

Jagrup Singh

Vs

State of Haryana

Criminal Appeal No. 403 of 1981

(D.A. Desai, A.P. Sen JJ)

07.05.1981

JUDGMENT

A.P. SEN, J. –

1. The short point involved in this appeal is whether appellant is guilty of culpable homicide amounting to murder punishable under Section 302, Indian Penal Code, or only of culpable homicide not amounting to murder punishable under Section 304, Part II, Indian Penal Code (hereinafter called 'the Code'). It is not disputed that the appellant, Jagrup Singh, struck a blow with the blunt side of a gandhala on the head of the deceased, Chanan Singh, who was his uncle, resulting in his death. It appears that after the death of Joginder Singh, the deceased Chanan Singh was looking after the family of his brother, Joginder Singh, consisting of his widow Mst. Dalip Kaur and her children. He had settled the betrothal and marriage of Mst. Dalip Kaur's daughter, Tej Kaur. The prosecution case is that the appellant Jagrup Singh and his brothers, Billaur Singh, Jarmail Singh and Waryam Singh, co-accused, although they were collaterals of Joginder Singh, were not invited by Mst. Dalip Kaur to the marriage of her daughter Tej Kaur, at the instance of the deceased Chanan Singh. On account of this, there was ill-feeling between the parties.

2. On the fateful evening, i.e. on March 20, 1978, at 5.15 p.m. the marriage of Tej Kaur was performed. It is alleged that shortly thereafter, the appellant Jagrup Singh armed with a gandhala, his brothers Billaur Singh armed with a gandasa and Jarmail Singh and Waryam Singh armed with lathis emerged suddenly and made a joint assault on the deceased Chanan Singh and the three eyewitnesses, Gurdev Singh, PW 10, Sukhdev Singh, PW 11 and Makhan Singh, PW 12. The deceased along with the three eyewitnesses was rushed to the Rural Dispensary, Rori where they were examined at 6 p.m. by Dr. Bishnoi, PW 3, who found that the deceased had a lacerated wound 9 cm x 1 1/2 cm bone deep on the right parietal region, 9 cm away from the tip of right pinna; margins of wound were red, irregular and were bleeding on touch; direction of wound was anterioposterior. The deceased was in a serious condition and, therefore, he was referred by Dr. Bishnoi to the Civil Hospital, Sirsa, where he died on the morning of March 21, 1978 at 2.10 a.m.

3. Dr. Karan Singh, Senior Medical Officer, Civil Hospital, Sirsa, PW 1, performed an autopsy on the dead body of the deceased. He found the following external injuries :

A stitched contused wound 9 1/2 cm long situated on right side of the head, 9 cm above the top of pinna and 9 cm above the eye brow. Skull deep, direction anterioposterior.

On dissection, he found the following internal injury :

A fracture line running starting from the lower and the anterior part of parietal bone injuring the middle meningeal artery near its entrance into the skull and traversing medially across the base of right middle fossa, crossing the mid-line and extending slightly to the left of mid-line. There was a dark red haematoma (extra-dural) 3" x 3" overlying the parietal and temporal lobes of brain on right side and the area was compressed.

In his opinion, the death of the deceased was due to cerebral compression as a result of the head injury which was sufficient in the ordinary course of nature to cause death.

4. The High Court of Punjab and Haryana, agreeing with the Additional Sessions Judge, Sirsa, held that the appellant struck a blow on the head of the deceased with the blunt side of the gandhala with the intent of causing such bodily injury which was sufficient in the ordinary course of nature to cause death and that being so, the appellant was guilty of culpable homicide amounting to murder punishable under Section 302 of the Code.

