SUPREME COURT OF INDIA

Jagriti Devi

Vs.

State of H.P.

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

06.07.2009

JUDGMENT

DR. MUKUNDAKAM SHARMA, J.

1. This appeal is directed against the judgment and order passed by the Himachal Pradesh High Court on 31.08.2000 affirming the judgment and order passed by the learned Sessions Judge, Shimla convicting the accused-appellant herein under Section 302 of the Indian Penal Code, 1860 (for short "the IPC") and sentencing her to undergo imprisonment for life and to pay a fine of Rs. 2,000/-, and in default of payment of fine to also undergo Simple Imprisonment for a further period of one year.

2. The accused-appellant herein was tried for an offence of murder punishable under Section 302, IPC for allegedly committing the murder of her co-wife Shama Devi, on 02.06.1996 at her house in Village Atgaon, Tehsil Chirgaon, District Shimla.

3. The accused-appellant Jagriti Devi is the legally wedded wife of one Mohinder Singh who was a resident of village Atgaon. Out of the aforesaid wedlock, the accused-appellant gave birth to five children, four daughters and one son. The husband of the accused-appellant, however,

married for a second time and brought the second wife- Shanti Devi home who was the deceased in the present case.

4. The aforesaid marriage with the deceased-Shanti Devi took place about 2-3 months prior to the date of occurrence. On 02.06.1996, the husband of the accused-appellant was out of station as he had gone to Rohru on the previous day. The deceased-Shanti Devi slept outside the house in veranda on the night intervening 01.06.1996 and 02.06.1996. When the said deceased was sleeping in the veranda on 02.06.1996 at about 6 a.m., the accused-appellant assaulted her with a `Khukri'. A number of blows appeared to have been given on her head and one blow on her neck. The deceased-Shanti Devi, however, survived for about few hours of the infliction of the injuries, and thereafter she died. The accused-appellant immediately after committing the crime fled away with the weapon of offence after washing her hands at the water tap in front of her house.

5. The Police was informed by Naresh, the brother of the deceased- Shanti Devi who lived in a separate village but not very far from the village of the husband of the accused-appellant. Being informed by a boy named Rajesh, Naresh came to the spot and saw his sister lying un-conscious with a number of bleeding injuries on her head and neck. Naresh informed the police. On being informed, Sub Inspector Dhanpat Rai who was the Additional Station House Officer at Police Station, Rohru, went to the spot of occurrence. By the time he reached the spot, the deceased-Shanti Devi had died. The body of the deceased was sent for post mortem examination.

6. During the course of investigation, the police arrested the accused- appellant in Chirgaon Bazar, when she was going towards her parents village in the company of her brother. On being interrogated, the accused- appellant told the Police that she had kept the `Khukri' hidden in a field. On the basis of the aforesaid statement, the `Khukri' was subsequently recovered and sealed in a parcel. The Police completed the investigation and submitted a charge sheet against the accused-appellant-appellant under Section 302 IPC.

7. The accused-appellant pleaded not guilty to the charge of Section 302 IPC and claimed to be tried. During the course of the trial, the prosecution examined 21 witnesses. After completion of the recording of evidence of the prosecution witnesses, the accused-appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short "the CrPC"). In the said examination, the accused-appellant did not deny having caused fatal injuries to the deceased, but she stated that she had killed the deceased in exercise of her right of private defence. The accused-appellant also filed a written statement under Section 233 of the Cr.PC in which she stated that on the fateful day, there was altercation between her and the deceased upon which deceased took out the `Khukri' kept under her pillow and attacked the accused-appellant with the same to which the accused-appellant received some injuries on her head, but luckily through the handle of the `Khukri'. It was also stated by the accused-appellant that in order to prevent the deceased from further assault, she snatched the `Khukri' from the deceased and had given a few blows of `Khukri' to the deceased.

8. The Trial Court, after going through the evidence on record found the accused-appellant guilty of the offence alleged against her and convicted her for the offence of murder punishable under Section 302 of the Indian Penal Code. The learned Sessions Judge, Shimla thereafter passed an order of sentence against the accused-appellant to undergo imprisonment for life and to pay a fine of Rs. 2,000/- and in default of payment of fine, directed her to undergo further simple imprisonment for a period of one year.

9. Being aggrieved by the aforesaid judgment and order of conviction and sentence, the accused-appellant filed an appeal before the High Court of Himachal Pradesh which entertained it and by a detailed judgment and order dated 31.8.2000 upheld the order of conviction and sentence by affirming the same.

