

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRIMINAL REVISION PETITION NO. 406 OF 2010**

% **Reserved on : 27th August, 2010.**
Date of Decision: 22nd September, 2010.

STATE (NCT OF DELHI) Petitioner
Through Mr. Saleem Ahmed, Additional Standing
Counsel for the State.

VERSUS

SAMIALAM @ SAMIA AND ANOTHER Respondents
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

1. Government of NCT of Delhi impugns order on the point of charge dated 8th October, 2009 rejecting their contention that the charge should be framed under Section 300 read with Section 302 and has erred in framing charge under Section 304/34 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC, for short). There is delay of 195 days in filing of this petition but in view of the fact that I do not find any merit in the revision petition and I am not inclined to issue notice on the application for condonation of delay.

2. Difference between culpable homicide and culpable homicide amounting to murder has been subject matter of several judicial pronouncements. Culpable homicide is a broader term of which murder is a specie. Every offence, classified as culpable homicide may not be murder

under Section 300 IPC. The difference in the two provisions was highlighted by the Supreme Court in ***State of A.P. versus Rayavarapu Punnayya***, (1976) 4 SCC 382 in the following chart:-

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done —	<i>Subject to certain exceptions</i> 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 <i>likely</i> to cause death; or	(2) With the intention 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 <i>sufficient in the ordinary course of nature</i> to cause death; or

KNOWLEDGE

(c)With the knowledge that the act is <i>likely</i> to cause death	(4) With the knowledge that the act is so <i>imminently dangerous that it must in all probability cause death</i> 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.
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3. IPC recognizes three degrees of culpable homicide. The first and the gravest is culpable homicide amounting to murder as defined in Section

300 IPC. The second is culpable homicide on the second degree, which is punishable in the first part of Section 304 IPC and then there is culpable homicide of the third degree which is the lowest and is punishable under second part of Section 304 IPC. Culpable homicide to be murder under Section 300 IPC has special characteristics specified in the four clauses. In order to find out whether the offender is guilty of murder the case should fall in one of the four clauses under Section 300 IPC. Interpreting four clauses, it has been held that in case of murder the offender should have positive intention to cause death of the victim. The offender is also guilty of murder if he assaults the victim with the intention of causing death or with the definite knowledge that (1) the bodily injury inflicted on him would cause death or (2) the injury was sufficient in ordinary course of nature to cause death (3) the injury was so eminently dangerous that it must cause death.

4. The facts stated in the charge sheet are:

- (a) One Mohd. Ishtiaq lodged a police report on 13th January, 2009 that today at about 4.30 p.m. his younger sister Naeema Akhtari, aged 10 years was present on the tea stall when one Shami Alam came and lied down on a wooden cot. Naeema Akhtari objected and asked him to go away. Shami Alam slapped Naeema Akhtari and this was objected to by Abdul Jabbar. On this, Shami Alam started abusing and beating Abdul Jabbar. Shami Alam was asked to go away and left but had extended threat that he would teach them a lesson.
- (b) At around 5.30 p.m. on the same date, Shami Alam along with his brother Sadre Alam came to the jhuggi of the complainant and started quarrelling with Abdul Jabbar and both of them lifted and threw him on the ground. Mohd. Ishtiaq tried to save Abdul Jabbar but he was pushed and thrown down. Sadre Alam got hold of his father and Shami Alam gave fist blows in his abdomen and as a result of which he became unconscious and fell down. Thereafter, both of them ran away from the spot. His father was taken to the hospital but was declared brought dead.

5. Copy of statement under Section 161 Cr.P.C. by Naeema Akhtari, the daughter has been placed on record. She has stated that when Shami Alam left he had stated that “Abhi Aakar Maje Chakhata Huin”, i.e., I will come back and teach you a lesson. The post mortem report, which was filed by the State pursuant to directions given by this Court states that the following external injuries were visible:-

“1. Bruise 4x3 cm dark reddish coloured, (Rt) side forehead 4x5 cm above lateral angle of (Rt) eye brow near hair line.

2. Different swelling bagginess (Rt) parietal region scalp.

3. Bruise 3x2 cm dark reddish coloured (Rt.) lothal Acnal border”

6. The cause of death has been stated as under:-

“The cause of death is encbral damage as a result of blunt force impact diverted upon head sufficient to cause death in ordinary course of nature all injuries are antemortem in nature and collectively consistent with assault.”

7. The question raised is whether on the basis of the allegations in the charge sheet and statement of Naeema Akhtari as well as the post mortem report, a case under Sections 299 or 300 IPC is made out. At this stage the allegations in the charge sheet and the statements have to be treated ex facie as correct.

8. Learned Additional Public Prosecutor has submitted that the case would fall under third and fourth clauses of Section 300 IPC. The accused had the intention to cause bodily injury to the victim and the body injury was intended to be inflicted was sufficient in ordinary course of nature to cause death. It was also contended that the bodily injury were made with the knowledge that the act was so eminently dangerous that it must in all probability cause death or such bodily injury was likely to cause death.

