CASE NO.:
Appeal (crl.) 887-888 of 2001
PETITIONER:
Ruli Ram and Anr.
Vs.

RESPONDENT:
State of Haryana
DATE OF JUDGMENT: 17, 201902BENCH:
K.G. BALAKRISHNAN & ARIJIT PASAYAT.
JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Political battles are increasingly being fought with bullets and not with ballots. Innocent lives are lost and in some cases of those who have no role to play therein.

Two young boys, Manohar and Satish, aged about 10 and 12 years respectively (hereinafter referred to as the 'deceased' by the respective names) lost their lives allegedly on account of one such battle. The two accused-appellants Ruli Ram and his son Ramesh were said to be responsible for taking away their lives. The trial court i.e. the Court of Sessions at Hissar held the accused-appellants guilty under Section 304 Part II of Indian Penal Code, 1860 (in short 'IPC'). In appeal by the State a Division Bench of Punjab and Haryana High Court at Chandigarh held that the accused-appellants were to be convicted under Section 302 IPC. The trial court awarded sentence of 10 years R.I. imprisonment; but the High Court substituted it by imprisonment of life.

Filtering out unnecessary details, the prosecution version is as follows:

On 2.8.1988 Datta Ram PW2 lodged first information report alleging that while two young boys (his grandsons) were playing by the side of a pond, they were thrown into it by the accused-appellants. PW3 Dharampal informed him about the incident and he found the accused-appellants running away from the spot. Effort was made to take out the two victims out of the water and later on they were taken to the hospital where they were declared dead. The act was stated to be on account of refusal by PW2 and his family members to vote in favour of candidate supported by accused-appellants. On the date of the incident, election to the panchayat was being held. The accused-appellants wanted the informant and his family members to vote for their candidate, but on their refusal to do so, accused-appellants took their revenge in the manner as aforesaid.

On the basis of the information lodged, investigation was undertaken, arrests were made and charge-sheet was placed. Accused-appellants pleaded innocence. It is to be noted that almost as a sequel to the aforesaid incident, there were allegations of booth capturing and poll violence. Because the incidents were closely linked, common trial was held, where the accused-appellants and 10 others faced trial. While the case of the accused-appellants related to the commission of alleged offence punishable under Section 302 IPC, the other accused persons faced trial and were held guilty for commission of other offences with which the present appeals are not concerned.

By a common judgment the Additional Sessions Judge as noted above convicted the accused-appellants under Section 304 Part II IPC, while others were convicted for other offences. The accused-appellants as well as the State filed appeals before the High Court. By a common judgment High Court disposed of the appeals. While appeal filed by the accused-appellants was dismissed, that of the State as indicated above was allowed. Judgment

in said appeals is the subject-matter of challenge in the present appeals.

In support of the appeal, learned counsel for the accused-appellants submitted that the evidence is so sketchy that no credence can be put on it. The witnesses were partisan and biased, more particularly in the background of almost admitted political enmity. The scenario as projected by the prosecution is highly improbable. Alternatively, it was pleaded that no case under Section 302 IPC is made out and the trial court's conviction under Section 304 Part II should have been maintained by the High Court, even if the prosecution case was to be accepted. It was submitted that the maximum sentence of 10 years was awarded by the Sessions Judge and the same is highly disproportionate. In this context it was pointed out that one of the accused-appellants Ruli Ram is presently 80 years old. In response, the learned counsel for the State submitted that the case is clearly covered under Section 302 IPC. Evidence of the witnesses is unimpeachable. It was submitted that there is no scope for applying Section 304 Part II IPC because the said provision is applicable only when any of the exceptions to Section 300 covers the case. Strong reliance is placed on Harendra Nath Mandal v. State of Bihar (1993(1) Crimes 984).

So far as the acceptability of evidences is concerned, the trial court and the High Court analysed the evidences in detail and have held it to be plausible and acceptable, and that it suffers from no infirmity. It has been noted that in a faction ridden village, independent witnesses, as submitted by the learned counsel for the accused-appellant, are difficult to get. Enmity is a double sword. While it can be basis for false implication, it can also be basis for the crime. The court has to weigh the evidence carefully and if after doing so, holds the evidence to be acceptable, the accused cannot take the plea that it should not be acted upon. When a plea of false implication is advanced by the accused foundation for the same has to be established. We do not find any reason to differ from the Courts below on the factual aspects.

This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC 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 the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the greatest 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 first 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. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. 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 keywords 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
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 is 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 the 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.

Clause (b) of Section 299 corresponds with clauses (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 internal 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 of 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.

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. 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 Section 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. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant and Anr. v. State of Kerala, (AIR 1966 SC 1874) is an apt illustration of this point.

In Virsa Singh v. State of Punjab, (AIR 1958 SC 465), Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that 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 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 was 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.

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."

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 or 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."

These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh's 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 sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention 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 intended to be inflicted.

Thus, according to the rule laid down in Virsa Singh's case, even if the intention of 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.

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.

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. The position was illuminatingly highlighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. (1976 (4) SCC 382) and recently in Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh (JT 2002 (6) SC 274).

The plea of the learned counsel for the State that Section 304 Part II applies only when exceptions to Section 300 cover a case is misconceived. The decision in Harendra Mandal's case (supra) was rendered in a different context and observations in the same case cannot be read out of context. That was a case where death itself had not been caused and therefore,

question of applying Section 304 IPC did not arise.

Coming back to the factual position as noted by the courts below the conclusions rendered by the trial judge appear to be sound. He had noted several factors to conclude that the intention was not to commit murder, but to create some disturbances at the polling station in order to divert attention of the crowd collected, so that the booth capturing would be facilitated. No injuries were caused to the deceased before they were thrown in the pond, and there was no attempt to even strangulate them. However, the accused-appellants could be attributed the knowledge that the natural and proper consequences of their acts was likely to cause death. The High Court did not indicate any basis to hold that the case was covered by Section 302 IPC. There was only a casual observation that the murders were committed intentionally because relatives of the deceased did not agree to vote in favour of the accused-appellant's candidate. There is absolutely no discussion to fortify the conclusion. The inevitable result is that the proper provision to be applied is Section 304 Part II IPC.

Coming to the question of sentence, we do not find any substance in the plea of accused-appellants that this is not a case where the maximum sentence was warranted. Two innocent children who were not even voters became victims of political differences of elders. Political rivalry and differences cannot extend to taking away the lives of others. Criminalisation of politics is a hot topic causing concern. The election was to a panchayat in 1988. The lives of innocent children were taken. One shudders to think what happens presently, when a large number of people lose lives in the heat of political battles for election to the legislative bodies. In a democracy, the path to power cannot be allowed to have dead bodies littered over it. It cannot be a case of capturing power (beginning with booth capturing) at any cost. The trend is dangerous and has to be curbed. In a case linked with political battles, stringent punishment is desirable without exception. Choice to vote for a candidate cannot be suppressed by intimidation. That would be against the spirit of democracy. The punishment has to be always proportionate to the crime. Punishment serves a purpose inasmuch as it acts as deterrent for those who have the propensity to take law into their own hands. The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the traffic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction that is thought to

call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of

proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. Therefore, the sentence of 10 years rigorous imprisonment awarded by the trial court is quite appropriate. The accused-appellants shall suffer rigorous imprisonment for 10 years in respect of their conviction under Section 304 Part II IPC.

The appeals are allowed to the extent indicated.

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