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Court : Allahabad

Decided On : Aug-06-1958

Reported in : AIR1959All131; 1959CriLJ158

Judge : R.K. Chowdhry, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 349 of 1956

Appellant : Thannoo

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : S.N. Mulla, Adv.

Disposition : Appeal dismissed

Judgement :

R.K. Chowdhry, J.

1. This is an appeal by one Thannoo aged 20 against his conviction by the learned Sessions judge of Budaun under Section 304, I.P.C., and the sentence of nine years' R. I. passed on him. The learned Sessions Judge does not say, as indeed he should have, as to which of the two parts of Section 304. I.P.C., was the one

under which he purported to convict the appellant.

2. The deceased in this case was one Likkhi aged 30, who is said to have died on the spot as result of a single lathi blow on his head. The prosecution case, found established by the Court below, was that there was a strip of land separating the houses of the appellant and the deceased, that the appellant was anxious to build a ghar on that land, and that this attempt of the appellant was resisted by the deceased. This resulted in strained relations existing between the appellant and the deceased.

The present occurrence is said to have taken place at about 7-30 p.m. on 28-7-1955. The prosecution case was that there was an altercation over the building of the ghar and an exchange of abuses between the appellant and Likkhi at the Chaupal of Chandan P.W. 2, 6 or 7 steps away from Likkhi's house, where Likkhi had gone for a smoke, and that the appellant struck Likkhi with his lathi on the head as a result of which Likkhi fell down and died on the spot. The exchange of abuses was heard and the assault seen by Likkhi's brother Bho-ley P.W. 1, by Chandan P.W. 2, at whose chaupal the occurrence happened, and by others, including the three neighbours Sita Ram P.W. 3, Kuar Singn Mukhia P.W. 4 and Kehri P.W. 5.

3. First information report of the incident was lodged by the deceased's brother Bholey P.W. 1 at 9-30 o'clock the same night at police station, Wazir ganj, four miles away from the village of occurrence Kallia Kazampur. Post Mortem disclosed a contused wound on the scalp, 2' x 3/10' x skull, on the front of head slightly to the left of midline 1 1/2' abovethe left eye-brow with underlying skull bone fractured.

In the opinion of Dr. H. P. Banerji, Civil Surgeon, Budaun, who conducted the post mortem death was due to shock and haemorrhage resulting from depressed fracture of the skull and laceration of the brain caused by head injury. The defence was a total denial of the prosecution case. One witness, Raghubir Singh was produced in defence, According to him, at sunset time the dead body of Likkhi was seen being brought towards the village and, when the witness asked those who were carrying the dead body, the latter replied that there had been no marpit and

that Likkhi had been killed by some one. The learned Sessions Judge disbelieved the defence witness and convicted and sentenced the appellant as aforesaid, relying upon the testimony of the eye-witnesses produced by the prosecution, There was no attempt at a resuscitation of the defence evidence in this Court.

4. On a perusal of the evidence of the eyewitnesses produced by the prosecution, who were all independent and natural witnesses, there appears to be no doubt that the lathi blow on Likkhi's head which proved immediately fatal was inflicted by the appellant because of an altercation between the two over the appellant's right to build a ghar. The learned counsel appearing tor the appellant submitted that the sentence passed on the appellant was, in any case, too severe. On the facts disclosed in this case this submission may be considered on the footing whether the learned Sessions Judge was right in acquitting the appellant of the offence under Section 302, I.P.C., and convicting him only under Section 304, I.P.C, If the answer to that query be in the negative, there would be no question of any reduction of sentence.

5. The learned Sessions Judge appears to have been right that it did not appear what the talk between the appellant and the deceased was in the be-ginning. The learned counsel for the appellant laid some emphasis on that. But that lacuna would appear to be of no consequence since there is definite evidence as to what transpired between the two immediately before the appellant dealt the lathi blow.

The appellant said that he would forcibly build his ghar on the land in question, and Likkhi replied that he would not let it be done. This led to an exchange of abuses between them and to the appellant striking his lathi on Likkhi's bead. The immediate cause of the incident being thus known, it is immaterial what had happened earlier, particularly when there is no suggestion, and it is inconceivable in the context of the situation, that anything in any way extenuatory of the guilt of the appellant could have happened prior to the known immediate cause.

6. The learned Sessions Judge, while conceding that the lathi blow was given on the head and with great force, held that the appellant was not guilty of the offence punishable under Section 302, I.P.C. because the case fell under Exception 4 to Section 300 of the Code. Now, there is no doubt that in criminal cases, as

distinguished from the civil, an exception receives a liberal construction in favour of t^e accused, but to say that, is not to say that only some, but not all, of the ingredients of an exception need be established.

