

**Ashok Kumar Vs. the State**

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**Court :** Delhi

**Decided On :** May-17-1979

**Reported in :** ILR1979Delhi102

**Judge :** V.D. Misra and F.S. Gill, JJ.

**Acts :** [Indian Penal code, 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal Nos 255 of 1976

**Appellant :** Ashok Kumar

**Respondent :** The State

**Advocate for Pet/Ap. :** D.C. Mathur, ; N.K. Parmar and ; K.K. Sud, Advs

**Judgement :**

**V.D. Misra, J.**

(1) This appeal is directed against the judgment of Mr. P. K. Bahri, Additional Sessions Judge, Delhi, convicting the appellant under section 302, Indian Penal Code, and sentencing him to imprisonment for life. As the appellant was not represented by any counsel of his choice, Mr. D. C. Mathur was appointed amicus Curiae.

(2) We must record our thanks for the assistance given by him. The prosecution case, in brief, is this Hari Om was one of the partners of Payal Biscuit Factory. The factory is run at premises No. 35/6-C, Lawrence Road, Delhi. Hari Om had his residence on the first-floor of the factory. The appellant was working off and on in the factory. He stopped working from August 4, 1975 onwards. August 10, 1975 was a holiday. However, some workers had been asked to work on that day. At about 10.30 A.M. Hari Om was sitting on a chair near the gate of the factory. He was wearing only pyjama. The appellant came there and claimed some dues from Hari Om but the latter told him that nothing was due to him. There was an exchange of hot words between the two. Suddenly the appellant took out a knife and stabbed Hari Om in the abdomen and ran away. He was chased by Hari Om as well as by some employees of the factory. Within a short distance the appellant was apprehended and brought back. Mool Chand, a relation of Hari Om, took Hari Om to the Willingdon Hospital. At about 12-30 P.M. Hari Om was examined by Casualty Medical Officer, Dr. M. Sarkar, who referred the injured to the Surgical Department for further treatment. The constable on duty at the Willingdon Hospital reported the admission of Hari Om to Police Station Punjabi Bagh which in turn rang up Police Post Shanti Nagar. This Police Post came to the conclusion that the crime had not been committed in their jurisdiction and informed the Police Station accordingly. At 2.45 P.M. Police Station Punjabi Bagh rang up Police Post Shakurbasti. A.S.I. Kanwal Singh was deputed to enquire into the matter. He went to the hospital to record the statement of the injured. But the doctor declared the injured unfit for making a statement. The Assistant Sub Inspector, therefore, came to the place of incident. He recorded the statement (Exhibit P.A.) of Ashok Kumar, Public Witness I, and sent the same for registration of a case. The appellant was arrested and knife Exhibit Pi was taken into possession.

(3) On August 13, 1975, the injured was declared fit for making a statement. A.S.I. Kanwal Singh recorded the statement of Hari Om in the hospital. It is Exhibit PZ/4. Hari Om, in spite of the medical help, died on August 20, 1975 at 10 P.M. Sub-Inspector Ram Chand Singh held inquest and prepared report Exhibit P.H. The dead body was sent for post-mortem examination along with the inquest papers.

(4) Dr. Bharat Singh, Police Surgeon, conducted the post-mortem examination on the dead body of Hari Om on August 21, 1975 at 3 P.M. He found two operational wounds. He also found :

'1. One stitched wound over the front of abdomen in right para-medical line, placed vertically. Size of the wound was 7' long. On cutting the sutures injury gaped. Margins were regular and smooth. Wound was abdominal cavity deep (operational). This operational wound probably included the stab wound mentioned in the case sheet.'

(5) On opening the abdomen the doctor saw 'that peritoneum was inflamed and was adherent to abdominal organs. Omentum was covering the front of abdomen, surface of stomach and liver on the anterior surface. There was healing linear wound over the liver on its anterior surface near the margin on the right lobe. This wound was through and through. It was 1' long. Depth of the wound in the substance of the liver was i'. Just below this wound on the liver there was an incised wound over the anterior surface of the stomach. Size of the wound was 1/2' X 1/4' X lumen deep. Angles of this wound were ' pointed. Margins were regular. There were marks of sutures around this wound. The doctor opined that injuries to liver and stomach were possible by a sharp pointed object and were sufficient to cause death in the ordinary course of nature. In his opinion, death was due to shock and periton IT is as a result of injuries to abdominal organs.