9. Reliance on fourth clause has been rightly rejected by the trial court. It is apparent from the charge sheet as well as the statement of Naeema Akhtari that the accused had come and had beaten up the deceased and the fist blows were given in the stomach. The deceased was thrown to the ground and head of the deceased stuck the ground. The aforesaid acts cannot be categorized as so eminently dangerous which in all probability would cause death or cause bodily injury that is likely to cause death. The fourth clause requires knowledge of the accused that his act is eminently dangerous and of the nature that in all probability would cause death or bodily injury as is likely to cause death. The act must be committed with the knowledge that the death must be the probable result. The allegations and the type of injury suffered cannot be categorized as covered by the fourth clause. It cannot be said that the accused had knowledge that in case the deceased falls down on the ground or is thrown to the ground, he would die because of his head hitting the ground. The expression "knowledge" postulates existence of positive mental attitude. The mental element in culpable homicide requires the positive mental attitude towards consequences of conduct is one of the knowledge in the fourth clause. Such attitude on the part of the accused must be of the highest degree of probability, approximate to a practical certainty. To fall under the fourth clause of Section 300, the accused must have foreseen that he was running the risk of causing death of the victim or such bodily injury as was likely to cause death in all probability. The fourth clause uses the word probability as distinguished from mere possibility. Further, the word 'probable' is prefixed by the word 'all' to convey the meaning that the act should be eminently dangerous that it must in all probability cause death or bodily injury likely to cause death.

10. Third clause of Section 300 has been subject matter of judicial

interpretation in ***Virsa Singh versus State of Punjab***, AIR 1958 SC 465. The requirements of third clause are that: (1) It must be established that the bodily injuries were present; (2) the nature of injuries must be proved. These two requirements are purely objective; (3) it must be proved that there was intention to inflict that particular injury suffered by the deceased, i.e., that the injury was not accidental or un-intentional or some other kind of injury was intended. After these three ingredients are satisfied and proved, the inquiry must proceed further and it must be proved that (4) the injury of the type described was sufficient to cause death in ordinary course of nature. The fourth part is also purely objective and inferential. The fourth part has nothing to do with the intention of the offender. The intention of the offender is restricted to part 3, i.e., it must be proved that the offender had the intention to inflict that particular injury and the injury which was suffered was not accidental or unintentional or that some other kind of injury was intended.

11. It was accordingly observed in ***Virsa Singh*** (supra) as under:-

“**12.** The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that is to say, *if the circumstances justify an inference* that a man’s intention was only to inflict a blow on the lower part of the leg, or some lesser blow, *and it can be shown* that the blow landed in the region of the heart *by accident*, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining—

“and the bodily injury intended to be inflicted” is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course

of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

13. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that “twelve good men and true” could readily appreciate and understand.”

(emphasis supplied)

12. In the subsequent portion of the judgment, it was further clarified and lucidly explained:

“20 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 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.”

(emphasis supplied)

13. It was further observed:-

“24. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact; and whether the conclusion should be one way or the other is a matter of proof, where necessary, by calling in aid all

reasonable inferences of fact in the absence of direct testimony. It is not one for guesswork and fanciful conjecture.”

(emphasis supplied)

14. As per the charge sheet, the two accused had come back to the spot but they were not armed with any weapon or even a rod or stick. They grappled with the deceased and he was pushed/thrown to the ground. One of the accused tried to strangle the deceased and he was given fist blows in the abdomen as per the allegations. As per the post-mortem, the cause of death was cerebral damage as a result of blunt force impact directed on the head. Thus, it is apparent and as per the case of the prosecution, death had occurred because the head of the deceased had hit the ground. Naeema Akhtari in her statement under section 161 of the Code has stated as under:

“When my brother Ishtiaq asked him to go away he shouted, “ Abhi aker maja chakhata hoon”. After that Shami Alam came back about after one hour at about 5.30 PM with his brother Sadre Alam (Pappu) and both started beating my father and abused him and throw him on the ground on which my father’s head struck on the ground, my brother tried to save him but both threw him away. Sadre Alam caught hold of my father and Sami Alam blew fists on his stomach on being beaten by and being thrown on the ground due to which he got injury on his head my father became unconscious and both ran away from the spot.”

15. As per the charge sheet, the statement given by Mohd. Ishtiaq on the basis of which FIR was registered reads:

“On the day of Moharram I injured my leg and that’s why I could not go for work, my father has a tea stall outside my house. Today 13/01/09 around 4.30 p.m. my younger sister Naeema Akhtari age 10 years was present on the tea stall, at the same time Shami Alam s/o Mohd. Ayud R/O B-435, J.J. Colony, Bawana, Delhi, came and lied down on the bed of the tea stall and my father was sitting on the other side. Then my sister asked him to leave the bed and go from there,

he immediately slapped her. On this my father requested him not to do so. He started abusing and beating my father. At the same time I also requested him to go from there on which he replied "I will come and teach you a lesson." Around 5.30 pm, Shami Alam along with his brother Sadre Alam also known as Pappu came to our house and both started fighting with my father and pushed him on the ground. When I tried to save my father they pushed me also. Sadre Alam held my father and started pressing his neck and Shami Alam hit my father's stomach with a punch, because of which my father fainted and then ran away."

(emphasis supplied)

16. The deceased as per the post mortem report had suffered small bruises and had swelling bagginess in parietal region scalp. What is apparent from the charge sheet and the statement of Naeema Akhtari is that the accused had pushed or had thrown the deceased to the ground and nothing more. The deceased was given fist blows. These allegations do not show that the accused intended to cause the head injury. It is not alleged that the accused had banged the head of the deceased on the ground. The accused were not armed. No knife, rod or weapon was used. In view of the allegations, the case will not fall under the third clause of Section 300 and the charge has been rightly framed under Section 299 read with Section 304 of the IPC.

The petition is dismissed.

Observations made above are for the purpose of disposal of the present petition and will not be construed as observations on merit binding on the trial court. Further this order shall not¹ prevent the trial² court from modifying the charge under section 216 of the Code.

(SANJIV KHANNA)
JUDGE

SEPTEMBER 22, 2010.
VKR/P

¹ Typographical error corrected on 30.09.2010

² Typographical error corrected on 30.09.2010