In the present case, the learned Sessions Judge totally ignored at least two of the ingredients of the Exception. One ingredient ignored was that the offender takes no undue advantage. The evidence here shows that the appellant was armed with a lathi but not Likkhi. That being so, the appellant did takeundue advantage of the situation of his opponent. It was what is called a case of argumentum ad hominem.

The other ingredient not considered at all by the learned Judge was that the homicide should have been committed in a sudden fight. He held that the homicide was committed upon a sudden quarrel, but such a quarrel should, according to the Exception, have taken place in a sudden fight. Now a fight is not a one sided affair but im-plies a combat or contest in which both parties participate, irrespective of how they fare, in it. In the present case, there is no doubt that the appellant and Likkhi quarrelled, but there certainly was no fight since there was but one blow dealt and that was by the appellant on Likkhi. With the above two ingredients of Exception 4 missing, the appel-land was not entitled to the benefit of it.

7. On the other hand, the act of the appellant did clearly fall in the category of the clause 'Third-ly' under Section 300, I.P.C., and therefore it was a case of murder. What this provision requires firstly, that the act by which death is caused is done with the intention of causing bodily injury to any person, and, secondly, that the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. Before noticing whether, on facts established, the appellant's act fell within the mischief of Thirdly, a piece of argument advanced by Mr. S. N. Mulla, learned counsel for the appellant, has to be considered.

8. The argument was that the intention provable under this clause is not only intention to cause the bodily injury actually found but also intention to inflict such bodily injury as is sufficient in the ordinary course of nature to cause death. The argument, in other words, was that both the aforesaid clauses of Thirdly are covered by the vinculum juris of the intention of the person whose act has caused death. And in support of the argument the learned counsel cited a Division Bench

case of this Court, Perana v. Emperor, 1936 All LJ 333 (A) where Allsop, J. observed as follows :

'We do not think that there is any reason for supposing that Perana intended to cause death or to cause such injuries as will be sufficient in the ordinary course of nature to cause death.....'

The clause Thirdly of Section 300, I.P.C, came in recently for consideration by their Lordships of the Supreme Court in Virsa Singh v. State of Punjab : 1958 CriLJ818 . The decision does not appear so far to have been reported, but its blue prints have been received in this Court. Incidentally, that was also a case of a single injury which had been caused in the abdomen by a spear.

It was found that the appellant had intentionally caused that injury, and the doctor's opinion was that the injury was sufficient to cause death in the ordinary course of nature. It was argued before their Lordships that the prosecution had not proved that there was an intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature, the contention being that the intention that the provision required must be related, not only to the bodily injury inflicted, but also to the clause 'and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.'

In support of the argument a decision of the Bombay High Court reported as Emperor v. Sardar Khan Tarid Khan, ILR 41 Bom 27: (AIR 1916 Bom 191) (C), was cited. Their Lordships of the Supreme Court dissented from the view expressed in that case that the intent required is linked up with the seriousness of the injury, holding that the two matters were quite separate and distinct, and interpreted the clause Thirdly of Section 300, I.P.C., 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 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.

Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is 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 land 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 cau.se 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. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of the kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.'

In view of the above pronouncement of their Lordships of the Supreme Court therefore views expressed regarding the clause thirdly in Section 300, I. P.C., in cases like 1936 All LJ 333 (A) and ILR 41 Bom-27: (AIR 1916 Bom 191) (C), are no longer good law.

The correct view now is that to bring the case under that clause the only intention qua the act which caused the death that need be proved is the in-tention to cause

the bodily injury actually found, and that the other requirement as to the nature of the injury inflicted being such as to be sufficient in the ordinary course of nature to cause death should be established objectively independently of the intention of the accused.

9. In the present case, that the injury inflicted was intentional admits of no doubt since there is a consensus of testimony that it was the result of a blow deliberately aimed at Likkhi's head by the appellant. As regards the nature of injury, unfortunately the evidence of Dr. Bancrji, who performed the post mortem and who was examined in the Court of the Committing Magistrate, is quite silent on the point.

The doctor should therefore have been recalled at the trial. But it struck neither the District Govern- ment Counsel nor the learned Sessions Judge to do so. The matter is however quite patent on the very face if it. The injury caused depressed fracture of the skull and laceration of the brain, and death was instantaneous on receipt of it.

It follows that the injury was undoubtedly such as to be sufficient in the ordinary course of nature to cause death. In view of these findings, the appellant's conviction should have been for murder under Section 302, I.P.C. The question of reduction of his sentence under Section 304, I.P.C., does not therefore arise. It may be stated in passing that it is the first part of the latter section that would be applicable.

The appeal is accordingly dismissed and theconviction and sentence of the appellant are maintained. The appellant shall surrender to his bail andserve out his sentence.

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