

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.35 of 2015

Arising Out of PS.Case No. -214 Year- 2007 Thana -KADWA District- KATI HAR

- =====
1. Chinta Devi, Wife of Lauki Sah Resident of Village - Dokhra, P.S- Kadwa, District - Katihar.
 2. Rekha Devi Wife Bablu Mandal Resident of Village - Sanjha Halt, P.S- Pranpur, District - Katihar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance:

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mrs. Meena Singh, Adv.

For the State : Mr. Bipin Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 27-11-2017

Appellants, Chinta Devi, Rekha Devi have been found guilty for an offence punishable under Section 304 Part II/34 of the IPC and they each have been sentenced to undergo S.I. for three years vide judgment of conviction as well as order of sentence dated 03.12.2014 passed by Additional Sessions Judge, III, Katihar in Sessions Trial No.256/2009.

2. PW.4, Most. Renu Devi gave her fardbeyan on 24.12.2007 at about 06:00 PM disclosing therein that Chinta Devi, wife of Lauki Sah and Rekha Devi daughter of Lauki Sah pushed her husband Arun Mandal at her *Darwaja* whereupon, her husband fallen down as a result of which, he sustained internal injury and died. She had further disclosed that seven years passed after her marriage out of which, she had begotten a daughter who is aged about one and half years old. The motive for occurrence had been shown as accused persons were claiming courtyard of



her house to be their land. She had been allotted Indira Awas Yojna whereunder she has procured brick. Since thereafter, accused persons indulged in quarrel relating to the land.

3. On the basis of the aforesaid fardbeyan Kadwa P.S. Case No.214/2007 was registered whereupon, investigation commenced and concluded by way of submission of charge sheet which happens to be basis for trial, which met with the conclusion, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has also been pleaded that deceased was suffering from tuberculosis and so, died on his own but on account of prevailing land dispute, they have been falsely implicated. However, neither oral nor documentary evidence has been adduced on their behalf.

5. In order to substantiate its case prosecution had examined altogether seven PWs, PW.1-Mangali Devi, PW.2-Akhilesh Mandal, PW.3-Lakhan Mandal, PW.4-Renu Devi, PW.5-Biren Mandal, PW.6-Dr. Ram Rekha Suman, PW.7-Vijay Kumar as well as had also exhibited Ext.1-Signature of Biren Mandal over inquest report and Ext.2-Postmortem Report. As stated above, defence had not examined either oral or documentary evidence.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellants that the finding recorded by the learned lower court is not at all justified inconsonance with the material available on



the record. To justify his submission the learned counsel for the appellants has submitted that Section 299 of the IPC identifies the culpable homicide. Aforesaid activity is to be perceived in light of Section 300 of the IPC which categorizes the offence of murder save and except, with further prescribing the expectations and on conjoint reading of both the sections, it is evident that whenever there happens to be an intention, though not to commit murder but the injuries which the accused has inflicted with an intention that it may be resultant in death of the deceased (in sub-clause (1),(2) of Section 299) or indulged in such activity with a knowledge that ultimate resultant may be the death of the deceased, then in that circumstance only Section 304 will be applicable justifying application of Part-I or Part-II as the case may be. From the evidence, as per learned counsel neither speaks with regard to knowledge that the push given by the appellants whereupon deceased had fallen down will ultimately cause death of the deceased as, the deceased had fallen on ground which was not at all the hard surface nor any such dangerous instrument including brick particle were present and that being so, on account of absence of knowledge there would not be applicability of Section 304 Part-II of the IPC. Accordingly, appellant could not be convicted and sentenced for Section 304 Part-II of the IPC and so, judgment impugned is fit to be reversed.

7. In an alternative, it has also been submitted that utmost, appellant could be found guilty for an offence punishable under Section 323 of the IPC for causing hurt and that being so, the period already undergone will satisfy the sentence relating



thereto.

8. On the other hand, while supporting the judgment of conviction and sentence recorded by the learned lower court, it has been submitted by the learned Additional Public Prosecutor that deceased Arun Mandal was firstly assaulted by broom and then was pushed in spite of non-resistance at the end of the deceased. That being so, the judgment of conviction and sentence recorded by the learned lower court happens to be legal, just and proper and fit to be confirmed.

