

Public Prosecutor Vs. Abdul Rahim

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Court : Andhra Pradesh

Decided On : Sep-08-1966

Reported in : AIR1968AP231; 1968CriLJ1030

Judge : Kumarayya and ;Sharfuddin Ahmad, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300, 302 and 304

Appeal No. : Criminal Appeal No. 399 of 1964

Appellant : Public Prosecutor

Respondent : Abdul Rahim

Advocate for Def. : N.C.V. Ramanujachari, ;C. Srinivasachari and ;S. Rangachari, Adv.

Advocate for Pet/Ap. : Party in person

Disposition : Appeal partly allowed

Judgement :

1. The only question to be answered in this appeal against acquittal of the accused of the offence under Section 302 I.P.C. is whether the Sessions Judge. Nellore was right in convicting the accused, Syed Abdul Rahim under part II of Section 304 Indian Penal Code after holding, a? he did, that the accused had intentionally and not accidentally pierced the knife below the chest which went deep producing

internal injury of 1/2' x 1/2' x 1/2' right in the middle and front part of the heart to which the deceased succumbed within a few minutes.

2. The circumstances under which and the manner in which the said offence was committed admits, to a large extent, of no dispute. It is common ground that on 25-10-1963 at about 2.00 P.M. the deceased went to the shop of the accused and demanded back 2 annas which the latter owed to him. Thereupon the accused pushed him saying 'Jare Kaminan' i.e 'get away mean fellow'. The deceased at once retorted and said that the accused and his father are 'Kamina' and not he. The accused thereupon fisted the deceased on his chest twice or thrice saying how dared he abuse his father. P.W. 1 intervened and separated the two. The accused remained at the shop. The deceased went to a distance of 10 feet from the shop near the sleeper fencing of the railway. Abdul Razaak, the younger brother of the accused came meanwhile and asked the accused what the disturbance was about. The accused told him that the deceased had abused their father. When interrogated by Abdul Razak, the deceased denied to have ever abused their father. At that time the accused was cutting plantains with knife. On the denial of the deceased he (accused) rushed towards him and questioning whether he had not abused his father, pierced the knife, which was in his hand, at the lower end of the chest which went two inches deep. As he removed the knife blood gushed out of the wound. When the deceased was about to fall, the accused threw the knife, caught hold of the deceased, took him on his shoulders and carried him to the railway hospital nearby. The doctor was not there. He fetched him. The doctor found the deceased in a collapsing state. All his efforts to revive or save the deceased proved futile. This, in short, is the prosecution version.

3. The accused admitted the prosecution case in general. All that he said was that he never wanted to harm the deceased and did not intend to pierce the deceased with the knife but that he was cutting the plantains at the time when the deceased denied before his brother that he ever abused their father, that without realising that he was having a knife in his hand he pushed the deceased saying go away and incidentally the knife pierced into the chest of the deceased. The knife thrust was thus involuntary. and was a sheer accident.

4. This plea of the accused does not find support from the material on record or any proved circumstances. The entire evidence points to one thing i.e., the thrust of the knife was an intentional act of the accused. P.W. 1 says that the accused was there in front of his shop holding a knife used for cutting plantains. On bearing the deceased saying like that, the accused rushed at him saying whether he did not abuse and pierced him below his chest with a knife. On receipt of the injury the deceased cried 'Ammo' and blood gushed out of the wound. When the deceased was falling the accused placed the knife on the ground, caught hold of him and carried him to the railway hospital. In cross-examination he reiterated that the accused questioning the deceased whether he did not abuse his father pierced the knife. There is nothing in the statement of this witness to suggest that the accused had pushed the deceased with both hands unmildful of the knife in his hand and the knife accidentally pierced him.

5. P.W. 2, another witness, categorically says that questioning the deceased whether he did not really abuse his father, the accused pierced the deceased with the knife in his hand below the lower end of the chest. After piercing the accused pulled back his knife and threw it out.

