

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

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Reserved on : 03.12.2020

Pronounced on : 07.04.2021

+ **CRL.A. 846/2018 & CRL.M.(BAIL) 7846/2020**

MADAN GOPAL YADAV

.....Appellant

Through : **MS. Rakhi Dubey, Advocate.**

versus

STATE

..... Respondent

Through : **Mr. Ashish Dutta, APP for the State**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By this Judgment, we shall dispose of the present appeal which has been filed against the Judgment of conviction dated 28.04.2018 and order on sentence dated 17.05.2018 passed by the Addl. Sessions Judge-02, South District, Saket Courts, New Delhi vide which appellant Madan Gopal Yadav has been convicted U/s 302/324 IPC and sentenced to undergo rigorous imprisonment for life and to pay a sum of Rs. 5,000/- as fine for the offence U/s 302 IPC and in default of payment of fine, simple imprisonment for two months. He has also been sentenced to undergo rigorous imprisonment for

01 year and to pay a fine of Rs. 1000/- U/s 324 IPC and in default of payment of fine, simple imprisonment for 15 days.

2. In brief, the facts of the case are that on receiving DD No.6-B dated 07.06.2012, SI Mukesh Kumar Meena alongwith Ct. Surender reached at the spot i.e. Kothi No. A-1/38, SJ Enclave, where he met Varun Lamba. Varun Lamba stated that his servant Dinesh and one more person are lying outside the servant quarter and their bodies are blood stained and they are unconscious. In the meanwhile, PCR and CAT ambulance also reached there. Dinesh Kumar was found dead and injured Shrawan was removed to the hospital. Blood stains were found till second floor and two mobile phones were also lying there. Blood stained knife was also recovered which was lying near the legs of injured. On the second floor of the house, one person Gopal (the present appellant) was present and was in panic condition. He was interrogated. On the right hand and on his face, one stab wound was noticed. Thereafter ruqqa was prepared and FIR of this case was registered and investigation went underway.

3. After the completion of the investigation, challan was filed before the court of Metropolitan Magistrate, who after completing all the formalities committed the case to the Court of Sessions for trial.

4. Vide order dated 20.09.2012, charges U/s 302/307 IPC were framed against the appellant to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution has examined 24 witnesses.

5. We have heard the Ld. counsel for the appellant, Ld. APP for the state and have also gone through the records of this case.

6. It is urged by the Ld. counsel for the appellant that the prosecution has not been able to prove any motive for the crime. It is further submitted that the appellant and the deceased had cordial relations for the last 5 to 6 years, so there was no occasion for the appellant to kill Dinesh. It is further urged that Shrawan (injured) had come to kill Dinesh as they both were homosexual and dispute arose between them. It is further urged by the Ld. counsel for the appellant that it was Shrawan (PW 14) who had committed the murder of Dinesh, inflicted injury upon the appellant and upon himself and the appellant has no role in giving any injury to deceased Dinesh or to PW-14 Shrawan. It is further argued that it is the appellant who informed PW 2 about the incident and did not try to flee away. It is further argued that knife, which according to the prosecution was used in the offence and found at the spot, neither had finger prints nor blood group of either of the deceased or the appellant. It is further argued that the IO has neither seized the CDR of the injured, nor of the accused/appellant so as to co-relate the call details of injured Shrawan, deceased Dinesh and the appellant. It is further argued that PW 1 has not supported the case of the prosecution over the fight between the appellant, injured and deceased. It is further argued that PW 14 is not a reliable witness as he is the perpetrator of the crime and has falsely implicated the appellant and conviction cannot be based on his sole testimony. Ld. counsel for the appellant further submitted that PW 14 has even failed to give the measurement of the knife which shows that he is

not telling the truth. It is further argued that there are insertions and improvements in the postmortem report which creates doubt about the authenticity of the postmortem report. In the alternative, the Ld. counsel for the appellant has argued that, at best, the case of the appellant falls within the ambit of Section 304 IPC and is not covered U/s 302 IPC.

