

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and
THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.323 of 2016

Loganathan ... Appellant

vs.

State, by
The Inspector of Police,
Mettupalayam Police Station,
Coimbatore District.
(Crime No.573 of 2012) ... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 20.11.2015 passed by the learned
Sessions Judge, Special Court for Bomb Blast Cases, Coimbatore, in
S.C.No.8 of 2014.

For Appellant : Mr.C.Ramkumar

For Respondent : Mr.E.Raja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by **V.Bharathidasan, J.**)

The appellant in this appeal is the second accused in
Sessions Case No.8 of 2014, on the file of the learned Sessions
Judge, Special Court for Bomb Blast Cases, Coimbatore. There are

two accused in this case. They stood charged as detailed below:-

<i>Serial number of charges</i>	<i>Charge(s) framed against</i>	<i>Charge(s) framed under</i>
1.	First Accused	U/s. 302 and 506(ii) IPC
2.	Second Accused	U/S. 302 R.W 34 IPC

2. The trial Court, by Judgment dated 20.11.2015, convicted the accused and sentenced them as detailed below:-

<i>Rank of the accused</i>	<i>Penal provision(s) under which convicted</i>	<i>Sentence</i>
Ist Accused	U/s. 302 IPC U/s.502(ii) IPC	Imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for six months. Rigorous Imprisonment for three years and no fine amount was imposed.
2 nd Accused	U/s.302 r/w 34 IPC	Imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for six months.

The sentences were ordered to run concurrently. Challenging the above said conviction and sentence, the appellant/2nd accused is before this Court with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:

(i) The deceased, in this case, one Mahendran, is the son of P.W.1. A-1 in this case is son of one Mani and they are residing behind the house of the deceased. There was a dispute between

the deceased and A1's family regarding the common pathway. Due to the same, there were frequent quarrels between the deceased and accused family. Two days prior to the occurrence, the deceased beaten father of the first accused. In order to take revenge, on 06.08.2012 at about 5.00 p.m., both A1 and A2 came in a motor cycle, A-2 riding the motor cycle and A1 sitting in the pillion. At that time, the deceased was standing near a shop and after seeing the deceased, A-1 got down from the motor cycle, scolded the deceased and taken empty beer bottle found near by a shop and attacked the deceased on his neck. On such attack, the deceased fell down. Once again A-1 attacked the deceased on the right side of the neck. P.W.1, the mother of the deceased was also standing there and she raised alarm. On hearing it, the people in and around the scene of occurrence rushed to the place and after seeing them, A-1 tried to escape and fell down. The public gathered there caught hold of the first accused. However, A-2 who was sitting in the motor cycle fled away from the scene of occurrence. Then, P.W.1 went to the police station along with P.W.8 and her relatives and lodged a complaint [Ex.P1].

(ii) P.W.15, Sub Inspector of Police attached to the respondent police station, on receipt of the complaint, registered a case in Crime No.573 of 2012 under Section 302 IPC and prepared first information report[Ex.P23] and sent the same to the learned

Judicial Magistrate, Mettupalayam and copies of the same to the higher officials.

(iii) P.W.18, Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared an observation mahazar [Ex.P4], drew rough sketch [Ex.P30] and arranged the photographer for taking photographs of the dead body of the deceased, M.Os.6 to 15, 23 and 24. Then, P.W.18 recovered blood stained earth [M.O.16], sample earth [M.O.17], broken beer bottle [M.O.1] in the presence of witnesses. P.W.18, then conducted inquest over the dead body of the deceased between 08.15 pm and 10.15 pm., in the presence of panchayatdars and prepared inquest report [Ex.P31]. After inquest, he sent the dead body to the Government Medical Collage Hospital, Coimbatore for conducting postmortem autopsy through P.W.15 Head Constable. Since A1 in this case was caught hold by the public and beaten him and he suffered some minor injuries and was admitted in the Government Hospital, Mettupalayam. On 06.08.2012, at about 6.30 p.m., P.W.18 arrested A-1 and on such arrest, he has voluntarily given a confession, and based on the disclosure statement[Ex.P6], P.W.18 recovered blue colour jeans Pant [M.O.18], Brown colour full hand shirt[M.O.19], White colour banyan [M.O.20] under mahazar [Ex.P7] in the presence of witnesses. On 07.08.2012 at

about 1.00 p.m., A-1 identified A-2 and P.W.18 arrested the second accused and on such arrest, the second accused has voluntarily given confession and based on the disclosure statement[Ex.P8], P.W.18 recovered Pulser Motor Cycle bearing Registration No.TN-39-AJ-1116 [M.O.2] under mahazar [Ex.P9]. He examined some witnesses and recorded their statements. P.W.18 sent the blood stained materials objects to the Judicial Magistrate Court for forwarding the same to the Forensic Department for chemical examination.

