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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-151-DB of 2012
Date of Decision: 21.05.2024

Amarjit Singh ...Appellant
Vs.
State of Punjab ...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Ms. Divya Sharma, Advocate for the appellant.
Mr. Arjun Sheoran, DAG, Punjab.

N.S.SHEKHAWAT, J.(Oral)

1. The appellant has preferred the present appeal against the impugned judgment and order dated 14.12.2011 passed by the Additional Sessions Judge, Gurdaspur, whereby, the appellant had been convicted under Section 302 IPC and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- alongwith default stipulation.
2. The FIR in the present case was registered on the basis of the statement made by Lakhwinder Singh son of Bachan Singh resident of village Bharth. He stated that he had two sons and two daughters. His elder son Baldev Singh used to do the labour work. At about 08.40 p.m., on 29.09.2009, he and his son Baldev Singh were standing outside the house in the chowk and the electric

bulb was on. In the meantime, Amarjit Singh resident of their village, who was earlier known to them came from the side of the village and stood near them. His son Baldev Singh asked him as to who he was and why he was standing there. On this Amarjit Singh became angry and started asking him as to who he was to ask such things. On this, Baldev Singh told that their house was on that side and they could ask about it. On this, Amarjit Singh got offended and was angry and he took out a *Kirch* (knife) from the left pocket of his pant and inflicted injury on the stomach of his son. His son fell down on the ground. He saved his son from him by moving ahead and Amarjit Singh ran away from the spot alongwith the *Kirch*. He arranged a vehicle and shifted his son to Government Hospital, Bham, from where, the doctor referred his son to Civil Hospital, Batala. Civil Hospital Batala further referred his son to Shri Guru Nanak Dev Hospital, Amritsar, where he was under treatment. Only, on account of asking the reason by his son Baldev Singh from Amarjit Singh for standing there, he inflicted injury with *Kirch* in the stomach of his son with an intention to kill his son. With these broad allegations, the FIR in the present case was ordered to be registered against Amarjit Singh, accused/accused under Section 307 IPC.

3. During the Course of investigation, Baldev Singh died on 02.07.2009 and the offence under Section 302 IPC was added in the present case. After usual investigation, the final report under Section 173 Cr.P.C. was presented before the Area Magistrate.

4. The Area Magistrate complied with the provisions of Section 209 Cr.P.C. and supplied the copy of the challan and the documents appended therewith, to the accused and committed the accused to the Court of Sessions. After examining the final report and the documents, the trial Court found that a *prima-facie* case under Section 302 IPC was made out against the accused and he was charge sheeted accordingly. The accused pleaded that he was innocent and claimed trial.

5. In support of the charge, the prosecution had examined 13 witnesses in the present case. Lakhwinder Singh, complainant, was examined as PW1 and he reiterated the averments made in the FIR in the present case. He proved his statement Ex. PA, which was made by him and was the basis of the FIR. The final inquest Ex.PB was also prepared in his presence. In cross-examination, he admitted that at the time of incident, people from the village were also present but he could not tell the name of anyone. His clothes were smeared with blood, when he put his son in the car, however, the police did not take into possession the blood stained clothes. He further admitted that their village was divided into four segments (patties) and there was about 2000 votes in their village. The house of the accused and his house were situated in different segments. He had been meeting Amarjit Singh, appellant before the occurrence also. Even, he had been meeting him being the resident of the same village. He stated that his neighbours were Sahib Singh and Wassan Singh etc. He did

not know as to whether the accused had been doing some labour work at Rajasthan. The prosecution further examined PW2 Ranjit Singh, who was a witness and signed on Ex. PA. The statement of PW3 HC Harwinder Singh was formal in nature. The prosecution further examined Dr. Kirpal Singh, Lecturer, Government Medical College, Amritsar, who had conducted the postmortem examination on the dead body of Baldev Singh in the present case and proved the PMR report Ex.PW4/B. He noticed the following injuries:-

- “1. Stitch wound 11 C.M. long on right side of abdomen with 14 stitches.*
- 2. Stitch wound 6 C.M. long on left side of upper part of abdomen.*
- 3. Stab wound on left side of abdomen 1.9 x 1.8 C.M. at 5 0 C p. to umbilicus.*

He further stated that on dissection peritoneal cavity contained 500 cc of clotted blood with faecal matter present, retroperitoneal haematoma present which was extending to right iliac fossa, stitching present at mesentery and small intestine.

The cause of death in this case in his opinion was haemorrhage and shock which was sufficient to cause death. Probable time that elapsed between death and injury was as per hospital record, between death and postmortem examination was within about 12 to 24 Hours. He handed over to police the stitched dead body, carbon copy of postmortem report, police papers 1-20 Pages dully signed by him.

