

(2004) 03 RAJ CK 0043
In the Rajasthan High Court
Case No : Criminal Appeal No. 551 of 2000

Narayan	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 323

Citation : (2005) 1 RLW 1 : (2004) 3 WLC 723

Hon'ble Judges : Sunil Kumar Garg, J;N.N. Mathur, J

Bench : Division Bench

Advocate : R.K. Charan, for the Appellant; K.R. Vishnoi, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This appeal has been filed by the accused appellant against the judgment and order dated 16.9.2000 passed by the learned Addl. Sessions Judge No. 1, Chittorgarh in Sessions Case No. 51/98 by which he convicted the accused appellant for the offence under Sections 302 and 323 IPC and sentenced in the following manner:-

-----	-----	Name of appellant
Convicted	Sentence	awarded Under Section
-----	-----	Narayan 302 IPC

Imprisonment for life and to pay a fine of Rs. 1000/-, in default of payment of fine, to further undergo 3 months SI. 323 IPC One month SI and to pay a fine of Rs. 100/-, in default of payment of fine, to further undergo SI for 15 days.

2. The facts giving rise to this appeal, in short, are as follows:-

On 24.8.1998 at about 4.15 PM, PW4 Anchhi wife of Madhoo (PW6) lodged an oral report Ex.P/6 before PW21 Keshar Singh, who was at that time ASI in Police Station Gangrar District Chittorgarh stating inter-alia that on that day she, her

husband PW6 Madhoo and her elder mother-in-law Mohini wife of Hazari (hereinafter referred to as the deceased) took food in the village Kanti and after taking food, they (PW4 Anchhi, PW6 Madhoo and deceased) all were returning to their village Indora and when they reached near the field of Champa, her son Ratan (PW5) met them and at that time, PW5 Ratan told them that the accused appellant Narayan Kaka and Ratan Kaka abused him and further, they threatened to kill him and therefore, he would not go in the field for the purpose of grazing goats. It was further stated in the report Ex.P/6 by PW4 Anchhi that thereafter, she made her son PW5 Ratan understand and thereupon, her son PW5 Ratan went in the field for the purpose of grazing goats. It was further stated in the report Ex.P/6 by PW4 Anchhi that thereafter, she saw accused appellant Narayan and Ratan S/o Khumbha, who are her uncle-in-law, in the field and at that time, she complained about the incident which had taken place with her son PW5 Ratan and upon this, Ratan gave lathi blow to her and upon this, her husband PW6 Madhoo asked why she was being beaten and upon this, the accused appellant came with kulhari and gave kulhari blow on the head of PW6 Madhoo, as a result of which, he fell down and thereafter, Ratan also gave beating to her husband PW6 Madhoo. It was further stated in the report Ex.P/6 by PW4 Anchhi that when the above incident was going on, deceased intervened in the matter and tried to save PW6 Madhoo, but the accused appellant gave kulhari blow on the leg of deceased, as a result of which she fell down and thereafter, the accused appellant gave further kulhari blows on the neck and head of the deceased and Ratan also tried to beat her (PW4 Anchhi) with lathi, but she ran away from the place of occurrence and came to the village. It was further stated in the report Ex.P/6 by PW4 Anchhi that thereafter, PW10 Mangila son of Laxman brought her husband PW6 Madhoo to the village Gayari and informed that deceased was lying dead in the field of Champa. On motive, it was further stated in the report Ex.P/6 by PW4 Anchhi that since the deceased was not having any child of her own, therefore, deceased took her son PW5 Ratan in adoption and since accused appellant was not happy with this adoption, therefore, for that, he committed the murder of the deceased.

On this report Ex.P/6, police chalked out regular FIR Ex.P/21 and started investigation.

During investigation, post mortem of the dead body of the deceased was got conducted by PW1 Dilip Sharma and the post mortem report is Ex.P/2. PW4 Anchhi was also got medically examined and her injury report is Ex.P/3, which shows that she received one simple injury. Similarly, PW6 Madhoo was also got medically examined and his injury report is Ex.P/4, which shows that he received four injuries.