6. P.W. 3 also says the same fact that the accused pierced the deceased with a knife in the chest questioning him whether he did not abuse his father. After piercing he pulled out the knife. The same is the testimony of P.W. 4 who even cried out 'Chubadaa' 'Chubadala' and Bhogdale, thereby meaning pierced or stabbed. The testimony of these two witnesses goes all one way that the piercing of the knife was the voluntary act of the accused. The nature of the injury also corroborates, rather than contradicts in any manner their testimony. If the accused had pushed the deceased with both hands, the injury of that nature would not have been there. It appears to be 2 1/2' deep going into the heart of the deceased. It was a direct push with the knife and not with hands. If it was a push with hands it would have moved the deceased back to some distance and made him even fall. If the deceased was about to fall it was not because of the hand push but on account of reeling sensation due to gushing of blood after the knife was taken. It is true that the deceased and accused are related through P.W. 6 the maternal uncle of the deceased. The accused was the brother of P.W. 6's second wife. The deceased

his mother and his brother are living with P.W. 6. Both the deceased and accused were the residents of the same village. It is also true that there was no previous enmity between them. Even the words used by the deceased could not afford a motive for the accused to cause his death. In fact when the words were first uttered reply was given only by fisting on the chest. The denial of course would not have worsened the feeling. But it is a fact that this time he used the knife which was in his hand and not fist. It is also true that as soon as he realised the nature of the injury he lost no time to take steps to save his life. He immediately removed him to a hospital on his hack. When he found that the doctor was not there, he rushed to hit house brought him and saw that the medical aid is given. This also shows that he did not cause the injury with intent to cause death. But there can be little doubt that while piercing the knife he did Intend to cause injury and that injury proved fatal to the deceased. In these circumstances, the question is what is the offence that is made out by these facts.

7. The learned Judge was of the view that since the accused neither had the intention to kill the deceased nor had intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death, it is not a case of murder nor is it a case coming under first part of Section 304 I.P.C. but it was an offence falling within the 2nd part of Section 304 I.P.C. It is on that basis that he awarded a sentence of imprisonment for three years having convicted him under part II of S 304.

8. Mr. Jayachandra Reddy, the learned additional public prosecutor contends that when there was the intention to cause injury, the very fact that the injury was sufficient in the ordinary course of nature to cause death will bring the act under Section 300 'thirdly' and the conviction could only be under Section 302 and not under Section 304. At any rate it could not be under the 2nd part of Section 304 I.P.C.

9. In order to appreciate the argument we have to notice the distinction between murder and culpable homicide not amounting to murder by referring to Section 300. All facts falling under Section 300 must necessarily fall within Section 299 though the converse may not be true. Section 299 is virtually divided into three

parts. The first part refers to the act by which death is caused being done with the intention of causing death. This part corresponds to the first part of Section 300. The second part of Section 299 speaks of the intention to cause such bodily injury as is likely to cause death. This has corresponding provisions in clauses 'Secondly' and 'thirdly' of Section 300 I.P.C. The third part of Section 299 corresponds to 'fourthly' of Section 300. Of course the difference between the two offences is marked by specific words used in those sections. We have now to see whether the present case falls under Section 300. Evidently it does not come under first part of it as the act was not done with the intention of causing death. Clause 2 is attracted when the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused. It postulates special knowledge of the constitution, constitutional defects, or ailments of the deceased. Unlike the second part of Section 299 which corresponds to 2nd and 3rd Clauses of Section 300, stress in this part of the Section is laid on the special knowledge of the offender of facts and circumstances under which the act was done with particular reference to the person and state of health of that person to whom the harm is done. We are however not concerned in this case with this clause i.e. secondly. The question that survives then is whether the injury is one which was intended to be caused and if so whether it is sufficient in the ordinary course of nature to cause the death. If the injury caused is not sufficient in the ordinary course of nature to cause death it is out of the purview of clause 'thirdly' of Section 300 and would appropriately fall under second part of Section 299.

10. While it is the contention of the learned Additional Public Prosecutor that when once it is proved that the accused intended to inflict the injury which was actually inflicted it may not be necessary to consider further whether he intended to inflict such injury as is sufficient in the ordinary course of nature to cause death. The intention to cause the injury being established, the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death would bring the act within clause 'thirdly' of Section 300, I.P.C.

11. As against this, the learned counsel Mr Ramanuiachari relying on the cases of *Faqira v. State* : AIR1955 All321 and in *Re. Mahanandi*, : AIR 1960 AP141

contends that it is not merely sufficient that the injury was intended to be caused but also it should be further proved that the accused intended to cause such injury as is sufficient in the ordinary course of nature to cause death Nasrulla Beg J., in his concurring Judgment in : AIR1955 All321 has no doubt said that the words 'intended to be inflicted' used in that proviso are not surplus words and are not therefor to be ignored nor the qualifications which they import into the clause be whittled down in any manner. He was of the view that:

'..... .to bring an act within the four corners of Clause (3), it is not enough that the injury actually inflicted is sufficient in the ordinary course of nature to cause death. It is further necessary that the offender should intend to cause an injury of this nature. From the fact that the injury caused is sufficient in the ordinary course of nature to cause death, it does not necessarily follow that the offender intended to cause an injury of that nature.'

