
(2012) 04 RAJ CK 0110
In the Rajasthan High Court
Case No : Criminal Jail Appeal No. 746 of 2006

Natu Lal and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 299, 300, 302, 304

Citation : (2012) CriLJ 3330

Hon'ble Judges : R.S. Chauhan, J; Govind Mathur, J

Bench : Division Bench

Advocate : K.R. Bhati, for the Appellant; K.R. Bishnoi, PP, for State, for the Respondent

Judgement

R.S. Chauhan, J.—Through this jail appeal, Nathu Lal and Hansaram have challenged the judgment dated 19.04.2006 passed by the Additional District & Sessions Judge (Fast Track) No.1, Udaipur, whereby they have been convicted for offences under Sections 302/34 and 201, IPC. Briefly the facts of the case are that on 11.06.2005, Manna (P.W.3) submitted a written report (Ex.P/9) at Police Station Sayra wherein he had claimed that they are three brothers, namely Nathu. Lachha and he himself. He further claimed that in 2002 his brother. Lachha. had committed murder of their parents. Thus, he was sent to jail. After he was released from the jail, Lachha had become mentally weak. His wife had also left him and gone in Nata. He further claimed that on 05.06.2005 around 9:00 a.m. when he himself came back from his in-laws" place, he asked his elder brother, Nathu, and his cousin brother. Hansa as to the whereabouts of Lachha. They told him that on Saturday Lachha had started throwing the roof tiles of the hut and had tried to burn the hut. Therefore, they threatened him. Consequently, he ran away. They tried to look for him, but they could not find him. He further claimed that around 6:00 p.m., in front of Deva Patel. Taldaba, Hirka and Khuma, he again asked Nathu and Hansaram about the whereabouts of Lachha. They informed these persons that since Lachha was not listening to them and was trying to burn the hut, they struck him with a wooden stick (Lath). Consequently,

he died. In order to get rid of the body, they have hidden it. On the basis of this written report, the police registered a formal FIR, FIR No.59/2005, for offences under Sections 302, 201/34, IPC and initiated the investigation. During the investigation, the body of Lachha was discovered and sent for post-mortem. Subsequently, the police filed a charge-sheet against both the accused-appellants, Nathu and Hansaram.

2. In order to buttress its case, the prosecution examined eighteen witnesses and submitted thirty-two documents. However, the defence neither examined any witness, nor submitted any documents. After going through the oral and documentary evidence, vide judgment dated 19.04.2006, the learned Judge convicted both the appellants and sentenced them to life imprisonment for offences under Sections 302 /34, IPC, imposed them with a fine of Rs.2,000/- and further directed them to undergo six months of simple imprisonment in default thereof. For offence u/s 201, IPC, they were sentenced to five years of simple imprisonment, imposed with a fine of Rs.2,000/- and further directed to undergo six months of simple imprisonment in default thereof. Hence, this jail appeal before this Court by both the appellants.

3. Mr. Kaluram Bhati, the Learned Counsel for the appellants, has vehemently raised the following contentions before this Court: firstly, according to Mana (P.W.3), Lachha used to be mentally disturbed. He had tried to throw away the tiles and had tried to burn the hut. Therefore, the appellants had intervened. During their intervention, they had allegedly assaulted Lachha. According to the Post-Mortem Report (Ex.P/16), Lachha had sustained a single injury on the back of his head which had resulted in a linear fracture of the occipital bone. Thus, it is a case of single injury. Secondly, even if the case of the prosecution were taken to be true that the injury was caused by them, the said injury was not caused after planning or with predetermination. Thus, the injury was not caused with intention to cause death. At best, only knowledge can be attributed to them that the injury was likely to cause death. Hence, the case does not fall within the ambit of Section 302, IPC. At worse, the case falls within the ambit and scope of Section 304, Part II, IPC. Lastly, the appellants have already served seven years of sentence. Therefore, their sentence should be reduced to as undergone.

