



\$~7

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 07.02.2024

+ CRL.L.P. 282/2022
STATE

..... Petitioner

Through: Mr. Ajay Vikram Singh, APP with
SI Abhishek, PS-Khajuri Khas.

versus

AMIT GAUTAM

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

%

J U D G M E N TANOOP KUMAR MENDIRATTA, J (ORAL)

1. Criminal Leave Petition under Section 378(4) Cr.P.C. has been preferred by State against judgment dated 03.03.2020 and order on sentence dated 04.03.2020 whereby the respondent has been convicted under Section 304 Part-II IPC.

2. The short point which arises for consideration in the present criminal leave petition is "*whether the offence for which respondent stands convicted falls under Section 304 Part-II or 304 Part-I of the IPC.*"

3. In brief, the case of the prosecution as noticed in the impugned judgment is that the deceased Shakuntala Devi had two sons, namely Amit Gautam (respondent) and Ajeet Gautam (complainant). On 17.05.2018, about 10:00PM, respondent had a quarrel with his mother and inflicted fist blows on her face. Further when the complainant intervened and tried to save their mother, the respondent fled after pushing him away. The mother of complainant and respondent, was moved to G.T.B. Hospital and the F.I.R. was initially registered under Section 308 IPC, on statement of Ajeet Gautam



(brother of respondent). Later on, during the course of treatment, Shakuntala Devi expired on 21.05.2018 on fifth day of the incident. Consequently, Section 304 IPC was invoked by the prosecution.

4. In order to prove its case, prosecution relied upon testimony of complainant (PW-2) i.e. Ajeet Gautam who rushed to the spot at the time of assault. Finding the testimony of PW-2 to be credible and trustworthy, the respondent was convicted under Part-II of Section 304 IPC vide impugned judgment dated 03.03.2020.

5. Learned APP for the State submits that the intention to cause death is manifest since fist blows were inflicted by the respondent/accused on the head of deceased, which resulted in injuries in the occipital region. It is further pointed out that injuries as revealed in the M.L.C. were sustained by the deceased due to assault and not due to fall from the bed, as contended on behalf of the respondent before the learned Trial Court.

6. The injuries suffered by the deceased as recorded in the M.L.C. may be briefly noticed:

- i. *Lacerated wound over lower lip (1x 0.5 cm).*
- ii. *Blackening around left eye.*
- iii. *Swelling over zygomatic region.*
- iv. *Bruise Mark near right eye.*
- v. *Swelling over nose.*
- vi. *Swelling in occipital region.*

Also, the injuries recorded in the post-mortem report as proved by Dr. Aditya Anand (PW-5) may be reproduced for reference:

“i) Bluish green contusion of size 8.0 x 3.5 cm present over right side of forehead and face, extending from 5.0 cm above right eyebrow to 3.0 cm below right eyebrow and 5.0 cm to



midline.

ii) Bluish green contusion of size 6.0 x 6.0 cm present over left side of face, 5.0 cm to midline and upper end touches left eyebrow with fracture of underlying zygomatic arch, extravasation of blood is present over the fracture ends and in the surrounding tissues.

iii) Bluish green contusion of size 4.0 x 1.5 cm present over nose, 1.5 cm below glabella.

iv) Reddish brown scabbed abrasion of size 3.5 x 1.5 cm present over left side face, 4.0 cm to midline and 4.5 cm below left eyebrow.

v) Superficial lacerated wound of size 0.5 x 0.2 cm x mucosa deep present over the mucosal aspect of lower lip in midline.

vi) Bluish green contusion of size 8.0 x 7.0 cm present over right side front of upper chest, 8.5 cm to midline and 7.0 cm below shoulder top.

vii). Bluish green contusion of size 5.0 x 3.5 cm present over left anterior axillary fold, 9.0 cm below shoulder top.

viii) Bluish green contusion of size 6.0 x 3.5 cm present over medial aspect of left breast, 5.0 cm to midline and 14.0 cm below mid clavicular point.

ix) Incised wound of size 1.5 cm x 0.2 cm x 1.2 cm present obliquely over the lateral aspect of right arm, 6.0 cm below shoulder top. Both ends having acute angle and tailing present towards the anterior end.”

The opinion as to the ‘cause of death’ as reflected in the post-mortem report (Ex.PW-5/A) is coma as a result of *ante-mortem* injury to head, produced by blunt force impact.

7. Section 299 IPC defines culpable homicide as under:-

“299. Culpable Homicide:-Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”



Further Section 304 IPC prescribes punishment for offence of culpable homicide not amounting to murder as defined in section 299 IPC and provides as under:-

“304. Punishment for offence of culpable homicide not amounting to murder- *Whoever commits culpable homicide not amounting to murder, shall be punished with¹ [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.”

