

Neutral Citation No. - 2025:AHC:120572-DB

Court No. - 44

Case :- CRIMINAL APPEAL No. - 1220 of 2015

Appellant :- Atul Kumar Gupta

Respondent :- State of U.P.

Counsel for Appellant :- Amit Tripathi, Anurag Shukla, Jitendra Pratap Singh, Sukhvir Singh, Jitendra Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Madan Pal Singh, J.

1. Heard Shri Sukhvir Singh, learned counsel for the appellant and Shri Pankaj Kumar Tripathi, learned A.G.A. for the State.
2. The present appeal arises from the judgment and order dated 12.02.2015 passed by Shri Shiv Singh Yadav, learned Additional Sessions Judge, Court No. 10, Farrukhabad, in Sessions Trial No. 570 of 1998 (State Vs. Atul Kumar Gupta). By that order, the learned court below has convicted the present appellant under Section 302 IPC. It has awarded life sentence together with fine of Rs. 10,000/- with default sentence of three months.
3. Upon the appeal being entertained by this Court, two bail applications filed by the present appellant were rejected vide orders dated 01.05.2018 and 19.09.2022. At present, the 3rd bail application was pressed by learned counsel for the appellant. Paper book is ready and the appellant has remained confined for 10 years and 5 months (actual). In that regard, we have taken on record Custody Certificate 22.10.2024, copy of which has been marked as 'X' and retained on record.
4. In such circumstances, we considered it appropriate to hear the appeal itself, finally. With the consent of the parties, the appeal has been heard.

5. The prosecution story emerged on the FIR lodged by the father of the deceased Prakash Chandra (P.W.-1 at the trial). It is dated 12.06.1995. With reference to the occurrence described to have caused at 8 a.m., the FIR was lodged at P.S. Kotwali Farrukhabad on the same day at 10:05 a.m. It is Ex.Ka-6 at the trial. According to the FIR, the deceased Sobran had gone to the shop of Bablu at 8 a.m. on 12.06.1995 to buy sugar. There, he met up with the accused Atul Kumar Gupta and asked for payment of money for purchase of milk that was due on him. Instead of making payment, the accused is described to have drawn his country-made pistol from his waist and shot at the deceased, once. The shot hit the deceased below his left eye, near his nose. Sobran died. The FIR further narrates that the occurrence was witnessed by Asha Ram (P.W.-3) and Smt. Sharda Devi (P.W.-2).

6. Here itself it may be noted that Sharda Devi is the sister of Prakash Chandra (P.W.-1) and Asha Ram is the brother-in-law ('Jeeja') of the said Prakash Chandra (P.W.-1). Also, it is worthwhile to note that Bablu at whose shop the occurrence took place, was not examined at the trial. No other/independent witness was examined by the prosecution.

7. During investigation, sample of blood stained and plain earth as also pair of slippers of the deceased were recovered from the place of occurrence on 12.06.1995. Inquest report was prepared on the same day and also autopsy examination was conducted by Dr. Surendra Bahadur Singh on that day itself, Recovery Memo of blood stained and plain earth as also slippers were prepared. It is Ex.Ka-4 whereas the Inquest Report is Ex.Ka-8 and the Autopsy Report is Ex.Ka-2 at the trial.

8. Upon completion of investigation, first Charge-Sheet was submitted by Inspector Prem Kumar Yadav (P.W.-5) against the

present appellant under Section 304-A IPC. However, further investigation was directed whereafter the second charge sheet was submitted on 05.04.1997 by the second Investigation Officer Sobaran Singh (since deceased), under Section 302 IPC. It is Ex.Ka-8 at the trial. Upon the case being committed for trial to the Court of Sessions, following charge came to be framed against the present appellant :

“प्रथम :- यह कि दिनांक 12.6.95 को समय 8 बजे बहद स्थान मोहल्ला चिलपुरा अन्तर्गत थाना कोतवाली फर्रुखाबाद जनपद फर्रुखाबाद में आपने वादी मुकदमा प्रकाशचन्द्र के लड़के सोबरन को तमचें से फायर करके उसकी हत्या कर दी इस प्रकार आपने भा0द0सं0 की धारा 302, के अन्तर्गत दण्डनीय अपराध कारित किया है जो इस न्यायालय के प्रसंज्ञान में है।”

9. At the trial, besides the above documentary evidence, the prosecution relied on three witness of fact, namely Prakash Chandra (P.W.-1), Smt. Sharda Devi (P.W.-2) and Asha Ram (P.W.-3). They tried to prove the prosecution story as narrated in the FIR. During their examination-in-chief, those witnesses claimed that the deceased had gone to a nearby shop of Bablu where he met up with the appellant Atul Kumar Gupta and asked for payment of money due to him from Atul Kumar Gupta. Offended, the accused is described to have uttered words to the effect that he had been insulted by the deceased. Further, he promised to make that payment right then. In that transaction he drew out his country-made pistol and shot at the deceased resulting in one injury being suffered by the deceased below his left eye, near his nose. All witnesses claimed that they had seen the occurrence along with Bablu. As noted above, Bablu was never examined.

