SUPREME COURT OF INDIA

Phulia Tudu

Vs.

The State of Bihar (Now Jharkhand)

Crl.A.No.1221 of 2007

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

14.09.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Jharkhand High Court upholding conviction of the appellants for offence punishable under Section 302 IPC read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC').

3. Background facts according to the prosecution in a nutshell are as follows:

Bitia Soren (PW-8) is the sister-in-law of Biti Murmu (hereinafter referred to as 'the deceased'). The first appellant's son fell ill and the appellants/accused were under the impression that since the deceased, Biti Murmu, is a witch, she has caused a spell on the son of the accused and, therefore, they were nurturing a grievance against the deceased. On the date of incident, when the villagers had gone to the cremation ground to cremate the dead body of a villager, Jhora Hansda, appellants Phulia Tudu and Malgo Soren, chased the deceased, Biti Murmu, and she took asylum in the house of Bitia Soren (PW-8). The appellants entered the house and caught hold of the deceased, Biti Murmu. Bitia Soren (PW-8) at that time, was engaged in dehusking paddy. The first accused caught the hands of the deceased and pulled her out and the deceased fell down. The first accused, Phulia Tudu, assaulted her with lathi and when PW-8 attempted to intervene, she was threatened with her life. The other accused was present there at that time and after the occurrence, they ran away from the place. After the return of the villagers including the husband of PW-8, information was passed on to them. Thereafter, fardbeyan, Ext.3, was given by PW-8 at Raneshwar police station at 2.30 p.m., which was registered as a crime and Ext.5 is the first information report and investigation was taken up by Bijendra Narain Singh (PW-9).

PW-9, on taking up the investigation, reached the scene of occurrence, prepared the inquest report, Ext.5, and sent the dead body to the hospital with a requisition to the Doctor to conduct autopsy. On completion of investigation, charge- sheet was filed. As accused persons pleaded innocence trial was held.

4. The trial Court believed the evidence of PW-8 and recorded conviction under Section 302 read with Section 34 IPC and sentenced each to undergo imprisonment for life.

However, the accused Kisto Kisku was acquitted.

5. Matter was carried in appeal before the High Court.

Before the High Court it was submitted that only accusation was that A2 held the hands of the deceased while A1 inflicted a lathi blow. It is submitted that lathi blow attributed to A1 could not have caused fatal injuries. In any event, only one blow was given and, therefore, Section 302 has no application.

6. Learned counsel for the State on the other hand supported the judgment of the High Court, which as noted above, dismissed the appeal filed before it.

7. 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.

8. 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; or (1) with the intention of causing death or (b) with the intention of causing such bodily injury as is likely to cause death; or (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; or (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; or 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 or incurring the risk of causing death or such injury as is mentioned above.

9. 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.

10. 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 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.

11. 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, (AIR 1966 SC 1874) is an apt illustration of this point.