

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:43962-DB

Judgment Reserved on 08.05.2024

Judgment Delivered on 24.06.2024

Court No.-1

Case :- CRIMINAL APPEAL No. - 2747 of 2004

Appellant :- Teji

Respondent :- State of U.P.

Counsel for Appellant :- K.K.Tewari,Ayush Tandon

Counsel for Respondent :- Govt. Advocate

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per : Ajai Kumar Srivastava-I,J.)

1. Heard Shri Ayush Tandon, learned Amicus Curiae for the appellant, Shri Umesh Chandra Verma, learned A.G.A. for the State and perused the entire record.

2. Under challenge in this criminal appeal is the impugned judgment and order dated 30.11.2004 passed by the learned Additional Sessions Judge, Court No.6, Sitapur in Sessions Trial No.376 of 2002 arising out of Crime No.109 of 2000, under Sections 302 of the Indian Penal Code¹, Police Station Sakaran, District Sitapur, whereby the appellant has been convicted and sentenced to undergo life imprisonment for the offence

¹ hereinafter referred to as "I.P.C."

under Section 302 I.P.C. with a fine of Rs.5000/- and in default of payment of fine, he has further been directed to undergo one year's simple imprisonment.

3. The case of the prosecution, in nutshell, is that the complainant, Kamta Ram is a resident of Village Jijauli, Police Station Sakran, District Sitapur. His nephew Teji is a resident of Village Lehulwa, Police Station Tambaur. His field had got eroded due to flow of river and thereafter he was living in the village of the complainant. Teji had developed illicit relationship with complainant's wife, Shanti Devi and he used to say that she should live with him in his house. The complainant, his wife, Saroj and his son, Manoj were lying on the roof of his house. On 29.07.2000 at about 12:00 in the night, the nephew of the complainant, Teji came on the roof and started talking with the complainant's wife. In the meanwhile, Teji fired a shot at the complainant's wife, as a result of which, Shanti Devi died on the spot. The complainant and his family members tried to apprehend the appellant, Teji, but he ran away from the spot. Upon hearing commotion, villagers, namely, Baijnath, Raidas and Bansidas reached at the spot, who saw the incident in the torch-light and also identified the accused-appellant.

4. On the basis of aforesaid written report, submitted by the first informant, Kamta Ram, the first information report, Ext. Ka-12 came to be lodged

against the accused/ appellant under Sections 304 I.P.C.

5. The inquest proceeding started on 29.07.2000 at 04:00 P.M. and got concluded on 29.07.2000 at 05:30 P.M. The inquest report has been duly proved by P.W.-5, Ramakant Pathak, S.I. as Ext. Ka.5.

6. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure². He visited the place of occurrence and prepared a site plan thereof Ext. Ka-11.

7. The postmortem report of the deceased has been conducted by Dr. G. L. Dixit, P.W.-3, which has been proved by him as Ext. Ka-4. As per postmortem report of the deceased, following ante-mortem injuries were found on the person of the deceased:-

"Firearm wound of entry 2.5 cm x 2.5 cm x cavity deep situated in front of lower part of neck in supra sternal notch. The edges are lacerated and inserted. Blackening and tattooing is present around the wound. On dissection the medial end of right clavicle is fractured, first and second ribs fractured.

8. According to the postmortem report, Ex. Ka-4, the cause of death of the deceased is reported to be shock and haemorrhage as a result of ante-mortem injury.

² hereinafter referred to as " Cr.P.C"

9. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet under Section 304 I.P.C., Ex. Ka-14 against the accused/ appellant.

10. However, Charges for the offence under Sections 302 and 304 I.P.C. were framed against the accused/ appellant, who denied the charges and claimed to be tried.

11. In order to bring home guilt of the accused/ appellant, the prosecution has examined Kamta Ram, complainant as P.W.-1, Saroj as P.W.-2, Dr. G. L. Dixit as P.W.-3, Baijnath as P.W.-4, S. I., Ramakant as P.W.-5, Constable Om Prakash as P.W.-6 and S.I., Shailesh Gaur as P.W.-7.

12. The accused/ appellant, in his statement recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He has also stated to have been falsely implicated in this case. He also claimed to be innocent.

13. No evidence in defence was adduced by the accused/ appellant before the learned trial court.

14. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 30.11.2004 whereby the accused/ appellant came to be convicted as aforesaid.

