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RAJU & ANR.

v.

STATE OF HARYANA

(Criminal Appeal No. 281 of 2009)

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FEBRUARY 10, 2010

[ALTAMAS KABIR AND SWATANTER KUMAR, JJ.]

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Penal Code, 1860 – s. 302/34 – Murder – Prosecution of appellant-accused with other co-accused – In the assault the co-accused were armed while the appellant-accused were unarmed – Incident was result of a previous incident of misbehavior of deceased with womenfolk – Conviction of the appellant-accused u/s. 302 with aid of s. 34, by courts below – Sentenced to life imprisonment – On appeal, held: On facts, common intention of the appellant-accused with the co-accused to murder not proved – Conviction u/s. 302/34 not sustainable – Conviction altered to u/s. 304 (Part I) r/w s. 34 – Sentence of appellant No. 2 altered to two years RI – Appellant No. 1, since is a juvenile, his case referred to Juvenile Justice Board – Juvenile Justice (Care and Protection of Children) Act, 2000 – ss. 15 and 20.

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The two appellants-accused were prosecuted u/s. 302/34 IPC alongwith two co-accused for having caused death of a person. The prosecution case was that the deceased misbehaved with the womenfolk in a marriage ceremony. As a fallout of that incident, the accused persons assaulted the deceased. The co-accused were armed with knives while the appellants-accused were not armed. One of the co-accused was declared a juvenile and his trial was separated. Trial Court convicted the co-accused u/s.302 IPC while convicted the appellants-accused u/s. 302/34 IPC. Appellants-accused challenged their conviction and the same was confirmed by High Court.

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In appeal to this Court, appellants contended that the evidence does not prove meeting of minds between the appellants and the co-accused; and that the case of appellant No. 2 is covered under Juvenile Justice (Care and Protection of Children) Act, 2000, because he was less than 17 years on the date of the incident.

Disposing of the appeal, the Court

HELD: 1.1. The conviction of both the appellants u/s. 302 IPC with the aid of Section 34 IPC is not warranted. The ultimate assault causing death of the deceased was the culmination of an incident which had occurred earlier during a marriage ceremony where the women folk, who were participating in the festivities, were teased by the deceased in an inebriated state. The resultant fall-out was the immediate response to the said incident with the intention of preserving the honour and dignity of the said women. It is on account of the said incident that subsequently the accused persons assaulted the deceased and when he tried to run away, they chased him and on being caught, he was fatally injured by the two co-accused with knives. [Para 9] [580-G-H; 581-A-C]

1.2. Although, it has been urged that the appellants had knowledge that both the co-accused were carrying knives, the same is not borne out from the evidence and their role in the incident in chasing the victim and, thereafter, holding him, was more likely to teach him a lesson as was sought to be projected as his defence. In the absence of any common intention, the conviction of the appellants u/s. 302 with the aid of Section 34 cannot be sustained. [Para 9] [581-B-D]

1.3. It is no doubt true that the evidence of PW.5 the complainant and PW.7 another eye-witness was corroborated by the injuries on the body of the victim, but

A that by itself would not establish common intention as far as the appellants in the present appeal are concerned. [Para 9] [581-D-E]

B 1.4. The role attributed to the appellants would attract the provisions of Section 304 (Part I) IPC and not Section 302 read with Section 34 IPC. The appeal as far as the appellants' conviction under Section 302 read with Section 34 IPC must, therefore, succeed and their conviction must be altered to one under Section 304 Part I read with Section 34 IPC. [Para 9] [581-G-H; 581-A]

C *V. Sreedharan vs. State of Kerala 1992 Supp (3) SCC 21*, relied on.

D 2. As far as the appellant No.1 is concerned, his case be referred to the concerned Juvenile Justice Board in terms of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be dealt with under the provisions of the said Act in keeping with the provision of Section 15 thereof and having particular regard to the period of detention already undergone by him during the course of the investigation and trial. [Para 11] [582-D-F]

E *Hari Ram vs. State of Rajasthan and Anr. 2009 (6) SCALE 695*, referred to.

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Case Law Reference:

2009 (6) SCALE 695 Referred to. Para 7

1992 Supp (3) SCC 21 Relied on. Para 9

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 281 of 2009.

From the Judgment & Order dated 30.10.2007 of the High

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Court of Punjab & Haryana at Chandigarh in Criminal Appeal A
No.135-DB of 1998.

Rishi Malhotra for the Appellants.

