

In Re: Dadi Abdul Gaffoor

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Court : Andhra Pradesh

Decided On : Oct-22-1954

Reported in : AIR1955AP24; 1955CriLJ329

Judge : Subba Rao, C.J. and ;Umamaheswaram, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300 and 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367(5)

Appeal No. : Referred Trial No. 63 of 1954 and Criminal Appeal No. 340 of 1954

Appellant : In Re: Dadi Abdul Gaffoor

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : P. Basi Reddi, Adv. for ;O. Chinnappa Reddi, ;V. Ramakrishna and ;C. Padmanabha Reddi, Advs.

Judgement :

(1) The Additional Sessions Judge of Kurinool convicted the accused under S. 302, Indian Penal Code and sentenced him to death.

(2) The prosecution case may be stated briefly. About five months prior to the date of the occurrence, Gaffoor Miah, father of the deceased Sathan Miah, rented out a house of his to the father of the accused. At the instigation of Sathar Miah, the lease was terminated and the house was let out of to one Chintalayya. This led to

an altercation between the members of the two families. Two months thereafter, a brother of the accused was injured by acid being thrown on him. The accused suspected that the deceased threw the acid. The accused's father reprimanded him for it. Enraged at the behaviour of the deceased, the accused at about 7-30 A. M. on the 8th of June 1953 followed him when he was going to the Handri river to take his bath, and, in the sands of that river near Gummez beat him on his head with a stick and, after he fell down, turned his face upwards and with a knife cut off his nose. The deceased was later on taken to the hospital, where he died the next day at 5.30 P. M. The evidence of the witnesses, who have spoken to this version was accepted by the learned Sessions Judge.

(3) The learned Counsel for the accused did not question the truth of the main events deposed to by the eye witnesses. He argued that, on the facts found, no case of murder has been made out and that the offence would only amount to culpable homicide not amounting to murder.

(4) The difference between the two offences of culpable homicide and murder is fine but real. Culpable homicide is a generic term. The offence will amount to murder if the conditions laid down in S. 300 are satisfied. If the offence comes under S. 299 or under one or other of the exceptions to S. 300, it will be culpable homicide not amounting to murder. Melvill J. in -- 'Reg v. Govinda', 1 Bom 342 (A) ably analysed the ingredients of the two sections and brought out clearly the difference between them. For convenience of comparison, he has given a table showing the ingredients of the two sections in juxtaposition at page 344, It is not necessary to reproduce the entire table, as on the facts of the present case, the only relevant clause is the third clause of S. 300, It will be enough if the third clause and the corresponding provisions of S. 299 are extracted. They read :

S. 299.	S. 300
With the intention of causing bodily injury as is likely to cause death.	With the intention of causing death.
injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death	

Dealing with this clause, the learned Judge observed at page 345 :

'The offence is culpable homicide if the bodily injury intended to be inflicted is likely to cause death, it is murder, if such injury is sufficient in the ordinary course of nature to cause death. The distinction is fine, but appreciable. It is much the same distinction as that between (c) and (4) already noticed. It is a question of degree of probability. Practically, I think that it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part, may be likely to cause death. a wound from a sword in a vital part sufficient in the ordinary course of nature to cause death.'

We respectfully agree with the analysis. But the example given by the learned Judge is only illustrative. It is for the court to ascertain, on the facts of each case, whether the offence committed is murder or only culpable homicide not amounting to murder. That clause could be invoked only if the intended bodily injury is sufficient in the ordinary course of nature to cause death. What is the injury intended to be inflicted by the accused can be ascertained, unless the accused admits that he intended to inflict a particular injury, only by the nature of the weapon or weapons used, by the seriousness of the injury caused and by the parts of the body on which the wounds are inflicted. Whether such injuries are likely to cause, death or sufficient in the ordinary course of nature to cause death, would depend again on the different degrees of a probability. If death was the most probable result, it would be murder.