5. In assailing the conviction, learned counsel for the appellant contends that the appellant having struck a solitary blow on the head of the deceased with the blunt side of the gandhala, can be attributed with the knowledge that it would cause an injury which was likely to cause death and not with any intention to cause the death of the deceased. The offence committed by the appellant, therefore, amounted to culpable homicide not amounting to murder, punishable under Section 304, Part II of the Code. He further contends, in the alternative, that there could be no doubt that the appellant acted in the heat of the moment when he hit the deceased and is, therefore, entitled to the benefit of Exception 4 of Section 300 of the Code. On the other hand, learned counsel for the State contends that the matter squarely falls within clause Thirdly of Section 300 of the Code. He submits that merely because the appellant rendered a solitary blow with the blunt side of the gandhala on the head would not necessarily imply that the offence amounted to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code.

6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

7. The ingredients of clause Thirdly of Section 300 of the Code were brought out by Vivian Bose, J. in *Virsa Singh v. State of Punjab* (1958 SCR 1495, 1503 : AIR 1958 SC 465 : 1958 Cri LJ 818 : 1958 SCJ 772) in his terse language :

To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "Thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

The learned Judge explained the third ingredient in the following words :

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh's case for the applicability of clause Thirdly is now ingrained in our legal system and has become part of the rule of law. Under clause Thirdly of Section 300 of the Code, culpable homicide is murder if both the following conditions are satisfied : (a) that the act which causes death is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz. that the injury found to be present was the injury that was intended to be inflicted.

8. The decision in Virsa Singh's case (1958 SCR 1495, 1503 : AIR 1958 SC 465 : 1958 Cri LJ 818 : 1958 SCJ 772), has throughout been followed as laying down the guiding principles. The decisions are too numerous and we may notice only two of them : *Gudar Dusadh v. State of Bihar* ((1972) 3 SCR 505 : (1972) 3 SCC 118 : 1972 SCC (Cri) 438 : 1972 Cri J 587) and *Chahat Khan v. State of Haryana* (AIR 1972 SC 2574 : (1972) 3 SCC 408 : 1972 SCC (Cri) 558). In *Gudar Dusadh's* case, the day before the occurrence, the accused had killed a goat and on the advice of the deceased, the complainant lodged a report. On the next morning, while the deceased was returning from his fields along with his son, they were assaulted by the accused persons who had been hiding on the route. Thereafter, the accused set fire to the hut of the deceased. On these facts it was held that the act of the accused who had waylaid the deceased was a pre-meditated act and, therefore, the accused had the necessary intention to commit murder. In *Chahat Khan's* case also, the deceased was waylaid by the accused who were armed with lathis. That case is destructive of the theory that a solitary blow

on the head reduces the offence to culpable homicide not amounting to murder punishable under Section 304, Part II. From the evidence it emerged that the accused had both gun and a lathi, and he made full use of the lathi by using both the hands and struck a blow on the head of the deceased with sufficient force. The solitary blow with the lathi was sufficient in the ordinary course of nature to cause his death, and there was no occasion for using the gun which was hanging on his shoulders. Both these cases fell within clause Thirdly as there was clear intention to cause such bodily injury which in the ordinary course of nature was sufficient to cause death.

9. Looking at the totality of the evidence, it would not be possible to come to the conclusion that when the appellant struck the deceased with the blunt side of the gandhala, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. A gandhala is a common agricultural implement consisting of a flat, rectangular iron strip, three sides of which are blunt, embedded in a wooden handle. The length of the iron strip is in continuation of the wooden handle and the end portion is sharp, which is used to dig holes in the earth to set up fencing on embankments in the field. If a man is hit with the blunt side on the head with sufficient force, it is bound to cause, as here, death. There can be no doubt that it was used with certain amount of force because there was cerebral compression. But that by itself is not sufficient to raise an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. He could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. The matter, therefore, does not fall within clause Thirdly of Section 300 of the Code.

10. In *Chamru Budhwa v. State of Madhya Pradesh* (AIR 1954 SC 652 : 1954 Cri LJ 1676), in somewhat similar circumstances, where there was exchange of abuses between the two parties both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of the skull resulting in the death. In view of the fact that the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under Section 304, Part II of the Code. In *Willie (William) Slaney v. State of Madhya Pradesh* ((1955) 2 SCR 1140 : AIR 1956 SC 116) there was, as here, a sudden quarrel leading to an exchange of abuses and in the heat of the moment a solitary blow with a hockey-stick had been given on the head. The court held that the offence amounted to culpable homicide not amounting to murder punishable under Section 304, Part II.

