SUPREME COURT OF INDIA

Settu and Others

Vs

State of Tamil Nadu

Appeal (Crl.) 865 of 2006 (Arising Out of S.L.P. (Crl.) No. 267 of 2006)

(Arijit Pasayat and L. S. Panta, JJ)

22.08.2006

JUDGMENT

ARIJ1T PASAYAT, J.

Leave granted.

Heard learned counsel for the parties.

Appellants call in question legality of the judgment rendered by a Division Bench of the Madras High Court confirming conviction of each of the appellants and imposition of sentence as done by the learned Additional Sessions Judge Vellore. While appellant Nos.1 and 2 were convicted for offence punishable under Section 302 of the Indian Penal Code, 1860

The trial Court held that the prosecution had established the accusations that on 22.8.1995 at 6.00 P.M. the appellants caused injuries to Ramesh (hereinafter referred to as the 'deceased') by cutting him with knife and pichuvas and as a result of the said injuries, the deceased breathed his life at about 3.2O P.M. on 29.8.1995 at Christian Medical College Hospital, Vellore while undergoing treatment. The further allegation against appellant No.2 was that during the incident he caused injuries to Babu (PW-12). Appellant No.2 was accordingly found guilty of offence punishable under Section 324 Indian Penal Code, 1860 and sentenced to one year rigorous imprisonment.

The factual position as highlighted by the prosecution during trial essentially as follows:

Chandru (P.W.1) is the elder brother of the deceased and Babu (P.W.12) was his friend. On 22.08.1995 at about 3.30 p.m. Babu (P.W.12) met the deceased, at the bus stop near Sankaranpalayam and deceased was seen with blood-stained injuries. Babu (P.W.12) questioned him as to what happened. Deceased informed him that appellant Nos.1 to 3 and another had beaten him. Babu (P.W.12) took the deceased to the hospital, where he was given treatment. Later, the deceased gave a complaint at the Police Station. P.W.12 and the deceased were returning to their village via Sankaranpalayam. While they were at the college road, appellant Nos.1 to 3 were seen standing with weapons in their hands. On seeing the deceased, the appellant No.1, removing a knife, which he had kept concealed, cut him on the left side of the head, which caused an injury on the left eyebrow. He was also inflicted an injury on the right ear by the said appellant. The deceased fell down. The appellant No.1, once again inflicted cut on the head of the deceased. The appellant No.2 cut the deceased on his back as well as on his right knee. P.W.12 intervened and he also sustained injury on account of the assault by the appellant No.2, which warded off. P.W.12 suffered an injury on the right wrist. The appellant No.3 beat the deceased on the right hand causing grievous injury. The occurrence was witnessed by P.W.12 and by P.W.1, the elder brother of the deceased, who had come to the scene of occurrence in search of his brother on hearing about the earlier occurrence, which took place at about 3.30 p.m., as well as by P.Ws 2 to 8. The deceased was taken to the Government Hospital at Veliore, where he was examined by the Casualty Medical Officer (P.W.19) at 7.10 p.m. The doctor found the following injuries:

1. A laceration on the left eyebrow with force. Fracture frontal sku11 5X 1/2 X 1/2 deep.

2. A laceration on the right forehead 5 X 1/2 X 1/2 cm.

Ex. P.14 is the wound certificate. In the meantime P.W. 12 appeared before P.W.20, the Sub-Inspector of Police of Vellore South Police Station and gave a complaint, which was reduced into writing. The said complaint is Ex. P.4. On the complaint (Ex. P.4) P.W.20 registered a crime in Crime No.900 of 1995 under Sections 326 and 323 Indian Penal Code, 1860. Investigation was taken up by P.W.20.

P.W.20 reached the scene of occurrence and examined witnesses. As there was no sufficient light at the place, he returned to the police station. In the meantime, P.W.12, who had suffered injury was referred to the hospital and was examined by P.W.19. The doctor found an abrasion on his right wrist measuring 1 X 1/8 cm. P.W.12 complained of pain in his arm. Ex. P.15 is the wound certificate issued by the Doctor. The bloodstained earth and sample earth, M.Os.9 and 10 were seized under a mahazar Ex. P.19. He went to Christian Medical College Hospital, where the deceased was sent from Government Pentland Hospital, Veilore, but he could not record the statement of injured Ramesh as he was unconscious. P.W.20 seized M.O.5 banian and M.O.6 pant, of the deceased Ramesh under a mahazar Ex. P.3. He searched for the appellants and arrested appellant Nos. 2 and 3 at about 1.0O p.m. on 24.8.95 when they were near Bagayam bus stand. They were questioned. The appellant No.2 gave a statement and in pursuance of the admissible portion (Ex. P. 2O) given by him, and on production by him knife and two sticks M.O. 8 series, were seized under a mahazar,

(Ex. P.21). On 24.8.95, investigation in the crime was taken up by P.W. 21, the Inspector of Police. On 4.9.1995 appellant No.1 was arrested and on the basis of his statement a knife was recovered.

After completion of investigation Investigating Officer filed charge sheet and the accused persons were sent up for trial.

In order to further its version prosecution examined nine witnesses. Out of them, PWs 2 to 8 made departure from the statement given during investigation. Therefore, prosecution relied upon the evidence of PWl and PW12. The trial Court held that the evidence of these two witnesses was cogent, credible and trustworthy and accordingly recorded the convictions and imposed sentence as noted earlier.

The accused persons preferred an appeal before the High Court which as noted supra was dismissed by the impugned judgment.

Learned counsel of or the appellants submitted that the prosecution version is not credible, cogent and is essentially unreliable. The evidence of PWs. 1 and 12 has not been analysed carefully because former was the elder brother of the deceased while the later was his friend. Additionally, the scenario as described by the prosecution clearly rules out application of Section 302 Indian Penal Code, 1860. So far as appellant No.3 is concerned, the prosecution version is to the effect that he assaulted on the right leg and not on any vital part. The Doctor PW13 has clearly indicated that the injuries which were stated to be fatal injuries were lacerated injuries.

In response, learned counsel for the respondent-State supported the judgment of the trial court and the High Court. According to him the concurrent finding of fact recorded by the courts below should not be interfered with.

The evidence of PWs 1 and 12 have been analysed in great detail by the trial Court and the High Court. The same has been rightly held to be cogent and credible.

This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the Indian Penal Code, 1860

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 distinction between the two offences.

Section 299

Section 300

A person commits culpable homicide if the act by which the death is caused is done

Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done

INTENTION

(a) With the intention of causing death

(1) With the intention of causing death;

(2) With the intention of causing such bodily injuries as the offender knows to be likely to cause the death of the person to whom the harm is caused;

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

(3) With the intention of causing bodily injury to any 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 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 of 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" 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 of 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 acts 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 proceeded further, and fourthly it must be proved that the injury of the type just described made up 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 ingredient of clause "Thirdly" of Section 300, Indian Penal Code, 1860 were brought out by the illustrious Judge in his terse language as follows:

"12. 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 leaned 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 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 come 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 Indian Penal Code, 1860, 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 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 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. and recently in Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh 7 and in Thangaiya v State of Tamil Nadu 9.

The factual scenario is examined in the back ground of the legal principles set out above. The conclusion is that the appropriate conviction would be in terms of Section 302 Indian Penal Code, 1860

In view of the disposal of the appeal itself, no orders are necessary to be passed in miscellaneous petitions.