ABC 2019 (III) 229 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Deepak Gupta & Aniruddha Bose, JJ)

Criminal Appeal No. 557 of 2010

(From Madras High Court)

Decided on 17 September 2019

KARUPPANNA GOUNDER ***- Appellant(s).***

Versus

STATE REP. BY THE INSPECTOR OF POLICE ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 302, 324, 149 & 34— Conviction u/s 302 — Injury by hammer — fatal injuries do not correspond with the injury attributed to accused — two co-accused acquitted & third was only convicted for causing simple injury — Held, since only one accused is left, we cannot take recourse to the provisions of Section 34 or 149, IPC — conviction altered to Sec. 324, IPC. (Para 11)***

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Use of sharp weapon (sickle) — Lacerated wound — Held, sickle has a sharp side on the inner portion and a blunt side on the outer portion — Injury could have been caused by the outer side of the sickle. (Para 8)

Facts:- *The facts of the case were that the deceased was the neighbour of the first accused. They both had adjacent landed properties and shared a common boundary. There was a common well on this boundary which was also divided between the appellant no.1 and the deceased. A dividing wall was there in the well. A quarrel ensued on the removal of sand from the well resulting into assault and subsequent death of the deceased. The trial Court convicted A-1 & A-2 whereas all other accused persons were acquitted. In the appeal before the High Court it was observed that a sickle was attributed to A-2 and since the injury was a lacerated wound and it could not have been caused by a sharp edged weapon, therefore, his conviction was altered to one u/s 324, IPC. In the present appeal, the honourable Apex Court refused to agree with this finding of the High Court. However, the State had not filed any appeal and since the occurrence took place 19 years back, the honourable Court didn't reopen the matter. Considering the weapon used by the accused A-1 and fatal injuries suffered by the deceased benefit of doubt was given to him and his conviction was converted to one u/s 324, IPC.*

Law of relief:- ***When other accused are acquitted & only one accused is left, recourse of Sec. 34 or 149, IPC cannot be taken.***

Held:- As observed above, the High Court held that the injury on the centre of the head could not have been caused by the *Koduval* (sickle) only on the ground that the injury was a lacerated wound and, therefore, could not have been caused with a sharp edged weapon. We are of the view that this view of the High Court may not be correct because a *Koduval* (sickle) has a sharp side on the inner portion and a blunt side on the outer portion. Injury could have been caused by the outer side of the *Koduval* (sickle). Unfortunately, the State has not filed any appeal and since the occurrence took place 19 years back, we may not reopen the matter. (Para-8)

The question is whether the death of the deceased could be attributed to the injury caused by the appellantA1. The appellant is alleged to have used the *Sammatti* (hammer) and he gave a blow at the back of the head or on the neck of the deceased. Both the injuries do not correspond with the injury of the back of the head or neck. These injuries can be related to the attack made by A2Rajendran, A3 and A4, who have alleged to have used iron rods. Unfortunately, A3 and A4 have been acquitted and A2 has only been convicted for causing simple injury with a weapon. Furthermore, since only one accused is left, we cannot take recourse to the provisions of Section 34 or Section 149 IPC. (Para-11)

Counsel:- ***For Appellant(s):*** *Satya Mitra Garg, Adv.*
For Respondent(s): *M. Yogesh Kanna, Adv.*

JUDGMENT

DEEPAK GUPTA, J.: - 1. This appeal filed by the accused-appellant is directed against the judgment and order of the High Court of Madras dated 19.12.2008, whereby conviction of the appellant no.1 (A1) under Section 302, Indian Penal Code, 1860 (IPC for short) has been upheld. Since appellant No.2 (A2Rajendran) has died during the pendency of this appeal, the appeal shall stand abated in so far as appellant no.2 is concerned.

2. The facts of the case are that Chinnappa Gounder (deceased) was the neighbour of the first accused. They both had adjacent landed properties and shared a common boundary. There was a common well on this boundary which was also divided between the appellant no.1 and the deceased. A dividing wall was there in the well.

3. The appellant had initiated some civil proceedings and appear to have obtained an order permitting accused no.1 to repair the well. On 17.07.2000, Karuppanna Gounder, his soninlaw Rajendran, his wife Thangaiyee, his son Mayakrishnan, and some others were removing sand from their portion of the well when PW6, son of the deceased Chinnappa Gounder objected to this action since they were dropping the sand on the passage used by the deceased and his family.

4. On this a quarrel ensued and there was a verbal altercation between the parties. The first accused-Karuppanna Gounder attacked Chinnappa Gounder with a *Sammatti* (hammer), and A2, his soninlaw used a *Koduval* (sickle) to attack Chinnappa Gounder on the head. A4 and A5 attacked the deceased with iron rods and hit him on the head while the other accused attacked the deceased with stones and sticks. When PW6 tried to intervene he was also attacked by the accused. Thereafter, Chinnappa Gounder was taken to the hospital where he died. After completing all investigations, the police filed a report under Section 173 of the Code of Criminal Procedure, 1973 against the appellant no.1 and 12 other accused. They pleaded not guilty and claimed trial. After trial, the trial court found A1-Karuppanna Gounder guilty of charge of murder and he was awarded life imprisonment. A2Rajendran was also held guilty under Section 302, 307, 324 of IPC and was awarded life imprisonment for the offence of murder. All the other accused who were charged for various offences including murder were acquitted by the trial court.

