IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2008
(Arising out of SLP (Crl.) No.5134 of 2006)

Kandaswamy ..Appellant

Versus

State of Tamil Nadu ..Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Madras High Court upholding conviction of the appellant under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'), as was awarded by learned Sessions Judge, Kamarajar, District at Srivilliputtur in Sessions case no.99 of 1994.

3. The prosecution case in a nutshell is as follows:-

At about 8.30 p.m. on 4.4.1993 the accused indiscriminately cut the victim-Alagarsamy (hereinafter referred to as 'deceased') resulting in his instantaneous death. PWs 1 and 2 were examined as eye witnesses to the occurrence.

Gurvammal is the elder sister of PW 1 and deceased Alagarsamy is her husband. The accused was known to him. Guruvammla died leaving behind two children – a girl and a boy. This made his father (PW 2) to bring Alagarsamy to his house. At about 8.30 p.m. on the occurrence day, he was standing opposite to the house of Ramaiah with his son, after returning from the house of Visalam. PW 2 was also coming in the street from the shop and he asked as to whether he had gone to Visalam's house and come back. Alagarsamy alighted from the bus and PW 2 also asked him as to whether he had

gone to Visalam's house. Palpandi (son of accused) also alighted from the bus and the accused asked him as to why he has not brought his mother with him for which he had been sent. Palpandi replied to his father (the accused) that unless the accused goes mother will not come. Finding fault that he is repeating the same answer, the accused beat his son. Alagarsamy asked him as to why he was beating the young boy for which the accused responded stating that he had no business to intervene in his family problem and saying so, removed the Aruval from his person and cut Alagarsamy which injury landed on his left hand. Alagarsamy fell down and the accused thereafter indiscriminately cut him. PWs 1 and 2 rushed towards the scene questioning the act of the accused. Threatening them with dire consequences, the accused made good his escape. Alagarsamy was lying dead. PW-1 went to the police station and gave the complaint namely Ex.P-1. He identified MO 1 as the weapon of offence and MOs. 2 to 4 as the personal wearing apparels of the deceased.

4. The appellant questioning the correctness of the judgment and conviction and sentence as imposed by the Trial Court under Section 302 IPC and sentenced to undergo for life imprisonment.

5. The only stand before the High Court was that the scenario as projected by the prosecution clearly rules out the application of Section 302 IPC. The High Court did not find any substance in the plea.

6. In support of the appeal, learned counsel for the appellant reiterated the stand before the High Court and submitted that even if the prosecution version is accepted in toto, case under Section 302 IPC is not made out.

7. Learned counsel for the respondent on the other hand supported the order.

8. 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 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 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.

9. 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

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(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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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."

15. 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."

16. 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.

17. 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.

18. 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.

19. 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.

20. The position was illuminatingly highlighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. (1976 (4) SCC 382), Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh (JT 2002 (6) SC 274), Augustine Saldanha v. State of Karnataka (2003 (10) SCC 472), Thangaiya v. State of Tamil Nadu (2005 (9) SCC 650) and Sunder Lal v. State of Rajasthan (2007 (10) SCC 371).

21. When the factual scenario is considered in the background of the legal principles set out above, the inevitable conclusion is that the appropriate conviction would be under Section 304 Part I IPC. Custodial sentence of 10 years would meet the end of justice.

22. The appeal is allowed with the aforesaid direction.

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J.

(Dr. ARIJIT PASAYAT)

.....J.

(P. SATHASIVAM)

New Delhi,
July 17, 2008