

In Re: Thipperudrappa and anr.

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Court : Karnataka

Decided On : Jul-30-1953

Reported in : AIR1954Kant53; AIR1954Mys53

Judge : Venkata Ramaiya and ;Mallappa, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323, 325, 326 and 439

Appeal No. : Criminal Appeal No. 30 of 1952-53

Appellant : In Re: Thipperudrappa and anr.

Advocate for Def. : Adv. General for the Govt.

Advocate for Pet/Ap. : V. Krishnamurthy and ;M. Sadanandaswamy, Adv.

Judgement :

Venkata Ramaiva, J.

1. The two appellants have been convicted under section 326 and sentenced to undergo R. I. for 8 years and 6 years respectively. The facts which may be taken to be established by the evidence are that one Kotrappa was beaten in a field near the village Chickamadapura, Challakere Taluk, on the morning of 13-1-1952, moved to the village in a cart within a short time and expired about an hour or two later. In Exhibit P-9 the earliest report of the occurrence the accused are mentioned to be the assailants and this is supported by the evidence of P. W. 14.

The direct evidence to show that it is the accused who assaulted Kotrappa is only that of P. W. 14. P. Ws. have said that Kotrappa himself when questioned about the injuries shortly before his death attributed these to beating by accused.

One of the witnesses says that the accused were running on the road near the place where Kotrappa was lying injured. From the medical certificate Exhibit P-6 it is seen that accused 1 sustained small injuries on the same day and not improbably while hitting Kotrappa. The learned trial Judge has believed the evidence of P. W. 14 and in the light of other facts referred to, we do not see any ground to disagree with the finding that the accused assaulted Kotrappa.

2. The determination of the offences of which the accused can be properly convicted is a point of some difficulty. The charge framed by the Magistrate mentioned it as one under Section 302, I. P. C. This was made subject to Section 34, I. P. C. by the amendment in the Court of Session. The learned Judge did not consider the materials to be sufficient to justify a conviction for murder but adequate for conviction under Section 326, I. P. C. which relates to causing grievous hurt with a deadly weapon. Existence of common intention to assault Kotrappa which is necessary for application of Section 34, I. P. C. may be inferred from the acts of the accused in jointly attacking him. This is not by itself enough to render them guilty of the offences under Section 326 and the fact that Kotrappa subsequently died cannot necessarily imply a common intention to cause death. There is absolutely no proof of any motive for the assault, of what led to it and of the part played by each in the incident.

Of the injuries caused to Kotrappa only the first which is a fracture of the skull is serious and such as is likely to cause death in the opinion of the doctor. But for this injury the person may not have died. The evidence does not show who as between the two accused caused this injury. It may be that the common intention was only to give an ordinary beating as indicated by the other injuries and one of the accused suddenly in rage or excitement struck the man on the head. There are cases in which under such circumstances, the accused are convicted under Section 325, I. P. C. --'See Emperor v. Bhola Singh', 29 All. 282 (A)', --'Lal v. Emperor' AIR 1827 Lah 831 (B)' &--'Nathu v. Emperor' AIR 1942 All. 400 (C). The

important factor to be noticed is that the weapons used were cutting instruments or daggers in these cases. In --'In re Nachal' : AIR1941 Mad746 , and --'Emperor v. Keamatali Sheikh' ALR 1942 Cal 423 (2) (E), notwithstanding the occurrence of death due to the beating, the assailants were convicted under Section 323 on the view that intention to cause death or grievous hurt is not made out.

The present case is of this kind as only sticks are said to have been used for the purpose of beating. The sticks may have been thick or thin, hard or soft as the eye-witness does not give any information about these and the sticks are not produced in the case. In view of all this, the offence of which the accused can be properly convicted is that of voluntarily causing hurt punishable under Section 323, I. P. C. The accused are said to have been in detention during the trial and undergone imprisonment for a few days before they were released on bail. The convictions of the appellants under Section 326, I. P. C. are altered to those under Section 323, I. P. C. and the sentence of imprisonment is reduced to the period already undergone.

Mallappa, J.