5. The High Court upheld the sentence of the A1appellant herein, but as far A2soninlaw, Rajendran was concerned, it was held that the injuries caused on the skull of the deceased Chinnappa Gounder were fatal. However, as per the medical opinion this injury could not have been caused with *Koduval* (sickle). Since the injury was a lacerated wound, the High Court held that it could not have been caused by a sharpedged weapon. The court further held that there was no attempt to murder by A2 but he caused simple injuries to 4 persons i.e., PW6, PW9, PW10 and PW11, and awarded 3 years rigorous imprisonment.

6. We have heard Mr. S. Nagamuthu, learned senior counsel appearing for the appellant no.1. The main issue is whether the injury caused by the appellantA1 can be said to be the cause of death of the deceased. There are many eyewitnesses, including PW1, A. Senthil

Kumar. Since the depositions made by all of them are similar, we are only referring to the statement of PW1.

7. According to this witness, after the verbal altercation took place, the appellantA1 and his son Kandasamy returned to their house but came back to the place of occurrence soon along with their soninlaw Rajendran. It is alleged that the appellantA1 chased the deceased with *Sammatti* (hammer) in his hand and gave a blow with the hammer on the back side of the head of the deceased. Here we may mention that there is some variation in the translation because at some places it is mentioned as back of the neck and in some places as back of the head. Be that as it may, the injury allegedly caused to Chinnappa Gounder by the appellant no.1 was at the back of the head. Chinnappa sat down raising a cry. Then A2Rajendran hit him on the centre of the head with a *Koduval* (sickle). A3 and A4 allegedly hit the deceased at the place where A2Rajendran had hit the deceased. We may point out that in cross examination all have admitted that both the appellants gave only one blow each to the deceased Chinnappa Gounder.

8. As observed above, the High Court held that the injury on the centre of the head could not have been caused by the *Koduval* (sickle) only on the ground that the injury was a lacerated wound and, therefore, could not have been caused with a sharpedged weapon. We are of the view that this view of the High Court may not be correct because a *Koduval* (sickle) has a sharp side on the inner portion and a blunt side on the outer portion. Injury could have been caused by the outer side of the *Koduval* (sickle). Unfortunately, the State has not filed any appeal and since the occurrence took place 19 years back, we may not reopen the matter.

9. Now coming to the postmortem report, there are 4 injuries mentioned out of which two are relevant and they are as follows:

> " 1. Laceration 10x2 cm bone deep on middle of head in parietal area.
>
> 2. Compound fracture skull with laceration 10x4x3 cm deep from frontal to parietal area of head. Brain matter is exposed with injury to membranes."

10. The first injury is 10x2 cm bone deep on the middle of the head in the parietal area meaning from the centre of the skull towards the back. The second injury which is a bigger injury goes from the

frontal to the parietal area. The injury was caused with such great force that the skull broke into many pieces and the brain matter had come out of the skull.

11. The question is whether the death of the deceased could be attributed to the injury caused by the appellantA1. The appellant is alleged to have used the *Sammatti* (hammer) and he gave a blow at the back of the head or on the neck of the deceased. Both the injuries do not correspond with the injury of the back of the head or neck. These injuries can be related to the attack made by A2Rajendran, A3 and A4, who have alleged to have used iron rods. Unfortunately, A3 and A4 have been acquitted and A2 has only been convicted for causing simple injury with a weapon. Furthermore, since only one accused is left, we cannot take recourse to the provisions of Section 34 or Section 149 IPC.

12. In view of the above, we give benefit of doubt to the appellant no.1, acquitting him of the offence of murder but convict him under Section 324, IPC. The appellant has already undergone sufficient punishment for that offence and, therefore, his sentence is modified to the period already undergone by him. The appellant is on bail, his bail bonds are discharged. The appeal is partly allowed in the aforesaid terms. Application(s), if any, shall also stand dismissed.

***Result*:-** Appeal partly allowed.

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ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(A.M. Khanwilkar & Dinesh Maheshwari, JJ)

Criminal Appeal No. 1046 of 2010

(From Punjab and Haryana High Court)

Decided on 19 September 2019

SMT. GARGI ***- Appellant(s).***

Versus

STATE OF HARYANA ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860, Section 302 — Murder of husband — Conviction under — no direct evidence — Homicidal death — Allegation of —deceased had strained relations with his wife — illicit relations & insistence of transfer of property in her name— deceased had expressed, imminent danger to his life at the hands of his wife— last seen evidence — accused was at home