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GURU @ GURUBARAN & ORS.

v.

STATE REP. BY INSP. OF POLICE
(Criminal Appeal No.1893 of 2010)

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SEPTEMBER 27, 2019

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

- Penal Code, 1860 – ss. 302, 323 and 324 – Murder – There was some dispute between the parties – Prosecution case was that C panchayat was called to settle the dispute – Since, Pradhan of the Panchayat was indisposed, the Panchayat was not held – Thereafter, PW-2, his sister victim-deceased, his wife PW-7, PW-13 and son of PW-2 were standing outside the house of PW-2 and talking among themselves – While they were standing, all accused persons (A-1, A-2, A-3, A-5 and A-9) came armed with sickles, iron pipe and D wooden staffs and attacked victim – Victim died – High Court convicted A-1 & A-2 u/s. 302 IPC, A-3 u/s. 324 IPC and A-5 & A-9 u/s. 323 IPC – Accused contended that there was a free fight on both sides and that there was no evidence to show that there was prior meeting of minds and further urged that offence was not of E murder but culpable homicide not amounting to murder – Held: The version of all the eye-witnesses against the accused persons was similar – Medical evidence also fully corroborated the version of all the eye-witnesses – Insofar benefit of Exception 4 to s.300 is concerned, evidence indicated that all accused persons came armed – The fact they were armed indicated that the occurrence did not F take place in the heat of passion, upon a sudden quarrel – A-1 had hit the deceased on head with a sickle with such a great force causing fracture of the skull, bringing the case within clause ‘Fourthly’ of s.300 IPC – Therefore, there is no reason to alter the sentence and conviction of A-1 – However, A-2 had given blow with an iron pipe G on back of the neck of the deceased, which only caused abrasions – Therefore, his conviction u/s.302 altered to s.324 IPC – Insofar as conviction of A-3, A-5 and A-9 is concerned, there is no reason to interfere with the judgment of the High Court.*

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Disposing of the appeals, the Court

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HELD: 1. The doctor states that the injuries caused the death of the victim. The first injury is a lacerated wound and it is urged by the accused persons, that this injury could not have been caused by sickle (*Koduval*), which is a sharp-edged weapon. A sickle is an instrument mainly meant for cutting grass and crops. The inner side is sharp but the outer side is blunt. While using it as an instrument of agriculture only, the sharp edge is used but while using it as a weapon of offence, more often than not, it will be the outer side which will be used to hit the victim. The doctor has opined that the injury could have been caused by a sickle which is MO-1 and, therefore, the medical evidence fully corroborates the version of all the eye-witnesses. [Para 5] [1068-G-H; 1069-A]

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2. The accused cannot take benefit of Exception 4 to s.300 IPC. It has come in evidence that all the accused persons came armed. Two were armed with sickles, one with an iron pipe and the other with wooden staffs. Even if it is assumed that they may not have come with the intention of killing, the fact that they were armed, clearly indicates that the occurrence did not take place in the heat of passion, upon a sudden quarrel. As pointed earlier, both sides were coming to attend a Panchayat to settle a dispute. Where was the need to carry arms if the intention was only to settle a dispute? Even otherwise, Exception 4 is not applicable because the manner in which the blow was given right on the middle of the head, brings this case squarely within clause "Fourthly" of Section 300 IPC. [Para 7] [1069-D-E]

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3. A-1 should have known that the act which he is performing, of hitting the deceased on the head with a sickle with such great force causing fracture of the skull, is so dangerous that it would have imminently caused death. Therefore, there is no reason to alter the sentence or conviction of A-1. [Para 8] [1070-A]

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4. However, as far as A-2 is concerned, since the High Court has held that neither Section 34 nor Section 149 IPC are applicable, each accused will only be responsible for his own acts and injuries. In this behalf, reference was made to a judgment of

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- A this Court in the case of *Atmaram Zingaraji vs. State of Maharashtra*. There is no appeal by the State. As far as A-2 is concerned, he is alleged to have given a blow with an iron pipe on the back of the neck of the deceased. This resulted in injury numbers 2 and 3. They are merely abrasions and could not have caused death. Therefore, the accused can only be held guilty of having committed the offence under Section 324 IPC. He has already undergone imprisonment for around 11 years and, therefore, his conviction under Section 302 IPC is altered to Section 324 IPC and the sentence is reduced to the period of incarceration already undergone. As far as A-3, A-5 and A-9 are concerned, this Court finds no reason to interfere with the judgment of the High Court as each has been held guilty for the offence which they have committed. [Para 9] [1070-B-E]
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Atmaram Zingaraji v. State of Maharashtra (1997) 7 SCC 41 : [1997] 3 Suppl. SCR 432 – referred to.