10. Thereafter, Dr. Surendra Bahadur Singh (P.W.-4) was examined. He proved the ante-mortem injuries suffered by the deceased and

the cause of death resulting therefrom. In that, following injuries were proved by him :

“(1) Gunshot wound of entry 15 cm x 10 cm x cranial cavity deep over left side roof of nose. Margins inverted, lacerated & ecchymosed and blackened with collar of abrasion over inverted margins. Direction front to back. On dissection – Nasal bones, frontal & occipital bones fractured. Meninges of brain lacerated with blood clots. Recovered one distorted bullet from cranial cavity.”

11. He also proved recovery of bullet from the site of injury i.e. cranial cavity. The cause of death was proven to be shock and hemorrhage as a result of ante-mortem injury.

12. Thereafter, Head Moharrir Ram Saran Singh was examined as P.W.-6. He proved the registration of the FIR. Next, Constable, Mool Chandra was examined as P.W.-7. He proved the Inquest Report. Thereafter, Indrapal Singh Chauhan (Teacher) and Omkar Singh (Principal), at Pandit Baburam Inter College, Police Station Mohammadabad, District Farrukhabad were examined as Court Witnesses C.W.-1 and C.W.-2, respectively, on the issue of age of the appellant, on the date of occurrence. However, that issue does not survive in this appeal. The appellant does not press claim of juvenility, at the time of occurrence. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. In that, he narrated that he had been falsely implicated for completely different reasons involving property dispute.

13. In such state of evidence, the learned court below has convicted the present appellant under Section 302 IPC and sentenced him as noted above.

14. Submission of learned counsel for the appellant is, the evidence led by the prosecution is not free from reasonable doubts. Infact none of the witnesses namely, Prakash Chandra (P.W.-1), Smt. Sharda Devi (P.W.-2) and Asha Ram (P.W.-3) had seen the

occurrence. Therefore, none has been able to truthfully describe the occurrence. In any case vast material improvements and material inconsistencies emerged during their cross-examination statements as have rendered the prosecution story, wholly doubtful.

15. Second, it has been submitted that the nature of injury described, it may never have been caused in the manner disclosed. As to the true occurrence, it has been submitted, the best eye-witness namely Bablu, the shop keeper at whose premise the occurrence took place, was deliberately not produced by the prosecution. The fact that the occurrence is described to have taken place some time after the deceased had left his home for the shop of Bablu, renders the prosecution story inherently doubtful, on two counts :

In the first place, the prosecution (through) Prakash Chandra (P.W.-1), the father of the deceased introduced the time gap as may never have been explained in the manner of occurrence disclosed by the prosecution.

Second, if it is to be assumed that if the shop where the occurrence took place was at ten minutes' walking distance from the residence of the deceased, the entire prosecution story must fall. In that event, none of the fact witnesses had any opportunity to witness it as they were at their residences at 10 minutes distance.

16. Alternatively, it has been submitted, in the context of a sudden quarrel disclosed by the prosecution at the place of a third party where the appellant and the deceased are disclosed to have met up by chance and not design, the sudden quarrel that erupted between those parties may not allow the occurrence to travel beyond the scope of Section 304 I.P.C.

17. On the other hand, learned A.G.A. would submit, the prosecution story is based on direct evidence. If inadvertent inconsistencies in the testimony of the prosecution evidence is ignored, it does not damage or dilute the ring of truth that the witnesses have spoken to prove the occurrence. The appellant had caused the occurrence with premeditation using a lethal weapon on vital body part of the deceased. Therefore, the appeal does not merit any interference.

18. Having heard learned counsel for the parties and having perused the record, it may not be doubted that the occurrence was promptly reported almost within two hours and therefore the FIR is prompt. Also, the appellant is named as the sole accused on the strength of eye-witness account namely Asha Ram (P.W.-3) and Smt. Sharda Devi (P.W.-2) (as disclosed in the FIR). Also, the medical report corroborates the nature of injuries described in the FIR. To that extent, there is less to doubt the prosecution story.

19. As to the exact occurrence, in the first place, it cannot be ignored that Prakash Chandra (P.W.-1) was not described as an eye witness in the FIR. Yet, he elevated his status to that of an eye witness before the learned trial court. That material improvement made by him was confronted to that witness through his previous statement recorded under Section 161 Cr.P.C. His reply thereto was evasive to the extent he disclosed that he was not aware why the Investigation Officer did not record in his statement made under Section 161 Cr.P.C. that he had seen the occurrence.