Thereafter, investigation was conducted by PW14 Ratan Singh, who was at that time SHO, Police Station Gangrar and he got prepared site inspection note and site plan Ex.P/7 and also seized the clothes of the deceased through Ex.P/13.

The accused appellant was arrested by PW14 Ratan Singh on 25.8.1998 through

arrest memo Ex.P/15 in presence of witnesses PW18 Rajendra Kumar and PW19 Jitendra Pal Singh and at the time of arrest, the accused appellant was wearing pent (Article 4) and that pent (Article 4) was seized by PW14 Ratan Singh through fard Ex.P/16 in presence of witnesses PW18 Rajendra Kumar and PW19 Jitendra Pal Singh.

During investigation, the accused appellant gave information on 26.8.1998 in respect of kulhari and the same was reduced in writing by PW14 Ratan Singh in the shape of Ex.P/17 and in pursuance of that information, the accused appellant got recovered a blood stained kulhari (article 3) and the same was seized by PW14 Ratan Singh through fard Ex.P/18 in presence of witnesses PW12 Laxman and PW13 Shankar. The FSL report is Ex.P/20, which shows that human blood was found on pent (Article 4) and kulhari (Article 3).

After usual investigation, police submitted challan against the accused appellant in the court of Magistrate and from where the case was committed to the Court of Session.

On 13.1.1999, the learned Addl. Sessions Judge No. 1, Chittorgarh framed charges for the offence under Sections 302 and 323 IPC against the accused appellant. The charges were read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

During the course of trial, the prosecution got examined as many as 22 witnesses and exhibited several documents. Thereafter, statement of the accused appellant u/s 313 Cr.P.C. was recorded. No evidence was led in defence by the accused appellant.

After conclusion of trial, the learned Addl. Sessions Judge No. 1, Chittorgarh through impugned judgment and order dated 16.9.2000, convicted the accused appellant for the offence under Sections 302 and 323 IPC and sentenced him in the manner as stated above holding inter-alia:-

- (i) That placing reliance on the statements of two eye witnesses, namely, PW4 Anchhi and PW6 Madhoo, the learned Trial Judge came to the conclusion that the accused appellant gave kulhari blow on the neck of the deceased, as a result of which she died.
- (ii) That blood stained kulhari (Article 3), by which murder of the deceased was committed, was recovered at the instance of the accused appellant.
- (iii) That the fact that kulhari (Article 3) recovered at the instance of the accused appellant and pent (Article 4) of the accused appellant were stained with human blood was confirmed by the FSL report Ex.P/20.
- (iv) That there was a motive also in the sense that after son of the deceased died, deceased took the son of PW4 Anchhi in adoption and since the accused appellant was son of her devar, therefore, the accused appellant was angry with such adoption and thus, there was a motive.

(v) That for the injuries, which were received by PW4 Anchhi, the accused appellant was not held responsible, but for the injuries of PW6 Madhoo, the accused appellant was held responsible.

Aggrieved from the said judgment and order dated 16.9.2000 passed by the learned Addl. Sessions Judge No. 1, Chittorgarh, the accused appellant has preferred this appeal.

3. In this appeal, the learned counsel for the accused appellant has family raised one submission that even assuming the prosecution story to be true, the offence punishable u/s 302 IPC cannot be said to have been proved against the accused appellant as the incident took place at the spur of moment when deceased intervened in the matter and in other words, the deceased was intervenor and therefore, there was no intention on the part of the accused appellant to murder deceased. Hence, the act of the accused appellant would amount to culpable homicide not amounting to murder and thus, he could be convicted u/s 304 Part-I or 304 Part-II IPC.

4. On the other hand, the learned Public Prosecutor has supported the impugned judgment and order.

5. We have heard the learned counsel for the accused appellant and the learned Public Prosecutor and gone through the record of the case.

