

CASE NO.:
Appeal (crl.) 325 of 1993

PETITIONER:
KARU MARIK

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 09/05/2001

BENCH:
M.B. Shah & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil J.
L...I...T.....T.....T.....T.....T.....T.....T...J

This appeal is by the sole accused who was convicted for offence under Section 302 IPC and sentenced to rigorous imprisonment for life by the Sessions Judge. The High Court of Patna dismissed the Criminal Appeal No. 239/87(R) by the order dated 15.9.1988 confirming the order of conviction. Hence this appeal by special leave.

In short, the prosecution case is that on 14.8.1983 at about 6 A.M. in the morning Savitri Devi, wife of the informant Thakuri Pandit (PW-9) had gone to ease herself towards north of her house. In the meantime, the accused Karu Marik being armed with chhura went there and assaulted with chhura on her chest. She began crying and wanted to run away but the accused caught hold of her hairs, threw her on the ground and started giving chhura blows on her abdomen and back. On raising alarm, her husband (PW-9) and Sita Dhobin (PW-2), Mukesh (PW-1) and others came there. Seeing them, the accused fled away. PW-9 found his wife in a pool of blood lying unconscious. He took her to Sadar hospital, Giridih, and admitted her. Enmity between the accused and PW-9 was said to be the motive. Furdi bayan of PW-9 was recorded in the hospital by S.I., R.N.Singh. On that basis, F.I.R. was drawn and a case under Section 307 IPC was registered against the accused. On 14.8.1983 itself, her dying declaration was recorded by S.N.Prasad, Judicial Magistrate First Class, Giridih. Savitri Devi died on 22.8.1983 in the hospital due to the injuries caused to her by the accused. Hence the offence was altered to one under Section 302 IPC. The accused was tried for an offence under Section 302 IPC. He pleaded not guilty and his defence was that he had been falsely implicated in the case out of enmity.

The prosecution in all examined 10 witnesses to establish the guilt of the accused. PW-1 was declared hostile. Accepting the evidence of PW-2 and PW-9, the eye-witnesses coupled with the dying declaration of the deceased and keeping in view the evidence of the doctor and

the Investigating Officer, the trial court held accused guilty and convicted him for an offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life. On appeal by the accused, the High Court re-appreciated and scrutinized the evidence objectively and appropriately and did not see any infirmity in the order passed by the trial court. In that view, upheld the order of conviction and sentence passed by the Sessions Court.

Having perused the judgments of both the courts and looking to the evidence placed on record, we are of the opinion that the accused was rightly convicted. It must be stated here itself that this Court on 27.9.1991 issued notice confining it to the nature of offence only. Accordingly, we heard learned counsel for the parties.

The learned counsel for the appellant submitted that the deceased died in the hospital after eight days of assault; nature of injuries inflicted on the deceased; the weapon used and in the absence of specific evidence of the doctor as to whether any particular injury or injuries were sufficient to cause death in the ordinary course, conviction of the appellant under Section 302 IPC is not justified. According to her, the appellant could be convicted under Section 324 IPC. She pleaded that the appellant had neither intention to cause death of the deceased nor such bodily injury which he knew was likely to cause death. On the other hand, the learned counsel for the respondent-State made submissions supporting the impugned judgment. He stated that the trial court as well as the High Court, were right and justified in convicting the accused and sentencing him for life imprisonment under Section 302 IPC based on the trustworthy and unshaken evidence of eye-witnesses coupled with the dying declaration. He added that the case of the appellant is covered by Clause II of Section 300; the doctor has clearly stated that the injuries inflicted on the deceased were sufficient to cause death; looking to the nature of the weapon used in the commission of offence and the parts of the body on which the injuries were inflicted, it cannot be accepted that the appellant could be convicted for an offence under Section 324 IPC instead of 302 IPC.

We have carefully considered the submissions made by the learned counsel for the parties. Dr. Sibnarayan Prasad (PW-8) who examined the deceased has stated that he found the following injuries on the person of deceased Savitri Devi:-

- (i) One incised injury on the right side of chest 2x2x6 deep in the cavity.
- (ii) One incised injury on right side of abdomen 3x2 deep in the cavity.
- (iii) One incised injury on back 3x2 deep into cavity.

Further after operation, the following injuries were found:-

- (i) Two incised injuries in the transverse colon each 1½x ½x deep into the cavity of the Lumen.
- (ii) Four incised injuries on the large intestine each ½x1/2x deep into the cavity of the Lumen

He has deposed that all the injuries were grievous in nature and dangerous to life and that they could be caused by sharp cutting weapon such as dagger. He was of the opinion that death of the deceased was due to shock and hemorrhage and circulatory failure as a result of the above injuries.

The manner of causing injuries, the nature of the injuries caused, the part of the body where they were inflicted, the weapon of assault employed in the commission of the offence and conduct of the accused are relevant factors in determining whether the offence committed is one of murder or culpable homicide not amounting to murder. Even a most illiterate and rustic person would know and realize that a savage blow with a short cutting weapon on vital part like chest and abdomen would cause bodily injury which would result in death. Ordinarily, a man is presumed to intend necessary consequences of his act. This Court, dealing with the second clause of Section 300 IPC in *Rajwant Singh vs. State of Kerala* (AIR 1966 SC 1874), in para 10 has observed that:-

The second clause deals with acts 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 harm is caused. The mental attitude here is two-fold. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will be the likely consequence of the intended injury.

Many a times, the nature of the injury inflicted itself presents a most valuable evidence of what the intention was but that is not the only way of gauging intention. Each case must be examined on its merits. Intention being the state of mind of the offender, no direct evidence as a fact can be produced. It has to be gathered from the available evidence and the surrounding circumstances in considering whether the offence is covered by clause I of Section 300 IPC. As far as clause II of the Section 300 is concerned, it is enough if the accused had the intention of causing such bodily injury as he knew to be likely to cause the death of the person to whom the harm is caused. Such intention may be inferred not merely from the actual consequences of his act, but from the act itself also.

In the case on hand, having regard to the nature of wounds inflicted, it must be deemed that his intention was at least to cause such bodily injury as was likely to cause death. The broad facts as deposed by the prosecution witnesses accepted by the trial court as well as the High Court clearly show that the appellant gave a blow with chhura on the chest of the deceased. When she tried to run away, he caught hold of her hair, threw her on the ground and again assaulted with the chhura on the abdomen and the back of the deceased. This is the manner in which the injuries were inflicted. The injuries inflicted were grievous in nature and dangerous to life which resulted in causing death of the deceased as deposed to by the doctor. The injuries were inflicted by the chhura, a sharp cutting weapon; even an illiterate and ignorant can be presumed to know that an intense assault with such weapon on such vital parts of the body would cause death. In criminal cases, intention or the knowledge under which a person acts is an important consideration. However, the intention being a

mental make up or a state of mind of an offender, it is difficult to prove directly as a fact, but is to be inferred from the facts and circumstances of the case. Hence, in the case on hand, it is not possible to accept the submission that the appellant could be convicted for the offence under Section 324 IPC.

In this view of the matter, we do not find any merit in the contentions urged on behalf of the appellant. Thus finding no merit in the appeal, it is dismissed.

JUDIS