SUPREME COURT OF INDIA

Bhagwan Bahadure

Vs.

State of Maharashtra

Crl.A.No.1304 of 2007

(Dr. A. Pasayat and Lokeshwar Singh Panta, JJ.)

28.09.2007

JUDGEMENT

Dr. ARIJIT PASAYAT, J.:-

1. Leave granted.

2. Challenge in this appeal is to the judg ment of a Division Bench of the Bombay High Court, Nagpur Bench upholding the convic tion of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for life and fine of Rs.1,000/-with default stipulation.

3. Backgrund facts in a nutshell are as follows:

On 13th March, 2000 Bhagwan Bahadure came to Bhendala and stayed with Kachrabai (hereinafter referred to as the 'de ceased'), who was residing with her mother Tuljabai (PW-7). In the morning, of the day of incident, the appellant started quarrel ling with the deceased on a flimsy ground. The appellant asked her to accompany him to his house. It is alleged that the appellant, who had a stick in his hand, assaulted the deceased by means of the stick. The de ceased fell down on the ground. The appel lant gave a blow with the stick on her head, whereby deceased suffered serious injuries and became unconscious. The appellant thereafter threw the stick and ran away to wards bus stand. Sidharth (PW 1) witnessed the incident. He went to the roadside for bringing a jeep to carry his mother to the hospital at Pauni. The Medical Officer gave first-aid to the victim as the injuries were severe and she was unconscious. The Medi cal Officer advised the family members to take her to the Govt. Medical College, Nagpur. In the meanwhile, PW 1 lodged a report in the police station against the ap pellant. Police registered a crime. Deceased succumbed to the injuries on way to the hospital at Nagpur.

4. Considering the evidence of PWs 1, 7 and 8, trial court found the evidence to be cred ible and cogent and accepted the same. He did not find any substance in the plea of the appellant that PWs 1 and 7 were related to the deceased and, therefore, their evidence could not be acted upon. It also did not accept the plea that offence under Section 302, IPC was not made out. Questioning the correctness of the trial court's order, appeal was pre ferred before the High Court which as noted above did not find any substance in the ap peal.

5. The stand taken before the trial court and the High Court was reiterated in this appeal.

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

7. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a wit ness. It is more often than not that a rela tion would not conceal actual culprit and make allegations against an innocent per son. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

8. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under :-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an in nocent person. It is true, when feelings run high and there

is personal cause for enmity, that there is a tendency to drag in an inno cent person against whom a witness has a grudge along with the guilty, but founda tion must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

9. The above decision has since been fol lowed in Gull Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon. AIR 1974 SC 276

10. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: AIR 1953 SC 364, Para 25

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corrobo ration. If the foundation for such an obser vation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeav oured to dispel in Rameshwar v. State of Rajasthan (AIR 1952 SC 54 at p. 59). We find, however, that it unfortunately still per sists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

11. Again in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) this Court observed: (pp. 209-210 para 14) :

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of jus tice. No hard and fast rule can be laid down as to how much evidence should be appre ciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

12. To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407), Lehna v. State of Haryana (2002 (3) SCC 76) and Gangadhar Behera and Ors. v. State of Orissa (2002 (8) SCC 381). 2002 AIR SCW 4271

13. The above position was highlighted in Babulal Bhagwan Khandare and Ann v. State of Maharashtra [2005(10) SCC 404] and in Salim Saheb v. State of M.P. (2007 (1) SCC 699).
2004 AIR SCW 7376

14. This brings us to the crucial ques tion as to which was the appropriate provi sion 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 amount ing to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically rec ognizes 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 de fined in Section 300 as 'murder'. The sec ond may be termed as 'culpable homicide of the second degree'. This is punishable un der 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.

15. 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 ap proach 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 fol lowing comparative table will be helpful in appreciating the points of distinction be tween 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 towhom 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 for incurring the risk of causing death or such in jury as is mentioned above.

16. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea req uisite under clause (2) is the knowledge possessed by the offender regarding the par ticular victim being in such a peculiar con dition 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 nor mal health or condition. It is noteworthy that the 'intention to cause death' is not an es sential 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 il lustration (b) appended to Section 300.

17. 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 in tentionally 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 per son 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 knowl edge 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 jus tice. 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" means that death will be the "most probable" result of the in jury, having regard to the ordinary course of nature.

18. 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 inju ries sufficient to cause death in the ordi nary course of nature. Rajwant and Anr. v. State of Kerala, (AIR 1966 SC 1874) is an apt illustration of this point.

19. In Virsa Singh v. State of Punjab, (AIR 1958 SC 465), Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the pros ecution must prove the following facts be fore it can bring a case under Section 300, "Thirdly". First, it must establish quite ob jectively, that a bodily injury is present; sec ondly the nature of the injury must be proved. These are purely objective investi gations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not acci dental 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 infer ential and has nothing to do with the inten tion of the offender.

20. 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 acci dental 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 in jury of the type just described made up of the three elements set out above is suffi cient 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."

21. 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 noth ing beyond the injury and the fact that the appellant inflicted it, the only possible in ference is that he intended to inflict it. Whether he knew of its seriousness or in tended serious consequences, is neither here or there. The question, so far as the inten tion is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he in tended 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."

22. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh's case (su pra) 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. AIR 1958 SC 465

23. 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 ex tend to the intention of causing death, the offence would be murder. Illustration (c) ap

pended to Section 300 clearly brings out this point.

24. 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 suf ficient 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 distin guished from a particular person or persons being caused from his imminently danger ous act, approximates to a practical cer tainty. 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 in curring the risk of causing death or such injury as aforesaid.

25. 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 sec ond and third stages.

26. The position was illuminatingly high lighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Ann (1976 (4) SCC 382), Abdul Waheed Khan Waheed and Ors. v. State of Andhra Pradesh (JT 2002 (6) SC 274); and Augustine Saldanha v. State of Karnataka (2003 (10) SCC 472) and Thangaiya v. State of Tamil Nadu (2005 (9) SCC 650). AIR 1977 SC 45 2002 AIR SCW 3463 2003 AIR SCW 4410 2005 AIR SCW 76

27. Keeping the aforesaid legal principles in view, the factual position is to be exam ined. It cannot be said as a rule of universal application that whenever one blow is given Section 302, IPC is ruled out. It would de pend upon the facts of each case. The weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given are some of the factors to be considered.

28. Considering the background facts in volved, the appropriate conviction would be under Section 304, Part I, IPC, and convic tion is accordingly altered. Custodial sen tence of 10 years would meet the ends of justice.

29. The appeal is allowed to the afore said extent.

Appeal allowed.