10. The accused-appellant being aggrieved by the aforesaid concurring judgments of conviction and sentence filed the present appeal on which we have heard the learned counsel appearing for the parties. Our attention was drawn to the statements of the prosecution witnesses as also the medical evidence and also to the statement of accused-appellant under Section 313 of the CrPC as also her written statement under Section 233 of CrPC.

11. The death of the deceased on the morning of 02.06.1996 is not disputed. It is also not disputed that the deceased died because of the injuries received due to the blows of `Khukri' given by the accused- appellant. What is, however, disputed is that the accused-appellant while giving the aforesaid blows by the `Khukri' neither had the intention nor the knowledge that the same would cause bodily injury to the deceased. The stand of the defense is that the aforesaid incident had taken place at the spur of the moment due to altercation between the deceased and the accused-appellant regarding doing certain daily cores. It is also the stand of the defense that the aforesaid injuries to the deceased were caused in exercise of the right of private defence by the accused-appellant. Therefore, we are required to examine as to whether such a case as sought to be made out by the defense could be deduced from the evidence on record.

12. The deceased was sleeping in the veranda outside the house. The incident had taken place early in the morning i.e. at about 6 a.m. If the accused-appellant had any intention to kill the deceased, she could have done the same during the night and would not have waited till the day light had broken out. It was a morning when there was sunshine all around and in that broad day light, the offence was committed. The accused-appellant had specifically stated in her statement under Section 313 CrPC and also in the written statement filed under Section 233 CrPC that there was an altercation between her and the deceased upon which the deceased took out the `Khukri' which the deceased had kept under the pillow and attacked her with the same but luckily she did not receive any serious injuries and received certain injuries by the handle of `Khukri' and in order to save herself from further assault, she snatched away the `Khukri' from the deceased and gave few blow with the said `Khukri' to the deceased.

13. The aforesaid `Khukri' which was used as a weapon for the commission of offence was recovered by the Police from the field, at the instance of the accused-appellant, but it is also established in evidence that the said `Khukri' was kept by the deceased under her pillow while she was sleeping in the veranda outside the house.

14. It is also further established from the records that the accused-appellant also received some injuries on her head which of course were of simple nature. But the prosecution has not given any explanation in their case regarding those injuries received by the accused-appellant. The eye witnesses examined by the prosecution themselves namely PW-16 (Divya), PW-18 (Vikram) and PW-19 (Vijay Singh) have stated in their evidence about the altercation between the deceased and the accused-appellant- appellant preceding the incident.

15. PW-16 (Divya) is the daughter of the accused-appellant. She had stated in her deposition that on the fateful day when her mother asked the deceased to go to the fields to fetch grass, the deceased not only refused to oblige the accused-appellant but also retorted saying as the milk is required for her own children, it was her job to arrange fodder. PW-16 had also stated that hearing the aforesaid reply by the deceased, the accused-appellant lost her tamper and slapped the deceased on her face and in retaliation, the deceased also slapped the accused-appellant. After that, the deceased took out the `Khukri' which she had kept under the pillow and tried to attack the accused-appellant. At that time, the accused-appellant grappled with the deceased to snatch the `Khukri' from the deceased and when they were grappling at the scene of occurrence, she (PW-16) ran to call her uncle to intervene but by the time she returned, the deceased was lying with the bleeding injuries on the floor of veranda while the accused-appellant was missing. PW-18 (Vikram), aged about 9 years who is a son of the brother of the husband of the accused-appellant-appellant, was also examined in the trial. He had given a detailed account of what he saw at the place of occurrence. He stated that when he came out in the morning to urinate, he saw the accused-appellant giving `Khukri' blows to deceased. He had stated that he had seen PW-16 (Divya) standing in the veranda at that time i.e. when the incident took place. He also stated that he thereafter went inside to call upon PW-19 (Vijay Singh), the other brother. The Trial Court as also the High Court relied upon the statement of PW-18 and PW-19 and discarded the statement of PW-16 on the ground that PW-18 and PW-19 have contradicted the statement of PW-16 who is the real daughter of the accused-appellant. Both, the trial court as well as the High Court held that PW-18 and PW-19 proved to be truthful witnesses who had stated that they had not seen any quarrel preceding the incident in which the accused- appellant assaulted and inflicted `Khukri' blows on the deceased.