- D **Case Law Reference**
[1997] 3 Suppl. SCR 432 referred to Para 9
 CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1893 of 2010
 - E From the Judgment and Order dated 10.02.2009 of the High Court of Judicature at Madras in Criminal Appeal No. 615 of 2000
 S. Nagamuthu, Sr. Adv., B. Balaji, S. Arun Prakash, Satya Mitra Garg, Advs. for the Appellants.
 Jayanth Muth Raj, Sr. Adv.(AAG), M. Yogesh Kanna, Adv. for the Respondent.
 - F The Judgment of the Court was delivered by
DEEPAK GUPTA, J.
 - G 1. This appeal is filed by Accused Nos. 1, 2, 3, 5 and 9 against the judgment of the High Court whereby Guru @ Gurubaran (A-1) and Durai @ Durairajan (A-2) have been convicted under Section 302, Indian Penal Code (IPC) and sentenced to imprisonment for life and to pay a fine of Rs.1000/- each with default sentence of 3 months rigorous imprisonment (RI). As far as Vettri @ Vettrivell (A-3) is concerned, he was convicted under Section 324 IPC on two counts and sentenced to one year RI on each count and fine of Rs.1000/- with default sentence of 3 months. Narayanan (A-5) and Srinivasan (A-9) along with other

accused were convicted under Section 323 IPC and sentenced to undergo six months RI and pay fine of Rs. 1000/- each with default sentence of 3 months. All the sentences were to run concurrently.

2. The prosecution case is that Parasuraman (PW-14), son of deceased Saroja and Munusamy Pillai (PW-1), was in love with Uma, the younger sister of A-1. They both got married and after the marriage, PW-14 lived in his wife's house. However, Saroja (deceased) did not approve of this. Thereafter, PW-14 came back to his house. On 03.03.1998, it is alleged that Jayaraman (A-4) assaulted Nagarajan (PW-2), brother of Saroja and brother-in-law of PW-1. To settle the dispute, a Panchayat was called the next day. It is admitted that this Panchayat was called at the instance of A-1. The Panchayat was to be conducted in the evening. However, since the Pradhan of the Panchayat was indisposed, the Panchayat could not be held. Thereafter, PW-2, his sister Saroja (deceased), his wife Rani (PW-7), Murugan (PW-13) and Naveen Kumar, son of PW-2 and PW-7 stood outside the house of PW-2 talking amongst themselves. According to him, PW-13 had come to the village because of the Panchayat. While they were standing there, A-1 came armed with a sickle (*Koduval*), A-2 armed with an Iron Pipe, A-3 armed with a sickle (*Koduval*) and A-4 to A-9 carrying thick wooden staffs in their hands. It is alleged that A-1 attacked deceased Saroja with a sickle on the front portion of her head and said that it was only because of her that the younger sister of A-1 has to live separately from her husband. A-2 gave a blow on the back of the neck of Saroja with an iron pipe. The other accused are alleged to have attacked Saroja with wooden staffs in their hand. When the family members of Saroja tried to protect her, all the 9 accused surrounded her and, as such, they could not protect her. According to the eye-witnesses, they were also attacked by the members of the aggressive party. The version of all the eye-witnesses is similar.

3. However, there are some discrepancies with regard to the manner in which the said incident took place. According to PW-1, on the date of Panchayat, first a verbal altercation took place between the two sides and then the attack took place whereas, according to PW-2 and some of the other eye-witnesses, the attack took place without any provocation. We are of the considered view that for the purpose of deciding this appeal, we can even presume that there was some verbal altercation between the two sides.