9. Before coming to the ocular evidence having available on the record, the ambit and scope of Section 299 IPC as well as 300 of the IPC is to be seen, in order to trace out applicability of Section 304 IPC. The Hon'ble Apex Court in **State of Andhra Pradesh vs. Rayavarapu Punnayya & Anr.** reported in **AIR 1977 SC 45** has held as follows:

“13. The academic distinction between “murder” and “culpable homicide not amounting to murder” has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

(See table on facing page)

14. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in



such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the “intention to cause death” is not an essential requirement of clause (2). Only the intention of *causing* the *bodily injury* coupled with the offender’s *knowledge* of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done —	<i>Subject to certain exceptions</i> culpable homicide is murder if the act by which the death is caused is done —
INTENTION	
(a) With the intention of causing death; or	(1) With the intention of causing death; or
(b) With the intention of causing such bodily injury as is <i>likely</i> to cause death; or	(2) With the intention of causing such bodily injury as the <i>offender knows to be likely</i> to cause the death of the person to whom the harm is caused; or
	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is <i>sufficient in the ordinary course of nature</i> to cause death; or
KNOWLEDGE	
(c) With the	(4) With the



knowledge that the act is likely to cause death.	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, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.
--	---

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given *knowing* that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that *particular* person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury *likely* to cause death and a bodily injury *sufficient in the ordinary course* of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299 conveys the sense of “probable” as distinguished from a mere possibility.



The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant v. State of Kerala AIR 1966 SC 1874* is an apt illustration of this point.

18. In *Virsa Singh v. State of Punjab AIR 1958 SC 465* Vivian Bose, J. speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500):

“The prosecution must prove the following facts before it can bring a case under Section 300, ‘thirdly’. First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

19. Thus according to the rule laid down in *Virsa Singh case* of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be “murder”. Illustration (c) appended to Section 300 clearly brings out this point.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate



much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general — as distinguished from a particular person or persons — being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is “murder” or “culpable homicide not amounting to murder”, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300. If the answer to this question is in the negative the offence would be “culpable homicide not amounting to murder”, punishable under the *first* or the *second* part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be “culpable homicide not amounting to murder”, punishable under the first part of Section 304, of the Penal Code.”

10. In *Jagriti Devi v. State of H.P.* reported in *AIR 2009 SC 2869*, it has been held:

“18. Section 299 and Section 300 IPC deal with the definition of “culpable homicide” and “murder” respectively. Section 299 defines



“culpable homicide” as the act of causing death:(i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such act is likely to cause death. The bare reading of the section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expressions “intent” and “knowledge” postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge, then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court”

11. Now coming to the facts of the case, the doctor PW.6, had conducted autopsy over the dead body of Arun Mandal on 25.12.2007 and found the following:

External examination:-A bruise (about 4”x3”) left side of chest wall. Haematoma (2”x2”). Left side of scalp.

Internal examination:-Head and neck-Meninges intact & NAD. Brain matter contains blood under cranial cavity. Thorax:-Thoracic cavity contains



blood # of left side lower rib. Heart and lungs intact and NAD. Abdomen-Digested fit material (about 200 wt.) non specific small.

12. Cause of death haemorrhage and shock due to abovementioned injuries. Time elapsed since death within 72 hours. From cross-examination, it is evident that neither there happens to be suggestion at the end of the appellant that deceased was suffering from tuberculosis nor with regard to degree of force having used, inflicted against the deceased which could have resultant in such kind of injuries that means to say, neither the nature of the injuries nor its impact is under challenge. As per Modi jurisprudence, it has been observed that fractures are not ordinarily dangerous unless they are compound, when death may occur from loss of blood, if a big vessel is wounded by the split end of a fracture.

13. Now coming to ocular evidence, PW.1 is the mother of the deceased. She had stated that on the alleged date and time of occurrence while she was returning from a shop to her house she had seen quarrel having in between Rekha and Chinta Devi on account of allotment of Indira Awas Yojna. During midst thereof, Rekha and Chinta pushed her son Arun Mandal as a result of which he fall down and died. During cross-examination she had detailed the boundary of the P.O. South-Chinta Devi, East-Chinta Devi, West-Chinta Devi but had denied presence of Kuldeep Mandal at North. She had further stated that grand father of Rekha Devi had given the land for construction of house which, Chinta Devi was resisting and for that, there was brawl. She had further stated that deceased Arun Mandal was not at all suffering



from any kind of ailment. Then had denied suggestion that he was a drunkard whereupon met with natural death and only to grab the land, got the appellant involved in this case.

14. PW.2 is the full brother of deceased who had deposed that on the alleged date and time of occurrence Kuldeep Mandal and Arun Mandal (deceased) indulged an altercation during midst thereof, Rekha Devi assaulted with broom as well as also pushed as a result of which Arun Mandal fell down and died. Police came, took away the dead body. Identified the accused. During cross-examination, he had disclosed the boundary of the P.O. North, South, East, West-Mana Devi. Accused persons were not inclined to allow them to construct building under Indira Awas Yojna. At the time of occurrence, accused Rekha Devi was cleaning the land. Then had denied the suggestion that deceased was suffering from tuberculosis and met with death on account thereof and only to grab the land, got this case filed.