8. At this stage, it may be apposite to refer to the observations of the Hon’ble Apex Court in ***Anbazhagan v. The State Represented by the Inspector of Police, 2023 (10) SCALE 173*** to determine whether the offence falls under Part I of Section 304 IPC or part II of Section 304 IPC:

“46. We have noticed something in the aforesaid observations made by this Court which, in our opinion, creates some confusion. We have come across such observations in many other decisions of this Court over and above the case of Jagrup Singh (1981) 3 SCC 616. What we are trying to highlight is that in Jagrup Singh (supra), although this Court altered the conviction from Section 302 to Section 304 Part II, it took shelter of Exception 4 to Section 300 of the IPC. The question is, was there any need for the Court to take recourse to Exception 4 to Section 300 of the IPC for the purpose of altering the conviction from Section 302 to Section 304 Part II of the IPC. We say so because there is fine difference between the two parts of Section 304 of the IPC. 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.

XXX XXX XXX

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 I 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.”

9. In the light of the principles of law clarified in *Anbazhagan v. The State Represented by the Inspector of Police* (supra), Part I of Section 304 IPC applies if the prosecution proves that death is caused by intention of causing such bodily injury as is likely to cause death; whereas Part II of Section 304 IPC would apply in case there is **knowledge** that the act is likely to cause death but without any intention to cause death. It is also important to notice that for the purpose of holding an accused guilty of the offence punishable under Second Part of Section 304 IPC, the accused need not necessarily bring his case within one of the exceptions to Section 300 IPC. If the act falls within Third Part of Section 299 IPC (i.e. causing of death with knowledge that act is likely to cause death), the accused would be punishable under Part II of Section 304 IPC.

10. Reverting back to the facts of the case, a bare perusal of testimony of PW-2 reflects that in examination-in-chief, he stated that at the time of the incident on 16.05.2018, he came out of his room on hearing commotion between his mother and respondent, and saw that the respondent had pulled his mother down from the bed. PW-2 further deposed that respondent had given a fist blow on the face of his mother. However, during cross-examination, he stated that when he reached the room he had seen his mother lying on the bed covering her face with her hands and when he tried to rescue his mother, respondent pushed him aside and fled from the spot. The mother of respondent was thereafter shifted to G.T.B. Hospital and expired during the course of treatment on the fifth day.



11. In order to ascertain if the accused/respondent had an intention to cause death, the following circumstances/factors become relevant:

- (i) Nature of weapon used, if any;
- (ii) Whether the blow is made at a vital part of the body;
- (iii) The amount of force employed in causing injury;
- (iv) Whether the act was in the course of sudden quarrel or sudden fight or free for all fight.
- (v) Whether the incident occurred by chance or whether there was a pre-meditation;
- (vi) Whether there was any prior enmity;
- (vii) Whether the deceased was a stranger;
- (viii) Whether there was a grave or sudden provocation, and if so, the cause for such provocation;
- (ix) Whether the offence was committed in heat of passion;
- (x) Whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;
- (xi) Whether the accused dealt a single blow or several blows.

Also, other relevant factors may be kept in consideration which may throw light on the intention of the accused. Reference in this regard may be made to *Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh*, (2006) 11 SCC 444.

12. On the face of record, the incident was neither pre-meditated nor the accused was armed. He did not visit the premises after making any preparation for assault. The quarrel followed by assault by fists appears to have happened on the spur of the moment over some differences regarding ancestral property.

The nature of injuries as recorded in the M.L.C. and reflected in the post-mortem report appear to be largely contusions with a small incised wound and fracture of zygomatic arch. It cannot be ruled out that injury on



the head may have been caused due to a hit or fall from the bed during the assault. The nature of injuries and manner of incident do not lead to an inference that the injuries were inflicted with an intention to cause death or cause injuries that were likely to cause death. However, considering the age of the deceased, it can be presumed that the respondent had knowledge that the injuries are likely to cause death. Considering the facts and circumstances of the case and for the reasons recorded above, the conviction of accused for offence punishable under Section 304 Part-II of IPC does not call for any interference by this Court.

13. Reliance may also be placed upon '*Lavghanbhai Devjibhai Vasava v. The State of Gujarat*', (2018) 4 SCC 329, wherein the appellant picked up a wooden object and hit his wife over a petty dispute on cooking of lunch which resulted in her unfortunate death. Considering the fact that the medical evidence showed that not much force was used in inflicting the blow to the deceased under sudden provocation and in a heat of passion, the offence was held to be covered under Section 304-II IPC and not under Section 302 IPC. The aforesaid authority also squarely applies to the facts and circumstances of the present case.

14. In view of above, this Court is of the opinion that no grounds are made out for granting leave to appeal. Petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the learned Trial Court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 07, 2024
B.S. Rohella/sd