SUPREME COURT OF INDIA

Chenda @ Chanda Ram

Vs.

State of Chhatisgarh

Crl.A.No.1285 of 2013

(Chandramauli Kr.Prasad and Kurian Joseph JJ.)

27.08.2013

JUDGMENT

KURIAN, J.:

1. Leave granted.

2. 'Homicide', as derived from Latin, literally means the act of killing a human being. Under Section 299 of the Indian Penal Code (hereinafter referred to as 'the Code'), homicide becomes culpable when a human being terminates the life of another in a blameworthy manner. Culpability depends on the knowledge, motive and the manner of the act of the accused. The offence is punishable under either Section 302, or Section 304 which consists of two parts. In the case before us, we are called upon to examine the nature of the offence of culpable homicide for which the appellant has been convicted by the Trial Court under Section 302 and sentenced to life imprisonment. His appeal was dismissed by the High Court.

3. It is sad and unfortunate that the epicenter of the matter is a simple quarrel on a trivial issue – a cat was chased away by the child of the deceased and, in the process, it landed on the terrace of the first accused where some gram was kept for drying. The appellant before us is the second accused who inflicted the fatal blow. The first accused who initiated the quarrel was, however, acquitted of the charges under Section 302 read with Section 34, for want of evidence.

BRIEF FACTS

4. On 26.02.1993 at about 04.00 P.M., one master Kishore Kumar, son of the deceased Ramgulal, residing in a remote village Deori Tola in district Durg, presently in Chhattisgarh State, threw a stone on a cat, which, while jumping, landed on the terrace of the first accused Anjoriram where he had kept his gram. The boy was scolded badly and one Chanda Ram beat him with a cane. Hearing his loud weeping, his mother Heminbai reached the spot and there was a verbal altercation between her and the accused. She told the child to call his father Ramgulal. There was a scuffle between Ramgulal and Anjoriram and the appellant-Chenda alias Chanda Ram, in the meanwhile, struck the head of Ramgulal with a tekani (piece of wood) used for supporting bullock carts. He fell down immediately. The neighbours shifted him to his house, thereafter to the District Hospital and, from there, to the hospital of the Bhilai Steel Plant at Bilaspur where he died at about 08.25 P.M., nearly four hours after the incident. Based on the report from the District Hospital, the case was initially charged under Section 307 read with Section 34 and afterwards, it was converted to Section 302 read with Section 34. Anjoriram is the first accused and the appellant Chanda Ram, the second. Nineteen witnesses were examined of which four are eye witnesses including the wife and child of the deceased. The Sessions Court entered a finding that the appellant Chanda Ram had the intention of killing Ramgulal when he hit on his head with a weighted tekani due to which he suffered serious head injury involving five fractures and, hence, he was convicted under Section 302. However, taking note of the age of the accused as twenty three years and other circumstances, the appellant was awarded life imprisonment. The first accused Anjoriram was acquitted for want of any evidence in relation to the act leading to the death. In appeal, as per the impugned judgment dated 18.06.2010, the High Court concurred with the findings of the Sessions Court and held that:

> "16. From the overall evidence available on record, we find that the quarrel started when the stone pelted by child Kishore Kumar for hitting the cat fell on the terrace of Anjoriram where gram was kept. While Anjoriram was engaged in scuffle with Ramgulal, who came much after the initial quarrel of beating of Kishore Kumar and quarrel with his mother Heminbai, the appellant picked up a heavy wodden plank use for support of bullock cart and assault the deceased on his vital part head with such force that he sustained fracture of both parietal bones, fracture of nose and fracture of occipital bones and died just four hours after the assault. We are unable to accept the argument of learned counsel for the appellant that the incident occurred as a result of sudden provocation, without premeditation on the spur of moment. From the evidence available on record, we have already pointed out that when the deceased and co-accused Anjoriram were involved

in the scuffle, the appellant gave a fatal blow on the vital part head of the deceased without any provocation. Intention of the appellant is to be gathered from the weapon of offence used for assault, the force with which and the part on which the assault was made. In the instant case, the assault was made by a heavy wooden plank with a force on the vital part head of the deceased resulting in multiple fractures of both parietal bones, nose bone and occipital bones.

