

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 19th April, 2010*
Judgment Pronounced on: 22nd April, 2010

+ **CRL.APPEAL No.680/2008**

ASHOK SEHGAL & ANR Appellants
Through: Mr.Sayed Aquib Ali and
Mr.Rashid Sayed, Advocates

versus

STATE Respondent
Through: Mr.M.N.Dudeja, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. At the hearing of the above captioned appeal held on 19.4.2010, learned counsel for the appellant conceded that there was sufficient evidence to hold that the appellants, who are father and son and juvenile co-accused Karan Sehgal were the ones who brutally assaulted deceased Gurvinder Singh at about 8:30 PM on 4.3.2004. The only issue requiring consideration was whether the acts of the appellants and their juvenile co-accused Karan Sehgal constitute the offence of murder or the offence of culpable homicide not amounting to murder. At the

conclusion of the hearing on 19.4.2010 following order was passed:-

“1. With reference to the testimony of PW-2, PW-3 and PW-4 learned counsel for the appellant concedes that there is sufficient evidence to prove that the appellant and juvenile co-accused Karan gave a merciless beating to deceased Gurvinder. Only submission urged by the learned counsel for the appellant is that in view of the testimony of the said witnesses; no weapon of offence being used; injuries being caused by fist blows and kicks, at best, knowledge can be attributed to the appellants that their acts would likely result in the death of the deceased and hence Section 299(C) IPC would be attracted. Counsel urges that the offence made out against the accused is that of culpable homicide not amounting to murder punishable under Section 304 Part II IPC.

2. Per contra, Ms.Richa Kapoor learned counsel for the State submits that keeping in view the testimony of the witnesses as per whom even when Gurvinder became lifeless and listless, the appellant continues to beat him. It is urged that there are 14 injuries 9 of which are directed towards the head. There is a fracture on the skull and sub-dural hemorrhage. Learned counsel urges that it is apparent that the appellants have put attributed knowledge of the kind contemplated by Section 300 fourthly IPC.

3. Learned counsel have not cited any case law and desires to place for our consideration judgments on the point, if any.

4. As requested by learned counsel for the appellant and the State we reserve the matter for judgment granting 2 days time to file such citations on which learned counsel rely.

5. Citations would be handed over to the Court Master latest by 21.04.2010.

6. Reserved for judgment.”

2. Needless to state, Ajit Singh PW-2, Karandeep Singh

PW-3 and Mangal Singh PW-4 the grandfather, the brother and a neighbour respectively of the deceased Gurvinder Singh were eye-witnesses to the incident and deposed that on 4.3.2004 at about 8:30 PM when they were present near House No.1/41 Lalita Park, Laxmi Nagar, Delhi-110092 they heard noise and on reaching the place from where the noise was coming found that Gurvinder Singh was lying on the ground while appellant Ashok Sehgal, his son and co-appellant Rajiv Sehgal and third son, a juvenile Karan Sehgal were brutally beating Gurvinder Singh and Karan Sehgal was exhorting "*Aaj isko chodna nahi*".

3. The motive for the crime was a trivial incident of a dispute while playing cricket a few days prior as conceded before us by learned counsel for the appellants and the State.

4. The post-mortem on the body of the deceased was conducted by Dr.Akash Jhanjee PW-12. As per the post-mortem report Ex.PW-12/A authored by him the following external injuries were noted upon the body of the deceased:-

“1. Contusion swelling in area of 4 x 3 cm over right parietal region of the head, reddish in colour, lying 4.2 cm above the top of right ear pinna, reddish in colour.

2. Contusion reddish in area of 5 x 4 cm over right side cheek region of the face lying 1.2 cm in front of right ear opening, extending to the level just below the right eye outer angle.

3. Contusion, reddish, in area of 4 x 3 cm over outer half of right forehead. Just above the right eyebrow level.

4. Contusion reddish in area of 4 x 4 cm over outer

half of left forehead region just above and outer to left eyebrow outer half.

5. Contusion reddish in area of 2 x 2 cm over left cheek region of the face just below an outer to left eye outer angle.

6. Abrasion reddish 1 x 1 cm over bridge of the nose 1.5 cm below the root level.

7. Abrasion contusion reddish 1.5 x 1 cm over left nostril opening fold. 0.5 cm above the outer border.

8. Lacerated wound 1 x 0.6 cm into muscle deep over inner surface middle portion of lower lip, apposing teeth gums also found bruised.

9. Contusion reddish with swelling 1 x 1 cm over outer surface of left side lower lip touching the mid line level.

10. Abrasion reddish 1.5 x 1 cm over front of left knee region.

11. Abrasion reddish 1 x 1 cm front of upper half left leg region.

12. Multiple small abrasions in area of 3 x 2 cm over back of left wrist region of the hand varying incise from 1 x .5 cm to 0.5 x 0.3 cm reddish in colour.