(iv) P.W.9, Assistant Surgeon, working in the Government Medical College and Hospital, Coimbatore, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

(1) Cut like laceration 9 x 4 cm x muscle deep noted over lower part of right side neck in its front and right side. The medial end is 3 cm above the sternal notch and the lateral end is 4 cm above the right clavicle. On dissection the wound irregularly cutting the underlying muscle, nerves and vessels include the carotid sheath and its content.

(2) Cut like laceration 7 x 2 cm x muscle deep noted over right side neck. The lateral end is 1.5 cm above wound No.1 and medial end is 3 cm above medial end of wound No.1. On dissection the wound irregularly

cutting the underlying muscles nerves and vessels.

(3) Cut like laceration 7 x 1 cm x muscle deep noted over front of neck, 0.5 cm above wound No.1. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(4) Cut like laceration 3 x 2 cm x muscle deep noted over front of neck, 0.5 cm above wound No.3. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(5) Cut like laceration 8 x 2 cm x muscle deep noted over right side neck and mastoid region. The medial end is 2 cm below and lateral to angle of mandible and outer and upper end is 3 cm posterior to upper part of ear. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(6) Cut like laceration 1.5 x 0.5 x 0.5 cm noted over right cheek. The outer end is 7 cm medial to the tragus and 2 cm below to outer canthus of right eye. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(7) Cut like laceration 1.5 x 0.5 cm x scalp deep noted over right frontal region. The outer end is 3 cm above to right ear and inner end is 6 cm above lateral to right eyebrow.

(8) Cut like laceration 5 x 1 x 0.5 cm noted over left side neck, 8 cm lateral to midline of neck at the level of thyroid. On dissection the wound irregularly cutting the underlying muscles.

(9) Cut like laceration 2 x 0.5 x 0.5 cm noted over left side upper part of neck, 2 cm lateral to angle of mandible and 4 cm medial to angle of mandible. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(10) Cut like laceration 1 x 1 cm x cartilage deep noted over right ear lobule.

(11) Cut like laceration 4 x 1 cm exposing tendons noted over dorsum of left hand, 6 cm from the below wrist, lower end is at the level of meta carpal phalange joint. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(12) Cut like laceration 3 x 0.5 cm x scalp deep noted over mid posterior parietal region.

(13) A stab wound with finely lacerated margins 5 x 2 x 4 cm noted over back of left side chest, 2 cm from midline at the level of T3 vertebra and 3 cm medial to the scapular prominence. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels and the wound passes downwards inwards along the muscle plane.

(14) A stab wound with finely lacerated margins 2 x 0.5 cm x muscle deep noted over back of left side chest, 1 cm outer to the previous wound at the level of medial border of the left scapula. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(15) Cut like laceration 2 x 0.5 x 0.5 cm noted over back of left side neck. The medial end is at the level of vertebral level. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(16) Reddish abrasion 11 x 0.5 cm noted over left shoulder and scapular region and 9 x 1 noted over right side of neck, 7 x 0.5 cm and 5 x 0.5 noted over right side neck and back of neck.

(17) Multiple small reddish abrasions of varying sizes and shapes noted over back of neck.

He opined that the deceased would appear to have died of Shock and Haemorrhage due to multiple injuries and he issued Postmortem Certificate[Ex.P12].

(vi) P.W.18 continued the investigation, examined the Doctor, who conducted postmortem on the dead body, and other

witnesses and recorded their statements and after completion of investigation, he laid the charge sheet against the accused.

4. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 18 witnesses were examined and 31 documents and 15 material objects were marked.

5. Out of the above said witnesses examined, P.W.1 is the mother of the deceased. She has spoken about the motive for the occurrence and she is also an eye witness to the occurrence. According to her, at the time of occurrence, A-2 is riding the motor cycle and A-1 is sitting in the pillion, after saw the deceased, A-1 got down from the motor cycle and attacked the deceased with empty beer bottle available near by a shop and she raised alarm and on hearing the noise, near by the public rushed the scene of occurrence and caught hold the first accused and sitting in the motor cycle went away from the scene of occurrence. She categorically stated that she did not know the second accused and for the first time she saw the second accused in the scene of occurrence. P.W.2 is another eye witness to the occurrence. According to him, he saw the first accused attacked the deceased

and at that time A-2 sitting in the motor cycle and after the occurrence, the public caught hold the first accused and A-2 went away from the scene of occurrence in his motor cycle. P.W.3 is also another eye witness to the occurrence. He is also reiterated the evidence of P.W.2. P.W.4 is also another eye witness to the occurrence. He is also reiterate the evidence of P.Ws.2 and 3. P.W.5 is working as sales man in No.26, Bharathi Nagar Ration shop. According to him, after hearing the noise, he come out from the Ration shop and saw the deceased lying on the road with stab injuries. P.W.6 was working as medical technician in 108 ambulance and after receipt of the information, he visited the scene of occurrence and found the deceased dead. P.W.7 is the witness to the observation mahazar and also recovery of broken beer bottle. P.W.8 is the close relative of P.W.1. According to him, he accompanied the P.W.1 and lodged a complaint before the respondent police. P.W.9, Assistant Surgeon, who conducted postmortem autopsy on the dead body of the deceased and issued postmortem certificate [Ex.P12]. P.W.10 is the Doctor working in the Government Medical College & Hospital, Coimbatore. According to her, he received the dead body and issued accident register and sent the dead body to the mortuary. P.W.11 is the photographer. He took photographs of the dead body. P.W.12 was working as Head Clerk in the Judicial Magistrate Court, Mettupalayam. he sent

