

Court No. - 44

Case :- CRIMINAL APPEAL No. - 2890 of 2016

Appellant :- Lal Babu

Respondent :- State of U.P.

Counsel for Appellant :- Dinesh Kumar Rawat, Kamlesh Kumar Tiwari, Prakash Chandra Srivastava, Raj Nath Pandey, Ram Sagar Yadav, Suneel Kumar Mishra, Vishnu Prakash

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Madan Pal Singh, J.

1. Heard Mr. Prakash Chandra Srivastava, learned counsel for the appellant, Ms. Archana Singh, learned A.G.A.-I for the State and perused the lower Court record.

2. The present appeal arises from the judgement and order dated 18th April, 2016 passed by Sri Ashwani Kumar Singh, Additional District and Sessions Judge, Court No.1, Ballia, in Sessions Trial No. 120 of 1998 (State of U.P. Vs. Lal Babu), arising out of Case Crime No. 164 of 1997 Police Station-Bairia, District-Ballia, whereby the learned court below has convicted the appellant-Lal Babu for offence under Section 302 I.P.C and sentenced him to undergo life imprisonment with fine of Rs. 20,000/- and in default thereof, he has to further undergo two years additional imprisonment.

3. The prosecution story emerged, on the strength of the Written Report dated 9th August, 1997 (Ex. Ka-1) submitted by Bheem, son of the deceased Pancha Natt (P.W.-1 at the trial) to the Police Station-Bairia, District-Ballia, which is Ex. Ka-1 at the trial.

4. In that Written Report, it was reported that the present appellant Lal Babu had assaulted the deceased Pancha Nut on 8th August, 1997

at about 09:00 p.m., at the residence of the parties, with a 'Dab', - a sharp edged cutting implement. That occurrence took place after the present appellant Lal Babu had first assaulted his eldest brother Baliram with a knife. He was taken to the Government Hospital at Sonbarsa by the first informant Bheem (P.W.-1 at the trial) and wife of the injured Baliram, namely, Shanti Devi. Because the deceased had scolded the appellant and tried to drive sense into him, ineberated, in the heat of the moment, the present appellant had assaulted the deceased with a 'Dab'. The occurrence was witnessed by Keshav and Dinesh (not examined at the trial). The father of the first informant (P.W.-1 at the trial), namely, Pancha Natt was carried to the District hospital in a jeep to the Sonbarsa Hospital. He was referred to the Ballia Sadar Hospital but he died on way. On that Written Report, Case Crime No. 76 of 1997 was registered at Police Station Bairia, District-Ballia, which is Ex. Ka-13 at the trial.

5. In support of the prosecution case, the then injured/deceased was first medically examined at the Community Health Centre, Sonbarsa, District Ballia on 8th August, 1997 at about 10:00 p.m. Injury Report of the injured is Ex.Ka-2 at the trial. In that, following injury was noted:

“ (1) incised wound- 8 cm x 0.5 cm x 0.5 cm skull deep skin margin skin cut bleeding present on the head, 15 cm. above the right tragus of ear.”

6. After the death of the deceased Pancha Natt, Inquest Report was prepared on 9th August, 1997 between 08:00 a.m. to 09:15 a.m., which is Ex.Ka-5 at the trial. The autopsy examination of the dead body of the deceased was conducted by Dr. A.K. Singh (not examined at the trial). It was noted, the deceased had suffered fracture on right parietal bone and that his death was caused due to comma, resulting in shock and haemorrhage. The Autopsy Report is Ex.Ka-3 at the trial.

7. Upon completion of the investigation, charge-sheet was submitted by the Investigation Officer Kamlesh Singh, (P.W.5 at the trial), which is Ex. Ka-12.

8. Upon case being committed for trial to the Court of Sessions, the following charge was framed against the accused:

“That you on 8-8-97 at about 9 P.M. in Kasba Bairia, P.S. Bairia, district Ballia, did commit murder by intentionally causing the death of Pancha Nut and, thereby committed an offence punishable under section 302 of the India Penal Code and within the cognizance of this Court.