He further said that no doubt the presence of injury of the kind would raise a presumption that the offender intended to cause injury of that nature but it is a rebuttal presumption and the court will have to ascertain that the facts brought out in the case are such as would rebut the presumption that was raised against the accused. His observations are categorical that unless both the tests are fully satisfied the conditions of clause 'thirdly' (a) will not be deemed to be satisfied. In order to come to a conclusion with regard to the intendment of causing such an injury he observed, various circumstances need be taken into account. It is only after taking into consideration the totality of circumstances brought out in evidence whether they are strong enough to rebut the presumption raised by the existence of the injury that conclusion as to whether the requirements of Clause 3 have been fulfilled can be reached. Among the factors to be considered for the purpose, according to the learned Judge, are the kind of weapon used, how it is used, whether used on the vital part of the human body or not, whether the attack was premeditated or was a sudden one made on provocation whether the injury caused was solitary one or multiple injuries and similar other factors which may be counter balancing factors for rebutting presumption.

12. The above view taken by the learned Judge is not quite in accord with the view expressed by the Supreme Court in *Virsa Singh v. The State of Punjab*, : 1958 CriLJ818 Bose J. delivering the opinion of the court in para 12 of the judgment has observed thus:

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 In-Jury 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 enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by' the prosecution (and, of course, the burden is on the prosecution throughout the offence is murder under Section 300 thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference the Injury is sufficient in the ordinary course of nature to cause death.'

13. In that case an argument was advanced, that the prosecution had not prove that there was an intention to inflict a bodily Injury that was sufficient to cause death in the ordinary course of nature and Section 300, thirdly was not therefore attracted. This argument was repelled as fallacious with the following observations: -

'If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature then the Intention ' is to kill and in that event the thirdly would be unnecessary . . . '

Relying on the decision in *Emperor v. Sardarkhan Jaridkhan*, ILR 41 Bom. 27, at p. 29 : (AIR 1916 Bom 191 at p. 192) it was argued in that case that where death was caused by a single blow it was always much more difficult to be absolutely certain what degree of bodily injury the offender intended. The learned Judge observed that the intent required cannot be linked with the seriousness of the injury. The two matters are quite separate and distinct though the evidence about them may sometimes overlap. 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 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 consequence is neither here nor 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. But whether the intention is there or not is one of fact, not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.'

14. Then His Lordship also dealt with the inference as to the seriousness of the injury and observed that:

' . . . If the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such case would be to inflict a totally different injury. The difference is not one of law but one of fact '

15. Thus the various observations referred above make it abundantly clear that all that is necessary to prove to attract the third clause of Section 300 I.P.C. is whether the accused intended to inflict the injury that was on the body. When that is proved, the further matter to be considered is whether the injury is sufficient in the ordinary course of nature to cause death. The intention in relation to sufficiency or otherwise of the injury is not a matter for consideration at all. In this state of law, declared by the Supreme Court reliance on the observations of Nasrullah Beg J, in Allahabad case is of no avail. Similarly, the decision of this court in : AIR 1960 AP141 on which much reliance has been placed is of little assistance. In fact this decision which does not refer to the above Supreme Court decision has been dissented by a Division Bench of this Court to which one of us was party in an unreported decision in Criminal Appeals Nos. 654, 689, 694 and 12 of 1960. D/- 19-12-1960 (AP) and also by another Bench in the case of Public Prosecutor, A.P. v. Veeraiah, 1962 (1) Andh WR 84.

16. That being the settled law we have to consider whether the two requirements contemplated by the 3rd clause of Section 300 I.P.C. have been fulfilled. We have already noticed that the testimony of direct witnesses point to one thing that the piercing of the knife by the accused in the chest of the deceased was a voluntary act of the accused. It was not unintentional or accidental. The thrust was made in the chest region below sternum and it pierced the heart to some extent. The only question then to be considered is whether the injury that has been inflicted is sufficient in the ordinary course of nature to cause death. Unfortunately, not a