20. Therefore, we are not inclined to believe that part of the prosecution story narrated by Prakash Chandra that he was an eye-witness of the occurrence. While we may not discard the deposition made by Prakash Chandra for that doubt only, it is noticeable, during his examination-in-chief, he did not disclose the

amount/money that may have been due to the deceased by the appellant. In that, it remain an admitted case to the said witness that the deceased along with the said witness were engaged in dairy business. During his cross-examination, he was specifically asked to disclose the amount of money that may have been due from the appellant. He gave completely vague and doubtful answers. He claimed ignorance of the amount that may have been due.

21. While such doubt exists, it is more material that he then narrated that the shop of Bablu was at a distance of 15-20 paces from his house. At the same time, he also proved that the occurrence took place about ten minutes after the deceased had left his house. Also, he proved that he saw an verbal altercation had arisen between the deceased and the appellant and that he heard that noise and therefore went to the place of occurrence. Yet, he was unable to describe, to any extent any word spoken either by the appellant or the deceased in that altercation that took place, near his house.

22. Similarly, Sharda Devi, who is the aunt ('*buwa*') of the deceased also could not prove with any clarity the subject matter of the verbal altercation that may have preceded the occurrence. She also claimed that the deceased had asked for his money and the appellant responded by firing at him with his country-made pistol. Yet, during her cross-examination, she confessed that her statement was first recorded after seven months of the occurrence. That delay is also to be borne in mind before any conclusion may be drawn as to the element of truth in the facts proven by that prosecution witnesses.

23. The third witness, Asha Ram, who is the uncle ('*phupha*') of the deceased also made a similar statement. He also offered material improvement at the trial. When confronted with his statement

recorded under Section 161 Cr.P.C., he denied having made the statement that he had taken the deceased (then injured) to his house and informed his father Prakash Chandra (P.W.-1) at that time. He also denied having made statement to the police that many people were present at the time of the occurrence. That was a material alteration made by that witness.

24. In such state of evidence, we have to examine if element of murder were proven by the prosecution, beyond reasonable doubt. As discussed above, on the strength of own prosecution evidence, the first reasonable doubt arises as to the premeditation. The prosecution itself proved that the occurrence was caused not either at the place of the appellant or the deceased, rather the prosecution described that the occurrence took place at the shop of one Bablu (not examined at the trial) where the deceased had gone to buy sugar and the appellant reached that place/shop at the same time. Therefore, the meeting of the deceased with the accused was a chance occurrence and may not a planned occurrence. Second, in absence of any proof of the amount that the deceased may have claimed from the appellant, further doubt arises as to the cause of the quarrel or what happened just before the occurrence. Here, we note, Prakash Chandra (P.W.1) described he ran a dairy business with the deceased. In the nature of business proven being unorganized dairy, it is difficult to accept the over simplistic explanation furnished by Prakash Chandra (P.W.-1) that he was not aware of the money that may have been due, though in the same breath he maintained that at the time of the occurrence, money was due from the appellant for about four months. Unless substantial amount of money may have been due which the appellant may not have paid, it is difficult to accept that the quarrel witnessed between the parties was unprovoked.

25. As to the occurrence, Prakash Chandra (P.W.-1) proved that the place of occurrence was at a distance of about 15-20 paces. Yet, he also proved that the occurrence took place after gap of time since the deceased left his home. Then he proved that the occurrence was preceded by a verbal altercation between both the parties wherein he heard noise from his residence and therefore went up to the place of occurrence. Clearly, on the strength of facts proven by none other than the father of the deceased, we are led to believe that that the occurrence was not caused in the manner narrated in the FIR or during the examination-in-chief.

26. What transpired between the accused and the deceased and what exact altercation took place that may have lasted for some time before the firearm injury was suffered by the deceased, was never proven. To that extent, the prosecution story admits a reasonable doubt if the occurrence had been caused as may subscribe to the strict proof of occurrence under Section 300 read with Section 302 IPC. To the extent, the element of premeditation is lacking and further to the extent on the own evidence of the prosecution, a sudden quarrel has been proven involving elements of heat of passion and no negative fact has been proven as may allow for any other view to be taken, we find that the occurrence may fall under Section 304 Part I as may be covered under Section 304 read with exception 4 read with Section 304 Part-I IPC.

27. 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 made analysis and differentiated 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."

28. In view of the above, the appeal is **partly allowed**. The conviction of the appellant is modified to one under Section 304 Part-I IPC. Accordingly, the sentence awarded to him is modified to sentence undergone by him. The appellant is in jail. He may be released forthwith, subject to him not 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.

29. Copy of this judgment alongwith original record of 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.

30. Let the trial court record be transmitted to the court concerned alongwith a copy of this order.

Order Date :- 22.7.2025

SA

(Madan Pal Singh, J.)

(S.D. Singh, J.)