AND I hereby direct that you be tried on the aforesaid charge by this court.”

9. At the trial, besides the documentary evidence referred to above, the prosecution relied on oral testimony of five witnesses. In that, first informant-Bheem was examined as P.W.1 at the trial. He proved, at the time of the occurrence, the appellant was inebriated. He first entered into a quarrel with his eldest brother Baliram and hurled expletives at him. On opposition being offered by Baliram, the appellant assaulted him with a knife. The injured was taken to a hospital by his wife Shanti Devi and the first informant Bheem (P.W.-1 at the trial). They returned from the hospital at about 9.00 p.m. At that time, the deceased Pancha Natt tried to drive sense into the appellant Lal Babu. It resulted in the appellant assaulting the deceased on his head. He also proved that the occurrence was witnessed by Dinesh and Keshav (both not examined at the trial). He further proved that at the time of occurrence, his mother Prabhawati (P.W.2 at the trial) and his wife Ramawati Devi (P.W.3 at the trial) were also present. They carried the injured to the Sonbarsa Government Hospital. After primary treatment being given, he was referred to the higher medical centre at Ballia. He died, on way.

10. Thereafter, Prabhawati, wife of the deceased Pancha Natt, was examined as P.W.2. She also proved that on 8th August, 1997 at about 9.00 p.m., the present appellant first assaulted Baliram in an inebriated state, after quarrelling with him. The injured was carried to the hospital by the wife of Baliram and the first informant Bheem (P.W.1 at the trial). After returning from there, the deceased was trying to drive sense into the appellant and in that he told him that he should not have assaulted

his eldest brother. On that, the appellant suddenly assaulted the deceased on his head with a '*Dab*'. She also proved that the occurrence was witnessed amongst others by his daughter-in-law Ramawati (P.W.3 at the trial) and also by Keshav and Dinesh (both not examined at the trial). Similarly, she proved that the deceased died while being taken to the higher medical centre at Ballia.

11. Third, Ramawati, the wife of the Bheem (P.W.1 at the trial) was examined as P.W.3. She proved that the appellant had assaulted the deceased on his head with a '*Dab*' made of iron rod. The injured was carried to the hospital by her family members and that he died on way to Ballia.

12. Thereafter, Dr. Om Prakash was examined as P.W.-4. He proved the Injury Report (Ex.Ka-2) of the then injured Pancha Natt (now deceased). He further proved that the deceased had suffered single injury on his skull, measuring 8 cm x 0.5 cm x 0.5 cm. Thereafter, he also proved the Autopsy Report prepared by Dr. A.K. Singh (not examined at the trial). It is Ex.Ka-3 at the trial.

13. Last, Sub-Inspector Kamlesh Singh Investigation Officer was examined as P.W.5. He proved the registration of the First Information Report, the investigation and the charge-sheet.

14. Thereafter the statement of the accused Lal Babu was recorded under Section 313 Cr.P.C.

15. In such evidence, the court below convicted the appellant under Section 302 IPC.

16. Submission of the learned counsel for the appellant is that the prosecution story is wholly doubtful. There is no real eye witness of the occurrence. All three eye witnesses are highly interested witnesses. They have been setup by the prosecution.

17. Second, it has been submitted that the place of occurrence itself is doubtful. Reference has been made to the site plan as also certain statements made by the Investigation Officer (P.W.-5 at the trial).

18. Third, it has been stressed that all the eye witnesses, namely, Bheem (P.W.1), Prabhawati (P.W.2) and Ramawati Devi (P.W.3) have described the place of occurrence, differently.

19. Fourth, it has been stressed that no recovery has been made either of blood stained or plain earth or the weapon of assault like 'Dab' or knife. The prosecution story as narrated in the First Information Report discloses that first assault was made on Baliram. He too was never examined at the trial. Infact he was deliberately withheld.

20. Last, it has been stressed that the first informant Bheem (P.W.1 at the trial) was not present at the time, date and place of occurrence, as is evident from a plain reading of the First Information Report.