6. Before proceeding further, first medical evidence of this case has to be seen.

7. PW1 Dr. Dilip Sharma in his statement recorded in Court has stated that on 25.8.1998 he was Medical Jurist in the General Hospital, Chittorgarh and on that day, he conducted the post mortem of the dead body of the deceased and found the following injuries on her body:-

1. Incised wound 5" x 1- 1/2" x 2" neck left side 3/4" deep at margin central deep well defined margin below (L) margin of mandible.

2. Incised wound 4" x 2" x 2" margin about 1" deep (central deep) well defined margin on neck left lateral aspect, cutting of Left sterno cleido Mastoid muscle with carotid vessels.

3. Incised wound 4" x 01" x 1" face left side central deep margin about 1/2" deep with well defined margin extending from outer end of left eye to left ear with cutting of muscle and artery and bone.

4. Lacerated wound 4" x 3" x bone deep chest left side below left cleivicle.

5. Lacerated wound 4" x 7" x 1" Rt. knee joint.

He has further stated that the cause of death of the deceased was shock due to haemorrhage following cutting of left carotid vessels, which were sufficient to cause death in the ordinary course of nature. He has proved the post mortem report Ex.P/2.

8. Thus, from the statement of PW1 Dr. Dilip Sharma, it is very much clear that deceased died because of shock due to haemorrhage following cutting of left carotid vessels, which were sufficient in the ordinary course of nature to cause death and therefore, death of the deceased was not natural one and it was homicidal.

9. PW1 Dr. Dilip Sharma has further stated that on that day, he also medically examined PW4 Anchhi and he found one simple injury on her person and he has proved the injury report Ex.P/3.

10. PW1 Dr. Dilip Sharma has further stated that on that day he also medically examined PW6 Madhoo and he found the following injuries on his person:-

1. Lacerated wound 4cm x 1/2cm on occipital region.
2. Contusion 16cm x 3cm on back below R.scapula
3. Contusion 10cm x 3cm over R.scapula.
4. Contusion 7cm x 3cm below injury No. 3.

He has further stated that the above injuries were simple in nature. He has proved the injury report Ex.P/4.

11. Thus, from the statement of PW1 Dr. Dilip Sharma, it is very much clear that PW6 Madhoo received four simple injuries.

12. Before proceeding further, it may be stated here that from the statements of PW4 Anchhi and PW6 Madhoo, it is well proved that the accused appellant was armed with kulhari and he gave kulhari blows on the person of the deceased including neck and it is also well proved that when the accused appellant was beating PW6 Madhoo, the deceased appeared on the scene and asked the accused appellant not to beat PW6 Madhoo and thereupon, the accused appellant gave kulhari blows on the person of the deceased including neck.

13. There is also no dispute on the point that at the instance of the accused appellant, a blood stained kulhari (Article 3) was recovered and injuries to the deceased were caused by kulhari and there is also no dispute on the point that a blood stained pent (Article 4) of the accused appellant was also seized and on blood stained kulhari (Article 3) and blood stained pent (Article 4), human blood was found, which is evident from the FSL report Ex.P/20.

14. The question for consideration is whether in the above facts and circumstances, the findings of the learned trial Judge that the accused appellant has committed the offence punishable u/s 302 IPC are liable to be confirmed one or not or whether the act of the accused appellant would amount to culpable homicide not amounting to murder punishable either u/s 304 Part-I or 304 Part-II IPC or not.

15. Before proceeding further, the legal position as is found in Sections 299, 300, 302 and 304 IPC has to be seen.

16. Section 299 IPC defines culpable homicide as the act of causing death (i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death or (iii) with the knowledge that such act is likely to cause death.

17. The word "homicide" has been derived from Latin terms Homo (man) and cido (cut). Homicide is the killing of a human being by a human being.

18. "Culpable homicide" is genus and "murder" its specie. All "murder" is "Culpable Homicide", but not vice versa. Speaking generally "Culpable Homicide" sans "special characteristics of murder" is "Culpable Homicide not amounting to murder".

