VINEET KUMAR CHAUHAN

v.

STATE OF U.P.

DECEMBER 14, 2007

[P.P. NAOLEKAR AND D.K. JAIN, JJ.]

Penal Code, 1860—ss. 302 and 304 (Part II)—Accused charged with murder caused by firearm—Acquittal by trial court, however, High Court convicted u/s 302—On appeal, held: Accused caused fatal injury to deceased—Though deceased died of septicemia and toxemia owing to bed sores, basic cause of death was bullet injury—There was direct casual connection between hitting of bullet fired by accused to deceased and her death—Absence of evidence of Ballistic expert was not fatal —Requirement of **mens rea** *was absent—There was no enmity— Occurrence took place without pre-meditation, in heat of passion upon sudden quarrel—At the most, accused had knowledge that use of revolver was likely to cause death, thus, s. 299 clause (3) attracted— Offence committed by the accused would be 'culpable homicide not amounting to murder—Hence, conviction altered to s. 304 (Part II)— Evidence.*

Evidence—Ballistic expert's evidence—Accused charged with murder caused by firearm—Failure to lead evidence of Ballistic expert to prove charges irrespective of quality of direct evidence on record— Does not vitiate trial—However, when direct evidence not available examination of Ballistic expert essential.

According to the prosecution case, PW 1 along with his wife and son-PW 2 were living opposite to the house of the appellant. On the fateful day, appellant and his servant went to the house of PW 1 and sudden quarrel took place between the appellant and PW. 2 over a minor issue. The appellant went to his house and took his father's revolver and opened indiscriminate firing towards PW1's house from the door of his house. One of the bullets hit the wife of

A PW 1 in her jaw. PW-1 lodged an FIR. He took his wife to the hospital for treatment. PW 4-doctor found two injuries on the person of the deceased. She developed bed sores and ultimately died on the 10th day. PW-7-doctor who conducted autopsy recovered a metallic bullet from her spinal cord which caused extensive damage in thoracic spine
B and paralysis of half of her body. He opined that death was caused due to septicemia and toxemia owing to bed sores. The investigations were carried out. The appellant and his servant were charged u/s 302 and 307 IPC. Prosecution examined witnesses. PW 1 and 2 were eye witnesses. PW 5 stated that the deceased had suffered paralysis
C in both her legs due to bullet injury sustained in the spinal cord. Trial Court holding the evidence to be insufficient to warrant conviction, acquitted the accused. High Court upheld the acquittal of the servant, however convicted the appellant. Hence, the present appeal.

Appellant–accused contended that the Ballistic Report casts a
D serious doubt that the distorted bullet allegedly recovered from the spot came out of the seized revolver; that it was also obligatory on the part of the prosecution to send the bullet allegedly recovered from the body of the deceased for being examined by the Ballistic Expert; that it was the prosecution case that the accused was firing
E towards the house of the deceased without aiming at any person and the bullet hit the deceased accidentally when she was closing the door of the house; that even if the occurrence is admitted to have taken place in the manner alleged, the appellant cannot be held guilty for the commission of the offence punishable u/s 302; and that the
F occurrence having taken place without pre-medication, in the heat of the passion upon a sudden quarrel, the appellant is entitled to the benefit of Exception 4 of the section 300 IPC.

Partly allowing the appeal, the Court

G HELD:1.1. It cannot be laid down as a general proposition that in every case where a firearm is allegedly used by an accused person, the prosecution must lead the evidence of a Ballistic Expert to prove the charge, irrespective of the quality of the direct evidence available on record. It needs little emphasis that where direct evidence is of
H such an unimpeachable character, and the nature of injuries,

disclosed by post-mortem notes is consistent with the direct evidence, the examination of Ballistic Expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence. [Para 10] [734-F-H; 735-A]

Gurcharan Singh v. *State of Punjab,* [1963] 3 SCR 585, relied on.

Mohinder Singh v. *The State,* [1950] 1 SCR 821; *State of M.P.* v. *Surpa,* [2002] 9 SCC 447, referred to.

1.2. In the instant case, having regard to the ocular evidence adduced by the prosecution, there is no reason to discard the prosecution theory that the injury as a result whereof deceased suffered complete paralysis of both the lower limbs etc. was caused by a bullet fired from a revolver. The nature of the injury as proved by P.W.5 under whose treatment the deceased remained at Moradabad and P.W.7, who had conducted the post-mortem examination is wholly consistent with the prosecution version. It is clear that the bullet recovered by P.W.7 at the time of post-mortem of the victim had traversed to thoracic spine through the neck from the face near the angle of the jaw, hitting the fifth thoracic vertebra, badly damaging the underlying spinal cord. Therefore, on the facts, the absence of Ballistic Expert's evidence is not fatal to the prosecution case, notwithstanding the fact that the Forensic Science Laboratory, in its report, had not expressed a definite opinion about the bullet recovered from the place of occurrence.