7. On the other hand, it is urged by the Ld. APP for the state that PW 14 is an injured eye witness and he has no reason to depose falsely against the appellant. He further submitted that the incident is corroborated by the testimony of PW 2 who noticed injured and the deceased lying at the top floor, the fact which was told to PW 2 by the appellant himself. He further argued that testimony of PW 14 is totally trustworthy and corroborated by the MLC and postmortem report. As regards motive, it is argued by the Ld. APP that appellant was jealous of the friendship between injured and the deceased and therefore, altercation took place and appellant killed Dinesh because of sexual preferences. Even otherwise, the case is based on eye witness account. It is further argued that the intention to kill can be attributed to the appellant as he has inflicted not one or two but 12 injuries, some of which are on vital parts of the deceased as well as injured PW 14. It is submitted by the Ld. APP that the contention of the counsel for the appellant that the case of the appellant falls under section 304 IPC, and not U/s 302 IPC, is not correct because the appellant has acted in cruel manner and inflicted 12 injuries with knife on the deceased and also injured PW 14 when he intervened.

8. It is the duty of the Court to sift the chaff from the grain and to accept what it finds to be the truth and reject the rest. In appreciating the evidence, inferences should not be drawn by picking up an isolated line or statement from here and there; rather the evidence should be examined in the light of the total statement of the witnesses. The findings should be on the basis of objective assessment of the evidence. It is only where the testimony is tainted to the core, the falsehood and the truth being inextricably intertwined, that the court should discard the evidence. The Court is not meant to reject the testimony of a witness on slightest deflection, but has a bounden duty to search the truth.

9. In the instant case, the most material witness of the prosecution is PW 14. Before discussing his testimony in detail, it can be noticed that the appellant has not disputed his presence at the place of incident i.e. A-1/38, SJ Enclave along with deceased Dinesh and injured Shrawan. In this regard, reply given by him in his statement U/s 313 Cr.P.C becomes relevant. Reply given by him to question No. 1 is as follows:

“Q. 1 It is in evidence against you that you were found present at H. No. A1/38, Safdarjang Enclave on 6/7-6-12, at sometime at 12 night to 2:30 a.m. What have you to say?

Ans. Yes, I was present at the aforesaid address.”

His presence at the spot is further fortified by his answer to question No. 32 wherein he stated that ***“witness Sarvan had attacked the deceased and he also attacked me. Later on, he stabbed with the knife on his own body in order to falsely implicate me in this case.”*** Therefore, we have no

hesitation to conclude that the appellant was present at the spot at the given date and time of incident.

10. The material witness of the prosecution is PW 14 who is the injured witness. In order to appreciate his testimony, the same is reproduced as under:

“PW-14 Sarwan @ Shartrughan S/o Sh. Ram Dev Ram @ Ghinu Ram, Age-23 years, Present R/o X-9, Hauz Khas, New Delhi.

ON S.A.

I hail from village Saugar Dist. Madhepura (Bihar). On day of incident I was residing as cook of my employer Sh. Amit Makhija at ground floor of H. No. A-1/44, Safdar Jung Enclave, New Delhi. One Dinesh was also residing as cook in Kothi No. A-1/38 Safdar Jung Enclave. He was my friend as we were on visiting term. Premises No. A-1/38 Safdarjung Enclave was constructed up to fourth floor. I am not aware who was residing on the ground floor. My friend Dinesh Kumar was residing as cook on the first floor. One Gopal was residing on the second floor and one other person whose name I do not remember was residing on third floor. Three room was also constructed at the roof of third floor of premises No. A-1/38. On 06.06.2012 at about 8:00 P.M. Gopal had called me on phone and told me that he was alone at his room as his employer along with his family is about to go. He further told me that he had arranged party for me as he was alone. I replied him I am busy and not in position to come as wife of my employer is at home. Aforesaid Gopal called me at about 10:30 P.M. on my phone No. 9650809951 through his phone but I cannot tell his phone no.

