SELVARAJ

v.

STATE OF TAMIL NADU AND ORS.

NOVEMBER 13, 1997

[M.M. PUNCHHI AND M. SRINIVASAN, JJ.]

Penal Code, 1860—Sections 302. 307 & 326—Murder—Property dispute among family members—Accused stabbed to death his brother—Evidence of eye witnesses—Trial Court disbelieving the prosecution witness acquitted the accused—High Court holding the accused guilty for the offence. convicted and sentenced him—On appeal, held, no material discrepancy in the evidence of the eye witnesses—High Court justified in holding that trial court has not properly appreciated the evidence and conclusions were illegal and grossly unjust—Accused had necessary intention to attack and kill the deceased—Conviction and sentence upheld.

Appellant was prosecuted for an offence under sections 302, 307 and 326 IPC. The prosecution case was that one 's' had four sons namely, 'R' 'V' (PW1), 'S' (appellant) and 'D'. The family had a house and land with trees. There was a dispute among the members of the family that the father was not giving any share to PW1 and 'D'. A quarrel broke out and PW1 was attacked by some members of the family. A complaint was lodged and case was registered. PW1 and 'D' gave evidence in the said case. Appellant was watching the proceeding in Court as his wife was one of the accused in that case. In the evening appellant made an attempt to attack PW1 but was prevented from persons nearby. On that night when PW1, PW5, PW6 and 'D' were talking near the house of 'D' appellant alongwith his friend 'G' arrived. Appellant asked 'D' whether he was in support of PW1 and stabbed him in the chest with a Katari knife. PW1 was also stabbed. PW5 and PW6 raised alarm and appellant and his friend ran away. The injured were taken to the hospital. 'D' was pronounced dead and PW1 was examined for his injuries. Appellant surrendered before the Court and denied his guilt. The Trial Court disbelieving the prosecution acquitted the appellant. However, on appeal, the High Court reversed the findings of the Trial Court and convicted the appellant for an offence under sections 302 and 326 of IPC. Hence the present appeal.

A The contention of the appellant was that there was discrepancy in the evidence of PWs 1, 5 and 6 and were thus wholly unbelievable; that the nature of injuries were not proved as the post-mortem report has not noted the measurement thereof, and that the appellant had no intention to attack and kill the deceased 'D'

B Dismissing the appeal, this Court

HELD : 1.1. The High Court was justified in holding that the Sessions Judge has not properly appreciated the evidence and had come to conclusions which were perverse, manifestly illegal and grossly unjust. [137-F-G]

C 1.2. There is no material discrepancy in the evidence of PWs 1, 5 and 6 who were the eye witnesses. Their evidence is natural and cogent. The High Court has analysed the entire evidence and believed the witnesses. The High Court has also given sufficient reasons for differing from the Court of Sessions. Every reason given by the Trial Court has been considered by the High Court and found to be erroneous. [137-E-F]

D 2. No doubt PW6 had stated that the appellant and the relatives of PW1 were pressing him to give evidence but he has categorically deposed that he is stating only what he had seen. A perusal of his evidence shows that he has no motive whatsoever to speak against the appellant. Thus the statement of PW6 cannot be torn out of the context and used by the appellant.

E [138-A-B]

3. A perusal of the post-mortem report shows that the injury found on the deceased was the immediate cause of death. The evidence shows that the appellant did not only stab 'D' on his chest but also dragged the knife downward as a result of which the intestine of the victim came out of the

F abdomen with bleeding. The contention that the post mortem report does not note the measurement of injury and thus it is not proved cannot be accepted. [138-C; G]

4. The appellant had necessary intention to attack and kill the deceased 'D'. PW1 has stated in his evidence that the appellant on seeing PW1 and

G deceased 'D' together in front of latter's house said that he was searching for both and questioned 'D' as to whether he was supporting PW1. It was only then the appellant stabbed 'D'. [138-D-E]

Guljar Hussain v. *State of U.P.*, AIR (1992) S.C. 2027 and *Mavila Thamban Nambiar* v. *State of Kerala,* JT (1997) (1) S.C. 367, held

H inapplicable.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 37 of 1994. A

From the Judgment and Order dated 17.7.92 of the Madras High Court in Crl. A. No. 302 of 1986.

K. Janjani for the Appellant. B

V.G. Pragasam for the Respondents.