the material objects to the Forensic Department for chemical examination. P.W.13 was working as Head Constable in the respondent police station. he submitted the material objects to the Forensic Department for chemical examination. P.W.14, Sub Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case and sent the first information report to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.15 is the Head Constable attached to the respondent police. According to him, he accompanied the dead body to the Government Hospital for postmortem. P.W.16, the learned Judicial Magistrate No.I, Coimbatore, who conducted test identification parade. P.W.17, Doctor, working in the Government Hospital, Mettupalayam, gave treatment to the first accused. P.W.18, Inspector of Police attached to the respondent police station, on receipt of the first information report, conducted investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the material objects and after completion of investigation, he laid the charge sheet against the accused.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused did not examine any witnesses nor marked any

documents.

7. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the appellant/2nd accused is before this Court.

8. We have heard Mr.C.Ramkumar, learned counsel appearing for the appellant and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. The appellant/2nd accused in this case stood charged for the offence under Section 302 r/w 34 IPC. It is the consistent evidence of all the eye witnesses that both A1 and A2 came in a motor cycle, A-2 riding the motor cycle and A-1 was sitting in the pillion. On seeing the deceased, A-1 got down from the motor cycle and attacked the deceased with beer bottle available in the near by shop. When A-1 attempted to escape from the scene of occurrence, the general public caught hold of him. At that time, A-2 who was sitting in the motor cycle fled away from the scene of occurrence. This is the only overtact attributed against to A-2. Thus, the only

allegation against the second accused is that he was riding the motor cycle. The trial Court convicted the second accused for having aided the first accused under Section 34 of IPC. Section 34 IPC does not create substantive offence. Section 34 of IPC would get attracted only on satisfaction of two conditions, one is the mental element or intention to commit the criminal act conjointly with other and the second is actual participation in one form or other in commission of the crime. To convict a person under Section 34 IPC, the prosecution must establish that there was a common intention between two persons and the person who was guilty of such intention is liable for punishment under Section 34 IPC. For arriving at such satisfaction, there must be some evidence to show that the accused participated in the offence in some manner need not in all cases by physical participation. Unless such common intention and participation are present the ingredients of Section 34 of IPC cannot be attracted. The common intention postulates the prior meeting of mind. It is the intention to commit crime and the accused can be convicted only if such intention is unfolded on the basis of evidence. The Hon'ble Supreme Court, in **VIRENDRA SINGH Vs. STATE OF MADHYA PRADESH reported in 2010(8) SCC 407**, has held as follows:

39. The common intention postulates the

existence of a pre-arranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such a common intention should be anterior in point of time to the commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under [section 34](#) IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinized by the court. This is particularly important in cases where evidence regarding development of the common intention to commit the offence graver, then, the one originally designed, during execution of the original plan, should be clear and cogent.

40. The dominant feature of [section 34](#) is the element of intention and participation in action. This participation need not in all cases be by physical presence. Common intention implies acting in concert.

10. In the instant case, there is no evidence to prove that A2 has common intention with A-1 and there is pre-arranged plan implying prior meeting of minds. It is the evidence of all the eye

witnesses that both A1 and A2 came in a motor cycle and after seeing the deceased, A1 got down from the motor cycle and attacked the deceased with empty beer bottle available nearby the scene of occurrence and A-2 was still staying in the bike. From the above evidence, it is clear that there was no common intention between A1 and A2 to commit the murder of the deceased. There was no prior meeting on mind and the occurrence took place all of a sudden after A-1 saw the deceased. In the absence of any common intention or prior meeting of mind between A1 and A2, it cannot be held that A2 has a common intention as like the first accused to perpetrate the crime. Hence, A-2 cannot be convicted with the aid of Section 34 IPC. The first accused is not before this Court, hence we are not expressing opinion on the act done by A1. In the said circumstances, we are of the considered view that the second is entitled for acquittal.

11. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Court for Bomb Blast Cases, Coimbatore, in Sessions Case No.8 of 2014 dated 20.11.2015 is set aside and the appellant/second accused is acquitted of all the charges levelled against him and bail bond if any executed by him shall stand cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

(S.N.J.,) (V.B.D.J.,)

12.08.2016

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To

- 1.The Sessions Judge,
Special Court for Bomb Blast Cases,
Coimbatore.
- 2.The Inspector of Police, Mettupalalam Police Station,
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.

S.NAGAMUTHU.J.,

and

V.BHARATHIDASAN.J.,

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