13. Abrasion reddish 2 x 2 cm over back of left hand. 1.5 cm below injury No.12.

14. Contusion reddish 5 x 4 cm over under surface of middle portion left foot region."

5. On internal examination of the body Dr.Akash

Jhanjee noted as follows:-

"On internal examination in the head region, scalp tissues showed sub-scalp bruising in and underneath the scalp layers over right side of the head. Skull showed fissured fracture line reddish in colour right parietal bone extending from the level of right parietal eminence down with length of 4 cm to the right

temporal bone with fracture ends bruised. Subdural hematoma in area of 4 x 4 cm seen over the outer and upper surface of right side parieto-temporal lobe. Contusion laceration 2 cm in length present over the outer surface of right temporal lobe. Patchy subarachnoid haemorrhage seen over both sides of cerebral hemispheres. Ventricles contained fluid blood. Neck structure were intact. Chest structure were intact. Abdominal organs were intact and stomach contained around 150 ml of semi-digested food material, non-identifiable in state with walls NAD. Bladder and Rectum were empty. Pelvis and Spinal column were intact.”

6. The cause of death of the deceased was opined to be cranio-cerebral damage consequent to blunt force diverted upon the head. Dr.Akash Jhanjee further opined that cranio-cerebral damage produced is sufficient to cause death in ordinary course of nature.

7. With reference to the fourteen injuries inflicted on the deceased, the injuries from serial No.1 to 9 show that the target was the face and the head of the deceased. Injuries from serial No.10 to 14 show that the other but non-vital parts of the body were also targeted. The injuries are contusions and abrasions except one lacerated wound and as deposed to by the eye-witnesses no object or weapon was used to assault the deceased. The appellants and their juvenile co-accused used fists and feet to hit the deceased.

8. It is apparent that the deceased was simply assaulted by the accused who neither used an object to hit the deceased or a weapon of offence as conventionally or

unconventionally understood. Under the circumstances, intention to cause death or intention to cause a particular injury on the person of the deceased is ruled out. What was debated before us was, whether knowledge could be attributed to the appellants that their acts were likely to cause the death of the deceased or knowledge could be attributed that their acts were so imminently dangerous that they must in all probability cause death or they had knowledge that the bodily injuries which were likely to cause death would in all probability result in death.

9. We need not catalogue various decisions which hold that the difference between the third limb of Section 299 IPC and Section 300 Fourthly IPC lies in the words '*likely to cause death*' in Section 299 IPC and the words '*must in all probability cause death*' in Section 300 Fourthly. The decisions hold that it is obvious that the distinction lies between knowledge that the offending act would cause an injury which is '*likely*' to cause death and knowledge that the bodily injury caused is '*sufficient in the ordinary course of nature*' to cause death. The decisions hold that the word '*likely*' conveys the sense of '*probability*' as distinguished from a mere possibility and the expression '*must in all probability cause death*' means that death will be the most certain probable result of the injury, having regard to the ordinary course of nature. To put it pithily, the distinction

between the two is one of degree. '*Likely to cause death*' connotes that there is less probability of death but '*sufficient to cause death*' means that the probability of death is greater.

10. A decision which has gone unnoticed is worth reproducing in its entirety. It was delivered by Melvill, J. on 18.7.1876. The decision is reported as Reg vs. Govinda (1877) ILR 1 Bombay 342. It reads as under:-

"1. I understand that these proceedings have been referred to me under Section 271-B of the Code of Criminal Procedure, in order that I may decide whether the offence committed by the prisoner was murder, or culpable homicide not amounting to murder.

2. For convenience of comparison, the provisions of Sections 299 and 300 of the Indian Penal Code may be stated thus:

Section 299

A person commits culpable homicide, if the act by which the death is caused is done

- (a) With the intention of causing death,
- (b) With the intention of causing such bodily injury as is likely to cause death,
- (c) With the knowledge that the act is likely to cause death.

Section 300

Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done

- (1) With the intention of causing death;
- (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;
- (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;

(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.

3. I have underlined the words which appear to me to mark the difference between the two offences.

4. (a) and (1) show that where there is an intention to kill, the offence is always murder.

5. (c) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or murder, depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide, if it is the most probable result, it is murder.

6. The essence of (2) appears to me to be found in the words which I have underlined. The offence is murder, if the offender knows that the particular person injured is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. The illustration given in the section is the following:

A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.

7. There remain to be considered (b) and (3), and it is on a comparison of these two clauses that the decision of doubtful cases like the present must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death; it is murder, if such injury is sufficient in the, ordinary course of nature to cause death. The distinction is fine, but appreciable. It is must the same distinction as that between (c) and (4), already noticed. It is a question of degree of probability.