The Judgment of the Court was delivered by

M. SRINIVASAN, J. One Savariyar Adimai had four sons, namely, Rajamani, Verghese alias Anthonimuthu (PW1), Selvaraj (Appellant) and Dasan (deceased). The family had a house and the land with some trees thereon. There was a dispute among the members of the family on the allegation that the father who was plucking the tamarind fruits from the tree on the family land was not giving any share to PW-1 and Dasan but was giving them to the other two sons. On account of the said dispute a quarrel broke out on 11.4.1982 between PW-1 and Dasan on one side and the father and two sons on the other with respect to the division of the family property. PW-1 was said to have been attacked by his father, brother Rajamani, his son Kalisthar and wife Marianesam and Vasantha, the wife of the appellant with stick, aruval and stone. PW lodged a complaint and the case was registered under Sections 147, 148,323,324 and 336 I.P.C. against those persons. The case was being tried in the Magistrate's Court at Thuckalay. On 28.1.1984 PW 1 and Dasan gave evidence in the said case for the prosecution. Though the appellant was not an accused he was present in Court watching the proceedings as his wife was an accused. In the evening PW-1 was proceeding in front of a shop of Chelladurai when the appellant came running from the opposite direction and shouted at PW-1 "Only if you are killed, the family's trouble will come to an end" PW 1 was frightened and ran into the said shop. The appellant was prevented from beating PW 1 by persons nearby including Chelladurai. On the same night PW-1 went to the house of Dasan and was talking to his wife as Dasan had gone out. Dasan returned at about 8.00 PM and PW 1 narrated what happened in the evening. Both went to the house of their younger sister Annapushpam which was in Alangode and returned later. At that time PWs 5 and 6 were near the gate of Dasan's house and all the four were talking together and it was about 9.30 PM when from the southern side the appellant and another person by name George came to that place. The appellant told PW 1 and Dasan that he was searching for them everywhere. The appellant questioned Dasan whether he was in support of PW-1 and stabbed him on C D E F G H

A his left chest with a katari knife and brought it downwards with the result, the intestines came out of the abdomen with bleeding. Dasan then fell down and when PW 1 tried to lift him up George who was standing behind him prevented him from doing so. The appellant stabbed PW 1 also stating that the family will have peace only if he was killed. As PW 1 moved a little, the stabbing was on the upper right arm. Appellant stabbed once again in the B neck below the left iliac fossa. PW 1 fell down, pressing the said injuries with his hand and raising alarm. PW 5 and 6 who were witnessing the occurrence also raised alarm. The appellant and his friend ran away from the scene with the weapon. The wife of Dasan rushed to the scene and bandaged the injury on him. PW 8 the son of PW 1 came there immediately and brought a taxi C driven by PW 11 to take the injured persons to the Govt. hospital at Nagercoil at about 10.30 P.M.. PW 8 and the wife of Dasan accompanied them. On their reaching the hospital, PW 3 Dr. Rajapandian pronounced Dasan to be dead and examined PW1 for his injuries. The following injuries were found by him :

D (1) Incised wound 2'' x 1'' depth not probed over left illiac fossa. Loops of intestine coming out of the wound over the abdomen. Fresh bleeding present from the wound.

(2) Incised wound 1" x1/2'' x1/2'' on the upper 1/3rd of right arm.

E 2. On getting information the Head Constable of Kottar Police Station proceeded to the hospital and recorded a statement from PW1 at 11.15 P.M. The Judicial Second Class Magistrate, Nagercil received the FIR and other connected documents at 1.15 AM on 29.1.1984 and forwarded the same to the Judicial Magistrate, Second Class, Franial. PW 2, the doctor who performed the autopsy opined that the injury suffered by Dasan was fatal. The appellant F surrendered before the Court and he was taken on police remand on 15.2.1984. He was said to have made a confessional statement and took PW 7 and other witnesses to his house and produced the katari knife from the rear side of his house. The appellant was charged under Section 302 and 307 I.P.C. and his friend George under Section 302 read with Section 34 and Section 307 read G with Section 309 IPC. Both the accused denied their guilt.

3. The Court of Session at Nagercoil disbelieved the prosecution and held that the accused were not guilty. Consequently they were acquitted. There was an appeal by the State and a revision by PW 1. The High Court after considering the evidence in detail reversed the conclusion of the trial H court and set aside its judgment so far as it related to the appellant herein.

The appellant was found guilty of the offences under Section 302 and 326 IPC and the offences under Section 302 and 326 IPC and sentenced to imprisonment for life and three years rigorous imprisonment respectively. Both the sentences were ordered to run concurrently. The acquittal of the second accused was confirmed by the High Court.

4. Learned counsel for the appellant has strenuously contended that the evidence of PWs 1, 5 and 6 who were the eye witnesses is discrepant on material particulars and wholly unbelievable. In particular, the learned counsel has drawn our attention to a statement in deposition of PW 5 that at about 9.30 PM when he went to the house of Dasan the latter was not there and PW1 was also not there. It is therefore contended that neither the deceased Dasan nor PW 1 was at the place of alleged occurrence at the stated time. It is further pointed out that PW6 has expressly stated in his deposition that he is giving evidence due to pressure from the police and the relatives of PW1. It is also contended by learned counsel that a perusal of the post mortem report shows that the nature of the injury is not proved as the measurement thereof is not noted. It is also argued that if at all, the intention of the appellant was only to attack PW 1 and not Dasan, and therefore the appellant could not be convicted under Section 302 IPC. The last argument addressed by the learned counsel is that the offence should have been brought under Section 304 Part II IPC and the appellant should be let off with the period already undergone.