Gopal told me on my phone that I should reach at his residence he further told me Dinesh is also coming. I immediately reached at his residence at the third floor of premises No. A-1/38. I found Gopal there. I asked from Gopal about Dinesh as he was not present. In my presence Gopal made telephone call through his phone to Dinesh. Dinesh replied him he is busy and he would come after some time. Gopal was having three beer bottles, one quarter liquor bottle, empty bottle and three glasses when I had reached there. Gopal prepared three pegs for us as Dinesh was about to come. I consume half glass beer on the request of Gopal also consume liquor and thereafter we both started talks in the mean time at about 11:15 PM Dinesh came to us. Dinesh also consume beer on the request of Gopal I also consume my balance beer and we all three started talks. I went near the bathroom and combing my hair while standing in front of the mirror of bathroom. At that time I felt that hot talks took place between Gopal & Dinesh. I immediately saw towards them and it came into my notice they were talking “aaj kal Sharvan (this PW) tumse (Dinesh) jayada lagaav rakhta hai or us se (Gopal) kam rakhta hai”. Gopal was uttering that Dinesh used to talk me more while gap between Gopal and Dinesh has come. But Dinesh replied he is treating Sharvan and Gopal in same manner. After aforesaid discussion between Dinesh & Gopal quarrel took place. Dinesh started to go but Dinesh did not go from there on my request. In the mean time Gopal slap Dinesh. Dinesh went toward up stair I followed him. Gopal also followed us Dinesh & Gopal both were in angry mood. Gopal stabbed on chest of Dinesh when we were in the middle of stair case to go toward top floor. I became nervous on seeing the blood oozing out form the injury of Dinesh.

Injured Dinesh rushed to the top floor I and Gopal followed him. Gopal dragged injured Dinesh by catching hold his hand when Dinesh was near the door of top floor.

Dinesh fell down in front of the door of top floor. Dinesh stand up and he tried to take out the key from his paint to open his room on the top floor. Room of Gopal is also situated near the Room of Dinesh. Gopal had again caused three – four injury with knife when Dinesh was in the process to stand up to go his room. I tried to save Dinesh and I wanted to take him towards the bathroom for his defence immediately Gopal also stabbed on my chest. Dinesh had fell down in front of the bathroom. I also fell down at the top floor in front of the bathroom on sustaining three-four stabbed injury caused by Gopal. I became unconscious I do not know what happened thereafter. Witness correctly identify accused present in court as a assailant by name as Gopal. I can not tell the phone No. on which accused Gopal had made calls to me. I had told present phone no. in my aforesaid examination. I regained my consciousness. Gopal had used his kitchen knife to cause injury me and my friend Dinesh. After about two days from the day of incident that injured Dinesh was declared dead in the Hospital. This fact was told to me by the brother of deceased.”

11. This witness was cross examined at length but nothing material could be extracted from his cross examination, rather it was suggested to him that the appellant was not present at the place of incident to which he gave a positive reply that appellant was present at the spot and it is also evident from the records of this case that the appellant had himself admitted his presence at the place of incident. The prosecution has been able to prove on record that the appellant, deceased Dinesh and injured Shravan had gathered in the intervening night of 6/7-06-2012 at house No. A-1/38, SJ Enclave for a party where the incident took place. PW 14 had given a very

descriptive/detailed narration of the sequence of events which took place and the manner in which the appellant stabbed the deceased and him.

12. PW 14 has also stated in his testimony as to the manner in which the fight started. He has stated that they were taking liquor in a lobby and Dinesh joined them lateron. He also stated that during quarrel appellant slapped Dinesh. Dinesh started moving towards staircase in order to leave the room. PW 14 further stated that he also followed Dinesh, and appellant also came after them. PW 14 further stated that on stairs, appellant stabbed Dinesh and stabbed him near the servant quarter. He further stated that he had seen the knife but cannot give its measurement.