[Para 12] [735-F-H; 736-A]

1.3. High Court on analysis of the statements of P.W.1 and P.W.2, found their testimonies to be trustworthy. High Court found that it was the appellant who had opened fire from the revolver from his door, one of which had hit the victim, who had come to close the main door of her house. Nothing has been shown as to warrant interference with the said finding recorded by the High Court. Therefore, in the context of this unimpeachable evidence, it stands

A proved that the appellant had gone to the house of the deceased; some unsavoury incident took place there; he returned to his house in a huff; took out the revolver of his father and fired shots towards the house of the deceased; one of the bullets hit the deceased and the same proved to be fatal. Having considered to the evidence on B record, in particular the testimony of P.W.1 and P.W. 2, the High Court was correct in coming to the conclusion that the appellant was responsible for causing the fatal injury to the deceased. The High Court also rightly held that though as per the post-mortem report the deceased died of septicemia and toxemia because of bedsores, C the basic cause of her death was the bullet injury caused to her by the appellant. [Para 13] [736-B-F]

2. On facts, it stands proved that there being a direct causal connection between the hitting of the bullet, fired by the appellant, to the deceased and her death, the death of the deceased was caused D by the appellant. However, having regard to the circumstances, particularly the manner in which the appellant fired the shots, the appellant could not be attributed the *mens rea* requisite for bringing the case under clause (3) of Section 300 IPC. Concededly, there was no enmity between the parties and there is no allegation of the E prosecution that before the occurrence, the appellant had pre-meditated the crime of murder. Having faced some sort of hostile attitude from the family of the deceased over the cable connection, a sudden quarrel took place between the appellant and the son of the deceased, on account of heat of passion, the appellant went home; F took out his father's revolver and started firing indiscriminately, and unfortunately one of the bullets hit the deceased on her chin. At the most, it can be said that he had the knowledge that the use of revolver was likely to cause death and, as such, the instant case would fall within the third clause of Section 299. Thus, the offence G committed by the appellant was only "culpable homicide not amounting to murder". Under these circumstances, the offence are brought down from first degree "murder" to "culpable homicide not amounting to murder", punishable under the second part of Section 304. The conviction of the appellant under Section 302 is set aside H and instead is convicted under Section 304 Part II IPC. The sentence

of rigorous imprisonment for five years would meet the ends of justice. [Paras 16 and 17] [737-F-H; 738-A-D] A

State of Andhra Pradesh **v.** *Rayavarapu Punnayya and Anr.*, **[1976] 4 SCC 382;** *Virsa Singh* **v.** *State of Punjab,* **[1958] SCR 1495 and** *Rajwant* **v.** *State of Kerela,* **[1966] Supp SCR 230, relied on.** B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 35 of 2006.

From the final Judgment and Order dated 7.10.2005 of the High Court of Judicature at Allahabad in Government Appeal No. 415 of 2000. C

Sushil Kumar, Vinay Arora, Aditya Kumar, Sudarshan Singh Rawat, Anmol Thakral and Sanjay Jain for the Appellant.

Ratnakar Das, T.N. Singh, Rajeev Dubey and Kamlendra Mishra for the Respondent. D

The Judgement of the Court was delivered by

D.K. JAIN, J. 1. This appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 has been preferred against the judgment of the High Court of Judicature at Allahabad in Government Appeal No. 415 of 2000. By the impugned judgment, the appeal filed by the State of Uttar Pradesh has been allowed and the appellant Vineet Kumar Chauhan has been convicted under Section 302 of the Indian Penal Code, ('IPC' for short) for causing the murder of Smt. Premwati. He has been sentenced to suffer imprisonment for life. E F

2. The genesis of the prosecution case, in brief, was that on 13.10.1993 at about 11.50 a.m., one Sri Krishna Sharma (P.W.1), husband of the deceased, lodged an F.I.R. with the police station Majhola, District Moradabad to the effect that on that day, at about 9.45 a.m., when he alongwith his wife and children was watching television, the appellant who was living opposite their house and was a cable operator along with his servant Dharamveer, came to their house and tried to persuade his son-Ravindra Sharma (P.W.2) to take a cable connection G H

A from them. Not being interested in the cable connection, they declined the request of the appellant whereupon an altercation took place between the appellant and P.W.2. The complainant and his wife intervened and asked the appellant to leave their house. The appellant went to his house, brought out the licensed revolver of his father and opened indiscriminate B firing towards complainant's house from the door of his house. Some bullets hit the door of the house of Sri Krishna Sharma and while his wife, the victim, was closing the door, one of the bullets hit her in the jaw. Sri Krishna Sharma brought his injured wife to the hospital for treatment and thereafter lodged the F.I.R.

