SUPREME COURT OF INDIA

Ramashraya

Vs.

State of M.P.

Crl.A.No.132-134 of 2000

(U.C. Banerjee and K.G. Balakrishnan JJ.)

23.02.2001

JUDGMENT

K.G. Balakrishnan, J.

1. The appellants herein challenge their conviction and sentence under Section 302 IPC read with Section 34 IPC. They were tried by the Fourth Addl. Sessions Judge, Raipur, alleging that they caused the death of one Ajeet. The prosecution case was that on 19.12.1987 when the deceased Ajeet and his son, Laljee, were doing some work in their paddy field, the appellants came there in their bullock cart. Deceased Ajeet was grazing his buffaloes near his field and a little away, his son Laljee, was collecting bundles of paddy. It seems that the appellants wanted to drive their bullock cart through the Tewda field of the deceased. Deceased Ajeet, objected to this and there ensued a quarrel between Ajeet and the appellants. Appellant Kripa Ram tried to hit the deceased on his head but the blow fell on the shoulder of the deceased. Seeing this, Laljee came near the deceased to save him, but Ajeet shouted, "Run away son, they are waiting for you, do not come this way." According to the prosecution, both the appellants inflicted severe injuries on the deceased Ajeet and he fell down on the ground. Seeing the altercation and beating being given to his father, Laljee ran away and on the way met Hirday Kumar. They returned to the place of incident and saw Ajeet lying dead on the ground. Later, the matter was reported to the Police. The Inquest Report was prepared and the body of Ajeet was subjected to post- mortem. The recovery report was also prepared. Two broken pieces of the tooth of Ajeet were recovered from the place of incident along with blood stained earth and the 'lathi' alleged to have been used to kill the deceased.

2. PW-1, Laljee; PW-2, Sukalu; and PW-6, Basant are the witnesses who were examined on the prosecution side. PW-1 narrated the whole incident in detail. PW-2 only spoke about the presence of the accused at the place of the incident. PW-6, Basant deposed that he had heard Ajeet shouting that he was being killed and saw the appellants assaulting him with 'lathi'. The evidence of these witnesses was satisfactorily proved by the prosecution.

3. We heard the learned counsel for the appellants, who contended that these witnesses were interested-witnesses and the courts below erred in placing reliance on these witnesses. We do not find much force in this contention.

4. The learned counsel further contended that the offence, if at all committed by the appellants, will not come within the definition of 'murder', but only 'culpable homicide' and the appellants are liable to be punished under Section 304 Part II, IPC. It was urged by learned counsel that there was no pre-meditation and the quarrel took place all of a sudden pursuant to a wordy altercation between the appellants and the deceased and that the appellants had not taken undue advantage of the situation. It was also urged that there was no intention on the part of the appellants to cause the death of the deceased. The learned counsel submitted that the circumstances of the case do not also indicate that there was knowledge on the part of the appellants that the injuries caused by them were likely to cause death. Reference was made to a series of decisions by learned counsel for the appellants in support of her contention.

5. In *State of Madhya Pradesh vs. Jhaddu & Ors.*[1], this Court held that there was no intention to kill, but the accused could be imputed with the knowledge that death was the likely result and therefore the conviction of the accused under Section 304 Part II IPC was affirmed. The deceased had sustained injuries on the chest resulting in fracture of ribs and laceration of lungs leading to death. This was on the basis of the nature of injuries that such a finding was recorded.

6. *Morcha vs. State of Rajasthan*[2] was a case where the accused husband went to fetch his wife at his in-laws village and on her refusal to accompany him immediately attacked her causing fatal injuries. The trial court held that the accused had no intention to kill and convicted him under Section 304 Part II. On appeal by the State, the High Court converted the conviction to that under Section 302. This Court held that the circumstances show that the appellant went armed with a dagger and despite the willingness expressed by the wife to accompany him next morning the accused inflicted two injuries on her person and the evidence indicated that the wound on the posterior axillary line caused injury to the liver and perforation of the large colon and was sufficient in the ordinary course of nature to cause death and it was held that the whole affair appeared to be pre-planned and pre-meditated. That the accused intended to cause the death of the deceased is further clear from the fact that he inflicted such a severe injury.

7. In *Madanlal vs. State of Punjab*[3], the accused caused serious injuries to the deceased with the handle of a pump due to which the deceased died 3 days thereafter. The motive of the crime was that the accused was hungry for three days and when he demanded food from the deceased 'Sewadar' of the 'Dera', where free food was being served, the deceased refused and consequently, the accused, in a fit of anger, attacked the deceased suddenly on being deprived of the power of self-control. This Court held that the offence would come under Section 304 Part II IPC instead of 302.

8. In *Ramesh Vithalrao Thakre & Anr. Vs. State of Maharashtra*[4], there was only one injury on the deceased. The accused had given a single blow by knife on the abdomen of the deceased while the latter was trying to intervene to save her brother being attacked by the accused. This Court held that the accused could be clothed with knowledge and not intention that the injury was likely to cause death and, therefore, the offence fell under Section 304 Part II IPC and not Section 300 IPC.

