SUPREME COURT OF INDIA

Shakti Dan

Vs

State of Rajasthan

Appeal (Crl.) 630 of 2007

(Arijit Pasayat and D. K. Jain, JJ)

26.04.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a Division Bench of the Rajasthan High Court upholding the conviction of the appellant for an offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). The appellant was convicted by learned Addl. Sessions Judge, Parbatsar who sentenced him to undergo life imprisonment and to pay a fine of Rs.200/- with default stipulation.

3. Background facts in a nutshell are as follows:

A written report (Ex.P/18) was submitted before Sattar Khan, Sub-Inspector of Police, PS Nawa

(PW-11) by Idan (PW-6) on 9.6.1999 with the averments that in the morning i.e. at about 7a.m. accused Shakti Dan started beating his wife at his house so she ran away from there and reached to the house of Idan (PW-6), the younger brother of the accused. The mother of the accused, namely, Smt. Ugam Kanwar also followed her and she also reached the house of Idan which was near the house of the accused. Smt. Ugam Kanwar (hereinafter referred to as the 'deceased'), advised his son accused Shaktidan that he should not quarrel with his wife. On hearing this, accused caught hold of his mother and dragged her out from the house and took her in front of the temple of deity Karni Mata, where he throttled her neck, on account of which she died.

4. On this report, which was received by Sattar Khan (PW-1), he thought it proper to conduct preliminary investigation. He called the photographer and then prepared Fard Ex.P/3. He also inspected the site and prepared an Inspection Note (Ex.P/1). On the back of Ex.P/1 Fard Surat Hall Lass was prepared and that is Ex.P/19. Fard Panchayatnama was also prepared, which is Ex.P/2. The dead body was taken to Govt. Hospital, Nawa, where postmortem of the dead body was conducted by Dr. Satyendracharya Swami (PW-14). The postmortem report is Ex.P/5. After postmortem, the dead body was handed over vide Ex.P/20 through Fard Supadaginama of the dead body of deceased Ex.P/22 to Idan (PW-6). Thereafter, he reached to Police Station Nawa and submitted a written report (Ex.P/18) given to him by Idan before the SHO, Police Station, Nawa Ishwar Singh (PW-13), who registered case No.61/99 under Section 302 IPC.

5. A regular FIR was chalked on the basis of above report (Ex.P/21). Thereafter, the investigation was conducted by Ishwar Singh (PW-13). He recorded statements of the witness of the case. The accused was arrested through Arrest Memo Ex.P/4 in presence of the witnesses. After investigation, a charge sheet was presented in the Court of Judicial Magistrate, Nawa under Sections 302 and 323 IPC on 19.7.1999. Thereafter, the case was committed to the Court of Sessions for trial. The learned Addl. Sessions Judge, Parbatsar, after hearing both the sides on charge, framed charges under Section 302 and 323 of IPC on 16.12.1999. Accused denied the charges framed against him and claimed trial.

6. In support of the case, prosecution examined Hamir Singh (PW-1), Kishorilal (PW-2), Pushpa Kanwar (PW-3) (the wife of the accused), Shambhoo Singh (PW-4), Saroj Kanwar (PW-5)(wife of PW6 Idan), Idan (PW-6), Kishore Singh (PW-7), Madho Ram (PW- 8), Jogendra Singh (PW-9), Girdharilal (PW-10), Sattar Khan (PW-11), Santosh (PW-12), Ishwar Singh (PW-13) and Dr. Satyendracharya Swami (PW-14). After completion of the trial, statement of the accused was recorded on 01.12.2001. In his statement under Sec. 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') accused has denied the charges against him and stated that there was enmity of the accused with Shambho Singh (PW-4).

7. The learned trial Judge, after hearing both sides, while acquitting the accused of the charge under Sec. 323 of the IPC, found the accused guilty of the offence under Sec. 302 of the IPC and sentenced him as stated hereinabove. Feeling aggrieved and dissatisfied with the judgment and order

of conviction and sentence dated 17.01.2002 in Sessions Case No. 31/99, the accused has preferred before the High Court, which was dismissed.

8. The High Court found that the evidence of witnesses is credible and cogent and therefore there was no merit in the appeal before it.

9. In support of the appeal, learned counsel for the appellant submitted that there was absolutely no motive for killing the mother. It was submitted that the evidence of PW-4 on which reliance has been placed is not a reliable witness.

10. It is submitted that even if the prosecution version is accepted, the appellant throttled his mother which resulted in her death. There was no intention to murder her. Therefore, it was submitted that the case is not covered under Section 302 IPC.

11. Learned counsel for the respondent on the other hand supported the judgment and conviction as done by the trial Court and upheld by the High Court.

12. The evidence of PW-4 though questioned to be unreliable, is credible.

13. This brings us to the crucial question 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.

14. 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 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.

15. 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.

16. 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" 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 degrees 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.

17. 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, [illegible] is an apt illustration of this point.

18. In Virsa Singh v. State of Punjab, [illegible] 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.

19. 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."

20. 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."

21. 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.

22. 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.

23. 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.

24. 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.

25. The position was illuminatingly highlighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. [illegible] , Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh [illegible] 7, Augustine Saldanha v. State of Karnataka [illegible] and Thangaiya v. State of Tamil Nadu [illegible] 9.

26. Considering the backgrounds facts and applying the principles set out above we are of the view that this is case where the conviction would be appropriate in terms of Section 304 Part I, IPC and custodial sentence of 10 years would meet the ends of justice. The appeal is allowed to the aforesaid extent. We appreciate the able assistance which learned Amicus Curiae rendered to the Court.