6. The police further examined PW4 HC Surinder Singh

and PW6 HC Rajinder Singh, whose testimonies are formal in nature. The prosecution further examined PW7 SI Kamal Kishore, who had initially conducted the investigation in the present case. On 03.07.2009, he arrested Amarjit Singh appellant in the present case and the police recorded his disclosure statement Ex.PW7/G, which was signed by him and HC Harbans Singh. In pursuance of the disclosure, the appellant led the police party at the disclosed place and got recovered one *Kirch* (knife) of iron, having length of 9' and handle having length of 3', which was made of brass. Still further, the prosecution examined PW8 HC Harbans Singh, who had deposited the parcel with the office of FSL Chandigarh. PW9 Jaswant Singh, Draftsman, prepared the scaled site plan Ex.PW9/A. PW10 SI Amolak Singh had also conducted the part of the investigation. He had arrested the appellant on 03.07.2009 and also recovered a *Kirch*, from the accused, in pursuance of his disclosure statement. He also recorded the statements of other witnesses. Still further, the prosecution examined PW11 Dr. Avtar Singh, Medical Officer, who had examined Baldev Singh, injured on 29.06.2009 and declared him unfit for making the statement vide his endorsement Ex.PW11/C. Dr. Kawaljit Singh, Junior Resident, Guru Nanak Dev Hospital, Amritsar, was examined as PW12, who stated that on 30.06.2009, the injured was declared unfit for making the statement in the present case. Dr. Vijay Kumar Vohra, Assistant Professor Maharaja Agrasen Medical College, Agroha, Haryana was examined as PW13, where

Baldev Singh was admitted and the MLR could not be prepared due to serious condition of the patient.

7. After examination of all the prosecution witnesses, the case was listed for recording of statement of the appellant under Section 313 Cr.P.C. and in his defence, he stated that he worked in Rajasthan and had come to village only a couple of days ago. He did not know the deceased and had no reason to cause injuries to him and a false case had been planted against him.

8. In the defence evidence, the accused examined DW1 Gurmangat Singh, who was running a sweet meat shop near the liquor vend in the village. He stated that at about 2-1/4 months ago at about 8.30 p.m., there was no electricity in the village and he was closing his shop. 2/3 persons were fighting in front of liquor vend and one of them, i.e., Baldev Singh had received injury. He inquired from him as to who was the persons, who fled away after causing injury to him. He said he could not identify them. Then he sent a message to the house of Baldev Singh. In the meantime, his family members came and took him along for treatment. However, he admitted in cross-examination that the fight had taken place about 20 yards away from his shop. He did not go near them and reached there only when Baldev Singh called him there. He was inside the shop when the fight had taken place. The accused further examined DW2 Baldev Singh, Assistant Line Man, who stated that as per the record, the electricity supply, from the feeder, which feeds Bherth, was stopped at 07.20

p.m. on 29.06.2009 and it was restored on the next day. However, he admitted in his cross-examination that his duty was over by 05.00 p.m. on 29.06.2009. Even the record was not in his hand, it was the only single sheet which he had brought. However, he stated that the record he had brought was a permanent record and was kept at the sub station.

9. Learned counsel for the appellant vehemently argued that in the present case, the entire prosecution case was based on the testimony of PW1 Lakhwinder Singh, who was the father of Baldev Singh, deceased. He was an interested witness and had falsely involved the present appellant. Apart from that, it was a case of blind murder and a false case was foisted upon the appellant. As per the admitted case of the prosecution, the parties were simply known to each other, however, there was no enmity between both the sides. Even, the prosecution did not lead any evidence to suggest any motive on the part of the present appellant to commit the crime in the present case. Still further, even the presence of PW1 Lakhwinder Singh was doubtful at the place of the alleged occurrence. Even the prosecution admittedly had the opportunity to examine the private witnesses, but in spite of availability of independent witnesses, no witness was joined by the prosecution. Learned counsel further submitted that the alleged occurrence had taken place at about 08.30 p.m. on 29.06.2009 and the FIR has been registered at about 07.15 p.m. on 30.06.2009 and there is unexplained delay of 22 hours in registration of the FIR.

Still further, there was no independent corroboration of the case of the prosecution and the entire prosecution case was based on the testimony of PW1 Lakhwinder Singh and other official witnesses. Still further, in alternate, learned counsel for the appellant prayed that the case of the appellant would fall within the exceptions appended to Section 300 IPC and at the worst, the appellant could be convicted for the offence under Section 304 IPC in the present case.

10. On the other hand, learned State counsel submitted that in the present case PW1 Lakhwinder Singh was an eye witness of the occurrence, who had mentioned the detailed account of the entire occurrence. Even, while appearing as PW1, he had supported the case of the prosecution on all material aspects and was subjected to lengthy cross-examination. Apart from that, a blood stained *Kirch* was recovered from the present appellant and as per FSL report, Ex.PY, the *Kirch* was alleged to be stained with blood.

