SUPREME COURT OF INDIA

Anda

Vs.

State of Rajasthan

Crl.A.No.180 of 1963

(K. N. Wanchoo, M. Hidayatullah, J. R. Mudholkar and S. M. Sikri, JJ.)

09.03.1965

JUDGEMENT

HIDAYATULLAH, J.:

1. The appellants, who are four in number, have been convicted by the Rajasthan High Court under S. 302 read with S. 34 of the Indian Penal Code and sentenced to imprisonment for life. Previously they were convicted along with three others by the Sessions Judge, Merta under S. 302 but read with S. 149 of the Code. On the acquittal of the others the change in the section wad made. The appellants were charged in the alternative and no question of a new charge arises. Special leave was granted to the appellants limited to the question whether S. 302 read with S. 34 was applicable to the facts of the case. At the hearing before us Mr. Prem claimed that under the leave he was entitled to argue that the offence disclosed by the evidence did not fall within S. 302, Indian Penal Code, while Mr. Brij Bans Kishore contended that the only point on which leave was granted was whether S. 34, Indian Penal Code was properly invoked. In our opinion, leave was not granted on the latter point which does not present any difficulty at all but on the question whether the conviction for murder is justifiable.

2. The incident took place on June 29, 1961, at about 5 or 5-30 a. in. at a village called Hindas. One Bherun son of Girdhari Jat was assaulted by a number of persons and received numerous injuries. He died as result on the same day. Prosecution proved satisfactorily that Bherun and his father Girdhari were on inimical terms with the appellants and that certain criminal proceedings were going on between them. The prosecution further proved that Bherun had gone to Hindas with a servant to attend to his fields there. He was on his way to the fields, when he passed the house of Bhagu (one of the original accused but since acquitted) and was caught hold of by Anda (appellant No. 1) and Roopla (appellant No. 2) and was assaulted. They and the other accused dragged him inside the house and beat him severely. Bherun tried hard to avoid being dragged inside the house and clung desperately to the door jamb but Anda and Roopla struck him on his hands with their sticks to make him release his hold. His cries attracted the neighbours and one of them Moda (P.W. 8) attempted a rescue but was beaten off. The evidence, proving the presence and participation of these appellants in the assault has been concurrently accepted by the High Court and the Sessions Judge and the findings on this part of the case must be considered as established. There can be no question that the appellants were actuated by a common intention which must have been the result of a prior concert, regard being had to the time, and the place and the circumstances of the visit of Bherun. Section 34, Indian Penal Code as we shall show presently, was thus rightly invoked and that aspect of the case furnishes no difficulty whatever.

3. Bherun was examined by Mr. C.L. Sablok, Medical Officer in-charge, Merta City Dispensary and he is witness no. 4 for the prosecution. Mr. Sablok found Bherun in great pain and sinking. He noted the injuries observed by him in his report (Ex. P. 1) which he was able to verify more fully when he performed the autopsy after Bherun's death. His second report is Ex. P. 2. The two examinations revealed the existence of over thirty wounds and injuries. There were fractures of the right and left ulnas, second and third metacarpal bones of the right hand and second metacarpal bone of the left hand, compound fractures of the right tibia and right fibula, the tibia being fractured at two places and fracture of the left fibula. These fractures lay under large bruises and lacerated wounds. Mr. Sablok could specify nine such bruises in addition to multiple bruises running in different directions on the right buttock which he was unable to count. There were as many as sixteen lacerated wounds on the arms and legs and a hematoma on the right forehead and a big bruise on the middle of the chest. When Bherun was admitted in the hospital he was bleeding profusely from his injuries and the right tibia which was fractured at two places was splintered and the broken ends were protruding. At the site of other injuries muscle tags were protruding out of the wounds. At the autopsy the lungs were pale and the heart empty which showed that enormous quantity of blood must have been lost. The opinion of Mr. Sablok on the cause of death was :

"In my opinion the cause of death is shock and Syncope due to multiple injuries. * * * * All these injuries collectively can be sufficient to cause death in the ordinary course of nature. But individually no injury was sufficient in the ordinary course of nature to cause death."

The argument of Mr. Prem is that the offence is not murder but culpable homicide not amounting to murder. He contends that this case cannot be brought under any of the clauses of S. 300 which turn the lesser offence into murder. Mr. Brij Bans Kishore says that Cls. (1) and (3) of S. 300 apply to this case. The question thus is what offence was committed?