13. Ld. defence counsel has argued that there was no motive for the appellant to have murdered Dinesh and it was injured Shravan who had committed the offence and later inflicted injury upon himself. First of all, as far as the question of motive is concerned, the case of the prosecution is not based on circumstantial evidence. This is a case of direct evidence in which we have an injured eye witness who has categorically deposed against the appellant and there is nothing in the cross examination to disbelieve this witness. The motive may be the liking between deceased and Shravan which did not go down well with the appellant. Further, in the facts and circumstances of this case, and the fact that we have a reliable injured eye witness account, motive pales into insignificance.

14. As held in the case of "*Jafel Biswas v. State of West Bengal*" (2019) 12 SCC 560, the absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the CRL.A. 846/2018

mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. When there are definite evidence proving an incident and eyewitness account prove the role of accused, absence in proving of the motive by prosecution does not affect the prosecution case.

15. In the matter of "*Bipin Kumar Mondal Vs. State of West Bengal*" reported in AIR 2010 SC 3638 the Hon'ble Apex Court held as under:

“In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye- witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy.”

16. As far as the arguments of the Ld. counsel for the appellant that injured Shrawan had murdered Dinesh or inflicted injury upon the appellant and upon himself, and that the appellant did not try to abscond, has also no force in it. First of all no such questions were put to PW-14 Shrawan during his cross examination and it has only been suggested to PW 14 that his injuries were self inflicted to which he denied. When Dr. Sanjeev Bhoi

(PW-19) who had proved the MLC of PW-14 Shrawan appeared in the witness box, he was not cross examined and his cross examination was treated as "Nil Opportunity given". His testimony has gone unrebutted and unchallenged. According to PW 2, the appellant had come to his house at about 2:20 a.m. and informed him about the incident. According to PW 21-SI Mukesh Kumar, who was the first police official to reach the place of incident and while he was making inquiries, Inspector Sanjay Sharma (PW-23) with other police staff also reached the spot and when Inspector Sanjay Sharma knocked the door of the flat on the second floor, appellant opened the door of the flat. PW 21 SI Mukesh Kumar further deposed that he had observed injury marks on the right arm and the right side of the neck of the appellant and when Inspector Sanjay Sharma (PW-23) inquired about the said injury marks from the appellant, he got scared and could not explain the injury marks on his body, therefore, he was brought to the police station for enquiry. This was the first opportunity with the appellant to have explained about the injuries on his person but he failed to do so. The appellant was also got medically examined vide MLC Ex. PW 19/C and the nature of injuries on his person were opined as simple caused by sharp object. As per the testimony of PW 20 Dr. Adarsh Kumar, on the request letter of IO dated 04.08.2012 Ex. PW 10/H, Dr. S. Janani gave opinion that possibility of the injuries on the person of appellant being self inflicted cannot be ruled out. Therefore, in our opinion, the trial court has rightly observed in the judgment that the appellant himself reported the incident and was found at the spot itself in a suspicious condition. The injury on the body of the appellant, as opined, are superficial in nature and could be self

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inflicted. The appellant cannot be given benefit of the circumstance that he did not try to abscond from the spot despite opportunity. Entire sequence of events of the prosecution case is also duly corroborated through the testimony of PW 2, PW 4, PW 8 and to some extent by PW 1.

17. During the course of the arguments, it has been vehemently argued by the Ld. counsel for the appellant that the conviction cannot be based on the sole testimony of an eye witness. This argument of the Ld. counsel for the appellant is totally against the canons of law. The Court is concerned with the quality of the evidence and not the quantity. If the testimony of the sole eye witness is believable then definitely the conviction can be based upon such testimony.

18. In the instant case, the eye witness is an injured eye witness. Nothing has been shown or proved on record by the defence that PW 14 had any animosity with the appellant. Rather, it was the appellant who was not happy with the relations between the deceased and Shrawan which is evident from these words uttered by him:

"Aajkal Shravan (PW 14) tumse (deceased Dinesh) jyada lagav rakhta hai aur usse(appellant) kam rakhta hai".