(6) After completing the investigation the appellant was challaned under section 302, Indian Penal Code.

(7) The defense of the appellant, as disclosed in his statement recorded under section 313 of the Code of Criminal Procedure, was this :

'The fact is that I had gone to Hari Om at about 7 or 8 A.M. and I was given beatings by Hari Om and his two brothers and I was rebuked and was asked to run away and they refused to pay my dues. I went to P. P. Shanti Nagar for lodging the report and I found a crowd collected there and I was asked to wait by a constable and was then later on arrested in the evening by the police at the police station itself.'

He denied giving any knife blow to Hari Om and the recovery of knife Exhibit P1.

(8) Mr. Mathur assails the statements of eye-witnesses. He makes a grievance of inordinate delay in recording the First Information Report. The dying declaration Exhibit PZ/4 is stated to be not properly recorded. He urges that, in any event, no case under section 302, Indian Penal Code, is made out and at the most the case would fall under section 304 Part II.

(9) Ashok Kumar, Public Witness I, and Raj Kumar, Public Witness 2, are the eyewitnesses. Both are employees of the Payal Biscuit Factory- They had come on that day to work overtime in the factory. They deposed that the appellant was not a regular employee of the factory but the appellant was sometimes engaged for work. Ashok Kumar Public Witness was doing his job at a distance of about 3 to 4 steps from the place where Hari Om was stabbed. Raj Kumar Public Witness was standing nearby. They did not intervene when hot words were exchanged between the appellant and Hari Om. It was nothing unusual. The moment Hari Om was stabbed these witnesses, Along with Hari Om, chased the appellant. The witnesses apprehended the appellant. We see no reason to disbelieve them.

(10) The statement (Exhibit PZ/4) of the deceased, which has become the dying declaration after the death of the deceased, names the appellant as the assailant. Dr. S. K. Nanda, Public Witness 12, had declared the injured fit for making a statement on August 13, 1975. It is true that the condition of Hari Om was not serious and he was not expected to die on that day. And it was for this reason that the statement was recorded under section 161 of the Code of Criminal Procedure and A.S.I. Kanwal Singh did not feel the necessity of requesting a Magistrate to record his statement. Exhibit PZ/4 is a detailed statement and we have not been shown any reason why we should not rely on it. We, therefore, hold that the trial court was right in concluding that it was the appellant who had given the fatal knife blow to Hari Om.

(11) There was a delay in recording the first information report. But the fact is that this delay was due to the objection raised by Police Post Shanti Nagar that the place of crime was not within its jurisdiction. Finally when Police Station Punjabi Bagh decided that it was within the jurisdiction of Police Post Shakurbasti, it was

2.45 P.M. Thereafter A.S.I. Kanwal Singh was deputed to investigate. The delay in recording the first information report is thus satisfactorily explained.

(12) Mr. Mathur contends that the case falls under Exception 4 to Section 300. It is true that there was no pre-meditation on the part of the appellant. But there was no sudden fight. Only hot words were exchanged and these cannot be termed as a sudden fight. Moreover, the appellant had taken undue advantage and acted in a cruel manner by suddenly giving a knife blow to Hari Om who was sitting on a chair.

(13) Lastly it is urged that since periton IT is has supervened it cannot be said that the death was due to the injuries inflicted by the appellant. Various cases have been cited by Mr. Mathur as well as by Mr. K. K. Sud, standing Counsel for the State.

(14) In *Virsa Singh v. State of Punjab*, : 1958 CriLJ818 , the ambit of clause (3) of section 300, Indian Penal Code, was explained thus :

'The prosecution must prove the following facts before It can bring a case under section 300 '3rdly' : 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 the 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.'

