REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 826 OF 2009
(Arising out of S.L.P. (Crl.) No.7458 of 2008)

SUPREME COURT OF INDIA

JUDGMENT

Santhanam ..Appellant

Versus

State of Tamil Nadu ..Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Madras High Court, Madurai Bench, upholding the conviction of the appellant for offence punishable under Sections 302 of the Indian Penal Code, 1860 (in short the 'IPC'). The co-accused was tried for offence punishable for offence punishable under Section 302 read with Section 114 and 506(2) IPC and was found not guilty and was acquitted of the charges.

3. Prosecution version, in a nutshell, is as follows:

The incident in question took place at around 2 p.m. on 9.12.2001, P.W.1 and her husband were working in the Postal Department and they are the owners of land in their native place, Kanjeerimalaipudur Kattukottagai. Thiruppathy (hereinafter referred to as the 'deceased') was employed with them as a farm servant. The land of the accused-appellant is situated adjacent to the land of P.W. 1. They had a dispute regarding water pipe line. Two days before the date of incident i.e. 9.12.2001 when the deceased was

irrigating, the appellant closed the water pipe line. The deceased asked him why he had closed the water pipe line, the appellant abused him and assaulted him with a stick. The deceased filed a complaint in the Uppiliyapuram Police Station. When P.W. 1 and her husband came to know about the same on 11.12.2001, they wanted to convene a Panchayat and, therefore, P.W.1, her husband and others gathered in front of the house of P.W. 1 at about 2.00 p.m. At that time, the appellant and the second accused came in a TVS 50 vehicle and both of them pulled the deceased Thiruppathy and assaulted him with hands. They intervened and prevented them from attacking the deceased. When the deceased, Thiruppathy went to the house of Dhandapani, the appellant and the second accused followed the deceased. The appellant attacked the deceased, Thiruppathy with a wooden log on his right shoulder, right forearm and on his head and the deceased fell down and fainted. The second accused took out billhook out of his shirt and threatened the witnesses with dire consequences. Then the second accused gave billhook to the appellant and both of them ran away from the place of occurrence. Immediately thereafter, P.W. 1 and her husband, Ramalingam went to Uppiliyapuram Police Station and gave a complaint and on the basis of which F.I.R. was lodged and a case was registered as Crime No. 658/2001 under Section 302 I.P.C. and investigation started. P.W.12,

conducted the Post-Mortem on 12.12.2001 and opined that the deceased appeared to have died of shock and haemorrhage due to injuries sustained on head.

Investigation was undertaken and on completion thereof the chargesheet was filed.

The case was committed to the Court of Sessions. Charges were framed. Since the accused persons pleaded innocence, trial was held.

In order to establish accusations, 14 witnesses were examined. In order to prove its plea of innocence, three witnesses were examined. The Trial Court found that accusations were not established against the second accused and he was acquitted. Before the High Court the primary stand was that the so called eye witnesses could not have seen the occurrence as claimed. This according to PW.4 she actually did not see the occurrence and also not did not see the accused persons assaulting but she came and found that the deceased was lying severely injured. It was also submitted that the medical evidence was at variance with the so called ocular evidence. Large number of criminal and civil cases were pending between the parties and the present case was the outcome of enmity. In any event, the

occurrence took place in course of altercation and Section 302 IPC has no application. The deceased was working under PW1 and her husband. On the earlier occasion when the deceased went over to the field and questioned the conduct of the accused, altercation took place and complaint was given against him. Panchayat was convened. It was also submitted that the injuries were on non-vital parts and, therefore, it cannot be said that the accused had intention to cause death. The High Court did not accept the stand that the occurrence took place in the course of altercation and other pleas.

4. The stand taken before the High Court was reiterated in the present appeal. Learned counsel for the respondent-State supported the judgment.

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

6. 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.

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

8. 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 killing within the ambit of this

clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

9. 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.

10. 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, (AIR 1966 SC 1874) is an apt illustration of this point.

11. In Virsa Singh v. State of Punjab, (AIR 1958 SC 465), 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 is 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.

12. 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."

13. 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."

14. 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.

15. 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.

16. 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.

17. 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.

18. The position was illuminatingly highlighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. (1976 (4) SCC 382), Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh (JT 2002 (6) SC 274), and Augustine Saldanha v. State of Karnataka (2003 (10) SCC 472) and Thangaiya v. State of Tamil Nadu (2005 (9) SCC 650).

19. In the peculiar facts of the case, the proper conviction would be under Section 304 Part I. Custodial sentence of 10 years would meet the ends of justice.

20. The appeal is allowed to the aforesaid extent.

…….J.
(Dr. ARIJIT PASAYAT)

…….J.
(ASOK KUMAR GANGULY)

New Delhi,
April 24, 2009