SUPREME COURT OF INDIA

Laxminath

Vs.

State of Chhattisgarh

Crl.A.No.75 of 2009

(Dr. Arijit Pasayat and Dr.M.K.Sharma JJ.)

16.01.2009

JUDGEMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Chhattisgarh High Court upholding the conviction of the appellant for the offences punishable under Sections 302 and 324of the *Indian Penal Code, 1860* (in short the `IPC'). The accused persons were sentenced to undergo imprisonment for life and for two years respectively for the said offences.

3. Prosecution version as unfolded during trial is as follows:

> "Mahgin Bai (PW-1) lodged the F.I.R (Ex. P-1) in the Police Station Bhairamgarh on 4.2.1993 at about 12.30 p.m. to the effect that on 3.2.1993 she was thrashing paddy in the house. At that time her mother-in-law Gangadei (hereinafter referred to as the `deceased') was preparing page.
>
> Accused Laxminath who is husband of her sister-in-law, came and demanded page. Her mother-in-law gave page to the accused. He thereafter demanded tobacco, on which her mother-in-law gave him tobacco also and accused left the house. Thereafter, the accused came with bow & arrow and shot the arrow on her, which hit on her left upper arm and blood started oozing out of it. Accused also shot an arrow on her mother-in-law, which hit on chest, blood started oozing out of the injury and accused ran away. Her uncle-in-law Dhaniram (PW2) witnessed the incident, brought the villagers and by that time, her mother-in-law was alive. Arrow was stuck in the chest of her mother-in-law. Villagers took her mother-in-law to Police Station Bhairamgarh from where they took her to Jagdalpur Hospital, but on the way near Mawlibhata Gangadei she succumbed to the injury. Receiving this report, the police

registered the FIR (Ex. P-1). The Investigating Officer left for the scene of occurrence and took into possession the bow under Ex.P-2.

The Investigating Officer gave a written request Ex. P-3 to the Assistant Surgeon, Primary Health Centre, Bhairamgarh for examination of the injuries of Mahgin Bai, on which doctor examined and prepared the injury report and mentioned that there was one incised wound over left upper arm.

Arrow, weapon of offence was taken into possession under Ex.P-4 and the petticoat of deceased Gangadei was taken into possession under Ex.P-5.

Blood stained soil and plain soil was taken into possession under Ex.P-6 from the place of occurrence. Arrow in question was examined by the doctor on the request of Station House Officer Ex.P-7 and doctor opined that the injury on the body of Mahgin Bai could be caused by the said arrow. Panchnama (Ex.P-10) of the body of Gangadei was prepared after giving notice Ex.P-9 to the Panchas. Postmortem on the body of deceased Gangadei was conducted by Dr. S.K. Naik and he prepared the post mortem report. There was a dying declaration before PW-6.

3. After completion of investigation, charge sheet was filed against the accused/appellant in the Court of learned Additional Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to learned Sessions Judge, Jagdalpur from where learned 1st Additional Sessions Judge, Jagdalpur received the case on transfer for trial. As accused pleaded innocence, trial was held. Learned trial Judge recorded conviction as noted above.

Before the High Court the basic stand was that the evidence was not sufficient to fasten guilt on the accused. The oral dying declaration was not believable.

It was also submitted that only one arrow was shot from a distance and, therefore, Section 302 IPC has no application. The High Court did not accept the plea and upheld the conviction and the sentence.

4. The stand before the High Court was reiterated before this Court.

5. Learned counsel for the respondent, on the other hand, supported the judgment of the trial Court as affirmed by the High Court.

6. The basic question is whether Section 302 IPC has application.

7. 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 Subject to certain exceptions if the act by which the death is caused is done- culpable homicide is murder if the act by which the death is caused is done - INTENTION (a) with the intention of causing (1) with the intention of death; or causing death; or (b) with the intention of causing (2) with the intention of such bodily injury as is likely causing such bodily injury to cause death; or as the offender knows to be likely to cause the death of 6 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 (4) with the knowledge that is likely to cause death. 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."

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" means 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*[1], is an apt illustration of this point.

12. In *Virsa Singh v. State of Punjab*[2], 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.

13. 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."

14. 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."

15. 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.”

16. 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.

17. 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.

18. 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.

19. The position was illuminatingly highlighted by this Court in *State of Andhra Pradesh v. Rayavarapu Punnayya and Anr.*[3], *Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh*[4], *and Augustine Saldanha v. State of Karnataka*[5] *and Thangaiya v. State of Tamil Nadu*[6].

20. Considering the factual scenario and the facts that one arrow was shot the offence is covered by Section 304 Part I IPC and not Section 302 IPC. Though it cannot be laid down that whenever one arrow is shot Section 302 IPC will not apply, on the facts of the present case it appears to be so. Therefore, conviction is altered from Section 302 IPC to Section 304 Part I IPC. Custodial sentence of eight years would meet the ends of justice.

21. Appeal is allowed to the aforesaid extent.

[1]*(AIR 1966 SC 1874)*
[2]*(AIR 1958 SC 465)*
[3]*(1976 (4) SCC 382)*
[4]*(JT 2002 (6) SC 274)*
[5]*(2003 (10) SCC 472)*
[6]*(2005 (9) SCC 650)*