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STATE OF A. P.

v.

M. SOHAN BABU & ANR.

(Criminal Appeal No. 363 of 2005)

B

DECEMBER 14, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

Penal Code, 1860:

C

s.302/34, 460 and 324 – Accused entering the house of victims at midnight – During the scuffle A-2 stabbed one of the victims – A-1 also causing injuries to him – Death of the victim – Witnesses also received injuries at the hands of the accused – Conviction by trial court u/s 302/34, 460 and 324

D

– High Court converting the conviction u/s. 302/34 into one u/s. 304(Part-I) – Held: It cannot be ignored that the two accused, duly armed, had entered the premises at mid night with the intention of committing robbery – They were also charged with the offence punishable u/s 460 – A2 had caused

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one injury in the stomach of the deceased while he lay on top of him – Injuries were also thereafter caused to the deceased by both the accused – It is also in evidence that when the neighbours arrived on the scene they too were caused injuries and threatened with dire consequences – The High Court has

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been influenced by the fact that there was no common intention on the part of the accused to commit murder – However, the common intention can be inferred from the circumstances of the case as they arise even during the incident – The initial purpose was to commit robbery, but as

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the accused were armed with knives which they had used repeatedly and effectively, they were willing to kill – Therefore, the High Court's observation that the matter fell u/s. 304 (Part-I) and not u/s. 302 of the IPC is erroneous and to that extent

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High Court's judgment is set aside – The judgment of the trial court is restored. A

s. 34 – Common intention – Explained.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 363 of 2005. B

From the Judgment & Order dated 11.12.2003 of the High Court of Andhra Pradesh at Hyderabad in CrI. Appeal No. 37 of 2002.

I. Venkatanarayana, Ramesh Allanki, D. Mahesh Babu for the Appellant. C

Anil Kumar Tandale, Manoj C. Mishra, Brajesh Jha for the Respondents. D

The following order of the Court was delivered

O R D E R

1. This is indeed an unfortunate case. E

2. P.W. 1-Maxwell Trevor, P.W.2-Gene Trevor and P.W. 4-Marlene Moss are brothers, whereas P.W. 5 Sherlyn Trevor is the wife of the deceased Glen Trevor. P.W. 3 Ezzard Moss is the sister of the deceased and wife of P.W. 4. The entire extended family was residing in a residential house bearing No. 12-5-188/2 Lalaguda, Secunderabad, consisting of two floors with two portions in each floor. The deceased was an employee of the Railways and he along with his wife and children was residing in the southern portion of the ground floor whereas P.W. 4 along with his wife and children was residing in the northern portion of the ground floor. P.Ws. 2,3 and 4 were residing on the first floor of the said premises. P.W. 6-D. Francis Satyanandam, was a neighbour of P.Ws. 1 to 5 with his residence on the southern side of the said premises. During the intervening night of 20th/21st November, 1991 shortly after F G H

- A midnight the deceased heard some footsteps and came out to investigate. He found A2 standing on the balcony of the first floor. A scuffle ensued between the two and the shouts and screams that came about in the scuffle woke up the other occupants of the building and they saw the deceased and A2
- B grappling with each other. As the deceased was a sportsman of some repute and physically strong he managed to pin A2 to the ground by falling on him. A2 thereupon took out a knife from the right side of his hip pocket with his right hand and stabbed the deceased on the left side of the abdomen and when P.W.
- C 3 went to his rescue A2 stabbed him on the lower part of the right arm as well. In the meanwhile, A1 came from the side of the balcony and stabbed the deceased on both his thighs. A1 also prevented P.Ws. 1 and 3 from going to the rescue of the deceased by holding a knife at the throat of P.W. 3. A1 also
- D stabbed P.W. 2 on his left shoulder. Despite the injuries having been caused to them, P.Ws.1 and 2 over powered A-2 and pushed him from balcony. In the meanwhile, the other neighbours arrived at the scene and got hold of A1 as well. P.Ws. 1 to 3 brought both the accused to the ground floor, where they were tied up with a rope and information was also
- E sent to the police. In the meanwhile, P.W. 1 secured a car from his neighbour Captain P. Crlbyand and removed the injured to the Railway Hospital Lalaguda, but he succumbed to his injuries on the way. The other injured were also brought to the hospital and they were examined and given first aid for their injuries.
- F Their injuries were found to be simple. The trial court relying on the evidence of the aforesaid witnesses as supported by the medical evidence convicted and sentenced the accused under Sections 302/34, 460 and 324 of the Indian Penal Code.
- G 3. An appeal was thereafter taken by the accused to the Andhra Pradesh High Court, which, modified the conviction to one under Section 304 Part I IPC (while acquitting the accused of the offence under Section 302). It is this part of the judgment which has been challenged by the State of Andhra Pradesh by
- H way of this appeal.

4. The facts as recapitulated reveal that the accused duly armed had entered the house of the deceased and when they had been challenged they had caused one fatal injury to the deceased. The High Court has found that as the case of the accused was not covered by Clause thirdly of Section 300 they were liable for conviction under Section 304 Part I and not Section 302. While dealing with this matter, the High Court has observed as under:

"That being the settled law, we have to consider whether the two requirements contemplated by the third clause of Section 300 IPC have been fulfilled. We have already noticed that the testimony of direct witnesses pointing to one thing that A2 dealt a knife blow on the left abdomen of the deceased – The only question then to be considered is whether A2 intended to inflict injury that was found on the dead body of the deceased. It is time to recapitulate the evidence of P.Ws. 1 to 4 quickly. P.w. 1 testified that by the time he came on to the balcony of the first floor the deceased and A-2 were grappling and more particularly the deceased was on the top of A-2 pinning him down to the ground. It is to be noted that the deceased was an internationally renowned cyclist and physically well built person and whereas A2 is a shorter man. In the situation in which A-2 was placed made us to believe that he dealt a knife blow in the process of extricating himself from the clutches of the deceased and unfortunately the blow landed on the vital part of the deceased, which ultimately led to his death. In these circumstances, the offence committed by A-2 comes within the purview of Section 304 I."

5. We find that in the facts of the case, the observations given above are not correct. It cannot be ignored that the two accused had entered the premises at mid night duly armed with the intention of committing robbery. They were also charged under Section 460 IPC on that account. It is also in evidence that the deceased had managed to pin A2 down to the ground

- A and A2 had caused one injury in the stomach of the deceased while he lay on top of him. Two injuries were thereafter caused on the thigh of the deceased by A2 and the other accused. It is also in evidence that when the neighbours arrived on the scene they too were caused injuries and threatened with dire consequences. To say, therefore, that there was no intention on the part of the accused to cause death would be carrying the matter a little too far. The High Court has been influenced by the fact that there was no common intention on the part of the accused to commit murder. We see, however, that the common intention can be inferred from the circumstances of the case and that the intention can be gathered from the circumstances as they arise even during an incident. The initial purpose was to commit robbery, but as the accused were armed with knives which they had used repeatedly and effectively, they were willing to kill as well and that they could not cause more damage as they were overwhelmed and pinned down.

6. We, therefore, feel that the High Court's observation that the matter fell under Section 304 Part I and not under Section 302 of the IPC is erroneous. We, accordingly, set aside this part of the High Court judgment and restore that of the trial court.

7. The appeal is allowed.

R.P.

Appeal allowed.