3. I entirely agree. It has to be observed that the lower Courts often commit, in interpreting Section 34 I. P. C., the mistake committed in this case. If, apart from the person who actually causes an injury, other persons are present at the time the injury is caused, it does not necessarily follow that they are also guilty of the offence. Before they could be convicted under Section 34, I. P. C. of an offence committed by another, it must be proved in the first place that they and he had the common intention of causing the injury and in the second place the act was committed in furtherance of the common intention. As observed by Mahmood J. in -- 'Empress v. Dharam Rai', 1887 All W N 236 (F):

'This section was the subject of consideration impliedly in the case of -- 'Queen v. Gorachand Gope', Beng LR Sup Vol p. 443 (G). At p. 456 Sir Barnes Peacock clearly laid down the rule of law that mere presence of persons at the scene of an offence is not, 'ipso facto', sufficient to render them liable, to any rule such as Section 34, enunciates, and that 'the furtherance of a common design' was In

essential condition before such a rule applied to the case of an individual person. It was probably in consequence of this expression of view from such a high authority that the Legislature by Section 1 of Act 27 of 1870, repealed the original Section 34; and in substituting another section therefor, inserted the important words 'in furtherance of the common intention of all' as representing the condition precedent to each of such persons being held liable for the crime in the same manner as if it were committed by him alone.

This change in the law is very significant, and it indicated to my mind that the original section having been found to be somewhat imperfectly worded, these additional words were introduced to draw a clear distinction that unpremeditated acts done by a particular individual, and which go beyond the object and intention of the original offence, should not implicate persons who take no part in that particular act. We have the opinion of an American Jurist on the point, whom Mr. Mayne, in his Commentary on the Indian Penal code, quotes (Bishop, Section 439), where that learned author, laying down the rule, goes on to say: 'But if the wrong done was a fresh and independent wrong springing wholly from the mind of the doer, the other is not criminal therein, merely because when it was done he was intending to be a partaker with the doer in a different wrong'. This seems to me to be the right interpretation of the words 'in furtherance of the common intention of all' as they occur in Section 34, Indian Penal Code.'

4. The common intention may be proved by showing that there was a pre-arranged plan. It may not always be possible to get direct evidence of such a plan. The common intention may have to be gathered from the act or conduct of the person or persons present and other circumstances. But it must be possible from the evidence on record to infer that all the accused had the common intention of committing an act and that it was committed in furtherance of that common object.

5. Five kinds of cases may arise when persons are tried in respect of an act committed by one of them. First there may be single injury inflicted by one of the persons present, but there may be no evidence to show which of them inflicted the injury though it is clear that one of them did so. In a case of that kind unless there are materials for the Court to come to the conclusion that the persons present had

the common intention to commit that act and that act was committed in furtherance of that common intention all of them have to be acquitted. Secondly there may be evidence to show that one of the accused committed the act and another person or persons were present when the act was committed. In such a case the person who committed the act can no doubt be convicted. But other person or persons can only be convicted if the evidence justifies the conclusion that they had the common intention of committing the act and it was committed in furtherance of that intention.

The third kind of case is where more than one person commit different offences. One might be guilty of causing a simple hurt, while another might be guilty of causing grievous hurt. In such a case also, while each of the accused can be convicted of the offence he actually committed, none of the accused can be convicted of the offence committed by another, unless it is shown that they had a common intention of committing the act and it was committed in furtherance of same. Fourthly, there may be cases in which a person receives numerous injuries inflicted by all the accused and as a cumulative effect of all the injuries caused by a number of persons the person dies, and not on account of any single injury. In such a case it may have to be inferred that the beating took place in furtherance of the common intention of causing the death of the person and the accused may be convicted of the offence of murder under Section 34, I. P. C.

Lastly, there may be cases in which more than one person take part in committing offences but it is not clear what particular offence was actually committed by each of them. For instance, if, as in this case, a person received more than one injury inflicted by two persons, but there is only one injury which amounts to grievous hurt and it is not possible to say which of the two accused committed the injury which amounts to grievous hurt, none of the accused can be convicted for any offence other than simple hurt, unless there is material to show that the grievous hurt was caused in furtherance of a common intention to inflict an injury of that kind.

6. As pointed out by my learned brother to this case there is only one injury which caused the death of the unfortunate injured person, and it is not in evidence which

of the accused caused that injury though it is in evidence that both the accused dealt blows with a stick. They can therefore be convicted only of an offence under Section 323, I. P. C.

7. Order accordingly.

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