15. Aggrieved by the aforesaid impugned judgment and order dated 30.11.2004, the accused/ appellant has preferred the instant criminal appeal.

16. Learned Amicus Curiae for the accused/ appellant has submitted that the finding of guilt of the accused/ appellant arrived at by the learned trial court is perverse and contrary to the evidence available on record, therefore, it deserves to be set aside.

17. His further submission is that the accused/ appellant had no motive to kill the deceased ; rather the first informant and his family members, being annoyed because of alleged illicit relation of the accused/ appellant with the deceased, had a strong motive to kill her and falsely implicate the accused/ appellant.

18. His further submission is that the prosecution witnesses are not only related but also interested, therefore, the finding of guilt of the accused/ appellant could not have been recorded by the learned trial Court without seeking corroboration of their testimonies by some other independent witnesses. For this reason, the impugned judgment is unsustainable. To substantiate his aforesaid submissions, he has placed reliance upon a judgment rendered by Hon'ble the Supreme Court in **Krishnegowda and others vs. State of Karnataka by Arkalgud Police**³.

³ (2017) 13 SCC 98

19. His next submission is that the learned trial Court has failed to appreciate the fact that there are material contradictions in the testimonies of witnesses of fact which, if read together, render the testimonies of witnesses of fact wholly unreliable. He has also submitted that the investigation in this case was not fair and was rather tainted, which vitiates the entire trial of the accused/ appellant.

20. Learned Amicus Curiae for the accused/ appellant has, thus, prayed to set aside the impugned judgment and order dated 30.11.2004 and to acquit the accused/ appellant accordingly.

21. Per contra, learned A.G.A. for the State has submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 30.11.2004, which is well discussed and reasoned. The accused/ appellant was named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeal.

22. Having heard learned Amicus Curiae for the accused/ appellant, learned A.G.A. for the State and upon perusal of record, it transpires that the prosecution has examined three witnesses of fact,

namely, P.W.-1, Kamta Ram, P.W.-2, Saroj and P.W.-4, Baijnath. P.W.-1, Kamta Ram is the complainant and husband of the deceased whereas P.W.-2, Saroj is son of the deceased. P.W.-3, Dr. G. L. Dixit had conducted the post-mortem on the cadavre of the deceased and prepared the postmortem report, which has been proved as Ext. Ka-4 by him. P.W.-4 is a neighbour of the first informant. P.W.-5 is Sub Inspector, Rama Kant Pathak, who investigated this case. P.W.-6, Constable Om Prakash Awasthi, who had registered first information report and prepared chik thereof which was proved as Ext. Ka-12. P.W.-7, Shailesh Gaur is the then Station House Officer of the Police Station Sakran.

23. According to the prosecution's story, the accused/ appellant had developed illicit relationship with the complainant's wife, deceased, Shanti Devi. The accused/ appellant wanted the deceased to live with him. In the night of 29.07.2000, the deceased was shot dead by the accused/ appellant. This incident, according to prosecution, was witnessed by the first informant, kamta Ram, P.W.-1, who is the husband of the deceased, and P.W.-2, Saroj, who is the son of the deceased. The place of occurrence, according to the prosecution, is the roof of the complainant's house where the complainant, his wife, Shanti Devi and his son, Saroj were lying. The time of occurrence is about 12:00 in the night. This incident, according to prosecution, was also witnessed by Baijnath, Raidas

and Bansidas, who had reached at the spot after hearing commotion and had seen the incident in the light of torch and also identified the accused/ appellant.

24. As stated above, admittedly, P.W.-1, Kamta Ram is the husband of the deceased whereas P.W.-2, Saroj is the son of the deceased. Thus, they are related to the deceased. Therefore, as held by three Judges Bench of Hon'ble the Supreme Court in **Karulal vs. State of M.P.**⁴, the testimonies of related witnesses cannot be discarded in toto because of their relationship with the deceased. The only requirement is that the testimonies of such witnesses need to be examined carefully.

