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658

GOKUL PARASHRAM PATIL

v.

B

STATE OF MAHARASHTRA

May 4, 1981

[A. D. KOSHAL AND BAHARUL ISLAM, , JJ.]

C

Conviction under s. 302 Penal Code based on sole injury on non-vital part—If injury caused by the assailant was not intended to cause death clause thirdly of s.30 Penal Code will not be attracted and the conviction and sentence should be under Part II of section 304 Penal Code.

D

The appellant attacked one Anta with a knife giving the latter a single blow above the left clavicle where it caused a muscle-deep incised wound having the dimensions 1-1/4" x 1/3". The autopsy surgeon, while certifying the existence of that wound, also found that the superior venacava had been cut, the damage so caused being sufficient in the ordinary course of nature to cause death. The sessions court convicted the appellant of an offence under section 302 of the Penal Code and sentenced him to imprisonment for life. The High Court confirmed the conviction and the sentence in appeal. Hence, the appeal by special leave.

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Allowing the appeal in part and substituting a conviction under Part II of section 304 and sentence of five years' rigorous imprisonment, the Court.

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HELD : 1. To attract clause thirdly of section 300 of the Penal Code and also illustration (c) appended thereto the injury in question needs satisfy only two tests- namely, (a) the injury must be sufficient in the ordinary course of nature to cause death and (b) such injury must have been intended to heve been caused by the culprit. [661 A-B]

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2. In the present case, the solitary blow given by the appellant to the deceased was on the left clavicle a non-vital part—and the appellant cannot be said to know that the superior venacava would be cut as a result of that wound. Even a medical man perhaps may not have been able to judge the location of the superior venacava with any precision of that type. The fact that the venacava was cut must, therefore, be ascribed to a non-intentional or accidental circumstance. Therefore, it cannot by said to have been intended by the appellant. [660 A-C]

H

Virsa Singh v. *State of Punjab*, A.I.R. 1958 S.C. 465, referred to.

Harjinder Singh v. *Delhi Administration*, A.I.R. 1968 S.C. 867 and *Laxman Kalu Nikalje* v. *The State of Maharashtra*, A.I.R. 1968 S.C. 1390, followed. A

CRIMINAL APPELLATE JURISDICATION : Criminal Appeal No. 512 of 1981.

Appeal by special leave from the judgment and order dated the 8th September, 1980 of the Bombay High Court in Criminal Appeal No. 664 of 1980. B

V.N. Ganpule, *A.B. Lal* and *Mrs. V.D. Khanna* for the Petitioner.

C

O.P. Rana and *R.N. Poddar* for the Respondent.

The Judgment of the Court was delivered by

KOSHAL, J. The appellant has been convicted of an offence under section 302 of the Indian Penal Code (hereinafter referred to as the Code) for causing the death of one Anita, and has been sentenced to imprisonment for life by the trial court as well as in appeal by the High Court. D

2. The case of the prosecution was that the appellant attacked the deceased with a knife giving the latter a single blow above the left clavicle where it caused a muscle-deep incised wound having the dimension 1-1/4" x 1/3". The autopsy surgeon, while certifying the existence of that wound, also found that the superior venacava had been cut, the damage so caused being sufficient in the ordinary course of nature to cause death. E

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3. The learned counsel for the appellant has contended that the case does not fall within the ambit of section 302 of the Code and that the two courts below erred in relying on *Virsa Singh* v. *State of Punjab*. (1) The gist of the dictum of this Court in that case is that if an injury is held to have been intended by the assailant and is further found to be sufficient in the ordinary course of nature to cause death, it would attract clause thirdly of section 300 of the Code and that, therefore, its author would be liable to punishment under section 302 thereof. The question thus is whether the G

(1) A.I.R. 1958 S.C. 465 H

particular injury which was found to be sufficient in the ordinary course of nature to cause death, in the present case, was an injury intended by the appellant. Our answer to the question is an emphatic no. The solitary blow given by the appellant to the deceased was on the left clavicle - a non-vital part - and it would be too much to say that the appellant knew that the superior venacava would be cut as a result of that wound. Even a medical man perhaps may not have been able to judge the location of the superior venacava with any precision of that type. The fact that the venacava was cut must, therefore, be ascribed to a non-intentional or accidental circumstance. This was precisely the view taken in *Harjinder Singh* v. *Delhi Administration*, (1) by Sikri, J., and in *Laxman Kalu Nikalje* v. *The State of Maharashtra*, (2) by Hidayatullah, C.J. In the former of these cases, the injury in question was a stab wound on the left thigh which had cut the femoral artery and vessels. In the latter, the damage caused consisted of a cut in the auxiliary artery and veins. In each of the two cases it was held that although the injury which was found to be sufficient in the ordinary course of nature to cause death had resulted from a blow with a sharp-edged weapon, the same could not be said to have been intended, that the only injury which could be regarded as intentional was the superficial wound resulting directly from the blow, that the assailant could not be held guilty of an offence under section 302 of the Code and that he was, on the other hand, guilty of a lesser offence falling under part II of section 304 thereof.

4. Mr. Rana, learned counsel for the State has drawn our attention to illustration (c) appended to section 300 of the Code and has contended on the basis thereof that the culpable act attributed to the appellant is covered thereby. The illustration may be extracted :

> "(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death'.

(1) A.I.R. 1968 S.C. 867.
(2) A.I.R. 1968 S.C. 1390.

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The proposition propounded by Mr. Rana is that the illustration, which is obviously relatable to clause thirdly of the section, postulates that the injury in question need satisfy only two tests to attract the provisions of that clause and that those tests are :

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(i) The injury must by sufficient in the ordinary course of nature to cause death.

(ii) Such injury must have been intended to have been caused by the culprit.

C

There is no quarrel with this proposition but then the injury which was found to be sufficient in the ordinary course of nature to cause death in the present case does not satisfy test (ii) because, as already pointed out, it cannot be said to have been intended by the appellant. The illustration, therefore, does not advance the cause of the State.

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5. Following the dicta in the two earlier decisions of this Court which have been cited above, we partially accept the appeal, set aside the conviction of the appellant for an offence under section 302 of the Code and substitute thereof one under part II of section 304 thereof. In consequence he shall suffer rigorous imprisonment for 5 years which punishment, in our opinion, will meet the ends of justice in the circumstances of the case. The judgment of the High Court is modified accordingly.

E

S.R. *Appeal partly allowed.*