

2023 LiveLaw (SC) 625

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
A.S. BOPANNA; J., M.M. SUNDRESH; J.

August 07, 2023

CRIMINAL APPEAL NO. 2293 OF 2023 [Arising out of SLP (Crl.) NO. 8100 of 2022]

SHAJI versus THE STATE OF KERALA

Indian Penal Code, 1860; Section 299, 300, 302, 304 - A duty is enjoined upon the Court of Sessions to undertake an exercise and to satisfy itself whether a case of culpable homicide not amounting to murder is made out or not, before proceeding with the trial of an accused for murder. (Para 6)

(Arising out of impugned final judgment and order dated 12-12-2017 in CRA No. 81/2013 passed by the High Court of Kerala at Ernakulam)

For Petitioner(s) Mr. Renjith B. Marar, Adv. Ms. Lakshmi N.kaimal, Adv. Mr. Zulfiker Ali P. S, AOR Mr. Arun Poomulli, Adv. Mr. Davesh Kumar Sharma, Adv.

For Respondent(s) Mr. Harshad V. Hameed, AOR Mr. Dileep Poolakkot, Adv. Mr. Subhash Chandran K.R., Adv. Mrs. Ashly Harshad, Adv.

ORDER

1. Leave granted.

2. It is the case of the prosecution that the appellant on the fateful day, i.e. on 02.08.2011, at about 08:30 p.m., woke up the deceased and demanded him to purchase a cigarette lighter. The deceased was none other than the minor son of the appellant. There was an altercation, followed by an attack on the deceased by the appellant. The deceased died due to the injuries suffered.

3. PW2 is none other than the wife of the appellant, and PW-3 is another minor son. Both of them have deposed in tune with the prosecution version. Of the total witnesses, i.e., PW-1 to PW-23, these two witnesses alone are the eye-witnesses. Exhibit P1 to P24 have been marked, along with material objects MO1 to MO9. The appellant pleaded innocence when questioned under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC"). Post-mortem was conducted by PW-16, who opined that the deceased died after sustaining head injury, caused by dashing of the head against the wall.

4. Learned counsel appearing for the appellant submitted that the Courts below did not take into consideration the discrepancies in the evidence of the witnesses. There is also an inordinate delay in the registration of the First Information Report implicating the appellant, followed by its receipt by the Court. These attending circumstances have not been taken note of by the Courts below.

5. Learned counsel appearing for the State submitted that the evidence deposed by the eye-witnesses was rightly accepted by the Courts below. Being family members, they do not have any motive to falsely implicate the appellant. A mere delay by itself cannot be a reason to doubt the version of the prosecution. In any case, the case was originally registered under Section 174 of the CrPC, and was thereafter converted into one punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter "IPC").

6. Having considered the materials available on record, especially the evidence of PW-2 and PW-3, we do not find any merit in the submission made by the counsel for the appellant that he did not commit a culpable homicide. The case of the prosecution is also

supported by the evidence of PW-16, the doctor who gave the post-mortem report. However, it is also on evidence that the appellant did make an attempt to revive the deceased after the occurrence. There was indeed a prior quarrel preceding the occurrence. He tried to splash water on the face of the deceased, and thereafter made an effort to warm him up. Added to that, he took the deceased to the hospital. From the above evidence, it is clear that the case on hand would fall under the offence punishable under Section 304 Part I of the IPC, and not under Section 302 of IPC. It is trite that a duty is enjoined upon the Court of Sessions to undertake an exercise and to satisfy itself whether a case of culpable homicide not amounting to murder is made out or not, before proceeding with the trial of an accused for murder. The materials available on record would clearly establish the fact that this is a case of a culpable homicide not amounting to murder, and therefore would fall under the offence punishable under Section 304 Part I of the IPC. We appositely refer to the recent pronouncement of this Court in **Anbzhagan v. The State Represented by the Inspector of Police, 2023 (10) SCALE 173:**

“46. ...We have noticed something in the aforesaid observations made by this Court which, in our opinion, creates some confusion. We have come across such observations in many other decisions of this Court over and above the case of *Jagrup Singh* (1981) 3 SCC 616. What we are trying to highlight is that in *Jagrup Singh* (supra), although this Court altered the conviction from Section 302 to Section 304 Part II, it took shelter of Exception 4 to Section 300 of the IPC. The question is, was there any need for the Court to take recourse to Exception 4 to Section 300 of the IPC for the purpose of altering the conviction from Section 302 to Section 304 Part II of the IPC. We say so because there is fine difference between the two parts of Section 304 of the IPC. Under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

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60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:—

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: ‘A’ is bound hand and foot. ‘B’ comes and placing his revolver against the head of ‘A’, shoots ‘A’ in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of ‘B’ in shooting ‘A’ was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, ‘B’ sneaks into the bed room of his enemy ‘A’ while the latter is asleep on his bed. Taking aim at the left chest of ‘A’, ‘B’ forcibly plunges a sword in the left chest of ‘A’ and runs away. ‘A’ dies shortly thereafter. The injury to ‘A’ was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that ‘B’ intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of ‘B’ within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of

the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of *mens rea*. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the

nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

7. The appellant has undergone incarceration for more than a decade. Considering the facts and circumstances of the case, the interest of justice would be served if the sentence is reduced to the period of incarceration already undergone. Accordingly, the appeal stands allowed in part, by convicting the appellant of the offence punishable under Section 304 Part I of the IPC, and the sentence is reduced to the period already undergone. The appellant be released and set at liberty forthwith, subject to the appellant not being required in any other case.

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