(5) What are the facts found in the present case The accused used a stick 31/2 feet long and 3' in diameter. He beat the deceased, who is a young man, on his head with that stick. The evidence of the witnesses that he beat him again on his head after he fell down may be excluded as the witnesses did not mention that fact before the Magistrate. After he fell down, the accused turned his face upwards, drew a knife 6' long from his drawers and put it out of his nose. The post-mortem examination discloses the following wounds on the body :

1. A contused incised wound obliquely placed over the left dorsum, one inch long, skin deep and with edges glued.
2. A contused punctured wound on the inner aspect of the right little finger.

3. Whole of the cartilaginous nose was severed vertically from the bridge, edges were congested nasal spetum could be seen.
4. An irregular contused lacerted wound on the left uppen lip 3/4' rectangular in shape.
5. A contused lacerated wound on the right occiput 1/2' X 1/2' and muscle deep.
6. A contused lacerated wound on the right parietal region 1' X 1/2' and muscle deep.
7. A contused lacerated wound on the right paietal region 1' X 1/2' and muscle deep just in front of injury No.6.
8. A lacerated wound on the right frontal region 3/4' X 1/4'and skin deep.
9. A contused lacerated wound on the left parietal region 2' X 1/2' and skin deep.

The doctor who was examined as P. W. 17 says that there was extensive extravasation under the scalp, that there was a fracture 5' in length starting in a depressed fracture and running forward on the right parietal above perite-temporal suture and ending in the frontal bone. He was of opinion that death was due to cerebral compression and that the compression of the brain was due primarily to fracture. Though the deceased was duly attended to, he passed away at 5.30 P. M.

(6) Can it be said from the aforesaid facts that the bodily injury intended to be inflicted is not sufficient in the ordinary course of nature to cause death When an assailant used a stick 3 1/2 feet in length and 3' in diameter to beat a person on his head causing serious injuries both external and internal, as disclosed by the medical certificate and also when he used a knife to chop off the victim's nose, we find it very difficult to hold that he did not intend to cause bodily injury sufficient in the ordinary course of nature to cause death. The weapon used, the part of the body where it was used and the nature of the wounds caused are sufficient in this case to infer an intention on the part of the accused to cause these wounds. We are also satisfied that the serious wounds caused in the vital part of the body of

the deceased are sufficient in the ordinary course of nature to cause death

(7) Relying upon the statement of the doctor that the injuries are sufficient to cause death, it is argued that the doctor intended only to say that the injuries are likely to cause death. We do not think we are justified in attributing to the doctor the subtle legal distinction between the two categories of injuries and in holding that he intended to say that the injury caused came within the definition of culpable homicide not amounting to murder. Indeed, if any such intention should be attributed to him, the word used by him viz., 'sufficient' must have been taken from the third clause of S. 300, indicating thereby that the wounds are sufficient in the ordinary course of nature to cause death. But we would prefer to base our conclusion on the facts clearly deposed to by the doctor, rather than on the ambiguous opinion expressed by him on the nature of the offence committed. On the facts disclosed by the doctor, we have no hesitation to hold that the injuries intended to be caused were sufficient in the ordinary course of nature to cause death. We would, therefore, hold that the offence committed was murder and that the accused was rightly convicted under S. 302, I. P. C.

(8) The next question is whether there are any mitigating circumstances in favour of the accused. The accused is a young man of 25. The quarrels between his family and that of the deceased, the active part taken by the deceased in the said dispute, the suspicion that he threw acid on the accused's brother naturally enraged the young man and he wanted to teach the deceased a lesson, which he would never forget. The method he conceived was to disfigure him by cutting away his nose. It was crude and certainly cruel, but it is obvious from the evidence that he had no intention to kill. With a lesser wound and with perhaps better medical attendance, his life might have been saved.

(9) Having regard to the aforesaid circumstances, and his youth, we think the ends of justice would be served if the lesser penalty of transportation for life is inflicted. We accordingly set aside the sentence of death, and instead sentence him to transportation for life.

(10) In the result, the conviction is confirmed, but the sentence is modified.

Sentence reduced.

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