9. In *Santosh vs. State of Madhya Pradesh*[5], the Sessions Judge, relying on an earlier case in (*Kapur Singh vs. State of Pepsu*[6]) convicted the appellant under Section 304 Part-I IPC on the ground that the injuries were inflicted on the limbs of the 3 men who died of bleeding, but infliction of injuries on vital parts of the body was deliberately avoided and, therefore, an intention to murder was not established. This Court held that the learned Sessions Judge appeared to have overlooked the various clauses of Section 300 IPC. An intention to kill is not required in every case. Knowledge that the natural and probable consequences of an act would be death will suffice for a conviction under Section 302 IPC.

10. In *W. Slaney vs. State of Madhya Pradesh*[7], the accused, a 22 years old, was in love with the sister of the deceased who did not like this intimacy. On the day of occurrence there was a quarrel between the deceased and the accused and the accused was asked to get away from the house of the sister. Shortly afterwards, the accused returned with his younger brother and called the sister to come out. Instead, the deceased came out and there was a heated exchange of words. The accused slapped the deceased on the cheek. The accused lifted his fist. The accused snatched a hockey stick from his younger brother and gave one blow on the head of the deceased with the result that his skull was fractured. The deceased died in the hospital ten days later. It was held that where the accused, causing the death of another, had no intention to kill, then the offence would be murder only if (i) the accused knew that the injury inflicted would be likely to cause death or (ii) that it would be sufficient in the ordinary course of nature to cause death or (iii) that the accused knew that the act must in all probability cause death. On the facts and circumstances of the case, it was held that the offence fell under Section 304 Part -II IPC and not under Section 302 as there was no pre-meditation and there was a sudden fight. The nature of the injury was such that the accused could not be attributed with the special knowledge required by Section 300 IPC, nor was the injury sufficient in the ordinary course of nature to cause death.

11. Reference was also made to the decisions of this Court in *(Laxman Kalu vs. State of Maharashtra*[8]); (*Ramesh Kumar vs. State of Bihar & Ors.*[9]); and (*Afrahim Sheikh & Ors. vs. State of West Bengal*[10]).

12. In all the cases referred to above, the facts and circumstances show that the occurrence took place all of a sudden and there was no pre-meditation on the part of the accused. From the nature of the injury also, it would be observed that the accused had only the knowledge that the injury was likely to cause death, but intention as such cannot be attributed to them. The second part of Section 304 speaks of 'knowledge' and does not refer to 'intention', which has been segregated in the first part. But the knowledge is knowledge of the likelihood of death. In order to bring the offence under clause (3) of Section 300, the prosecution must

establish, quite objectively, that a bodily injury is present and the nature of injury must be proved.

13. In *Virsa Singh vs. State of Punjab*[11], it was held as under:

> "In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.
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> To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly";
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> First, it must establish, quite objectively, that a bodily injury is present;
>
> Secondly, the nature of 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."

14. 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-element 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.

15. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S.300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely object inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary

course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

16. Argument of the appellants' counsel is that the incident happened pursuant to a sudden quarrel and the appellants had no pre-meditation to cause the death of the deceased and therefore, the offence would come under 'culpable homicide' punishable under Section 304 IPC. In order to decide the question, the nature of the injuries sustained by the deceased and the circumstances under which the incident took place are relevant factors. From the nature of the injuries and the origin and genesis of the incident, it could be spelt out that all the ingredients of the offence of murder defined under Section 300 IPC are made out and it is not possible to bring the offence within any of the five exceptions of Section 300 IPC. Therefore, Section 304 IPC cannot be invoked. The argument of the appellants' counsel that there was no intention on the part of the accused to cause the death of the deceased cannot be accepted in view of the nature of injuries sustained by the deceased. Though the quarrel between the accused and the deceased ensued after a wordy altercation, a series of injuries were caused by the accused on the skull and all over the body of the deceased. Both the appellants had brutally attacked the deceased. Having regard to the nature of the injuries and the circumstances under which the injuries came to be inflicted, it is clearly established that the appellants had the intention to cause the death of the deceased and the injuries caused were sufficient in the ordinary course of nature to cause death. The appellants have been rightly convicted under Section 302 IPC. We see no merit in these appeals, which are dismissed.

[1]*1991 Supp. (1) SCC 545* [2]*(1979) 1 SCC 161* [3]*1992 Supp (2) SCC 233*
[4]*AIR 1995 SC 1453* [5]*(1975) 3 SCC 727* [6]*AIR 1956 SC 654*
[7]*AIR 1956 SC 116* [8]*AIR 1960 SC 1390* [9]*1994 Supp.(1) SCC 116*
[10]*AIR 1964 SC 1263* [11]*AIR 1958 SC 465*