19. Whenever a Court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder" on the facts of a case, it will be convenient for it to approach the problems 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 casual connection between the act of the accused and the death lands to the second stage for considering whether the 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 IPC, 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 the 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 Section 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 IPC.

20. Section 300 IPC deals with murder. It does not define "murder". Section 299 explains "culpable homicide". Section 300 IPC sets out circumstances when culpable homicide amounts to murder and when it does not amount to murder. Murder is an aggravated form of culpable homicide. The existence of one of the four conditions turns culpable homicide into murder while the special exceptions of Section 300 IPC reduce the offence of murder again to culpable homicide not amounting to murder.

21. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. Clause (4) is not intended to apply to cases in which a person intends to inflict an injury likely to cause death because the section speaks of knowledge and not intention.

How the intention can be gathered

22. The nature of weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

23. By "intention" is meant the expectation of the consequence in question. The intention is an inference of law resulting from the doing of the act. It means an actual intention, the existing intention of the moment, and is proved by, or inferred from, the acts of the accused and the circumstances of the case.

Distinction between intention and knowledge

24. Intention and knowledge are not identical, they are two different things. Knowledge is an awareness of the consequences of the act. The awareness is termed as knowledge. The word "knowledge" imports a certainty and not merely a probability. The word "intention" is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so.

25. "Intent" and "knowledge" in the ingredients of Section 299 postulate the existence of positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person.

26. "Knowledge" is an awareness on the part of the person concerned indicating his state of mind.

27. Thus, the demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they cannot be different things.

28. The five exceptions as are found in Section 300 IPC, which say when culpable homicide is not murder are reproduced hereinbelow:-

"Exception-1: Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Exception 2: Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3: Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing, an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death

is caused.

Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Exception 5: Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years; suffers death or takes the risk of death with his own consent."

29. Thus, the position in respect of offences u/s 302, 304 Part-I and 304 Part-II IPC may be summarized as follows:

(i) That if the act of the accused is covered by clauses first, second the third of Section 300 IPC, then culpable homicide would amount to murder punishable u/s 302 IPC.

(ii) That if the act of the accused falls in any of the clauses (1) to (3) of Section 300 IPC, but is covered by any of the five exceptions made in Section 300 IPC, then it would amount to culpable homicide not amounting to murder punishable u/s 304 Part-I.

(iii) That if the act of the accused is covered by clause (4) of Section 300 IPC, then it would amount to culpable homicide not amounting to murder punishable u/s 304 Part-II IPC.

(iv) That Section 304 IPC does not create an offence but provides for punishment for culpable homicide not amounting to murder.

30. Before proceeding further, it may further be stated here that since in this case the accused appellant has motive to do something as deceased took in adoption the son of PW6 Madhoo and for that, he was not happy, therefore, something should be said about motive.

On Motive

31. Motive means and connotes, activate, allure, arouse desire, carry weight, command, encourage, guide, impel, incite, interest, persuade, prompt, provoke desire, set in motion, stimulate, tempt, urge.

32. In The shadow 1939, for motive, it has been said "who knows what evil lurks in the heart of men".

33. Motive is a double edged weapon, which cuts both ways helping or harming both the prosecution and the defence. The first is that the motive lies locked in the heart of a man, and so, it becomes difficult to know the same. Failure to bring on record any evidence regarding motive does not, however, weaken a prosecution case, though existence of the same may strengthen the same.

34. Motive is something which prompts a man to form an intention to commit

offence. Men does not usually act without a motive. Man being a creature of passions and affections, there is hardly any man whose act is not motivated by something or other. However, sometime the motive may not be surfaced, undetectable. Man who is gifted with the reasons and is sensible, would not commit the offence of murder without any purpose. The purpose is a motive. Motive is the ultimate end which a person hopes to achieve. The exception can be find in the act committed in heat of passion etc. etc. or the person-accused is the sane and has lost the sense of reasonings. Sometimes, when we speak of motive, we mean an emotion such as jealousy or greed, and sometimes we mean a species of intention. Motive is a consequence ulterior to the mens rea and the actus reus; it is no part of the crime.