16. We have examined the evidence of PW-16, PW-18 and PW-19 carefully and on a reading thereof, we are of the considered view that both PW-18 and PW-19 came to the scene of occurrence when the accused- appellant had assaulted the deceased with the `Khukri'. PW-18 came to the place of occurrence when he saw PW-16 standing in the veranda. PW-19 was informed by PW-18. When PW-18 went inside to inform PW-19 by that time the incident must have been over as it took

only few minutes for the accused-appellant to give blows to the deceased and then running away from the scene of occurrence. Therefore, it is crystal clear that PW-16 has seen the entire incident from the starting point namely altercation taking place between the accused-appellant and the deceased and thereafter accused-appellant receiving injuries and the thereafter deceased being given those fatal blows by the accused-appellant.

17. We find no reason to disbelieve the statement of PW-16.

In our considered opinion both the trial court and the High Court discarded her evidence without any cogent reason. The trial court and the High Court took the view that the injuries received by the accused-appellant were not explained by the prosecution in the trial. It is true that those injuries were received by the accused-appellant while there was a grappling going on between the accused-appellant and the deceased for snatching `Khukri' which was the weapon of murder. On appreciation of the entire evidence on record, we are satisfied that there was an altercation preceding the incident of murder in which accused-appellant was insulted by the deceased and by doing so the deceased provoked the accused-appellant and the accused- appellant snatched away the `Khukri' from the hands of the deceased due to which the accused-appellant also received the injuries.

18. Section 299 and Section 300 IPC deals with the definition of culpable homicide and murder respectively. Section 299 defines culpable homicide as the act of causing death; (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death or (iii) with the knowledge that such act is likely to cause death. The bare reading of the section makes it crystal clear that the first and the second clause of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court.

19. In the case of State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382, this Court observed as follows at page 386:

"12. In the scheme of the Penal Code, "culpable homicides" 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 this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest 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."

20. Placing strong reliance on the aforesaid decision, this Court in the case of Abdul Waheed Khan v. State of A.P., (2002) 7 SCC 175, observed as follows at page 184:

"13. 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.

14. 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 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.

15. 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 Singh v. State of Kerala3 is an apt illustration of this point.

16. In Virsa Singh v. State of Punjab4 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.

17. The ingredients of clause "thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows: (AIR p. 467, para 12)

"12. 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."

18. The learned Judge explained the third ingredient in the following words (at p. 468): (AIR para 16)

"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 nor 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."

19. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case4 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.

20. Thus, according to the rule laid down in Virsa Singh case4 even if the intention of the 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.

21. 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.

22. 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, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages."

21. The aforesaid principles have been consistently applied by this Court in several decisions. Reference in this regard may be made to the decision of this Court in Ruli Ram v. State of Haryana, (2002) 7 SCC 691; Augustine Saldanha v. State of Karnataka, (2003) 10 SCC 472; State of U. P. v. Virendra Prasad, (2004) 9 SCC 37; Chacko v. State of Kerala, (2004) 12 SCC 269; and S. N. Bhadolkar v. State of Maharasthra, (2005) 9 SCC 71.

22. That being the well settled legal position, when the factual background of the present case is tested on the principles laid down by this Court in the aforesaid decisions, we are unable to agree with the views taken by the trial court as also by the High Court. As already noted, it is quite clear from the record that there was an altercation preceding the incident of murder in which the accused-appellant was insulted by the deceased and by doing so the deceased provoked the accused-appellant. The deceased also took out the `Khukri' which was under the pillow with the intention of assaulting the accused-appellant and the accused-appellant in order to save herself grappled with the deceased and during that process she also received injuries. The prosecution has failed to give any explanation with regard to those injuries received by the accused-appellant. Further, it is also established in evidence that the `Khukri' used in the commission of offence was kept by the deceased under her pillow while she was sleeping in the veranda outside the house. Clearly, there was no intention on the part of the accused-appellant to kill the deceased. That being the position, we are of the considered view that the present case cannot be said to be a case under Section 302 IPC but it is a case falling under Section 304 Part II IPC. It is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

23. We, therefore, hold the accused-appellant to be guilty for offence under Section 304 Part II IPC. Her conviction under Section 302 IPC is, therefore, set aside. The accused-appellant has already undergone about seven years of imprisonment. We therefore, alter the sentence to the period already undergone by the accused-appellant. So far as the punishment of fine is concerned, the same stands set aside. The accused-appellant is already on bail. The bail bonds shall stand cancelled.

24. The appeal stands allowed to the aforesaid extent.