Manjit Singh and Kamal Mohan Gupta for the Respondent. B

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. The Appellants herein, Raju and Mangli, along with Anil C
alias Balli and Sucha Singh, were sent up for trial for allegedly
having committed an offence punishable under Section 302
read with Section 34 Indian Penal Code. Accused Sucha Singh
was found to be a juvenile and his case was separated for
separate trial under the Juvenile Justice Act, 1986. The
Appellants herein were convicted under Section 302 read with D
Section 34 IPC and were sentenced to imprisonment for life
and to pay a fine of Rs.5,000/-, in default to undergo rigorous
imprisonment for a further period of three years. Anil alias Balli
was convicted under Section 302 and was sentenced to
imprisonment for life and to pay a fine of Rs.5,000/-, in default E
to undergo further rigorous imprisonment for three years. He
was also convicted under Section 25 of the Arms Act and was
sentenced to undergo rigorous imprisonment for one year. The
sentences, as far as Anil alias Balli is concerned, were directed
to run concurrently. F

3. Of the three accused, Accused Nos.1 and 2, Raju and
Mangli, have challenged their conviction under Section 302
read with Section 34 IPC.

4. Appearing on their behalf, Mr. Rishi Malhotra, learned G
Advocate, submitted that the role attributed to the Appellants
in the alleged incident did not attract the provisions of Section
302 Indian Penal Code, hereinafter referred to as "IPC", since
there is nothing on record to either prove or indicate that they
had any common intention to commit the murder. Mr. Malhotra H

A submitted that the allegation against the accused persons is that the deceased, Ishwar, the brother of the complainant, Chandu Lal (PW.5), was returning to his house on 31st March, 1994, at about 10.30 p.m. after seeing a motion picture. When he reached near the gate of Government Livestock Farm, B Hissar, the Appellants herein, along with Anil alias Balli and Sucha Singh, attacked him with fists and blows. In order to save himself, Ishwar started running towards his house, but he was chased and surrounded by the accused persons near the house of one Om Prakash. According to the complainant, he was C present near the house of Om Prakash when the occurrence took place. He has stated that he witnessed the incident as indicated hereinabove and that at the time of the incident Anil alias Balli and Sucha Singh were armed with knives while the Appellants herein were empty-handed. In the First Information Report lodged by him, he has stated that after chasing and D catching Ishwar, the Appellants herein, Raju and Mangli caught hold of Ishwar while Anil alias Balli inflicted a knife blow on the left anterior side of the victim's chest. Ishwar fell down on the ground and then accused Sucha Singh inflicted another knife blow on the right posterior side of his waist. On an alarm being E raised by Chandu Lal, the accused persons ran away from the spot. An attempt was made to save Ishwar by taking him to hospital, but he died on the way.

5. Thereafter, the body of the victim was sent for post- F mortem examination which was conducted by Dr. (Mrs.) K.K. Nawal, Senior Medical Officer, General Hospital, Hissar (PW.8) along with Dr. Pawan Jain, on 1st April, 1994, at 9.30 A.M. The post-mortem examination revealed the injuries as mentioned by PW.8 and in the opinion of the doctor, the cause of death G was shock and haemorrhage, as a result of the multiple injuries, which were ante-mortem in nature and sufficient to cause death in the due course of time.

6. Mr. Malhotra submitted that from the aforesaid evidence, H it would be evident that there was no prior meeting of minds

between the Appellants herein and Anil alias Balli and Sucha Singh, to kill Ishwar. Mr. Malhotra submitted that there is nothing on record to indicate that the Appellants herein had any knowledge that Anil alias Balli and Sucha Singh were carrying knives for commission of the murder. He urged that the only intention in chasing the deceased and holding him was to teach him a lesson following the altercation that had taken place between the deceased and the accused persons just prior to the incident, where the deceased was stabbed. Mr. Malhotra submitted that the altercation as well as the subsequent incident was the result of an earlier incident which had taken place on 31st March, 1994, in connection with the 'Bana' ceremony being conducted in connection with the marriage of the son of one Parwati. At the said ceremony, the women folk were singing songs near the Government Livestock Farm, Hissar, where deceased Ishwar came in a drunken condition and misbehaved with them. Mr. Malhotra submitted that the entire incident was triggered off on account of the said incident, where the deceased misbehaved with the ladies who were involved in marriage festivities which ultimately led to the altercation and stabbing of the deceased by the Accused Nos.3 and 4. Mr. Malhotra submitted that there was no prior motive or common intention to commit the murder of the deceased and the Appellants had, therefore, been wrongly roped in in respect of an offence under Section 302 with the aid of Section 34 IPC.

7. As far as the Appellant No.1, Raju, is concerned, Mr. Malhotra submitted that on the date of the incident (31.3.1994), he was a juvenile and as per his mark-sheet, wherein his date of birth was recorded as 1977, he was less than 17 years of age on the date of the incident. Mr. Malhotra submitted that having regard to the recent decision of this Court in the case of *Hari Ram vs. State of Rajasthan & Anr.* [(2009) 6 SCALE 695], the Appellant No.1 must be held to have been a minor on the date of the incident and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply in his case. Mr. Malhotra, therefore, contended that the

A Appellant No.1 would have to be dealt with under the provisions of the said Act in keeping with the decision in the aforesaid case.