21. Alternatively, it has been submitted that the occurrence may not travel beyond the ingredients of Section 304 IPC. In absence of pre-meditation and in the context of a sudden quarrel that had erupted, it has been stressed that the occurrence may not travel beyond Section 304 Part-II IPC.

22. On the other hand, Ms. Archana Singh, learned A.G.A.-I would submit, the First Information Report is not an encyclopaedia. The first informant Bheem (P.W.-1) did not deny his presence at the place of occurrence, either in the First Information Report or at any stage of the investigation or trial. On the contrary, he established his presence during his examination-in-chief. In absence of effective cross-examination on the point, no doubt exists.

23. In any case, Prabhawati wife of the deceased (P.W.2 at the trial) and Ramawati Devi, who is the daughter-in-law of the deceased (P.W.3 at the trial) are wholly natural witnesses. The place of occurrence was proved by all the witnesses of fact, as their house. Also, they established the source of light i.e. oil lantern. In any case, parties being closely related and well known from before, no credence may be given to that doubt being raised.

24. As to the place of occurrence, it has been stressed, no effective cross-examination exists either as to the presence of the eye witnesses or the manner of occurrence or any other aspect of the prosecution story.

25. In case of direct evidence led by the prosecution, no doubt may be seen/established merely because of lapse on the part of the Investigation Officer in not collecting the samples of blood stained and plain earth and/ or the weapon of assault.

26. Referring to the nature of injuries suffered, it has been stressed, it was sufficient to cause death in the natural course of events.

27. Having considered the respective submissions advanced by the the learned counsel for the parties and having perused the record, in the first place, the First Information Report is neither an encyclopedia nor it is a piece of substantive evidence. At best it may be used to corroborate the substantive evidence led at the trial.

28. As to the substantive evidence, we find all eye witnesses produced by the prosecution were natural witnesses inasmuch as the time of occurrence being about 9.00 p.m. on 8th August, 1997, at their house, those witnesses may be safely expected and thereof were accepted to be present at the time of occurrence.

29. All witnesses established their presence at the place of occurrence during their examination-in-chief. It is true that during their cross-examination, to stray questions put to them, some responses emerged as may indicate otherwise, at the same time in the context of procedural law that governs the reliability of the eye witnesses and credibility of their statements, we note that no previous statements made by any of the witnesses, namely, first informant Bheem (P.W.1) or Prabhawati (P.W.2) or Ramawati Devi (P.W.3) was confronted to those witnesses. Neither any portion of their previous statements was marked and read out to them nor their response with respect to that previous statement (as may have been recorded during their examination-in-chief or during investigation) was invited. Merely suggestions may have been

thrown without effective contradictions offered. Therefore, we are not in a position to offer any credence to such statements recorded during cross-examination of those witnesses.

30. Seen in that context, the first informant Bheem (P.W.1) categorically proved, after he had returned from the hospital with Baliram and his aunt Shanti Devi at around 9.00 p.m., he had seen his father Pancha Natt (deceased) trying to drive sense into the accused-appellant not to assault his brother. He also proved the presence of Prabhawati (P.W.-2) and Ramawati Devi (P.W.-3). The appellant is described to have assaulted the deceased with a single blow, on his head. That nature of that occurrence proven by the first informant Bheem (P.W.1) remained undoubted, during his cross-examination.

31. Prabhawati (P.W.2), who is the wife of the deceased narrated the occurrence, similarly i.e. that her husband was assaulted by the accused-appellant after her son Bheem (P.W.1) had returned from Government Hospital, Sonbarsa with Baliram. She also proved that the occurrence was caused by the appellant while the deceased was trying to drive sense into the appellant not to commit acts of violence against his own brother.