25. Keeping in view the aforesaid requirement of law regarding analyzing the testimonies of such related witnesses carefully, we proceed to scan the testimonies of witnesses of fact, namely, P.W.-1, Kamta Ram, P.W.-2, Saroj and P.W.-4, Baijnath. A very careful examination of their entire testimonies reveals that P.W.-1, Kamta Ram has stated that the accused/ appellant is his nephew, who used to live with the first informant. The accused/ appellant had developed illicit relationship with his wife, deceased. The accused/ appellant wanted to keep the first informant's wife, deceased as his wife. It is in this backdrop that on the date of incident at 12:00 in the night, when this witness alongwith his wife, deceased and his sons,

⁴ (2021) 13 SCC 391

Saroj and Manoj was sleeping on the roof of his house, the accused/ appellant came on the roof and started talking with the deceased. Suddenly the accused/ appellant shot the deceased dead by a country-made firearm. Upon hearing the sound of fire, this witness and his sons woke up and saw that the accused/ appellant dropped his country-made firearm at the place of occurrence and fled away from there. The deceased died at the spot. This witness has proved written report as Ext. Ka-1.

26. P.W.-2, Saroj is son of the first informant and the deceased. He has also deposed that on the date of incident, he was sleeping with his brother, Manoj, his father, Kamta Ram, P.W.-1 and his mother, Shanti Devi, the deceased on the roof of his house. He also states that after hearing sound of fire, he woke up and saw the accused/ appellant running away from the spot. While fleeing away the accused/ appellant had dropped his country-made firearm in the courtyard.

27. P.W.-4. Baijnath is a neighbour of the first informant, who deposed that his house is near the complainant's house. On the date of incident at about 12:00 in the night, he was lying on the roof of his house. He saw that the accused/ appellant fired at the deceased. This witness along with one Banshi tried to apprehend the accused/ appellant, who, however,

succeeded in running away after dropping the countrymade firearm at the place of occurrence.

28. It is pertinent to mention that P.W.-1, Kamta Ram and P.W.-2, Saroj are husband and son of the deceased. The time of incident is about 12:00 in the night, therefore, their presence at the place of occurrence, as narrated in their testimonies, along with the deceased appears to us to be natural. Their testimonies in respect of place and time of occurrence are consistent. The place of occurrence, according to Investigating Officer, P.W.-5, who prepared a site plan and proved the same as Ext. Ka-11, supports the truthfulness of the testimonies of witnesses of fact, namely, P.W.-1, Kamta Ram and P.W.-2, Saroj in respect of place of occurrence. P.W.-4, who is a neighbour and is not related to the first informant and the deceased, has also supported the prosecution's case in his testimony in all material aspects.

29. In order to test the veracity of testimonies of P.W.-1, Kamta Ram, P.W.-2, Saroj and P.W.-4, Baijnath, we have carefully examined the postmortem report, Ext. Ka-4. This postmortem report was prepared by Dr. G. L. Dixit, who has been examined as P.W.-3. The postmortem report has, thus, been proved by P.W.-3, Dr. G. L. Dixit. A perusal of the postmortem report, Ext. Ka-4 reveals one firearm entry wound of 2.5 cm x

2.5 cm. It is the case of the prosecution also that the accused/ appellant fired only once at the deceased.

30. We have also been able to notice that the firearm injury, which turned fatal to the deceased, had blackening and tattooing. This also suggests that the deceased was shot from a close distance. According to P.W.-3, Dr. G. L. Dixit, the tentative time of death of the deceased was about 12:00 in the night of 29.07.2000. Thus, the postmortem report also sufficiently corroborates the time and manner of occurrence and is in tune with the consistent testimonies of witnesses of fact, namely, P.W.-1, Kamta Ram, P.W.-2, Saroj and P.W.-4, Baijnath.

31. Thus, having regard to entire testimonies of P.W.-1, Kamta Ram, P.W.-2, Saroj and P.W.-4, Baijnath in its entirety, we find their testimonies to be cogent and reliable so far as the date, time and manner of commission of this incident is concerned. The accused/ appellant had motive to commit this crime. We have not been able to notice any plausible cause for his false implication.

32. It is no more res integra that some lapses on the part of the Investigating Officer while conducting the investigation do not always adversely impact the prosecution's case. To be specific, the fact that Investigating Officer did not collect the torch during investigation, in the light of which P.W.-4, Baijnath had

seen and identified the accused/ appellant, is not so material, particularly having regard to the fact that the accused/ appellant was closely related to the first informant, the deceased and P.W.-2, Saroj, being their nephew and cousin brother respectively. Therefore, it was not difficult for the P.W.-1, Kamta Ram and P.W.-2, Saroj to have properly identified the accused/ appellant in the night. The accused/ appellant could have been easily identified by P.W.-1, Kamta Ram and P.W.-2, Saroj. Therefore, we do not find any substance in submission of learned Amicus Curiae for the accused/ appellant to the contrary.