(15) In *State of Andhra Pradesh v. Ravavarapu Punnayya and another*, : 1977 CriLJ1 , the difference between murder and culpable homicide not amounting to murder was explained thus :

'.....wherever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder' or the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.'

(16) One of the questions therefore to be decided is whether the particular injury or injuries were sufficient in the ordinary course of nature to cause death. In other words, the prosecution must prove that death was the inevitable result of the injury. Many a time the cause of death is given by the doctors as 'shock and haemorrhage'. If it is clearly traceable to the injury inflicted the person causing the injury must be held to have caused the death. Sometimes the cause of death is given as septicaemia or toxaemia. Now if it can be shown by the prosecution that these are the well-known perils from a wound when the supervention of these factors will not take the case out of the category of culpable homicide amounting to murder. It will depend on the facts and circumstances of each case whether the supervening factors are the probable consequences of the injury or were due only to doctor's negligence or unskilful treatment. If the supervening causes of death are not the necessary result of injuries, then merely because the injury is stated to be sufficient in the ordinary course of nature to cause death would not make it a

case of culpable homicide amounting to murder.

(17) In *Sudershan Kumar v. State of Delhi*, : 1975 CriLJ16 , it was established beyond reasonable doubt that the body of the victim was burnt to the extent of 35 per cent by throwing acid. The victim survived for about 12 days and died 'due to toxaemia and septi-semia from absorption of toxins from extensive superficial ulceration of the body caused by some corrosive material.' The injury suffered was opined to be sufficient in the ordinary course of nature to cause death. There was evidence of the doctor, who treated the victim, that the cause of death was malaena and respiratory failure. The court held that since these supervening factors were the direct result of the burns and could not be termed as 'supervening circumstances not resulting from the injuries', the conviction under section 302 was upheld.

(18) In the case of *Rayavarapu Punnayya and another* (supra) the court found that 'the injuries were the direct cause of the death. No secondary factor such as gangrene, tetanus etc., supervened'. In other words the supervention of these secondary factors, if they were not the probable result of the injuries, would result in the case being culpable homicide not amounting to murder.

(19) Now periton IT is is an inflammation of the peritoneum which is 'the delicate serous membrane which lines the abdominal and pelvic cavities and also covers the organs contained in them.' (see *Pocket Medical Dictionary* by Nancy Roper, Twelfth Edition). *Modi's Medical Jurisprudence and Toxicology*, Fifteenth Edition, page 287, describes wounds of the abdomen. The relevant part is in the following terms :

'Wounds of the abdomen are produced by a cutting or stabbing instrument, by a firearm, by the horns or claws of an animal, or by a fall on an iron railing , on a sharp projecting point. They are of two kinds, non-penetrating and penetrating. Non-penetrating wounds are usually simple and heal rapidly, but may be serious from haemorrhage from some large blood-vessel, such as the epigastric artery, or from septic infection, which extending to the deeper tissues, may involve the peritoneum and cause peritonitis. ventral hernia may sometimes occur from the cicatrix left after the healing of the wound. Penetrating wounds are, as a rule,

dangerous, and may cause death immediately from shock or internal haemorrhage, or subsequently from septic peritonitis. They may occur with or without injury or protrusion of the abdominal viscera. Those wounds in which the subjacent viscera are not damaged usually heal readily, unless they are extensive and the abdominal contents are exposed to the air.'

(20) In the instant case the peritoneum was cut and the liver was injured. The injury to the liver was 1' long and the depth of the wound in substance of the liver was 1/4'. It is true that the victim survived for about ten days after receiving the injury. However, it is evident that periton IT is is one of the probable consequence of the injury caused. It would, thereforee, make no difference that the death has been caused byperitonitis. As already observed, the injury was opined to be sufficient in the ordinary course of nature to cause death. The case would thus fall squarely under clause (3) of section 300, Indian Penal Code. The appeal is, thereforee, dismissed and the conviction and sentence of the appellant are upheld.

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