19. The testimony of the injured witness inspires much more confidence because it is highly improbable that a man would let go his real assailant and would name someone else. We have perused the judgments relied upon by the Ld. Trial Court titled as ***"Manjit Singh Vs. State (NCT of Delhi)"*** Crl. Appeal No. 51/1998 dated 19.03.2014 and ***"State of U.P. Vs. Kishan***

Chand'' reported in (2004) 7 SCC 629 and are of the opinion that the Ld. Trial Court has rightly placed reliance on the said judgments and has rightly concluded as follows in para No. 34 of the judgment:

“34. This injured witness PW 14 able to provide full account of incident, defence miserably failed to impeach the credibility and the trustworthiness of this injured witness. I find no reason to disbelieve the testimony of injured (PW 14) who remained consistent and coherent on the core issue that the accused inflicted multiple injuries to deceased consequent to which he died.”

20. So we also find no reason to differ with findings of the Ld. Trial Judge and see no reason to disbelieve the otherwise reliable and trustworthy testimony of PW 14 whose testimony is duly corroborated by Ex. PW 19/B which is his MLC.

21. It has been argued by the Ld. counsel for the appellant that the CDR record were not collected by the IO in order to seek the location. In our opinion, even if that has not been done by the IO no prejudice has been caused to the appellant as his presence and presence of deceased and injured Shravan has not been disputed by him as observed by us hereinabove.

22. It has been contended by the Ld. counsel for the appellant that knife recovered at the spot could not be connected with the crime as there were no finger prints on it and PW14 was not able to tell its measurement. In our opinion, the contention of the defence counsel that because PW 14 has failed to give the measurement of knife, it makes him an unreliable witness has no force because, even if, the injured witness has failed to give the

measurement of the knife that does not make him an unreliable witness. It is highly improbable that a person who is being attacked with a knife would be in a position to notice the measurement of the knife. Rather, in such a situation his first concern would be to save himself or the person who is being attacked. His testimony and cross examination clearly establishes the manner in which the incident took place and how the stab injuries were inflicted by the appellant to him as well as to the deceased Dinesh.

23. The knife was seized vide seizure memo Ex. PW 10/C, however, there is nothing in the testimony of police officials examined by the prosecution to doubt the recovery of the knife from the spot. Blood stains were noticed on the knife but as per FSL report, there was no reaction over the blood found on the knife and no finger prints were lifted from the knife. Here, it is worthwhile to say that the scientific investigation in criminal cases in the country is not up to the mark, which also appears to be the case here also. Experience has shown that crime team officials are not professionals in forensics and are not well equipped/qualified in collecting the blood samples and other objects from the scene of crime. That is why in most of the cases, the finger prints are not detected on the weapon used in the crime and the blood samples are found to be putrefied. In our opinion, when such a heinous crime takes place, it should be the responsibility of the SHO of the concerned Police Station to take assistance from a scientific officer from the nearest FSL Laboratory and to take him along to the crime scene so that the exhibits are lifted and preserved in a scientific manner, otherwise, it would be very difficult to collect the scientific evidence from

the scene of crime in a proper manner. We have seen that in many cases public witnesses do not support the case of the prosecution which leads undesired results, but if proper scientific investigation is undertaken then in that case the prosecution will have scientific evidence to fall back upon even if witnesses are not supporting. Therefore, IO/SHO should be very particular and see to it that the case is not lacking in collection of scientific evidence. We say this at the cost of repetition, that the Delhi police officials who are made in-charge of the crime teams and fellow members of the crime team are highly ill-equipped and not properly qualified to collect samples, lift exhibits and preserve them in a proper manner so that they can be examined properly in the FSL. It is high time that the authorities should look into this aspect and constitute crime teams with the personnel's possessing the requisite expertise and qualification.