17. On the basis of aforesaid discussions, we are of the opinion that the trial court has rightly convicted the appellant under Section 302 of the IPC and sentenced him for life imprisonment. There is no illegality or infirmity in the impugned judgment. The appeal is without any substance and deserves to be dismissed."

5. It is contended on behalf of the appellant that the evidence if properly appreciated would lead to only one inference, that the appellant did not have any intention to commit murder. There was only a single blow with the stick, the same happened to be on the head, it was done on the spur of the moment, it was without any premeditation and that it was in the process of a fight between the parties. There is no evidence regarding any previous enmity between the parties and, thus, the case would come under Exception 4 of Section 300 of the Code.

6. On behalf of the respondent State, it is submitted that on the only ground that there was a mere single blow, the offence cannot be roped in under Exception 4 since, admittedly, the fight was not with the accused. It is further contended that the fatal blow was on a vital organ, i.e., the head, with great force resulting in serious injury to the head causing five fractures, the injury is sufficient in the ordinary course of nature to cause death and, thus, both intention and knowledge are decipherable from the conduct of the accused appellant and, hence, the conviction under Section 302 is to be upheld.

7. The crucial aspect to be analysed in this case is whether the conduct of the appellant in inflicting the fatal blow is intentional and with knowledge or with knowledge only. The medical report given by PW14 shows that the injury caused by the weapon used by the appellant is sufficient in the ordinary course of nature to cause death. Hence, we have to analyse the evidence in the light of Section 300 clause "Thirdly" and examine whether Exception 4 to Section 300 is applicable. Section 300 "Thirdly" reads as follows:

"300. Murder.-Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

xxx xxx xxx xxx

Thirdly.-If it is done 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-" (Emphasis supplied)

Exception 4 to Section 300 of the Code, reads as follows: "Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.-It is immaterial in such cases which party offers the provocation or commits the first assault."

(Emphasis supplied)

8. If the case falls under Exception 4, then the further inquiry should be as to whether the case falls under the first part of Section 304 or the second part, which reads as follows:

"304-Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

(Emphasis supplied)

9. All the eye witnesses have narrated the evolution of the quarrel and about the conduct of the appellant inflicting the injury with tekani used for supporting

bullock carts. PW2-Heminbai, wife of deceased, reached the spot on finding her child weeping on account of a cane beating by Anjoriram. There was verbal altercation between herself and Anjoriram. She asked her son PW5-Kishore Kumar to call her husband Ramgulal (deceased). During the scuffle that followed, Chanda Ram hit Ramgulal on his head once and she caught hold of Ramgulal when he fell down. According to her, there was previous enmity with the accused persons. PW5-child Kishore Kumar is the second eyewitness. He deposed that he had thrown a stone on a cat and in the process, it ran away and landed on the roof of the accused persons due to which some gram kept on the terrace fell down. Infuriated, the appellant Chanda Ram beat him on his leg with a cane. He started to weep and his mother came to the spot. She questioned the appellant as to why he beat the child and she told Kishore Kumar to call his father so as to have a final decision about the ongoing fights. He went weeping to his father to call him to the spot immediately. A scuffle between the father Ramgulal and Anjoriram followed. Anjoriram hit Ramgulal with a screwdriver on his nose while the appellant hit Ramgulal on the head with tekani. Resultantly, his father fell down. He was shifted to the house and thereafter to the hospital. PW9-Latabai, resides adjacent to the house of the deceased. She has also stated that during the scuffle between Anjoriram and the deceased, it was Chanda Ram who hit the head of Ramgulal with the tekani. According to PW11-Kartikram, during the verbal altercation between the first accused Anjoriram and PW2-Heminbai, Ramgulal (deceased) came to the spot and there was a scuffle between Anjoriram and Ramgulal. During the scuffle, the accused Chanda Ram hit Ramgulal once on the head with tekani and consequently, Ramgulal fell down. Anjoriram also fell down, the hands of Anjoriram and Ramgulal were tied to each other and it is PW2-Heminbai who separated Anjoriram. PW14-Dr. R. N. Pandey who conducted the autopsy has stated that he had noted the following injuries:

(1) Cut wound on the head of size 4inch x 3inch bone deep.

(2) Floated swelling on head and nose and on both the eyes.

(3) There was fracture in skull on both sides of cuttlebone, in bell up skull and also in the bone of nose.

(4) Fractures were also found in the left parietal and occipital bone of the Skull, there were total 5 fractures in the skull.

10. According to Dr. Pandey, those injuries can be caused by one blow with the weapon of offence and that the injury was sufficient in the ordinary course of nature to cause death.

11. The landmark judgment in Virsa Singh vs. State of Punjab[1] draws a distinction between "Thirdly" of Section 300 and Exception 4 thereunder. The following are the four steps of inquiry involved:

> i. first, whether bodily injury is present;
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> ii. second, what is the nature of the injury;
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> iii. third, 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; and iv. 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.

12. In State of Andhra Pradesh vs. Rayavarapu Punnayya and Another[2], it was held that culpable homicide without the special characteristics of murder is culpable homicide not amounting to murder, falling under Section 304 of the Code. It was further held that there are three degrees of culpable homicide. The first is murder under Section 300; second, culpable homicide not amounting to murder falling under the first part of Section 304; and third is culpable homicide not amounting to murder falling under the second part of Section 304. To quote: -

> "12. In the scheme of the Penal Code, '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 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."

13. In Pappu vs. State of Madhya Pradesh[3] the Court almost exhaustively dealt with the parameters of Exception 4 to Section 300 of the Code. It was held that the said Exception can be invoked if death is caused (i) without premeditation; (ii) in a sudden fight; (iii) without the offender's having taken undue advantage or acting in a cruel or unusual manner; and (iv) the fight must have been with the person killed. It was further held that all the four ingredients must be found in order to apply Exception 4. To quote:

> "13. … The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".
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> 14. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors."

14. In Jagriti Devi vs. State of Himachal Pradesh[4], it was held that the expressions "intention" and "knowledge" postulate the existence of a positive mental attitude. It was further held that when and if there is intent and knowledge, then the same would be a case under first part of Section 304 and if it is only a case

of knowledge and not intention to cause murder by bodily injury, then the same would be a case of second part of Section 304. To quote:

> "26. Section 299 and Section 300 IPC deal with the definition of "culpable homicide" and "murder" respectively. Section 299 defines "culpable homicide" as the act of causing death:
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> (i) with the intention of causing death, or
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> (ii) with the intention of causing such bodily injury as is likely to cause death, or
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> (iii) with the knowledge that such act is likely to cause death.
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> A bare reading of the section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expressions "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.
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> 27. 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.
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> 28. 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."

15. In Gurmukh Singh vs. State of Haryana[5] after scanning all the previous decisions where the death was caused by a single blow, this Court indicated,

though not exhaustively, a few factors to be taken into consideration while awarding the sentence. To quote:

> "23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:
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> (a) Motive or previous enmity;
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> (b) Whether the incident had taken place on the spur of the moment;
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> (c) The intention/knowledge of the accused while inflicting the blow or injury;
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> (d) Whether the death ensued instantaneously or the victim died after several days;
>
> (e) The gravity, dimension and nature of injury;
>
> (f) The age and general health condition of the accused; (g) Whether the injury was caused without premeditation in a sudden fight;
>
> (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
>
> (i) The criminal background and adverse history of the accused;
>
> (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
>
> (k) Number of other criminal cases pending against the accused;
>
> (l) Incident occurred within the family members or close relations;
>
> (m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused."