5. We are unable to accept any of the contentions. There is no material discrepancy in the evidence of PWs 1, 5 and 6 who were the eye witnesses. Their evidence is natural and cogent. The High Court has analysed the entire evidence and believed the witnesses. The High Court has also given sufficient reasons for differing from the Court of Session. Every reason given by the trial court has been considered by the High Court and found to be erroneous. We are entirely in agreement with the judgment of the High Court that the "Sessions Judge has not properly appreciated the evidence and has come to conclusions which are perverse and manifestly illegal and grossly unjust". As regards the statement of PW 5 that at 9.30 PM Dasan was not found in his house, no inference can be drawn therefrom. In fact PW 1 has categorically stated that he and Dasan went to the house of their younger sister at Alangode, on return found PWs 5 and 6 at the gate of Dasan's house and were talking to them when the appellant came there at that time. According to him it was about 9.30 PM. There is no merit whatsoever in the contentions urged by the learned counsel based on the statement of

A PW 5 referred to above.

6. The statement of PW6 cannot be torn out of the context and used by the appellant. No doubt PW 6 had stated that the appellant and the relation of PW 1 were pressing upon him to give evidence but he has categorically deposed that he is stating only what he had seen. A perusal of
B his evidence shows that he has no motive whatsoever to speak against the appellant.

7. The comment of the learned counsel on the contents of the post mortem report is without any substance. A perusal of the report shows that the injury found on the deceased was the immediate cause of death. The
C evidence shows that the appellant did not only stab Dasan on his chest but also dragged the knife downward as a result of which the intestine of the victim came out of the abdoment with bleeding.

8. The contention of learned counsel that the appellant had intention
D to attack PW 1 only and not the deceased Dasan is without merit. As stated by PW 1 in his evidence the appellant on seeing PW 1 and Dasan together in front of the latter's house said that he was searching for both everywhere and questioned Dasan whether he was supporting PW 1. It was only then the appellant stabbed Dasan. As pointed out already it was not a mere stabbing but the knife was drawn downwards as if to cut the body into two. From the
E above facts it is clear that the appellant had intention to attack and kill the deceased Dasan also.

9. It is needless to refer to Section 301 of the Indian Penal Code in the present case as we are convinced on the facts that the appellant had the necessary intention to kill the deceased also.
F

10. Learned counsel for the appellant contends that there being only one fatal blow and no repetition of the blow by the accused, the conviction should be under Section 304 and not under Section 302 IPC. Reliance is placed on the judgment in *Guljar Hussain* v. *State of U.P.*, AIR (1992) S.C.
G 2027 to which one of us (Justice M.M. Punchni) was a party. In that case the dimension of the injury could not be given by the doctor and the post mortem report could not be legally proved. The said report was not deposed to by any witness at the trial. The benefit of cross-examination of the concerned doctor was not available in full measure to the accused because of the absence of the medico legal report. Thus the medical evidence was found to
H be legally deficient. In such circumstances the Court said :

"In these circumstances, it has to be seen whether the appellant intended to cause the death of the deceased. When dimension of the injury has not been legally proved one has to fall back on the proved fact that after the blow of the appellant, the deceased died within two hours. In other words, the death of the deceased was the direct result of the blow of the appellant. Thereafter no other supportive factor is available to maintain the conviction of the appellant under Section 302 IPC. The blow was not repeated. The primary intention of the appellant was to obstruct the marriage of his sister. It could well be that the appellant intended to cause such injury as was likely to cause death of the deceased so as to fall within the grip of Section 304, Part I, I.P.C. and not per se under Section 302 IPC for intentionally causing the death of the deceased. The totality of the circumstances thus goads us to err on the safer side by altering the conviction of the appellant to one under Section 304 Part I IPC for which he should be sentenced to 10 years rigorous imprisonment."

11. That ruling has no application in the present case.

12. Learned counsel has also drawn our attention to the judgment in *Mavila Thamban Nambiar* v. *State of Kerala,* JT (1997) 1 SC 367. On the facts of the case this Court held that the offence would more appropriately fall under Section 304 Part II and altered the conviction from Section 302 IPC to Section 304 Part II IPC. The Court inferred that the appellant had knowledge that an injury with the scissors on the vital part would cause death though he may not have intended to commit murder. The ruling turned on the facts of the case and would not help the appellant in the present case.

13. In the circumstances we have no hesitation to uphold the judgment of the High Court. Consequently the appeal fails and is hereby dismissed.

S.V.K.I. Appeal dismissed.