**SUPREME COURT OF INDIA**

Budhi Lal

Vs

State of Uttarakhand

Crl.A.No.1537 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ)

26.09.2008

**JUDGMENT**

**Dr. ARIJIT PASAYAT, J.**

1. Heard learned counsel for the parties.

2. Leave granted.

3. Challenge in this appeal is to the judgment of a Division Bench of the Uttarakhand High Court dismissing the appeal filed by the appellant. In the appeal challenge was to the order of conviction recorded by the learned Sessions Judge, Chamoli in Sessions Trial No.8 of 1986 for offence punishable under Section 302 the Indian Penal Code, 1860 (in short `IPC'). The appellant was sentenced to undergo rigorous imprisonment for life.

4. Prosecution story in brief is that house of Budhi Lal (appellant) is one kilometer away from village abadi in village Airash. Appellant got married firstly to one Sobati Devi, but he had no issue from her. Later, he got married to Jashu Devi (hereinafter referred to as the `deceased') and from her he had seven children. Out of the seven, eldest daughter Sushila was married. Both the ladies used to live with Budhi Lal in aforesaid house. Jaspal (PW.3) of village Kaphalkhet came to the house of Budhi Lal on 9.8.1985, in connection with purchase of a pair of bullocks, belonging to him. The deal was settled at Rs.1200/- and in that night Jaspal stayed in the house of Budhi Lal. After having meals the family members and Jaspal slept in the house. In said intervening night i.e. 9/10th August, 1985, appellant Budhi Lal at about 2 a.m. committed murder of Jashu Devi. According to the prosecution Jaspal woke up to go to toilet and saw from a window that Budhi Lal sitting on the chest of Jashu Devi, assaulting her with his hands. On being questioned, why he is doing so, Budhi Lal told him that he was telling his wife to behave. Appellant asked Jaspal being guest he should leave the place and sleep in another room. Next morning, Budhi Lal told the villagers that his wife Jashu Devi has died of pain in her stomach. He asked Jaspal to go to the houses of his brothers and relations living in village Jilasu and inform them about the death of Jashu Devi. Jaspal (PW.3) informed the relatives of Budhi Lal, as told by him about the death of his wife due to pain in her stomach and came back to the village. Meanwhile, Sobati Devi informed the village Pradhan about the death of Jashu Devi. The village Pradhan came to the spot at 10 a.m. and thereafter got sent the information of death of Jashu Devi to Patwari of the area (in Uttarakhand hills Patwaris are given police powers). The Patti Patwari Sri Kareem Bux (PW.6) received the information on 10.8.1985 at his Chauki when he returned back in the evening. The entry of written information (Ext. A-2) sent through Ashadu Lal was made in the General Diary (copy of which is extract Ext. A-3), by the Investigation Officer Kareem Bux on the next day at 11.30 a.m., Patwari came to the spot and took the dead body in his possession, sealed it and prepared the inquest report (Ext. A-4) and sketch of the dead body (Ext. A-5). He also prepared a letter of request (Ext. A-6) for the post mortem examination and sent the dead body for autopsy. Meanwhile, he prepared site plan (Ext. A-9) on same day i.e. 11.8.1985. He also recorded the statements of the witnesses of the inquest report. The post mortem examination was conducted by Dr. S.K. Srivastava (PW.1) on 12.8.1995 at 4.30 p.m. at District Headquarter, Gopeshwar (District Chamoli). The said Medical Officer prepared post mortem examination report (Ext. A-1). He opined that Jashu Devi had died due to suffocation as a result of obstruction in respiratory passage. He also recorded the ante mortem injuries found on the body of the deceased. Investigating Officer Kareem Bux (PW.6) thereafter examined Budhi Lal and his daughter Sushila. The Investigating Officer also interrogated other witnesses. On completion of the investigation, charge sheet (Ext. A-8) was filed by Investigating Officer on 20.11.1985, before the Magistrate concerned.

5. The case was committed by the court of learned Magistrate concerned to the Court of Sessions. Since the appellant pleaded innocence, trial was held. Six witnesses were examined to further the prosecution version. Primarily, relying on the evidence of PW.3, the learned Trial Judge directed conviction of the accused, as aforenoted. The Trial Court, it needs to be pointed out, also referred to the evidence of PW.5 before whom accused gave varying versions as to how the deceased had died. The Trial Court also took note of the fact that the deceased and the accused were last seen and in the examination under Section 313 of the Code of Criminal Procedure, 1973 (in short `the Code'), the accused had accepted that he and the deceased were sleeping together in the night of the incident.

6. In appeal before the High Court, the primary stand was that the evidence of PW.3 should not have been relied upon and in any event, a case under Section 302 IPC was not made out. The High Court did not find substance in the plea and dismissed the appeal.

7. In support of the appeal, learned counsel for the appellant submitted that presence of PW.3 in the house has not been established and in any event, in view of the accepted prosecution version, a case under Section 302 IPC is not made out.

8. Learned counsel for the State, on the other hand, supported the judgment.

9. Coming to the evidence of PW.3, it appears that PW.3 has given enough reason as to why he was present in the house. Even otherwise, PW.4, the daughter of the accused, though, she resiled from the statement made during investigation, clearly stated that PW.3 was sleeping in their house in a separate room. This witness further stated that her father, the accused suspected fidelity of the deceased and was under the impression that she was having illicit relationship with PW.3. In the examination under Section 313 Cr.P.C. also, the accused had accepted this position. Therefore, the presence of PW.3 has been clearly established by evidence on record. Apart from that, as rightly noted by the Trial Court and the High Court, the accused accepted that he was with the deceased in the night of occurrence and they were sleeping in the same room.

10. Therefore, the Trial Court and the High Court were justified in holding the appellant guilty.

11. The residual question is whether Section 302 IPC has application?

12. 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 `murders' 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.

13. 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 for incurring the risk of causing death or such injury as is mentioned above. |

14. 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.

15. 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.

16. 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.

17. 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 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.

18. 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."

19. 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 justifies 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."

20. 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.

21. Thus, according to the rule laid down in Virsa Singh's case (supra), 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.

22. 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.

23. 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.

24. The position was illuminatingly highlighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. (1976 (4) SCC 382), Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh (JT 2002 (6) SC 274), Augustine Saldanha v. State of Karnataka (2003 (10) SCC 472), Thangaiya v. State of Tamil Nadu (2005 (9) SCC 650) and Sunder Lal v. State of Rajasthan (2007 (10) SCC 371).

25. Considering the factual scenario and the manner of assault, as alleged by the prosecution, in our considered view, the appropriate conviction shall be under Section 304 Part-I IPC. Custodial sentence of 10 years would meet the ends of justice.

26. The appeal is allowed to the aforesaid extent.