

(1986) 02 BOM CK 0027

In the Bombay High Court

Case No : Confirmation Case No. 5 of 1985 with Criminal Appeal No. 750 of 1985

Shobhana Manji Thakkar and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-02-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 300, 302, 304, 34

Citation : (1986) 2 BomCR 554

Hon'ble Judges : R.A. Jahagirdar, J;A.D. Tated, J

Bench : Division Bench

Advocate : C.D. Shenoi, P.L. Dharkar and D.K. Joshi,-accused No. 1 and F.H. Ponda,-accused No. 2, for the Appellant; J.A. Barday and M.D. Gangakhedkar, Public Prosecutor, for the Respondent

Judgement

A.D. Tated, J.—I have heard the judgment just delivered by my learned brother. I fully agree with my learned brother on all points except on the finding reached by him that the appellants-accused have not committed an offence u/s 302 read with section 34 I.P.C. in respect of the death of Manjula. With utmost respect I am unable to agree with my learned brother that the accused committed only the offence punishable under Part II of section 304 read with section 34 I.P.C. in causing the death of Manjula inasmuch as the doctor who performed autopsy on the dead body of Manjula opined that the injuries sustained by Manjula were likely to cause death. My learned brother determined the nature of the offence in respect of the death of Manjula only on the basis of the nature of the injury as deposed to by Dr. Kapse. In my opinion, with respect, this is not the correct approach. When it is proved that the accused intended to cause the death and to carry out the said intention caused violence to the victim and the victim, without intervention of anything, died, the offence is clearly murder punishable u/s 302 I.P.C. The Supreme Court in the recent decision in State of Uttar Pradesh Vs. Ram Sagar Yadav and Others, of the report, propounded the law as follows :-

"Except in cases covered by the five exceptions mentioned in section 300 of the

Penal Code, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or if the act falls within any of the three clauses of section 300, namely, 2ndly, 3rdly, and 4thly."

2. In the present case my learned brother on considering the evidence on record found that both the appellants-accused intended to cause the death of their sisters-in-law Manjula and Parul, and having made preparation for causing the death they entered into the house and caused violence to the vital part, that is, head, of Manjula, and Manjula succumbed to those injuries. It is not shown nor suggested that anything interfered between the act of the accused and the death of Manjula. Therefore, the Act of the accused in causing the grave head injuries to Manjula resulted in her death, and this was done by the accused in furtherance of their common intention to cause her death, as is evident from their letters which my learned brother has extensively considered in his judgment. Under such circumstances, in my opinion, simply because Dr. Kapse says that the injuries were likely to cause death, it cannot be held that the accused did not intentionally cause the death of Manjula.

3. A reference may be made to the decision in *Queen Empress v. Khandu Valad Bhavani*, ILR (1896) 15 Bom 194. In that case the accused struck his father-in-law three blows on the head with a stick, with the intention of killing him. He fell down senseless on the ground. The accused, thinking that he was dead, put under his head a box of fire wood and set the hut on fire, in which he was lying, with the intention of removing all evidence of the crime. In that case the accused had confessed that he had intended to cause the death of his father-in-law. The Civil Surgeon who examined the dead body gave evidence to the following effect :---

"On June 1st the dead body of an old man was sent to me for examination. I examined it. It was the body of an old man. I can't give his age. It was much decomposed when I received it. I found on the left side beneath the arm an opening in the body communicating with the abdomen through which some of the viscera were protruding. The skin was much charred and extensively decomposed, and I cannot consequently state how this wound was caused. There was an incised wound, two inches long, extending to the bone on the occipital region. The skin itself was not injured. I did not open the head. The back of the trunk was extensively charred, as also the skin on the back of the legs and buttocks. I did not open the body. I have heard the statements made by the accused. The wound on the head was from a dangerous blow, but would not, I think, have been likely to cause death. I only found a wound on the head. The opening in the side did not look like the result of a blow from a stick. I thought it resulted partly from the charred state of the skin and partly from the decomposed state of the body. The injury to the head would not, in my opinion, have caused death if the hut had not been set fire to. I think the burning caused death, and did not merely accelerate it. The blow on the head would probably have caused concussion of the brain. The injuries caused by the burning are such

as would have caused death. Deceased would have been likely to have fallen senseless from the blow on the head the mark of which I saw."

"Cross-examined:---I do not think that deceased died immediately after receiving the blow."

