week prior to the date of occurrence, all the accused assembled in the house of A-2 several times and entered into criminal conspiracy to murder the deceased and A-3 also stated that he will go to Hyderabad and stay there and instructed A-1 and A-2 to murder the deceased before he returned. A-4 also instructed A-1 and A-2 to murder the deceased as they have lost all their properties and became penniless.

On 3.9.1992, the fateful day, A-1 and A-2 in pursuance of their criminal conspiracy, lay in wait near the New Bridge at Pamarru. While A-1 concealed a Penakatti near umbilicus and covered the weapon with his shirt and towel, A-2 concealed an axe by concealing it near umbilicus and with his shirt and towel. A-1 was waiting near a shop at the slope and A-2 was waiting at the road near New Bridge, they found the deceased coming on a cycle from the village to the centre at about 8.45 a.m. and both the accused attacked him with Penakatti and axe. A-1 struck him with penakatti on his head, and A-2 also gave blows on his head with the axe and the deceased fell on the edge of bridge wall from his cycle. Then the deceased tried to run away towards the centre. A-1 and A-2 chased him, hacked him with Penakatti and axe. Then the deceased fell down into the slope. A-1 and A-2 hacked the deceased indiscriminately. PWs 1, 2, 3 and 5 i.e. Lakshmi Reddy, Chandrasekhara Reddy, Ramachandra Reddy and Venkatarama Reddy requested the accused not to kill the deceased, but they did not heed to their words. Then PW-9 Siva Reddy and PW-4 Nancharayya tried to prevent the accused from further hacking the deceased. The accused brushed them aside, and threw the cycle in the canal and threatened the above two persons and also other persons who had gathered there. The accused having caused nearly fifty injuries on the body of the deceased, left the place of occurrence with the weapons. The deceased was taken to the hospital, PW-7 the Medical Officer, after examining Gangi Reddy declared him dead. Later the Medical Officer, conducted autopsy over the body of the deceased, opined that the deceased appeared to have died of shock and haemorrhage, due to multiple injuries. At about 9.45 a.m. PW-1 gave a report to the Sub-Inspector of Police, Pamarru who registered the same as Criminal case No.89/92 of Pamarru Police Station under Section 302 IPC and investigated into. The Sub-Inspector of Police visited the scene of offence in the presence of mediators (PWs 9 and 11) and another, seized the blood stained Palmyrah leaves and blood stained earth and conducted inquest over the dead body in the presence of Panchayatdar PW-11 and one K. Rama Rao.

Investigation was undertaken on the basis of information lodged. Out of four accused persons A-1 and A-2 were charged for commission of offence punishable under Section 302 IPC, while all of the four accused were charged for commission of offence punishable under Section 302 read with Section 120-B IPC.

The trial Court placed reliance on the evidence of eyewitnesses and held that the accusations were clearly established so far as A-1 and A-2 are concerned. But acting on the statement made by the public prosecutor that there was no definite material against A-3 and A-4, directed their acquittal. All the four were also held not guilty of offence punishable under Section 120-B IPC.

The convicted accused persons filed appeal before the Andhra Pradesh High Court. The primary stand of the accused persons before the High Court was that after having discarded a part of the evidence, the trial Court committed mistake in believing the evidence of PWs 2, 4, 6 and 9. Though the police station was situated nearby, there was delay in lodging the complaint and same was not properly explained. As large number of injuries were found on the body of the deceased on post mortem, it is highly improbable that two accused persons accused of having hacked the deceased with penakatti and axe, could cause such large number of injuries. One of the injuries was stated to be caused by blunt weapon and use of blunt weapon was not spoken by any of the witnesses. The ocular evidence and medical evidence did not tally with

each other. Stand of the State before the High Court was that the trial Court had properly analysed the evidence to conclude about the guilt of A-1 and A-2. Since the evidence was acceptable and trustworthy, the trial Court rightly acted on it. There was in fact no delay in lodging the FIR. Observations made by the doctor recording injury No.10 were hypothetical. It did not say that the injury could not have been caused by weapon used by the accused. The High Court accepted that there was corroboration as to the alleged number of injuries and weapons used. The cause of death which was homicidal was due to the assaults. The High Court, therefore, found that reasonings and findings of the trial Court were just and correct. Further, the High Court observed that since large number of injuries were found and they were on vital parts, it is difficult to say which injury was caused by which accused and which injury ultimately resulted on the death of the deceased. On this premises, it was held that Section 302 IPC was not applicable. It was further observed that the participation of A-1 and A-2 in committing the offence was established but since there was doubt as to which injury resulted in death, the proper provision to be applied is Section 326 IPC for which five years rigorous imprisonment was imposed accordingly.

In support of the appeal, Ms. K. Amareswari, learned senior counsel submitted that the approach of the High Court is erroneous. It has been clearly born out by evidence on record that the accused persons were armed with deadly weapons, indiscriminately attacked the deceased mostly on vital parts and inflicted nearly 50 injuries. That being so, the High Court was not justified in altering the conviction to Section 326 IPC. In any event, Section 34 had full application.

In response, learned counsel for the accused respondents submitted that there was no evidence to show any common intention in making the assaults and as rightly observed by the High Court, Section 302 IPC had no application. With reference to the evidence of some of the witnesses who resiled their statement made during investigation, it was submitted that two persons i.e. accused A-1 and A-2 who were weakly built could have been resisted by the witnesses fairly large in number and who were physically well built. The fact that it did not happen that way goes to show that they were not present. In any event, there is no motive for the crime as ultimately PWs 1 and 2 would have been benefited from the killing. Further, it was submitted that since no particular injury could be attributed to any particular accused, the conviction has been rightly altered to Section 326 IPC and Section 34 has no application.

We find that the High Court has really missed to consider the real question and it has concluded that since no particular injury could be attributed to any particular witness the proper course should be to alter the conviction to Section 326 IPC. This reasoning cannot be justified as either sound logic or on any settled principle of criminal jurisprudence. From the conduct of the accused before and after the occurrence and the manner of indiscriminate assaults, a common intention is clearly perceived and proved beyond doubt. Even otherwise, looking at the weapons used by the accused, the injuries being large in number and on vital parts, Section 302 IPC had been rightly applied by the trial Court and the High Court was not justified in altering the conviction.

The legality of conviction by applying Section 34 IPC in the absence of such charge was examined in several cases. In Willie (William) Slaney v. State of Madhya Pradesh (AIR 1956 SC 116) it was held as follows:

"Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is a rolled up one involving the direct liability and the constructive

liability without specifying who are directly liable and who are sought to be made constructively liable.

In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant".

The above position was re-iterated in Dhanna etc. vs. State of Madhya Pradesh (AIR 1996 SC 2478).

Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained as to how they happened to be at the spot of occurrence and the trial Court and the High Court have accepted the same.

Coming to the plea of the accused that PWs 4 and 9 were 'chance witnesses' who have not explained how they happened to be at the alleged place of occurrence it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial by describing the independent witnesses as 'chance witnesses' it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.

In the aforesaid background the trial Court was justified in convicting the accused-respondents under Section 302 IPC and the High Court without any legal basis altered the conviction. The judgment of the trial Court is restored. The respondents are convicted under Section 302 IPC to undergo imprisonment for life. They shall surrender to custody to serve remainder of sentence. The appeal is, therefore, allowed.