24. Now coming back to this case, no doubt, there were no finger prints found on the knife, the blood group was also not detected and, above all, for the reasons best known to the prosecution the knife was not shown to PW 14 but, in our opinion, if the prosecution has failed to prove that the knife which was recovered from the spot had no connection with the offence then also, in our opinion, the appellant cannot draw any benefit from the same, in view of the reliable testimony of PW 14. At best, it can be said to be a minor lacuna in the case of prosecution, but no benefit of it can be extended to the appellant in the facts and circumstances of this case.

25. The case of the prosecution primarily rests on the testimony of PW 14 which we have found to be unflinching, reliable and wholly trustworthy and nothing has come out in his testimony to render him unreliable.

26. The Ld. Trial Court has convicted the appellant for the murder of Dinesh U/s 302 IPC. The Ld. defence counsel has argued in the alternative that the case of the appellant at best falls within the ambit of section 304 IPC and not U/s 302 IPC. Sections 300 IPC and Section 304 IPC are as follows:

300. Murder. —Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly. —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly. — If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly. —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

304. Punishment for culpable homicide not amounting to murder.— Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done

with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

27. In order to appreciate the submissions of the Ld. defence counsel, we have reproduced the two sections hereinabove.

28. The crucial question is as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' its "specie". All 'murders' are 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The safest way of approach to the interpretation

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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.

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

(C) with the knowledge that the act is likely to cause death.	(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

29. 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.

30. 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. 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 to cause death" 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.

31. 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 and Anr. v. State of Kerala**, (AIR 1966 SC 1874) is an apt illustration of this point.

32. In "**Virsa Singh v. State of Punjab**", (AIR 1958 SC 465), Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that 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. Thirdly, 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.

33. The ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

"To put it shortly, 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.

Thirdly, it must be proved that there was an intention to inflict that particular bodily 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 is 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."

34. The learned Judge explained the third ingredient in the following words (at page 468):

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

35. The test laid down by Virsa Singh's case (supra) for the applicability of clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

36. Thus, according to the rule laid down in Virsa Singh's case, 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.

37. 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. 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. 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.

38. This position was illuminatingly highlighted by Supreme Court in **State of Andhra Pradesh v. Rayavarapu Punnayya and Anr.** (1976 (4) SCC 382), **Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh** (2002 (7) SCC 175), **Augustine Saldanha v. State of Karnataka** (2003 (10) SCC 472) and in **Thangiya v. State of T.N.** (2005 (9) SCC 650).

39. Factual background of this case is now to be analyzed on the basis of principles set out hereinabove. In the instant case, the prosecution has been able to successfully prove that PW 14-Shrawan who is the injured eye witness is totally trustworthy. As per the postmortem report which is Ex. PW 7/A, there were 12 stab wounds on the body of the deceased. As per the testimony of PW 7 Dr. Sanjay Kumar-II, who had proved the CRL.A. 846/2018

postmortem report, the cause of death in this case was Haemorrhagic shock as a result of multiple antemortem injuries produced by pointed sharp edged object and were sufficient to cause death in ordinary course of nature. The appellant had inflicted 12 stab injuries on the person of deceased Dinesh and when PW-14 Shrawan tried to save deceased Dinesh at the hands of the appellant, the appellant even inflicted knife blows on the person of PW-14 Shrawan. As per the postmortem report of deceased Dinesh, the injuries caused upon him were sufficient to cause death in the ordinary course of nature. Therefore, it can be said that the appellant had acted in a most cruel and unusual manner. So, the inevitable conclusion is that the case at hand is covered under Section 302 IPC.

40. Therefore, in view of the discussions mentioned hereinabove, we are of the opinion that the appellant is guilty of committing murder of Dinesh and causing knife injuries to PW-14 Shrawan. The appeal is accordingly dismissed. Impugned judgment dated 28.04.2018 and order on sentence dated 17.05.2018 passed by the Ld. Trial Court are, upheld. All pending applications (if any) are disposed of. Trial court record be sent back forthwith alongwith a certified copy of this judgment.

RAJNISH BHATNAGAR, J

VIPIN SANGHI, J

April 07, 2021

Sumant

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