15. PW.3 Lakhan Mandal, father of deceased who had deposed that on the alleged date and time of occurrence, Chinta and Rekha assaulted his son with broom and then pushed him as a result of which he fell down and died. Quarrel ensuing on account of allotment of Indira Awas Yojna. Police had come, prepared inquest report. During cross-examination he had stated that his house as well as house of accused persons lies five hands away from the place of occurrence. Both the parties happens to be at strain relationship on account of land. The P.O. lands belongs to father of accused Chinta Devi. Then had denied the suggestion that he had made statement to the police to the effect that his son Arun Mandal was suffering from tuberculosis as a result of which,



he died. He further stated that at the time of occurrence the accused persons were possessing only broom and nothing else.

16. PW.4 is the wife of the deceased/informant namely Most. Renu. She had stated that on the alleged date and time of occurrence she was at her house. There was quarrel on account of grant of Indira Awas Yojna. Accused Chinta Devi was claiming the land. Then thereafter, Chinta and Rekha Kumari pushed her husband as a result of which, he fell down and died instantaneously. Police was informed and after arrival of the police, she gave her fardbeyan over which, she had put her thumb impression. During cross-examination, she had stated that there was continuous dispute amongst the parties since before regarding land. Accused persons were claiming the land. Then had denied the suggestion that she had stated before the police that her husband Arun Mandal was suffering from T.B. since before. She had further denied the suggestion that her husband was drunkard as well as engaged in selling of spurious wine. Then had stated that brawl continued for an hour. None of the neighbours came. None of her family members came. Rekha was unmarried at the time of occurrence. Then had denied the suggestion that deceased died of T.B. and for that, got this case filed with a false allegation that on account of push having given by the accused persons, her husband died.

17. PW.5 is Biren Mandal who happens to be one of the witness of inquest report. He had stated that the police prepared inquest report in his presence and had shown (exhibited) his signature. During cross-examination, he had stated that deceased was suffering from tuberculosis as well as was a drunkard. He



had also stated that deceased died of ailment.

18. PW.7 Vijay Kumar is the Investigating Officer. He had deposed that on 24.12.2007, after having been informed telephonically with regard to commission of murder of a person, Sanha Entry was made and then proceeded towards place of occurrence. After arrival, he recorded fardbeyan of Renu Devi. Prepared inquest report of deceased Arun Mandal and then, sent the dead body for postmortem to mortuary. Recorded further statement of the informant. Returned back to Police Station and registered the case. Again proceeded to P.O. inspected, place of occurrence, recorded statement of witnesses and on account of transfer, he handed charge on 21.01.2008. During cross-examination he had shown boundary to the P.O. East-Road and then cow shade of Lokeshwar Mandal, West-Devi Asthan and then house of Shiv Narayan Mandal, South-Kare Mandal, North-Lokesh Mandal.

19. He had further shown his inability to properly disclose on which plot house of Renu Devi stood. In likewise manner, he failed to disclose whether Renu Devi was residing over the land of Kuldeep Mandal. He had seen brick staked at the place of occurrence. He had further asserted that on account of fall over the aforesaid brick by the deceased, he died. Then had shown his inability to disclose the age of Rekha as well as whether she was married or unmarried. He had not investigated over status of Rekha being minor at the time of occurrence. He had further stated that dispute was going on amongst both the parties relating to Indira Awas Yojna. He denied the suggestion that deceased was not pushed by Rekha and Chinta.



20. From the evidence available on the record, it is evident that neither appellants have had suggested that during course of brawl deceased had interfered, was aggressive, indulged in any kind of criminal activity and to ward of the same, he was pushed in order to defend themselves. That means to say, there happens to be no challenge at the end of appellants nor controverted the allegation that deceased was never pushed by them. Furthermore, it has also not been shown that deceased was armed with any weapon. That being so, there was no occasion for apprehension. When there was no occasion for apprehension, then in that event, there was no justification for pushing the deceased down to earth. However, from the evidences it is apparent that quarrel was going on whereupon, it could be said that whatever been the action of the accused persons/appellants happen to be on account of spur of moment. In the aforesaid background, whether it could be said that push having been given by the appellants was with acknowledge that injury which he sustained might prove fatal. Had there been, properly tackled by way of cross-examination, then in that event the action would have been properly visualized. On the other hand, appellants themselves taken a risk whereunder cross-examined the I.O. that deceased was pushed over the brick staked since before whereupon he had fallen down, sustained the injuries and then died. That means to say pushing the deceased over the stake of bricks speaks otherwise consequent thereupon, the finding recorded by the learned lower court needs no interference. Now coming to sentence, it is apparent that each of the appellants has been directed to undergo S.I. for three years which, in the facts and



circumstances of the case is reduced to S.I. for one year with a fine appertaining to rupees twenty five thousand each. In case of deposit of fine, rupees forty thousand will be handed over to the informant by the learned lower court on proper identification, failing which, each of the appellant will have to go S.I. for six months additionally. Appeal is partly allowed with the aforesaid modification in sentence. Appellants are on bail, their bail bonds are cancelled with a direction to surrender before the learned lower court to serve out the remaining part of sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	01.12.2017
Transmission Date	01.12.2017