On the above facts and the medical evidence, Birdwood, J., recorded his opinion as follows :

"The accused admits that he struck the deceased with the intention of killing him. In intention, therefore, he was a murderer. But on the evidence, such as it is, it must be found that the striking did not amount to murder. It was, however, an attempt to murder. The accused must also, I think, be taken to have set fire to the shed in order to remove evidence of the murder which he thought he had committed, though he himself does not give any such explanation of his conduct. By setting fire to the shed however, he actually caused death; and the question in this case, arising with reference to the definition contained in section 299 of the Indian Penal Code, is whether he set fire to the shed with the intention of causing death or with the intention of causing such bodily injury as was likely to cause death or with the knowledge that death was likely to be caused by the Act. As I am of opinion that the accused thought, when he set fire to the house, that the deceased was already dead, I cannot hold that the Act of setting fire to the shed by which the death was caused was done with such intent or knowledge as is contemplated in section 299 of the Indian Penal Code. It is not as if the accused had intended, by setting fire to the shed, to make the deceased's death certain. I do not believe that was his intention. If that had been the case, I should have no difficulty in upholding the conviction. I would, therefore, alter the conviction to one u/s 307 of the Indian Penal Code; and as hurt was caused, I would sentence the accused to transportation for life."

Justice Parsons did not agree with Justice Birdwood, and he found that the offence committed was murder and the conviction u/s 302 I.P.C. was proper. The matter was referred to the third Judge, Chief Justice Sergeant, who recorded the following judgment :

"It is to be regretted that the attention of the Civil Surgeon was not drawn to the statement of the prisoner that he struck the deceased three blows, two of which were on the ears, and that he was only questioned as to the probable consequences of the wound on the back of the head. Having called for and seen the stick with which the blows were struck, I think there is but very little reason for doubt, more especially as the deceased was a leper in a feeble state, that the blows proved fatal, as the accused himself says was the case. But, assuming that the deceased would not have died from the effect of the blows, I agree with Mr. Justice Birdwood that as the accused undoubtedly believed he had killed his victim, there would be a difficulty in regarding what occurred from first to last as one continuous act done with the intention of killing the deceased. Under the circumstances, the offence should be held to have been only the attempt to

murder, and that the sentence should be transportation for life u/s 307."

4. In the decision referred to above, though the medical evidence was that the injuries were only likely to cause death, the intention to cause death could be gathered from the confession of the accused and also from other circumstances, and the intention being to cause death and as the death was not caused by the blows he had given on the head of his father-in-law, he was convicted u/s 307 I.P.C. for attempt to cause murder, and had the blows on the head resulted into death he would have been found guilty for murder.

5. Section 299 I.P.C. reads follows :---

"299. 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."

It is not necessary to reproduce the Explanations to the said section. Section 300 I.P.C. reads as follows :

"300. 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 causing death, or---

2ndly.---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---

3rdly.---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---

4thly.---If the person committing the act knows that it is so imminently dangerous that 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."

It is not disputed that none of the exceptions to section 300 I.P.C. is attracted in this case. The appellants-accused have clearly indicated their intention to cause the death of their sisters-in-law Manjula and Parul in the writings and various letters Exs. 47 to 53, which were written shortly before the incident. They clearly prove the motive, preparation and intention on the part of the accused to cause the death of Manjula and Parul. The intention is further exhibited by selecting the vital part, that is, head, of Manjula and pounding it with the grindstone (Article 12). As a result of such pounding of the head, there was profuse bleeding, and the evidence of panch Bakil Barkatali Shaikh (P.W. 2), corroborated by the panchnama of the scene of offence (Ex. 43) shows that the injuries sustained pleaded profusely. Soon after the causing of the death of the Manjula by pounding her head, the dead body was set on fire, and the evidence of Dr. Kapse

shows that the burning injury was post mortem. Therefore, it can be legitimately held that the death of Manjula was instantaneously caused by the severe pounding of the head causing extensive haemorrhage. Dr. Kapse noticed the following external injuries on the dead body of Manjula:-

"(1) Contused lacerated wound on forehead, right side, 5.2 x 3 cms., bone deep, near hair-line.

(2) Contused lacerated wound on left side of forehead above eyebrow, 2.5 x 1.8 cms.

(3) Contused lacerated wound, irregular shaped, on entire occipital region, 12.5 x 8.5 cms., bone deep.

(4) Contused lacerated wound on left side of head above ear, transversely placed, 3.5 x 2.5 cms., bone deep.