11. We have heard the rival contentions made by learned counsel for both the parties and have carefully perused the trial Court record in the present case.

12. In the present case, the prosecution examined Lakhwinder Singh, complainant as PW1. He alongwith his son Baldev Singh, deceased was present near their house and the electric bulb was blowing. Amarjit Singh, appellant came there and after a hot exchange between them, the appellant took out a *Kirch* (knife) and inflicted blows with *Kirch* on the stomach of Baldev Singh. Due to

serious condition, Baldev Singh was referred to Guru Nanak Dev Hospital, Amritsar, where he died on 02.07.2009. PW1 Lakhwinder Singh stated that there was no reason or any motive to cause this injury to his son by the accused. He further stated that his house and the house of the accused were situated in different segments (patties). He had been meeting the appellant before the occurrence also, being resident of the village. Even as per the testimony, there was no enmity between both the parties. In the present case, the postmortem on the dead body of Baldev Singh was conducted by PW4 Dr. Kirpal Singh and he had prepared the postmortem report Ex.PW4/B and had found the following three injuries on the person of Baldev Singh:-

- “1. *Stitch wound 11 C.M. long on right side of abdomen with 14 stitches.*
2. *Stitch wound 6 C.M. long on left side of upper part of abdomen.*
3. *Stab wound on left side of abdomen 1.9 x 1.8 C.M. at 5 0 C p. to umbilicus”.*

13. As per PW4 Dr. Kirpal Singh, the cause of death was haemorrhage and shock, which were sufficient to cause death. Even during the course of investigation, blood stain *Kirch* was recovered from the appellant by PW10 SI Amolak Singh, in pursuance of the disclosure statement Ex.PW7/G suffered by the appellant, in his presence and PW7 SI Kamal Kishore and PW8 HC Harbans Singh and a recovery memo Ex.PW7/J was prepared in this regard. As per the FSL report Ex.PY, the *Kirch* (knife) was found to be stained with

human blood.

14. Before proceeding any further to examine the evidence led by the prosecution, it would be appropriate to determine as to whether the appellant/accused had an intention to commit the murder of Baldev Singh or not. Eventually, it would depend upon a combination of several factors and there can be no straight jacket formula for deciding whether there was any intention to commit the murder or not. Similarly, this Court has also to determine as to whether there was a grave and sudden provocation, which led the accused to loose his power of self control and it would depend on the facts and circumstances of the case. The Hon'ble Supreme Court has held in ***Criminal Appeal No. 2006 of 2023 decided on 06.09.2023*** titled as "***N. Ramkumar Vs. The State rep. By Inspector of Police***" as follows:-

"19. This Court in a recent judgement in the case of Anbazhagan v. The State represented by the Inspector of Police in Criminal Appeal No.2043 of 2023 disposed of on 20.07.2023 has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:

"60. 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 cause 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."

15. In the present case also, it emerges from the facts unravelled during the trial that Baldev Singh, deceased and the appellant belonged to the same village and there was no enmity

between both the sides. Even, as per PW1 Lakhwinder Singh, Baldev Singh and the appellant belonged to different patties (segments). Even, they had been meeting each other being the residents of same village. Apart from that, it was also apparent that the appellant had been doing some labour work at Rajasthan, however, he had returned to the village some time ago. Even, admittedly, there was no enmity between the parties and the occurrence had taken place at the spur of the moment. In fact, at the time of the occurrence, Baldev Singh (deceased) and the appellant were standing near the house of Baldev Singh. Baldev Singh asked Amarjit Singh appellant as to who he was and why he was standing there. On this, the appellant became angry and started saying as to who he was to ask him. On this Baldev Singh stated that his house was on this side and he could ask the appellant. On this all of a sudden, the appellant got angry and caused injuries with a *Kirch* on the stomach of Baldev Singh and Baldev Singh ultimately succumbed to the injuries. There is no doubt that the appellant should have exercised caution and controlled himself. However, as already discussed hereinabove, the response to a particular situation may differ from person to person. We are, therefore, of the considered view that the case would fall under exception (1) of Section 300 of the IPC. As such, the conviction under Section 302 IPC would not be maintainable. The conviction under Section 302 IPC is converted to Part I of Section 304 IPC.

16. As per the custody certificate, the appellant has already

undergone 07 years, 03 months and 14 days of actual sentence and had earned remissions of 07 years, 01 month and 0 days and, thus, the appellant had undergone 14 years, 04 months and 16 days of sentence including remissions. Consequently, the sentence imposed on the present appellant is ordered to be reduced to the period already undergone by him. The fine will remain unaltered in the present case.

17. With the above modifications, the appeal stands disposed off.
18. All pending applications, if any, are disposed off, accordingly.
19. Trial Court record be sent back to the trial Court.

(GURVINDER SINGH GILL)
JUDGE

21.05.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No