16. In the light of the principles which have been discussed fairly exhaustively, we have to analyse the factual position as to whether the appellant had the intention to cause death, or whether he only had the knowledge about the injury which is likely to cause death. We have to also analyse the manner in which the injury is caused and the provocation for the same. There is no evidence in the case that there was previous enmity between parties though PW2 has attempted for such a version of the case. She has been disbelieved on that account because of contradictions within her own statement under Section 161. The available evidence would show that there was no premeditation on the part of the appellant and that it was a case of sudden fight. It has to be noted while appreciating the evidence that Ramgulal (deceased) was called by his wife to the spot to settle the disputes once for all and that the ensuing sudden scuffle with the first accused was in the presence of his wife. It has come out in the evidence of PW11-Kartikram that the injury inflicted by the appellant was during the scuffle between the deceased and the first accused Anjoriram and that after the lone strike on the head of the deceased by the appellant, both the deceased and Anjoriram had fallen down and it was PW2-Heminbai who separated Anjoriram and Ramgulal as they had become entangled with each other. That only means that Ramgulal had overpowered Anjoriram or else the deceased alone would have fallen down and not the first accused Anjoriram. The said conduct of the deceased overpowering Anjoriram during the scuffle was the immediate provocation for the appellant to take the weapon, the tekani which was available in the vicinity to hit the deceased. There is no evidence at all as to whether the appellant intended to hit on the head only or elsewhere on the body. The scuffling parties being in motion, it could easily have happened that the blow fell on the head unintentionally. No doubt the scuffle of the deceased was with the Anjoriram but the entire fight was with the deceased on one side, and the appellant and other accused Anjoriram on the other side. It is not required that the fight must be between the main accused and deceased. The fight can as well be between two parties, the deceased on one side and all the other accused on the

other side. There is only one hit. There is nothing to show that there was any cruelty involved by inflicting any other injury or by any other conduct on the part of the appellant so as to hold that the appellant was taking any undue advantage of the situation or that he behaved in a cruel or unusual manner. Thus, all the four ingredients required for treating the case under Exception 4 to Section 300 of the Code as stated in Pappu's case (supra) are satisfied in the instant case.

17. The next inquiry is whether the offence falls under first part of Section 304 or the second part. Having regard to the parameters indicated in Gurmukh Singh's case (supra), the offence seems to fall under the second part. There is no evidence of motive or previous enmity. The incident has taken place on the spur of the moment. There is no evidence regarding the intention behind the fatal consequence of the blow. There was only one blow. The accused is young. There was no premeditation. The evolution of the incident would show that it was in the midst of a sudden fight. There is no criminal background or adverse history of the appellant. It was a trivial quarrel among the villagers on account of a simple issue. The fatal blow was in the course of a scuffle between two persons. There has been no other act of cruelty or unusual conduct on the part of the appellant. The deceased was involved in the scuffle in the presence of his wife and he had actually been called upon by her to the spot so as to settle the score with the accused persons.

> The deceased had, in the scuffle, overpowered the first accused. That first accused was acquitted. Thus, considering all these aspects, we are of the view that it is a fit case to alter the punishment of imprisonment for life to imprisonment for a period of 10 years with fine of Rs.50,000/-. Ordered accordingly. Since the deceased has been left with a young widow and one child, the amount of fine thus recovered shall be paid as compensation to the widow and the child. In the event of the appellant defaulting to pay the fine, he shall undergo imprisonment for a further period of two years. In case the appellant has already served the term as above, he shall be released forthwith, if not required to be detained in connection with any other case. The appeal is allowed as above.

[1] (1958) 1 SCR 1495
[2] (1976) 4 SCC 382
[3] (2006) 7 SCC 391
[4] (2009) 14 SCC 771
[5] (2009) 15 SCC 635