Practically, I think, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

8. In the present case the prisoner, a young man of 18, appears to have kicked his wife, (a girl of 15) and to have struck her several times with his fist on the back. These blows seem to have caused her no serious injury. She, however, fell on the ground, and I think that the evidence shows that the prisoner then put one knee on her chest, and struck her two or three times on the face. One or two of these blows, which, from the medical evidence, I believe to have been violent and to have been delivered with the closed fist, took effect on the girl's left eye, producing contusion and discoloration. The skull was not fractured, but the blow caused an extravasation of blood on the brain, and the girl died in consequence either on the spot, or very shortly afterwards. On this state of facts the Sessions Judge and the assessors have found the prisoner guilty of murder, and he has been sentenced to death. I am myself of opinion that the offence is culpable homicide, and not murder. I do not think there was an intention to cause death; nor do I think that the bodily injury was sufficient in the ordinary course of nature to cause death. Ordinarily, I think, it would not cause death. But a violent blow in the eye from a man's fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing concussion or extravasation of blood on the surface or in the substance of the brain. A reference to Taylor's Medical Jurisprudence (Fourth Edition, page 294) will show how easily life may be destroyed by a blow on the head producing extravasation of blood.

9. For these reasons I am of opinion that the prisoner should be convicted of culpable homicide not amounting to murder, and I would sentence him to transportation for seven years.

10. This order was accordingly passed by the Court."

and PW-4 when the cries of the deceased attracted their attention they saw the deceased lying on the ground and the accused hitting him with fists and kicks. As per the post-mortem report the first nine injuries are directed towards, what we may call in layman's language, the face. The first injury is above the right ear pinna i.e. the right parietal region. The second injury is on the right side cheek. The third is on the half right forehead. These injuries are directed towards the right side of the face. The fourth injury is on the outer half of the left forehead. The fifth is on the left cheek. Thus, the fourth and the fifth injury are directed towards the left side of the face. Injury No.6, 7, 8 and 9 are directed towards the nose and the mouth i.e. in the middle of the face. Injuries No.10, 11 and 14 are simple abrasions and contusions on the left knee, the left leg and the left foot. Injury No.12 and 13 are on the left hand and the left wrist. Thus, the subarachnoid haemorrhage and the fracture of the skull commencing from the right parietal bone extending to the right temporal bone (having length of 4 cm) is obviously the result of the face being pounded as per external injuries No.1 to 9.

12. It is apparent that extravasation of blood at the arachnoid matter i.e. the membrane (one out of the three) covering the brain resulted in the death of the deceased.

13. As held by Melvill, J. it would be difficult to hold,

under such circumstances, that the bodily injury caused was sufficient in the ordinary course of nature to cause death. Ordinarily it would not cause death. But, violent blows as afore-noted, some of which being when the victim is lying with head on the ground, is certainly likely to cause death, either by producing concussion or extravasation of blood on the surface or in the substance or the brain.

14. We are fortified in the view which we have taken with reference to the decision of the Supreme Court reported as AIR 1966 SC 148 Anda & Ors. Vs. State of Rajasthan where in a case of a severe assault resulting in death of the victim it was held to be an act constituting the offence of culpable homicide not amounting to murder and not the offence of murder, as also the decision reported as 1994 Supp (1) SCC 116 Ramesh Kumar Vs. State of Bihar & Ors. and 2007 (12) SCC 518 Shankar Diwali Vadu Vs. State of Maharashtra in which cases a severe assault with fist blows and kicks resulting in subdural haemorrhage were held to be offences punishable under Section 304 Part II IPC. Interestingly in Ramesh Kumar's case (supra) apart from a severe assault, tying a rope around the neck of the deceased and dragging him while assaulting him was also an act of aggression, death was due to haemorrhage and partial strangulation. Yet, the act was held to be an offence punishable under Section 304 Part II IPC.

15. Thus, the conviction of the appellants is altered from the offence punishable under Section 302/34 IPC to that of the offence of culpable homicide not amounting to murder and punishable under

Section 304 Part II IPC.

16. On the issue of sentence, considering the brutality of the assault as an aggravating circumstance as also the fact, treated as a mitigating circumstance by us, that instant offence is the only committed by the appellants, noting further that as of today both appellants have undergone a sentence of about 6 years and have earned remissions due to good jail conduct of about 5 months, we are of the opinion that ends of justice would be met if the appellants are set free and at the same time are directed to compensate the parents of the deceased. Thus, we sentence the appellants to undergo imprisonment for the period already undergone and to pay compensation in sum of Rs.2,00,000/- (Rupees Two Lakhs) to be shared equally by the parents of the deceased. We clarify that each appellant shall pay compensation in sum of Rs.1,00,000/- (Rupees One Lakh) to make good the sum of Rs.2,00,000/- (Rupees Two Lakhs). The compensation shall be deposited with the learned Trial Judge within two weeks who shall proceed to disburse the same to the parents of the deceased.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 22, 2010
dk/mm