(2023) 11 CHH CK 0086

Chhattisgarh High Court

Case No: Criminal Appeal No. 1184 Of 2016

Shivkumar @ Muthul		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision: Nov. 21, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 299(c), 300(4), 300, 302, 304II
- Code Of Criminal Procedure, 1973 - Section 161, 313, 374(2)

Hon'ble Judges: Sanjay K. Agrawal, J; Sanjay S. Agrawal, J

Bench: Division Bench

Advocate: Pushpendra Kumar Patel, Sudeep Verma

Final Decision: Partly Allowed

Judgement

Sanjay K. Agrawal, J

1. Invoking the jurisdiction of this Court under Section 374(2) of CrPC, this criminal appeal has been preferred by the appellant calling in question the

legality, validity and correctness of the judgment of conviction and order of sentence dated 9.9.2016 passed by Second Additional Sessions Judge,

Surajpur, District Surajpur in Sessions Trial No.29/2016 by which the appellant herein has been convicted for the offence punishable under Section 302

of IPC and sentenced to undergo Life Imprisonment and to pay fine of Rs.100/- and in default whereof to undergo additional Rigorous Imprisonment

for two months.

2. Case of the prosecution, in brief, is that on 1.1.2016 the appellant herein along with two juvenile co-accused persons namely Kalyan Singh @ Pale

Gond and Dev Singh @ Nanka Gond, took Hulas to Ghogra forest near Atem river for the purpose of picnic and during the period some altercation

took place between them on which, the appellant and the two juvenile co-accused persons assaulted Hulas with Tangi (axe) and hands & fists on

account of which, he sustained grievous injuries and died. Subsequently, the appellant and the two juvenile co-accused persons are said to have

brought the dead-body of Hulas on their bicycle and left the dead-body at the courtyard of his house and absconded.

3. The matter was reported to the police by PW-4 Ranvijay Singh, father of deceased Hulas, on which Merg was recorded vide Exhibit P-8 and FIR

was registered vide Exhibit P-15. Inquest proceeding was conducted vide Exhibit P-3 and the dead-body of deceased Hulas was subjected to post-

mortem which was conducted by PW-9 Dr. Shashikant Snehi who proved the post-mortem report (Exhibit P-12). Pursuant to the memorandum

statement (Exhibit P-4) of the appellant, a Tangi was seized vide Seizure Memo (Exhibit P-5). Statements of the witnesses were recorded under

Section 161 of CrPC and the accused persons were arrested.

4. After completion of the investigation, the two juvenile co-accused persons were charge-sheeted for the aforesaid offence before the concerned

Juvenile Court and the appellant herein was charge-sheeted before the concerned jurisdictional Criminal Court from where the case was committed to

the Court of Sessions and after committal, the matter was received by the Court of Second Additional Sessions Judge, Surajpur for trial and its

disposal in accordance with law, in which the appellant abjured his guilt, took a plea of false implication and entered for trial.

5. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 11 witnesses and exhibited 19 documents.

In defence, neither any witness has been examined nor any document has been exhibited. Statement of the appellant was recorded under Section 313

of CrPC in which he denied the circumstances appearing against him in the evidence, pleaded innocence and false implication.

6. After conclusion of the trial, the Trial Court, by impugned judgment dated 9.9.2016, on appreciation of oral and documentary evidence available on

record, convicted the appellant for the offence punishable under Section 302 of IPC and sentenced him to undergo Life Imprisonment and to pay fine

of Rs.100/- with default stipulation, against which the present appeal has been preferred by the appellant calling in question the legality, validity and

correctness of the impugned judgment.

7. Mr. Pushpendra Kumar Patel, learned counsel appearing for the appellant, would submit that according to Dr. Shashikant Snehi (PW-9), the cause

of death is cardio-respiratory failure and clotting of blood in brain and the deceased was under the influence of liquor, as stated in para-10 of his

statement, and that no injuries were found on the body of the deceased which were caused by a sharp edged weapon i.e., Tangi in the instant case

which has allegedly been seized pursuant to the memorandum statement of the appellant. Furthermore, the injuries suffered by the deceased were not

sufficient to cause his death. As such, according to learned counsel for the appellant, it would not be an offence under Section 302 of IPC and, at best,

it would be an offence of culpable homicide not amounting to murder and would fall under Section 304 (Part-II) of IPC. Accordingly, the conviction of

the appellant may be altered to Section 304 (Part-II) of IPC and he may be sentenced for the period already undergone, as he is in jail since 5.1.2016

i.e. for more than 7 years and 10 months and the appeal may be allowed accordingly.

8. Per contra, Mr. Supdeep Verma, learned Deputy Government Advocate, would submit that the prosecution has been able to bring home the

offence beyond reasonable doubt and the Trial Court has rightly convicted the appellant herein for the offence punishable under Section 302 of IPC.

As such, it is not a case where the conviction of the appellant can be converted and the appeal deserves to be dismissed.

9. We have heard learned counsels for parties, considered their rival submissions made herein-above and have also gone through the records with

utmost circumspection.

10. The first question as to whether the death of deceased Hulas was homicidal in nature, has been answered by the Trial Court in affirmative relying

upon the statement of Dr. Shashikant Snehi (PW-9) who has proved the postmortem report (Exhibit P-12) in which the cause of death has been

opined to be cardio-respiratory arrest and hemorrhagic shock and the nature of death was homicidal, which, in our considered opinion, is a correct

finding of fact based on the evidence available on record and it is neither perverse nor contrary to the record. Accordingly, we hereby affirm the said

finding of the Trial Court.

