SUPREME COURT OF INDIA

Suchand Bouri

Vs.

State of West Bengal

Crl.A.No.460 of 2008

(R.M. Lodha and S.B.Sinha JJ.)

09.04.2009

JUDGEMENT

R.M. Lodha, J.

1. We are confronted, in this appeal by special leave, with a question: whether, on the facts of the case, the offence is "murder" or "culpable homicide not amounting to murder".

2. Facts are these, briefly put: Jorehira-Namopara is a small village in the district of Bankura (W.B.) having about 40/50 houses. On June 21, 1986, there was a quarrel between Suchand (appellant) and Sanatan (PW-11) in respect of boundary of land. Suchand blamed that Sarbeswar (deceased) being a village Chowkidar was instigating Sanatan against him. Suchand threatened Sarbeswar that he would behead him and his son. The following day, on June 22, 1986 in the afternoon, three brothers, viz., Bisweswar, Sarbeswar and Rishi(PW-1) alongwith their family members were chit- chatting on the pathway near their house. Suchand, Fulchand, Nepal and 14 other persons armed with deadly weapons like lathi, tangi, katari, ballam, kural, etc. came there. Fulchand and Nepal started assaulting Bisweswar with lathi, tangi, etc.. As a result of which Bisweswar fell down. Sarbeswar intervened to rescue Bisweswar and at that time Suchand gave a knife blow on the chest of Sarbeswar. Few other members of the family also got injured. Sarbeswar died the next morning.

3. After completion of investigation, 17 persons including the present appellant were sent up for trial. They were tried under Sections 147, 302/149 and 307/149 of the Indian Penal Code. The prosecution examined 14 witnesses in all; out of them PW-1, PW-2, PW-3, PW-4 and PW-5 were the eye witnesses. Bisweswar at whose instance the first information report was lodged died during the trial and, therefore, he could not be examined.

4. The first Court, namely, Additional Sessions Judge (2nd Court), Bankura vide its judgment dated May 28, 1993 acquitted 14 accused persons of all the charges leveled against them. The present appellant was found guilty of the offence under Section 302 IPC for the murder of Sarbeswar and sentenced to suffer rigorous imprisonment for life and a fine of Rs.

1,000/- with default stipulation. Fulchand and Nepal were found guilty for the offences under Section 323 IPC and sentenced to suffer rigorous imprisonment for six months.

5. A common appeal was preferred by the present appellant as well as Fulchand and Nepal before the High Court of Judicature at Calcutta. On April 21, 2005, the division bench of the High Court delivered the judgment. The conviction of Fulchand and Nepal was set aside. However, the conviction of the appellant and the sentence awarded to him by the first Court was upheld.

6. Although Sarbeswar received multiple injuries, injury no. 9, as per the post mortem report (Exhibit-7), was found to be sufficient in the ordinary course of nature to cause death. Dr. J.N. De who conducted the post mortem examination on the dead body of Sarbeswar in post mortem report recorded in respect of injury no. 9 thus; "one stitched up wound 6" in length,1" above the mid 1/3rd of right clavicle and 2 = to the right of mid line of front. On removal of stitches it is incised penetrating in character and cavity deep. On dissection it is seen to have passed through the skin, fossa, muscles then cuts through and through the right external jagular vein then cuts 1st rib on rightside and enters the right chest cavity then penetrate into the upper lobe of right lung. Right chest cavity contains fair amount of extravasated clotted and liquid blood on further dissection ..... fair amount of extravasated clotted and liquid blood seen to infiltrate the tissues over upper part of rightside of chest, whole of rightside of neck and (Illeg.) surface of right angle of lower jaw. Fair amount of extravasated clotted and liquid blood seen to infiltrate the tissues."

7. There is no challenge before us that injury no. 9 was caused by the appellant Suchand and that death of Sarbeswar was homicidal.

8. Mr. Ranjan Mukherjee, learned amicus curiae strenuously urged that the offence committed by the appellant would not come within the definition of "murder", but only "culpable homicide not amounting to murder" under Section 304. He would urge that there was no premeditation nor any intention to cause Sarbeswar's death; Sarbeswar was given solitary knife-blow by the appellant when he intervened while Bisweswar was being assaulted. According to the learned amicus curiae, the case is covered by Exception 4 to Section 300 and that the appellant cannot be said to have intention of causing such body injury upon Sarbeswar which in fact was caused and as a result of which Sarbeswar died.

> “He heavily relied upon the following observations of this Court "
>
> 19. The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death.