11. At this stage, we think it desirable to refer to two other decisions in *Harjinder Singh (alias Jinda) v. Delhi Admn.* ((1968) 2 SCR 246 : AIR 1968 SC 867 : 1968 Cri LJ 1023.) and *Laxman Kalu Nikalje v. State of Maharashtra* ((1968) 3 SCR 685 : AIR 1968 SC 1390 : 1968 Cri LJ 1647.) where the court, relying upon the principles enunciated by Vivian Bose, J. in *Virsa Singh's case* (1958 SCR 1495, 1503 : AIR 1958 SC 465 : 1958 Cri LJ 818 : 1958 SCJ 772), excluded the application of clause Thirdly, because the third ingredient laid down, viz. the intention to cause the particular injury which was likely to cause death, was not present.

12. In *Harjinder Singh's case* there was a sudden commotion when the accused took out a knife and stabbed the deceased who intervened in a fight. At this stage, the deceased was in a crouching position presumably to intervene and separate the two persons fighting. It could not, therefore, be said with any definiteness that the accused aimed a blow at a particular part of the thigh that it would cut the femoral artery which would result in the death of the deceased. It was, therefore, not possible to apply clause Thirdly of Section 300 of the Code. In *Laxman Kalu Nikalje's case* there was a sudden quarrel and the accused lost his temper and whipped out a knife and gave one blow. Although it was given on the chest, it was not on a vital part of the chest and but for the fact that the

knife cut the auxiliary artery, death might not have ensued.

13. In the present case, there is no doubt that there was a sudden quarrel and the appellant assaulted the deceased with the blunt side of the gandhala on the head in the heat of the moment. What actually was the immediate cause for the assault by the appellant on the deceased at the marriage ceremony of Tej Kaur, is not clear. The genesis of the quarrel resulting in the head injury to the deceased is not known. The prosecution came with a positive case that the appellant, together with his three brothers, who had not been invited to the marriage of Tej Kaur by Mst. Dalip Kaur at the instigation of the deceased Chanan Singh, came armed with different weapons to teach the deceased a lesson. But the prosecution has failed to examine Mst. Dalip Kaur and the defence version is that the appellant and his brothers had been invited to the marriage of Tej Kaur by Mst. Dalip Kaur.

14. In view of these infirmities in the prosecution case, the High Court was constrained to observe :

In the absence of any specific and positive evidence whether oral or documentary, it is not possible to arrive at any positive conclusion that this circumstance furnished any motive for the accused to attack Chanan Singh (deceased) and three other prosecution witnesses. After a careful perusal of the entire prosecution evidence, it appears more probable that the accused had also joined in the marriage as the collaterals, but something happened on the spur of the moment which resulted in the infliction of injury by Jagrup Singh on the person of Chanan Singh which resulted into his death. In the first information report, it had not been disclosed, as was subsequently made out at the trial, that the accused had come from the house of Jarmail Singh, accused, armed with weapons.

In our judgment, the High Court having held that it was more probable that the appellant Jagrup Singh had also attended the marriage as the collateral, but something happened on the spur of the moment which resulted in the infliction of the injury by Jagrup Singh on the person of the deceased Chanan Singh which resulted in his death, manifestly erred in applying clause Thirdly of Section 300 of the Code. On the finding that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without pre-meditation and in a sudden fight, the case was covered by Exception 4 to Section 300. It is not suggested that the appellant had taken undue advantage of the situation or had acted in a cruel or unusual manner. Thus, all the requirements of Exception 4 are clearly met. That being so, the conviction of the appellant Jagrup Singh, under Section 302 of the Code cannot be sustained.

15. The result, therefore, is that the conviction of the appellant under Section 302 is altered to one under Section 304, Part II of the Indian Penal Code. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years.

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