11. The case of the prosecution is based on circumstantial evidence, therefore, it would be appropriate to notice the most celebrated judgement of the

Supreme Court rendered in the matter of Sharad Birhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 in which the five golden principles

which constitute the panchsheel of the proof of a case based on circumstantial evidence, have been catalogued in para-153 which reads as under:-

â€œ153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be

fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that

the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be

proved' and â€œmust be or should be provedâ€ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the following

observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between

'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.â€

12. The Trial Court has found that the deceased was last seen alive along with the appellant and the two juvenile co-accused persons, as per the

statement of PW-1 Kumari Devpati, sister of the deceased, and that all the said three accused persons had taken her brother along with them and her

brother did not return home. Subsequently, at 9:00 p.m., the appellant and the two juvenile co-accused persons brought the dead-body of her brother

Hulas and left it at the courtyard of her house and absconded from there. PW-4 Ranvijay Singh, father of deceased Hulas, has also stated in the same

line.

13. As such, once when the appellant and the two juvenile co-accused persons had taken the deceased Hulas along with them and subsequently they

returned along with his dead-body, they were required to explain under Section 313 of CrPC as to how and under what circumstances he died.

However, it has been contended on behalf of the appellant that, according to the post-mortem report (Exhibit P-12), the cause of death of deceased

Hulas was due to cardio-respiratory arrest/ hemorrhagic shock and his right handâ€™s humerus bone was also found to be fractured. For ready

reference, the relevant part of the statement of Dr. Shashikant Snehi (PW-9) who has proved the post-mortem report (Exhibit P-12) is being

reproduced herein under:-

14. A careful perusal of the statement of Dr. Shashikant Snehi (PW-9) would show that there were some external injuries on the left and right hands

of the deceased and his right hand was also found to be fractured. Colloidal undigested food materials were found in his stomach. According to the

opinion of Dr. Shashikant Snehi (PW-9), the cause of death was due to cardio-respiratory failure and clotting of blood in brain.

15. Now, the question would be whether the nature of injuries suffered by deceased Hulas were sufficient to cause his death in the ordinary course of

nature so as to attract Section 300 (Thirdly) of IPC which provides that culpable homicide is murder if the act by which death is caused is done with

the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause

death.

16. The Supreme Court in the matter of State of U.P. v. Virendra Prasad AIR 2004 SC 1517 has defined the clause Thirdly of Section 300 IPC in the

following words:-

12. The ingredients of clause ""thirdly"" of Section 300 IPC were brought out by the illustrious Judge in his terse language 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 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.

13. The learned Judge explained the third ingredient in the following words (at page 468):

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 not 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 consequences, 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.

14. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case (supra) for the applicability of clause

thirdly"" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is

murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with

the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is suffi-cient in the ordinary course of nature to cause death. It

must be proved that there was an in-tention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death

viz. that the injury found to be present was the injury that was in-tended to be inflicted.

15. Thus, according to the rule laid down in Virsa Singh case (supra) even if the intention of the accused was limited to the infliction of a bodily injury

sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder.

Illustration (c) appended to Section 300 clearly brings out this point.

16. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for

the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section

300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a

particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of

the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of

causing death or such injury as aforesaid.

17. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But

sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate

and clear cut treatment to the mat-ters involved in the second and third stages.

18. The position was illuminatingly highlighted by this Court in State of A.P. v. Rayavarapu Punnayya (1976 (4) SCC 382 and Abdul Waheed Khan

alias Waheed and ors. v. State of A.P. (2002 (7) SCC 175).â€

17. Reverting to the facts of the present case, in light of the principles of law laid down by their Lordships of the Supreme Court in Virendra Prasad

(supra), it is quite vivid that the injuries which the appellant is said to have inflicted and noticed by Dr. Shashikant Snehi (PW-9) who has proved the

post-mortem report (Exhibit P-12), are that the right hand of deceased Hulas was fractured and the cause of death was due to cardio-respiratory

failure and clotting of blood in brain. As such, the injuries inflicted and found on the body of the deceased, particularly being fracture on his right hand

and abrasion on the left hand and the cause of death being cardio-respiratory failure as well as clotting of blood in brain and more particularly in

absence of any incised wound caused by Tangi on the body of the deceased and the cause of death being not due to fracture, in our considered

opinion, the injuries intended to be inflicted were not sufficient in the ordinary course of nature to cause death so as to attract Section 300 (Thirdly) of

IPC. Under these circumstances, it cannot be held that the appellant had an intention to commit culpable homicide amounting to murder and, at best,

the case would fall within the ambit of Section 304 (Part II) of IPC and not under Section 302 of IPC.

18. Accordingly, we set aside the conviction of the appellant under Section 302 of IPC and the sentence of Imprisonment for Life awarded

thereunder. Instead we convict him under Section 304 (Part II) of IPC and sentence him to the period already undergone by him. He is stated to be in

jail since 5.1.2016. He be set at liberty forthwith, if not required to be detained in connection with any other offence. However, the sentence of fine of

Rs.100/- along with default clause stands confirmed.

19. As a consequence, this criminal appeal is partly allowed to the extent indicated herein-above.

20. Let a certified copy of this judgment along with the original record be transmitted forthwith to the concerned Trial Court as well as to the

Superintendent of Jail where the appellant is presently lodged and suffering his jail sentence, for necessary information and action, if any.