4. The offence of culpable homicide is defined by S. 299. It reads :

"299. Culpable Homicide.

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death commits offence of culpable homicide."

The offence involves the doing of an act (which term includes illegal omissions) (a) with the intention of causing death or (b) with the intention of causing such bodily injury as is likely to cause death or (c) with the knowledge that the act is likely to cause death. If death is caused in any of these three circumstances, the offence of culpable homicide is said to be committed. The existence of the three circumstances (a), (b) and (c) distinguishes homicide which is culpable from homicides which are lesser offences or which are excusable altogether. Intent and knowledge in the ingredients of the section postulate the existence of a positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed on the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person.

5. Section 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Section 300 begins by setting out the circumstance when culpable homicide turns into murder which is punishable under S. 302 and the exceptions in the same section tell us when the

offence is not murder but culpable homicide not amounting to murder punishable under S. 304. Murder is an aggravated form of culpable homicide. The existence of one of four conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder. We are not concerned with the exceptions in this case and we need not refer to them. We now refer to the circumstances which turn culpable homicide into murder. They read:

"300. Murder.

Except in the case hereinafter expected culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

2ndly - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -

3rdly - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted in sufficient in the ordinary course of nature of cause death, or -

4thly - 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."

Taking the four clauses one by one we find that under the first clause of S. 300 culpable homicide is murder when the act by which death is caused is done with the intention of causing death. This clause reproduces the first part of S. 299. An intentional killing is always murder unless it comes within one of the special exceptions in S. 300. If an exception applies, it is culpable homicide not amounting to murder. It is the presence of a special exception in a given case which reduces the offence of murder to culpable homicide not amounting to murder when the act by which death is caused is done with the intention of causing death.

6. The 2ndly in S. 300 mentions one special circumstance which renders culpable homicide into murder. Putting aside the exceptions in S. 300 which reduce the offence of murder to culpable homicide not amounting to murder. Culpable homicide is again murder if the offender does the act with the intention of causing such bodily injury which he knows to be likely to cause the death of the person to whom harm is caused. This knowledge must be in relation to the person harmed and the offence is murder even if the injury may not be generally fatal but is so only in his special case, provided the knowledge exists in relation to the particular person. If the element of knowledge be wanting the offence would not be murder but only culpable homicide not amounting to murder or even a lesser offence illustration (b) appended to this clause very clearly brings out the point. It reads :

(b) A. knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury, Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death."

7. The third clause views the matter from a general stand point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature. If the intended injury cannot be said to be sufficient in the ordinary course of nature to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but within culpable homicide not amounting to murder or something less. The illustration appended to the clause 3rdly reads:

"(c) A intentionally gives Z a sword-but or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder although he may not have intended to cause Z's death."

The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder.

8. The clause 4thly comprehends generally the commission of imminently dangerous acts which must in all probability cause death or cause such bodily injury as is likely to cause death. When such an act is committed with the knowledge that death might be the probable result and without any excuse for incurring the risk of causing death or injury as is likely to cause death, the offence is murder. This clause, speaking generally, covers cases in which there is no intention to cause the death of any one in particular. Illustration (d) appended to this clause reads:

"(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual."

9. Now the word 'act' in all the clauses of S. 299 or S. 300 denotes not only a single act but also a series of acts taken as a single act. When a number of persons participate in the commission of a criminal act the responsibility may be individual, that is to say, that each person may be guilty of a different offence or all of them may be liable for the total result produced. This depends on the intention and knowledge of the participants. The subject is then covered by Ss. 34, 35 and 38 of the Code. They may be read at this stage:

"34. Acts done by several persons in furtherance of common intention.

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone".

"35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.

When an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

"38. Persons concerned in criminal act may be guilty of different offences.

Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

The first two sections create responsibility for the total result. The third creates individual responsibility only. Section 34 applies where there is a common intention and for a criminal act done in furtherance of the common intention of all, every one is equally responsible. Section 35 requires the existence of the knowledge or intent in each accused before he can be held liable if knowledge or intent is necessary to make the act criminal. Thus if two persons beat a third and one intends to cause his death and the other to cause only grievous injury and there is no common intention, their offences will be different. This would not be the case if the offence is committed with a common intention or each accused possessed the necessary intention or knowledge. Section 38 provides for different degrees of responsibility arising from the same criminal act. The illustration brings out the point quite clearly:

"A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide."