(5) Contused lacerated wound just above injury No. 4, 3.8 x 3 cms.

(6) Superficial to deep thermal burns on trunk below nipple level on both upper limbs below middle part of arms and on lower limbs entire part, both hands, pelvic region, gluteal region and both things uppermost part charred."

On dissection of the body he found haematoma beneath the scalp all over. There was no soot in the windpipe. In the opinion of Dr. Kapse, the external injuries except injury No. 6 were ante mortem injuries. The cause of death, in his opinion, was haemorrhage and shock due to multiple injuries by a hard and blunt object. The scalp was severed with the multiple wounds more on back. He further opined that the injuries except injury No. 6 could have been caused by an object like the grindstone (Article 12). He also opined that injury No. 6, that is, burn injury, was caused when the person was already dead. He further says. "These injuries were likely to cause death in ordinary course of nature." Dr. Kapse was cross-examined on the evidence he gave in respect of the injuries noticed by him on the dead body of Manjula, and his evidence during the cross-examination reads as follows :

"Except injury No. 4 mentioned in column No. 17 in Exh. 205, all other injuries are over the head. All injuries on the head are not on one side of the head. Since these injuries are on different sides of the head, they could have been by several blows. The blow is given on the front side of the head and if the person falls down on back of the head injury is possible. Instead of falling on the back if a person after a blow on front falls on left side injury is possible. If a person falls violently with multiple twists, the head's part coming in contact with ground may sustain these injuries. Injury No. 1 mentioned in Exh. 205 has not caused any damage to the brain.....These is no internal corresponding injury in the cranial cavity. Injury No. 1 by itself is not likely to cause death."

6. The medical evidence is mere opinion evidence and the strength and the validity of the medical expert depends upon the competency of the expert and

the data supplied to him. If there is reliable evidence which conclusively proves a fact to be proved, no much weight can be attached to the non-conforming opinion of an expert who has not been supplied with all the data requisite for giving the opinion thereof. In the present case Dr. A.L. Kapse in his post mortem notes Ex. 205 while conducting autopsy has clearly recorded the cause of death being haemorrhage and shock due to multiple injuries by a hard and blunt object. The injuries sustained by Manjula on the head on account of the forcible blows given with the grindstone (Article 12) pleaded profusely and Manjula instantaneously succumbed to those injuries. I have already indicated that the intention of the appellants-accused from the beginning was to cause the death of Manjula, and with the same intention the injuries were caused on the vital part like head of Manjula, and it resulted into death. The accused can also be legitimately posted with the knowledge that by giving forcible blows with the grindstone on the head of the victim, resulting into profuse bleeding, would in all probability cause death of the victim. Under such circumstances, in my opinion, the case would squarely fall within the first clause, and even within secondly, of section 300 I.P.C. It is not that the intention of the accused can be proved only by the nature of the injury. It can be proved by other evidence also, where such evidence is available. When other evidence is not available, one has to look to the nature of the injury, and if the injury is sufficient in the ordinary course of nature to cause death and has been intentionally inflicted, the intention to cause death or injury sufficient to cause death can be inferred for sustaining conviction for murder u/s 302 I.P.C. In the present case, as stated earlier, the intention of the accused to cause the death of Manjula has been proved even by the evidence other than the nature of the injury, and the injuries inflicted by the accused in order to carry out their common intention to cause the death of Manjula on the vital part of the body are sufficiently grave and resulted into the instantaneous death of Manjula.

7. Consequently, the conviction of the appellants-accused for causing the death of Manjula u/s 302 read with section 34 I.P.C. by the learned Additional Session Judge is proper and legal. Therefore, I would confirm the conviction of the appellants for the offence u/s 302 read with section 34 I.P.C. for causing the death of Manjula and sentence them to imprisonment for life. I fully agree with my learned brother that extreme penalty of death is not called for in the circumstances of the present case. I also agree with my learned brother that the appellants attempted to commit the offence punishable u/s 511 read with sections 201 and 34 I.P.C. and they were rightly convicted on that count. The sentence of seven years" rigorous imprisonment awarded on that count is not legal, as it could not exceed one-half of the sentence awardable for the offence u/s 201 I.P.C. Hence I would reduce it to three years" rigorous imprisonment and direct the sentences of imprisonment to run concurrently.

P. C. : The papers be placed before the learned Chief Justice for further hearing in accordance with Rule 7 of Chapter XXVIII of the Appellate Side Rules read with section 292 of the Code of Criminal Procedure, 1973.