SUPREME COURT OF INDIA

Rajinder

Vs

State of Haryana

Appeal (Crl.) 689 of 2006

(Arijit Pasayat and C. K. Thakker, JJ)

05.06.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the appeal filed by the appellant, upholding the conviction recorded and sentenced imposed on the appellant by learned Additional Sessions Judge, Hissar, for alleged commission of offences punishable under Section 302 of the Indian Penal Code, 1860 (in short 'IPC') and Section 27 of the Arms Act 1959, (in short the 'Arms Act'). The appellant was convicted for the offence punishable under Section 302 IPC and sentenced to undergo RI for life and to pay a fine of Rs.10, 000/- with default stipulation. He was also convicted in terms of Section 27 of the Arms Act and was sentenced to undergo RI for one year and to pay a fine of Rs.500/ with default stipulation.

Background facts in a nutshell are as follows:

Vishnu Ram (PW-8) followed agricultural pursuits at village Tharwa. His elder brother Prithi Raj

lived separately from him. Subhash (hereinafter referred to as the 'deceased') was the son of said Prithi Raj. About 1= years prior to this occurrence, the police had recovered poppy husk from appellant - Rajinder. He suspected that deceased had given secret information to the police and he had a hand in getting the poppy husk, recovered from him. Then in the year 1995, Prithi Raj had taken 10 acres of land on lease from Indal Kumar, brother of appellant-Rajinder. Rajinder took ill of it.

On 29.4.1995 at about 7.00 p.m., Vishnu Ram (PW-8) and deceased were going to irrigate their fields. Appellant met them on the village phirni. He declared that deceased had given information to the police regarding the poppy husk and Prithi Raj had taken on lease the land of his brother and they shall have to pay price for the same. Vishnu Ram (PW-8) pacified appellant and he left for the village. Then later at about 9.15 p.m. Vishnu Ram (PW-8) and deceased were going through their fields looking after the water course. Vishnu Ram (PW-8) had a torch with him. When they reached on the culvert by the side of the village near the road leading to village Pirthala and deceased was walking ahead of Vishnu Ram (PW-8), appellant was spotted in the torch light coming from the village side. He was armed with his gun. He enquired from Vishnu Ram (PW-8) and deceased as to who they were. Vishnu Ram disclosed his own identity and identity of Subhash. Then appellant raised a 'lalkara' saying that he will teach a lesson to them for giving secret information to the police and for taking the land on lease. He then fired a shot at Subhash with his gun, which hit on his right thigh. Subhash fell down on the ground. Vishun Ram (PW-9) raised alarm. Appellant then ran away towards his house by firing shots from the gun. Prithi Raj, elder brother of Vishnu Ram (PW-8) reached the spot on hearing the alarm. A conveyance was arranged and Vishnu Ram and Prithi Raj took Subhash to Tohana for treatment.

Dr. H.L. Gupta (PW-9) on 29.4.1995 at 10 a.m. medically examined the injured. He found the following injury on his body:

"1. A fire arm wound on the right thigh-wound of entry circular in shape 1(cm x 1(cm margins were inverted on the postereo-lateral aspect of the middle of the right thigh. Margins were greasy and black.

Wound of exit-large extensive would 1= x 4" on the atereo-medial aspect of right thigh (at middle). There were severe bleeding from the wound and margins were everted. There was corresponding tears in the pant.

There was corresponding tear in the pant. Pant Ex.P16 was sealed by the doctor into a parcel and it was given to the police. "

The doctor opined that the injury was dangerous to life. Its duration was fresh and it was caused by a fire-arm. Ex.PK is copy of the M.L. report. Dr. H.L. Gupta had sent ruqas Ex.PM and PL to the police.

Subhash Chander (PW-14) SI/SHO Police Station Tohana on the night intervening 29/30.4.1995 received two ruqas Ex.PL and PM from Civil Hospital, Tohana. He then went to Civil Hospital Tohana along with other police officials. Ruqas were accompanied by copy of M.L. report of Subhash. Vishnu Ram - complainant met PW Subhash Chander SI in the hospital. His statement Ex.PD was recorded. He made his endorsement Ex.PD/2 and got his case registered. Ex.PD/1 is the copy of the FIR.

Subhash succumbed to the injury in the hospital. His dead body was lying on the trolly in the gallery of the hospital, when Subhash Chander SI visited the hospital. He prepared Inquest Report Ex.PH on the dead body of Subhash. Inquest proceedings were attested by Vishnu Ram and Prithi Raj.

Application Ex.PQ was sent through Om Parkash Constable for getting the post mortem examination conducted on the dead body of Subhash.

On 30.4.1995 at 8.30 a.m., Dr. B.B.Lala (PW-10) conducted post mortem examination on the dead body of Subhash, who had expired on 29.4.1995 at 11.50 p.m. in the hospital.

On completion of investigation charge-sheet was filed and the accused was charged for alleged commission of offence punishable under Section 302 IPC and Section 27 of the Arms Act.

Prosecution examined 14 witnesses. PW-8 was stated to be eye-witness. Accused pleaded innocence and false implication. Before the High Court the stand of the accused was that there was delay in sending the first information report. The alleged motive for commission of offence is not established and in any event there was only one injury that too on the thigh and, therefore, the case is not covered under Section 302 IPC. As noted above Trial Court found the accused guilty and convicted and sentenced him. In the appeal before the High Court, the plea raised before the Trial Court was reiterated before the High Court. The prosecution supported the order of conviction as recorded by the Trial Court. The High Court on consideration of rival stands held that the conviction as recorded and sentenced as awarded do not suffer any infirmity. The appeal was accordingly dismissed.

In support of the appeal learned counsel for the appellant submitted that scenario as depicted clearly rules out application of Section 302 IPC. At the most even if prosecution version is accepted in toto the conviction could be under Section 326 IPC. It is submitted that accused has already suffered custody for more than 6 years and 8 months.

Learned counsel for the State on the other hand supported the impugned judgment.

The crucial question is as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is

culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299

Section 300

A Person commits culpable homicide, if the act by which the death is causes is done.- Subject to certain exceptions culpable homicide is murder, if the act by which the death is caused if done--

INTENTION

(a) Which the intention of causing death; or

(b) With the intention of causing such bodily injury as is likely to cause death or

(1) With the intention of causing death;

(2) 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;

(3) With the intention of causing bodily injury to the person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

KNOWLEDGE

(c) With the knowledge that the act is likely to cause death.

(4)With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature to cause death" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury.......sufficient in the ordinary course of nature to cause death" mean that

death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant and Anr. v. State of Kerala, is an apt illustration of this point.

In Virsa Singh v. State of Punjab, Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that 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 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 was 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 ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

"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 (at page 468):

"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 or 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 by Virsa Singh's case (supra) 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 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or 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.

Thus, according to the rule laid down in Virsa Singh's case, even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

The above are only broad guidelines and not cast iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

The position was illuminatingly highlighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. , Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh 7, Augustine Saldanha v. State of Karnataka and in Thangiya v. State of T.N. 9.

When the factual background is tested on the principles set out above, the inevitable conclusion is

that the conviction under Section 302 IPC cannot be maintained and the conviction has to be in terms of Section 304 Part II IPC. Custodial sentence of 7 years would meet the ends of justice.

The appeal is allowed to the aforesaid extent.