We may now apply these principles to the facts of the present case. In the present case the accused were obviously present at the spot by previous arrangement. The time and the place and the errand on which Bherun was engaged clearly show that they intended to waylay and beat Bherun. This intent was obviously shared and was the result of prior arrangement. The question is whether they can be brought within any one of the three clauses of S. 300. The injuries were not on a vital part of the body and no weapon was used which can be described as specially dangerous. Only lathis were used. It cannot, therefore, be said safely that there was an intention to cause the death of Bherun within the first clause of S. 300. At the same time, it is obvious that his hands and legs were smashed and numerous bruises and lacerated wounds were caused. The number of injuries shows that every one joined in beating him. It is also quite clear that the assailants aimed at breaking his arms and legs. Looking at the injuries caused to Bherun in furtherance of the common intention of all it is clear that the injuries intended to be caused were sufficient to cause his death in the ordinary course of nature even if it cannot be said that his death was intended. This is sufficient to bring the case within 3rdly of S. 300.

10. Our attention was drawn to a decision of the Gujarat High Court reported in Oswal Danji Tejsi v. State, AIR 1961Guj 16. The accused there were convicted under S. 325 read with S. 34, Indian Penal Code. In that case twenty one injuries were caused on the person of the victim of which only two injuries, which were caused with an iron-ringed stick, were fatal. There were three accused and only one such stick. The learned Judges observed:

.... Having regard to the paucity of the number of fatal injuries, it would not be proper to say that the three accused persons were necessarily actuated with an intention of causing death of Rana....."

It appears that the Assistant Government Pleader conceded that the common intention was not to commit murder and that the offence was culpable homicide not amounting to murder, which he said was the appropriate section to apply. The learned Judges did not agree but changed the conviction from S. 325, Indian Penal Code to S. 326, Indian Penal Code. The statement of the learned Judges

which we have quoted from their judgment, with due respect, is not adequate. They seem to have considered the matter only from the view point of Cl. (1) of S. 300.

11. We may refer to two cases of this Court. In Brij Bhukhan v. State of Uttar Pradesh, (S) AIR 1957 SC 474, there was no injury sufficient to cause death in the ordinary course of nature. It was, however, pointed out that it was open to the Court to look into the nature of the injuries and if they were cumulatively sufficient in the ordinary course of nature to cause death, clause 3rdly of S. 300 was applicable. We have considered the matter from this point of view. In Criminal Appeal No. 1. of 1957, dated 14-3-1957 (SC), Chandgi v. State of Punjab, there was one serious injury which was inflicted with a gandasi and had all but severed the arm of the victim from his body, This Court did hold the accused guilty under S. 302/34, Indian Penal Code, observing:

"This injury may or may not be described as sufficient in the ordinary course of nature to cause death and curiously enough when the Doctor was examined before the learned Sessions Judge no questions were addressed to him in this behalf. On the evidence as it stands it is impossible for us to come to the conclusion that the common intention of the appellants was to murder the deceased. The only conclusion to which we can come on the record is that the common intention of the appellant in pursuing the deceased was to cause him grievous hurt....."

The injury itself was not proved to be sufficient in the ordinary course of nature to cause death and, in our opinion, the case is distinguishable.

12. No case can, of course, be an authority on facts. In the last case inference was drawn from facts which were different. It is always a question of fact as to whether the accused shared a particular knowledge or intent. One must look for a common intention, that is to say, some prior concert and what that common intention is. It is not necessary that there should be an appreciable passage of time between the formation of the intent and the act for common intention may be formed at any time. Next one must look for the requisite ingredient that the injuries which were intended to be caused were sufficient to cause death in the ordinary course of nature. Next we must see if the accused possessed the knowledge that the injuries which were intended to cause were sufficient in the ordinary course of nature to cause death. When these circumstances are found and death is, in fact, caused by injuries which are intended to be caused and which are sufficient in the ordinary course of nature to cause death the resulting offence of each participant is murder.

13. In this case the accused beat Bherun inside a house after dragging him there. The number of injuries shows, that all took part. His arms and legs were smashed and many bruises and lacerated wounds were caused on his person. The injuries intended to be caused were sufficient in the ordinary course of nature to cause death. The assault was thus murderous and it must have been apparent to all the assailants that the injuries they were inflicting in furtherance of the common intention of all were sufficient in the ordinary course of nature to cause death. In these circumstances it cannot be said that the offence was not murder but only culpable homicide not amounting to murder.

14. The appeal fails and is dismissed.

Appeal dismissed.