35. Keeping the above legal position in mind, the facts of the present case are being examined.

36. In the present case, from perusing the report Ex.P/6 lodged by PW4 Anchhi and the statements of PW6 Madhoo and PW4 Anchhi, it appears that the accused appellant was armed with kulhari and at the time when the accused appellant was beating PW6 Madhoo, the deceased came there and asked the accused appellant not to beat PW6 Madhoo and upon this, the accused appellant gave kulhari blow on the leg of the deceased and then, he gave kulhari blows on the neck of the deceased as a result of which her left carotid vessles were cut resulting into her death. Apart from this, it further appears that the accused appellant was having motive to cause murder of the deceased as deceased took the son of PW6 Madhoo is adoption and he was not happy with such adoption.

37. Thus, in our considered opinion, looking to the entire facts and circumstances of the case and the facts that the accused appellant gave kulhari blows thrice on the person of the deceased including neck, which is a vital part of the body and that he was having motive, it can reasonably be inferred or presumed that by giving kulhari blows thrice, the accused appellant was having no other intention except to cause murder of the deceased and in other words, the injuries on the person of the deceased were caused by the accused appellant with kulhari with an intention to cause her murder and thus, the act of the accused appellant would amount to culpable homicide amounting to murder punishable u/s 302 1PC.

38. There is no doubt that the deceased was in a crouching position presumably to intervene and separate the accused appellant and PW6 Madhoo and on her intervention, the accused appellant first gave kulhari blow on the leg of the deceased and then, he gave kulhari blows on the neck of the deceased as a result of which her left carotid vessles were cut resulting into her death, therefore, but, by the above act, the required intention on the part of the accused appellant to cause murder of deceased can reasonably be inferred or presumed. Furthermore, the factors such as nature of weapon used by the accused appellant i.e. kulhari, motive for the crime as he was not happy with the adoption of son of PW6 Madhoo by the deceased, severity of the blows on vital

part of the body i.e. neck, clearly indicate that the accused appellant was having no other intention except to cause murder of the deceased.

39. On point of intervention, in Ramesh Vithalrao Thakre and another Vs. State of Maharashtra, where a single injury was caused to the deceased by the accused of that case on her intervention, the Hon"ble Supreme Court observed that the act of the accused was likely to cause death of the deceased without any intention to cause her death and therefore, in that case, the accused was convicted u/s 304 Part-II IPC. However, in the present case, no doubt deceased intervened in the matter when accused appellant was beating PW6 Madhoo and on her intervention, the accused appellant gave kulhari blows thrice on the person of the deceased including neck, which is a vital part of the body. Had the accused appellant would have given only one kulhari blow, the position would have been different. Thus, the law laid down in the case of Ramesh Vithalrao Thakre (supra), would not come to help the accused appellant.

40. Thus, it cannot be held that the accused appellant had no intention to cause murderous assault on the deceased without any intention whatsoever to cause death. The act of the accused appellant is not covered by any of the exceptions made in Section 300 IPC nor is covered by clause (IV) of Section 300 IPC. Therefore, the accused appellant has committed offence punishable u/s 302 IPC and not u/s 304 Part-1 or 304 Part-II IPC and thus, the learned trial Judge was right in convicting the accused appellant for the offence punishable u/s 302 IPC.

41. For the reasons stated above, the argument that the act done by the accused appellant would amount to culpable homicide not amounting to murder punishable either u/s 304 Part- I or 304 Part-II stands rejected and no interference is called for with the findings of guilt and conviction recorded by the learned Addl. Sessions Judge No. 1, Chittorgarh through impugned judgment and order dated 16.9.2000 against the accused appellant for the offence under Sections-302 and 323 IPC and this appeal deserves to be dismissed.

Accordingly, this appeal filed by the accused appellant is dismissed after confirming the judgment and order dated 16.9.2000 passed by the learned Addl. Sessions Judge No. 1 Chittorgarh.