- A 4. The occurrence is not denied. The main defence is that there was a free fight on both sides and that there is no evidence to show that there is prior meeting of minds. The accused had not been convicted under Section 34 or Section 149 IPC and, therefore, each individual accused can only be convicted for the injury attributed to that individual.
- B Therefore, it becomes relevant to refer to the medical evidence of the autopsy surgeon Dr. Rajamani, Assistant Surgeon (PW-3). The injuries are as follows:
- C “1. An Antemortem red, oblique lacerated wound measuring 6cm x 1cm x 1cm, exposing the bones over the left frontal region of scalp, 1 cm away from the midline with bleeding and blood clots.
- D On Exploring the wound, echymosis seen behind the scalp over the frontal, parietal, temporal and back of skull. There is a fracture of frontal bone measuring 5 cm in length, vertical, para sagittally and 1cm away from midline over the left side, extended to upwards to fronto parietal junction, and another fracture line which is adjacent to it and slightly oblique from the frontal bone to towards fronto parietal junction, 4cm x $\frac{1}{8}$ on and on exposing the skull bones blood clots seen over the membranes of the leftcerebral hemisphere of brain on the frontal, parietal, temporal and occipital region, of the brain. Both fractures are involving inner and outer table of the skull.
- E 2. An abrasions varying size from 3cm to $2\frac{1}{2}$ cm x $\frac{1}{4}$ cm with $\frac{1}{2}$ cm different from each other, oblique, placed over middle 1/3 of right side neck.
- F 3. An AM abrasion $2\frac{1}{2}$ cm x $\frac{1}{4}$ cm obliquely placed 1cm away from injury No.2 on right side of neck.
- G 4. An AM swelling whole of the anterior and lateral side of right side neck. On exposing the injury No.2, 3, 4 minor blood clots under the skin of neck and congestion of sternomastoid muscle and blood clots seen in anterior and lateral side of right side neck.”
- H 5. The doctor states that these injuries caused the death. The first injury is a lacerated wound and it is urged by Mr. S. Nagamuthu, learned senior counsel, that this injury could not have been caused by sickle (*Koduval*), which is a sharp-edged weapon. A sickle is an instrument mainly meant for cutting grass and crops. The inner side is

sharp but the outer side is blunt. While using it as an instrument of agriculture only, the sharp edge is used but while using it as a weapon of offence, more often than not, it will be the outer side which will be used to hit the victim. The doctor has opined that the injury could have been caused by a sickle which is MO-1 and, therefore, the medical evidence fully corroborates the version of all the eye-witnesses.

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6. It was next urged that the offence was not of murder but may amount to culpable homicide not amounting to murder. It has been urged that the case would fall within Exception 4 to Section 300 IPC, which reads as follows:

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“Exception 4 – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

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7. We are of the view that the accused cannot take benefit of this Exception. It has come in evidence that all the accused persons came armed. Two were armed with sickles, one with an iron pipe and the other with wooden staffs. Even if it is assumed that they may not have come with the intention of killing, the fact that they were armed, clearly indicates that the occurrence did not take place in the heat of passion, upon a sudden quarrel. As pointed out above, both sides were coming to attend a Panchayat to settle a dispute. Where was the need to carry arms if the intention was only to settle a dispute? Even otherwise, we feel that Exception 4 is not applicable because the manner in which the blow was given right on the middle of the head, brings this case squarely within clause “Fourthly” of Section 300 IPC, which reads as follows:

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“300. Murder – xxx xxx xxx

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Secondly - xxx xxx xxx

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Thirdly - xxx xxx xxx

Fourthly -If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

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- A 8. A-1 should have known that the act which he is performing, of hitting the deceased on the head with a sickle with such great force causing fracture of the skull, is so dangerous that it would have imminently caused death. Therefore, we find no reason to alter the sentence or conviction of Guru @ Gurubaran (A-1).
- B 9. However, as far as Durai @ Durairajan (A-2) is concerned, since the High Court has held that neither Section 34 nor Section 149 IPC are applicable, each accused will only be responsible for his own acts and injuries. In this behalf, reference was made to a judgment of this Court in the case of *Atmaram Zingaraji vs. State of Maharashtra*¹. There is no appeal by the State. As far as A-2 is concerned, he is alleged to have given a blow with an iron pipe on the back of the neck of the deceased. This resulted in injury numbers 2 and 3. They are merely abrasions and could not have caused death. Therefore, the accused can only be held guilty of having committed the offence under Section 324 IPC. He has already undergone imprisonment for around 11 years and, therefore, his conviction under Section 302 IPC is altered to Section 324 IPC and the sentence is reduced to the period of incarceration already undergone. As far as Vettri @ Vetrivell (A-3), Narayanan (A-5) and Srinivasan (A-9) are concerned, we find no reason to interfere with the judgment of the High Court as each has been held guilty for the offence which they have committed.
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- E 10. In view of the above, the appeal of Accused Nos. 1, 3, 5 and 9 is dismissed and the appeal of Accused No. 2 is allowed and his conviction is altered from offence punishable under Section 302 IPC to offence punishable under Section 324 IPC and the sentence is reduced to the period of incarceration already undergone.
- F 11. Accused-Appellant Nos.1 & 2 were granted bail vide this Court's order dated 08.01.2018. In view of the above, bail bond of Appellant No.1 (A-1) is cancelled. He shall be taken into custody forthwith to serve remaining period of the sentence and bail bond of Appellant No.2 (A-2) is discharged. Pending application(s), if any, stand(s) disposed of.
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Ankit Gyan

Appeals disposed of.

¹(1997) 7 SCC 41