32. To similar effect, Ramawati Devi (P.W.3) proved here presence and the occurrence.

33. In face of such evidence led, we are not in a position to doubt the presence of the eye witnesses, namely, first informant Bheem (P.W.1), Prabhawati (P.W.2) and Ramawati Devi (P.W.3). We also do not find any inherent material contradictions in the statements made by the three witnesses as to the place, time and manner of the occurrence including the assailant and the weapon used. Minor differences in such narration, that are implicit and unavoidable in human affairs only bring out to the truthfulness of the statements made. In the absence of any contradiction offered during their cross-examination, there is no reason to doubt the essential facts disclosed by the three eye witnesses as to the date, time and place and manner of occurrence.

34. That ocular account also finds corroboration with the medical evidence. In the context of single blow described by the three eye witnesses, the medical opinion also corroborates the same. It corroborates that the occurrence may have been caused by a hard object with a sharp-edge. The size of the injury and the seat of the injury also corroborate the description of the injury as noted in the medical opinion as also as narrated by eye witnesses.

35. To the extent, no other submission exists on that issue, we find that the learned court below has not erred in believing the prosecution story that the occurrence has been caused by the appellant in the manner described.

36. On the alternative submission advanced by Mr. Srivastava, learned counsel for the accused-appellant, we do find considerable merit in the same. In the first place, no past or previous dispute or animosity was proven by the prosecution. That apart, no evidence was led to establish premeditation. On the contrary, the prosecution itself led evidence to the effect that the appellant had consumed some alcohol and was in an inebriated state. In that, he first entered into a quarrel with his eldest brother Baliram, who is described to have been assaulted with a knife. Though neither those injury was proven nor Baliram was examined at the trial, thereafter the prosecution story further narrates that the deceased being second eldest brother of the appellant was trying to drive sense into the appellant. Thus, it has been clearly suggested that the deceased was upset by the occurrence attributed to the appellant i.e. assaulting Baliram and was reprimanding the appellant. What exactly transpired between the deceased and the appellant is not disclosed by the prosecution. However, it has been disclosed that in the occurrence with Baliram, both parties were hurling expletives at each other and had quarrelled for some time. Thus, motive was clearly excluded by the prosecution, on its own showing. It is in that heat of passion and sudden quarrel that the occurrence is described to have been caused. While the issue of inebriated state may be ignored (for lack of proof), the element of sudden fight, and the injury caused in

the heat of passion arising from sudden quarrel, are clearly seen to exist.

37. In a recent decision of the Supreme Court in **Anbazhagan Vs. The State, Represented by the Inspector of Police, 2023 SCC OnLine SC 857**, the Supreme Court has again made analysis and the difference between murder and culpable homicide not amounting to murder. The Supreme Court summarized the principle as below:

"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 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."

38. Considering Exception-4 to Section 300 I.P.C. read with Explanation thereto and further reading that provision in conjunction with Section 304 Part-II I.P.C., we do opine that the occurrence may not travel beyond Section 304 Part II I.P.C.

39. Seen in that light, the appellant has remained confined for ten years and two months. Since the issue relating to quantum of sentence under Section 304 I.P.C. depends on background facts of the case, antecedents of the accused, etc., we are of the opinion that the interest of justice would be met if the accused-appellant is sentenced for the period already undergone.

40. Accordingly, charge and conviction of the accused-appellant, namely, Lal Babu under Section 302 I.P.C. is altered to charge and conviction under Section 304 Part-II I.P.C. The sentence awarded by the learned court below under the impugned judgment is modified to the period already undergone by the appellant.

41. Accordingly, the present criminal appeal is **partly allowed**. Consequently, the judgment and order dated 18th April, 2016 passed by Ashwani Kumar Singh, Additional District and Sessions Judge, Court No.1, Ballia, in Sessions Trial No. 120 of 1998 (State of U.P. Vs. Lal Babu), arising out of Case Crime No. 164 of 1997 Police Station-Bairia, District-Ballia is modified to that extent only.

42. Since the appellant Lal Babu is reported to be in jail, he shall be released forthwith unless he is wanted in any other case. He is directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

43. Copy of this judgment along with original record of the learned court below be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

(Madan Pal Singh, J.)

(Saumitra Dayal Singh, J.)

Order Date :- 29.7.2025

Sushil/-