4. On the other hand, Mr. K.R. Bishnoi, the learned Public Prosecutor, has contended that according to the medical evidence, the injury was caused by a blunt weapon with such a force as to cause the fracture of the occipital bone - a vital part of the body. Hence, the intention to kill is writ large. Secondly, in order to hide their crime, the appellants had buried the body which was taken out almost after two weeks. Thus, the learned Judge has rightly convicted the appellants for offence u/s 302, IPC read with Section 34, IPC and for offence u/s 201, IPC. Hence, the learned Public Prosecutor has supported the impugned judgment.

5. Heard the Learned Counsel for the parties, examined the record, and perused the impugned judgment.

6. The moot question before this Court is whether this case falls within the ambit of Section 300, IPC and is punishable u/s 302, IPC, or whether it falls within the ambit of Section 299, IPC and is punishable u/s 304, Part I or II, IPC?

7. In order to adjudicate this issue, it is essential to distinguish between Section 299, IPC and Section 300, IPC.

Section 299, IPC is as under :--

299. Culpable homicide.-- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 300, IPC is as under :--

300. Murder.-- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of -

Secondly.-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -

Thirdly.-- If it 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, or-

Fourthly.-- If the person committing the act knows that it is so imminently dangerous, it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

8. A distinction between "murder" and "culpable homicide not amounting to murder" is no longer res integra. For, in the case of State of Andhra Pradesh Vs. Rayavarapu Punnayya and Another, the Hon'ble Supreme Court has critically analysed both the provisions and has delineated the distinction between the two as under :--

12. In the scheme of the Penal Code, "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". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the 1st Part of Section 304. Then, there is "culpable homicide of the third degree." This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three

grades. Culpable homicide of this degree is punishable under the second Part of Section 304.

13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences. Section 299. Section 300.

Section 299

Section 300

A Person commits culpable homicide if the act by which the death is caused is done-

Subject to certain exceptions culpable homicide is murder if the act by which the death caused is done

INTENTION

(a) with the intention of causing death; or

(1) with the intention of causing death; or

(b) with the intention of causing such bodily injury as is likely to cause death or;

(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

(3) 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; or

KNOWLEDGE

c) with the knowledge that act is likely to cause death.

(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

(Emphasis in the original)

14. Clause (b) of Section 299 corresponds with Cls. (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in

such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge or the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In Clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Sec. 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of "probable" as distinguished from a mere possibility. The words "bodily injury sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It will be sufficient to say that cl.(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.

9. The Apex court also dealt with the issue as to how the court is to distinguish between the two categories. It indicated a broad guidelines as under :--

21. From the above conspectus, it emerges that 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 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 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 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.

22. 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 other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

10. The first question that arises before this Court is whether the appellants had the intention to cause the death of Lachha? According to Manna (P.W.3). the appellants had told the complainant that Lachha was throwing the roof tiles and had tried to burn the hut. Therefore, at the spur of the moment, in order to prevent him from further damaging the hut, they wielded a lathi over his head. Obviously, there was no intention to cause his death. The intention was to prevent him from causing damage to the property. Thus, the intention to cause his death can safely be ruled out.

11. The second question before this Court is whether they could have the knowledge that the injury is so imminently dangerous that it must in all probability cause death or whether they had the knowledge that it is likely to cause death? Admittedly, according to the prosecution, Lachha had suffered a single injury on the back of his head that too by a blunt weapon like lathi. A

single injury caused by lathi, which had resulted merely in a linear fracture, cannot be held to be so "imminently dangerous that it must in all probability cause death". However, it can be inferred that a person who wields a lathi on a vital part like head would certainly have the knowledge that he is "likely to cause death". Hence, the cause would fall u/s 299, IPC and not u/s 300, IPC.

12. Since it is a case of single injury, since no one has pleaded any of the exceptions mentioned in Section 300, IPC, therefore the case would fall u/s 304, Part II, IPC. For the reasons stated above, this Court reduces the conviction from offence u/s 302 to 304, Part-II read with Section 34, IPC. Since the appellants have already undergone seven years of sentence, their sentence is reduced to as undergone. Since both the appellants are incarcerated in a jail, it is directed that they shall be set at liberty forthwith, if not wanted in any other criminal case. The appeal is thus, partly allowed.