B 8. Appearing for the State of Haryana, Mr. Kamal Mohan Gupta, learned counsel, did not seriously dispute the submissions made by Mr. Malhotra as far as the Appellant No.1, Raju, was concerned having satisfied himself regarding the juvenility of the said Appellant upon due inquiry. However, as far as the second appellant, Mangli, is concerned, Mr. Gupta submitted that he had been rightly convicted under Section 302 C with the aid of Section 34 IPC. Mr. Gupta submitted that the role attributed to the Appellant No.2 was not as innocent as had been attempted to be made out by Mr. Malhotra. On the other hand, there was a background of the incident involving the misbehaviour of the said deceased with the women folk at the D marriage ceremony of the son of Parwati which triggered the incident. It was submitted that the subsequent incident culminating in Ishwar's death was not an isolated incident but a fall out of the earlier incident. He also urged that the common motive to kill the victim would also be evident by the fact that E after Ishwar was initially assaulted and tried to run away, he was chased by all the four accused, including the Appellant No.2, who along with the Appellant No.1, held him while Anil @ Balli caused stab injuries with the knife, which ultimately resulted in F Appellant No.2 did not warrant any interference and the appeal as far as he was concerned, was liable to be dismissed.

G 9. We have carefully considered the submissions made on behalf of the respective parties and the evidence adduced on behalf of the prosecution and have arrived at the conclusion that the conviction of both the Appellants under Section 302 IPC with the aid of Section 34 is not warranted. As has been pointed out, the ultimate assault on Ishwar causing his death was the culmination of an incident which had occurred earlier during the marriage ceremony of the son of Parwati where the women folk, H

who were participating in the festivities, were teased by the deceased in an inebriated state. The resultant fall-out was the immediate response to the said incident with the intention of preserving the honour and dignity of the said women. It is on account of the said incident that subsequently the accused persons assaulted Ishwar and when he tried to run away, they chased him and on being caught, he was fatally injured by Anil @ Balli and Sucha Singh with knives. Although, it has been urged that the Appellants herein had knowledge that both Anil and Sucha Singh were carrying knives, the same is not borne out from the evidence and their role in the incident in chasing the victim and, thereafter, holding him, was more likely to teach him a lesson as was sought to be projected as his defence. In the absence of any common intention, the conviction of the Appellants under Section 302 with the aid of Section 34 cannot be sustained. It is no doubt true that the evidence of PW.5 the complainant and PW.7 another eye-witness was corroborated by the injuries on the body of the victim, but that by itself would not establish common intention as far as the appellants in the present appeal are concerned. The learned counsel appearing for the appellant has placed strong reliance upon the judgment of this Court in the case of *V. Sreedharan vs. State of Kerala* reported in 1992 Supp (3) SCC 21, where the Court on the facts of the case took the view that the incident arising out of a quarrel at home and ending on the road was a continuous sequence, injury being a result of provocation and that prosecution under Section 304 Part I and not Section 302 IPC, was attracted. Even in that case the present deceased had kicked the food on an auspicious day giving provocation and after the deceased ran for some time, the fatal injuries were caused on his person. Somewhat similar are the facts here, as the cause of conflict arose from the conduct of the deceased in the marriage party which ultimately as a sequence of events resulted in fatal injuries on the person of the deceased. The role attributed to them would, in our view, attract the provisions of Section 304 Part I IPC and not Section 302 read with Section 34 IPC. The appeal as far as the appellants' conviction under

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A Section 302 read with Section 34 IPC must, therefore, succeed and their conviction must be altered to one under Section 304 Part I read with Section 34 IPC.

B 10. The appeal is, therefore, allowed to the extent that the conviction of both the Appellants under Section 302 read with Section 34 IPC is set aside and they are convicted instead under Section 304 Part I read with Section 34 IPC. The Appellant No.2 is sentenced to two years' rigorous imprisonment and fine of Rs.500/-. In default of payment of such fine, the Appellant No.2 shall undergo rigorous imprisonment for a further period of 15 days. The Appellant No.2 shall be entitled to set off in respect of the period of imprisonment already undergone in terms of Section 428 Cr.P.C.

C 11. As far as the Appellant No.1 is concerned, let his case D be referred to the concerned Juvenile Justice Board in terms of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be dealt with under the provisions of the said Act in keeping with the provision of Section 15 thereof and having particular regard to the period of detention already E undergone by him during the course of the investigation and trial. The Registry is directed to take immediate steps for transmission of the records to the concerned Juvenile Justice Board, as far as the Appellant No.1 is concerned.

F 12. The Appeal is disposed of accordingly.

K.K.T.

Appeal disposed of.