The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner."

9. To answer the question as to whether the offence, on the facts of the case, is "murder" or "culpable homicide not amounting to murder", we must see whether the case is squarely covered within Clause Thirdly of Section 300 IPC or the accused is entitled to the benefit of Exception 4 of Section 300 IPC.

10. It would be preposterous to assume any proposition in law that in a case of solitary blow on a vital part of the body that results the death, the offence must necessarily be reduced to culpable homicide not amounting to murder. Legal position has been most appropriately summed up, which has now become a classic statement with regard to exposition of *State of Punjab*[2]. Vivian Bose, J. analysed Section 300 "Thirdly" by laying down 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 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."

Learned Judge further went on to observe:

"Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction

between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

11. The tests laid down by this Court in Virsa Singh have been consistently followed by the Courts as providing the guidelines when an issue regarding the nature of offence whether murder or culpable homicide not amounting to murder is raised before the Court.

12. The determinative factor in Section 300 `Thirdly' is the intentional injury which must be sufficient to cause death in the ordinary way of nature. It is immaterial whether the offender had knowledge that an act of that kind will be likely to cause death. The offender's subjective knowledge of the consequences is irrelevant. The result of the intentionally caused injury must be viewed objectively. To find out whether the offender had intention to cause such bodily injury which in the ordinary course of nature was sufficient to cause death, the diverse factors need to be kept in mind such as: the force with which the blow has been dealt with, the type of weapon used, the vital organ or the particular spot of the body targeted, the nature of the injury caused, the origin and genesis of the crime and the circumstances attendant upon the death. [*Jagrup Singh v. State of Haryana*[3]*; and Ramashraya and Anr. V. State of M.P.*[4]]

13. In so far as the facts of the present case are concerned, the accused appellant had a strong feeling of annoyance against Sarbeswar as he thought that Sarbeswar being a village chowkidar was helping Sanatan with whom the accused had a boundary dispute. On a day proceeding the incident, the accused had threatened to behead Sarbeswar and his son. The accused went armed with a deadly weapon like knife to the place of occurrence where Sarbeswar, his brothers and other family members were sitting and inflicted blow by that weapon on the chest of Sarbeswar. The injury that Sarbeswar suffered clearly shows that knife was used by the accused with a considerable force and injury was caused on a vital part of the body. It is true that the injury was inflicted on Sarbeswar when he intervened while his brother Bisweswar was being assaulted but the force with which Sarbeswar has been stabbed by knife, the intention of causing such bodily injury is obvious. The said injury was sufficient in the ordinary course of nature to cause death. The stab injury inflicted on the chest of Sarbeswar by the accused was surely not accidental or unintentional. The act of the accused is squarely covered by Section 300 `Thirdly'.

14. Although the learned amicus curiae strenuously urged that the injury caused by the accused was without premeditation nor he took any advantage or acted in a cruel or unusual

manner, we are afraid the facts eloquently speak otherwise. The four requisites of Exception 4 are not at all satisfied in the present case.

15. For the invocation of Exception 4 to Section 300 IPC, it has to be probablised by the defence that the death is occurred: (i) in a sudden fight ; (2) without pre-meditation; (3) the act was committed in a heat of passion; and (4) the offender had not taken any undue advantage or acted in a cruel manner. The existence of all the four requisites must be probablised. In absence of existence of any of the four requisites, Exception 4 has no application. By means of judicial decisions, the expression "sudden fight" occurring in Exception 4 of Section 300, though not defined, has been explained. "Sudden fight" implies mutual provocation; a bilateral transaction in which blows are exchange - the fight is not per se palliating circumstance, only an unpremeditated fight is such. The expression "heat of passion" has been explained by the Courts to mean that there is no time for passion to cool down. The act must have been committed in a fit of anger. Unfortunately, in the present case none of the four requisites of Exception 4 exists much less all the four requisites. The instant case is not a case of sudden fight nor the act can be said to have been committed in a heat of passion. As a matter of fact, the appellant had a pre-existing malice against the deceased. The appellant is not at all entitled to the benefit of Exception 4.

16. In what we have discussed above, the conviction of the accused under Section 302 IPC and sentence awarded to him cannot be said to suffer from any legal infirmity.

17. The appeal must fail and is dismissed.

[1]*(2002) 3 SCC 327)*
[2]*AIR 1958 SC 465*
[3]*AIR 1981 SC 1552*
[4]*(2001) 3 SCC 439*