single question in this behalf was out to the medical officer when he was in the box. His post-mortem report. Ex P-6 also is not specific about this. The Medical Officer. P.W. 12 says that the deceased appeared to have died of shock and haemorrhage as a result of the injury to the heart. As regards the nature of injuries he says that it was an incised wound below the lower end of chest bone i.e.. below sternum and on dissection the internal injury revealed an incised wound 1/2' x 1/2' x 1/2' on the middle and front part of the heart. He does not state whether the wound was on the auricle or verticle, whether in the right or left thereof. There is no material before us to come to the conclusion as to the nature if the injury and whether it is sufficient in the ordinary course of nature to cause death. May be that in this particular case the deceased died within a few minutes of the receipt of Injury but there are also cases to which reference has been made by the learned counsel relying on passages from Modi's Medical Jurisprudence¹ and Toxicology (14th Ed. P. 284-287) that the patients who received wounds in the heart survived not only for days and months but also years danger to life being dependent upon the nature of wound it is but elementary that the burden lies always on the prosecution to establish all the essential elements which go to prove the guilt and these elements must be established beyond reasonable doubt. But the evidence in this behalf is deficient or leaves us in doubt, the accused is entitled to the benefit of such doubt. In this case we have not only noticed that no question was put to the doctor and this important piece of opinion evidence was not brought on record but also the Public Prosecutor in the trial court had conceded that the offence committed by accused would be culpable homicide not amounting to murder. That would of course be so, only if the injury inflicted is likely to cause death coming within Part II of Section 299 I.P.C. In this state of evidence we think we should give the accused the benefit of doubt in relation to the nature, of injury.

17. We have now before us an unreported decision of this court in R.T.No. 14 of 1964 D/- 13-2-1964 (AP) where similar view was taken in the absence of clear evidence as to the injury being sufficient in the ordinary course of nature to cause death. There Krishnan Rao J. delivering the opinion of the court observed thus:

Although no less than three medical officers (P.Ws. 10, 11 and 19) who examined the deceased's injuries, were placed in the witness box it was not elicited from any

of them by the Prosecutor in trial court that the injury was sufficient in the ordinary course of nature to cause death so as to attract the clause 'thirdly' Section 300 I.P.C. On the other hand, P.W. 11 who treated the deceased and conducted part of the abdominal operation on her said on the point: The death was due to haemorrhage and shock as a result of primary injury that is the stab injury on the abdomen. The injury on the abdomen was grievous and the other injury on the wrist was simple in nature. It is reasonable to suppose that the abdominal injury was necessarily fatal or was sufficient in the ordinary course of nature to cause death, P.W. 11 would have stated so, instead of merely saying that the injury was grievous which in the present context, would merely mean that it endangers life within the clause 'Eightly' of Section 320 I.P.C.

18. While referring to the case of *Brij Bhukhan v. The State of Uttar Pradesh*, : 1957 CriLJ591 relied on by Public Prosecutor in support of his argument where the doctor did not say that any one of the injuries was sufficient to cause death, the Supreme Court inferred mention to cause death from the nature of the injuries, the learned Judge said that their Lordships of the Supreme Court came to the conclusion that there was Intention of causing death having regard to the ferocity of the assault resulting in a number of injuries and the case therefore was distinguishable

19. We are on the point whether the injury as it is, was sufficient in the ordinary course of nature to cause death. However, much we feel that the injury was on a vital organ, it is not safe for us to conclude as to the nature of the injury being sufficient in the ordinary course of nature to cause death. May be that death took place within short period after the injury but that cannot be the conclusive test as we cannot forget the fact that in cases where cloud is cast on the exact nature of injuries on account of absence of clear or satisfactory evidence in that behalf, we must give the benefit of doubt to the accused. For the above reasons we do not think that we can safely bring the case within Clause (3) of Section 300 I.P.C. It must be held that in case falling under part 2 of the Section 299 I.P.C. for an injury of this kind is likely to cause death. If that be the case, Section 304 and not Section 302 is the proper provision under which the accused could be convicted. Section 304 part I, it may be remembered covers cases which by reason of the

exceptions under Section 300 I.P.C. are taken out of the purview of, Section 300 of Clauses 1, 2 and 3 but otherwise would fall within it and also cases which fall within second part of Section 299 but not within Section 300, Clauses 2 and 3. Section 304 part 2 I.P.C. covers cases falling within 3rd part of Section 299 and not falling within 4th clause of Section 300 I.P.C. We have already noticed that it is not part 3 of Section 299 but part 2 of Section 298 I.P.C. that is attracted by the facts of the case. If that be so Section 304, part 1 is the proper section.

20. We, therefore, convict the accused under Part (1) of Section 304 I.P.C. and having regard to the circumstances of the case sentence him to five years rigorous imprisonment. The conviction and sentences are accordingly varied. The appeal is partly allowed.

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