33. Thus, having carefully scanned entire prosecution evidence, we find that the prosecution has successfully proved its case against the accused/ appellant. The case law cited by learned Amicus Curiae for the accused/ appellant in **Krishnegowda (Supra)** is distinguishable on the facts for the reason that we have found the testimonies of P.W.-1, Kamta Ram and P.W.-2, Saroj to be cogent and reliable and also the same having been corroborated by the testimony of P.W.-4, Baijnath. We have also not found any such lapse in the investigation, which goes to the root of the prosecution's case.

34. Thus, on the basis of aforesaid overall discussion, we find that the prosecution has succeeded in proving the fact that on 29.07.2000 at about 12:00

in the night, the present appellant shot the deceased because the appellant had illicit relation with the deceased, who was the wife of the complainant/ P.W.-1, Kamta Ram.

35. However, so far as the conviction of the present appellant under Section 302 I.P.C., in the light of aforesaid proven facts of this case is concerned, we may usefully refer to paragraph No.66 of a recent judgment of Hon'ble the Supreme Court in **Anbazhagan vs. State Represented by the Inspector of Police**⁵ as under :-

"**66.** 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

⁵ **2023 SCC OnLine SC 857**

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.”

36. What is meant by intention has also been elucidated by Hon’ble the Supreme Court in **Anbzhagan’s case (supra)** in paragraph No.21 in following words:-

“**21.** Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by *res gestae*, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:—

1. The nature of the weapon used.
2. The place where the injuries were inflicted.
3. The nature of the injuries caused.
4. The opportunity available which the accused gets.”

37. Now advertent to the case in hand in the light of aforesaid principles, we find that according to prosecution story, the sole appellant had fired at the deceased only once. Keeping in view the postmortem report of the deceased, Ex. Ka-4, which has been proved by P.W.-3, Dr. G.L. Dixit, we find the sole ante-mortem firearm injury sufficient in ordinary course of nature to cause death of the deceased. There is nothing on record to show that the act of opening fire by the appellant was premeditated. All the aforesaid facts go to show that this incident occurred in the heat of passion. Though, the appellant had illicit relation with the deceased, however, he did not intend to kill the deceased and he had knowledge that gun shot injury might cause death of the deceased. Thus, it was a case of culpable homicide not amounting to murder, for which, the appellant, Teji, deserved to be convicted under Section 304 Part-II I.P.C. His conviction under Section 302 I.P.C. recorded by the learned trial Court, without advertent to the aforesaid facts and circumstances, in which this incident occurred, appears to be unsustainable and the same deserves to be set aside.

38. For the aforesaid overall reasons, the present criminal appeal is **partly allowed**. The conviction of the appellant, Teji and sentence awarded to him under Section 302 I.P.C. is altered to one under Section 304 Part-II I.P.C., for which, the appellant, Teji is awarded

ten years' simple imprisonment. The conviction of the appellant, Teji under Section 302 I.P.C. and sentence awarded therefor are hereby set aside.

39. From a perusal of report dated 20.11.2020 furnished by the learned Chief Judicial Magistrate, Sitapur, which is annexed as flag 'B' to this appeal, it appears that the present accused/ appellant has already served out the sentence awarded to him by this Court under Section 304 Part-II I.P.C. and he has already been released from jail on 26.01.2019 by giving benefit of remission by the appropriate Government. Therefore, the accused-appellant need not surrender unless he is wanted in any other case.

40. The present appellant, Teji, is directed to file a personal bond and two sureties in the like amount to the satisfaction of the court concerned in compliance of Section 437-A Cr.P.C. within six weeks from today.

41. Before we part with the case, we express our appreciation for the distinguished assistance rendered by Sri Ayush Tandon, learned Amicus Curiae for the appellant. He shall be entitled to Rs.21,000/- (Rupees Twenty One Thousand Only) from the High Court as fee for his services.

42. Let the trial court record alongwith a copy of this judgment be transmitted forthwith to the learned

trial Court concerned for information and necessary compliance through fax/ e-mail.

(Ajai Kumar Srivastava-I, J.) (Attai Rahman Masoodi, J.)

Order Date :- 24.06.2024
Mahesh