C 3. The victim was examined by Dr. Jagmal Singh, P.W.4. The following injuries were found on her person:

1. Lacerated wound 1.5 cm. x .5 cm x not probed on face, left side over left mandible, 3 cm. below and outer to left angle of mouth. Advised x-ray of left side fact and left side neck.

D

2. Lacerated wound .5 cm x .5 cm x skin on left arm outer part, 4 cm. above left elbow.

4. Both the injuries were found to be fresh. Injury No.1 was alleged E to have been caused by firearm but final opinion was reserved to be given after the x-ray. Injury No.2 was caused by a blunt object. On x-ray being taken, a radio opaque shadow elongated was found in thoracic spine in dorsal region over T 5-6.

5. The victim remained under treatment and supervision of Dr. D.S. F Ahlawat (P.W.5). On 15.10.1993, she was taken to Delhi for treatment. However, on 21.10.1993, she was again admitted in Moradabad Hospital, where she developed bedsores. Smt. Premwati ultimately died on 25.3.1994. As per the autopsy conducted by Dr. S.P. Singh (P.W.7) on 25.3.1994, the ante-mortem injuries were mainly deep bedsores on G various parts of the body and one old healed scar, size 1.2 cm x .5 cut, on the left face at the chin 2.5 cm. away from medium plank thoracic spine. On internal examination, the doctor recovered a metallic bullet from her spinal cord, which had caused extensive damage in thoracic spine and paralysis in half of the body. The cause of death was opined to be H septicemia and toxemia due to bedsores. After investigations, charge sheet

under Sections 452 and 307 was filed against the appellant and his father. A
However, charges were framed against them under Sections 302 and 307 IPC.

6. In support of the case, the prosecution examined seven witnesses, including Sri Krishna Sharma (P.W.1) and Ravindra Sharma (P.W.2), who claimed to be the eye-witnesses. As per testimony of P.W.5, the deceased B had suffered paralysis in both her legs due to bullet injury sustained in the spinal cord. The Trial Court found the evidence to be insufficient to warrant conviction of both the accused. Doubting the presence of P.W.1-Sri Krishna Sharma and P.W.2-Ravindra Sharma at the spot and *inter-alia,* observing that from the report of the Ballistic Expert it could not be C established that the lead (from part of the bullet) recovered from the spot pertained to a shot fired from revolver recovered from the house of the accused-Vineet Kumar and that deceased had actually died of septicemia and toxemia owing to bedsores, as she was not properly advised and attended to while she was admitted in hospital and death was attributable D to the negligence and bedsore, the Trial Court directed their acquittal.

7. On appeal by the State, the High Court affirmed the acquittal of Dharamveer. Insofar as the case of the appellant was concerned, the High Court found the ocular evidence *qua* him to be perfectly in harmony with the medical evidence. Concluding that the appellant did commit the offence E of murder, as noted above, the High Court convicted him under Section 302 I.P.C. It is this conviction and sentence which has been challenged in this appeal.

8. Mr. Sushil Kumar, learned senior counsel appearing on behalf of the appellant assailed the conviction of the appellant mainly on the ground F that apart from the fact that the Ballistic Report casts a serious doubt that the distorted bullet allegedly recovered from the spot came out of the seized revolver, it was also obligatory on the part of the prosecution to send the bullet, allegedly recovered from the body of the deceased, for being examined by the Ballistic Expert, so as to connect the recovered licensed G revolver of the appellant's father with the crime. It was submitted that since it was a positive case of the prosecution that the bullet which had hit the deceased was fired from the seized revolver, omission to send the bullet for ballistic examination is a serious infirmity in the prosecution case, which assumes still greater significance because of Ballistic Report, which does H

A not even establish that the remnants of the bullet (lead), recovered from the place of incident, was of the bullet fired from the revolver allegedly used by the appellant. In support, strong reliance is placed on the decision of this Court in *Mohinder Singh* v. *The State*[1], wherein it was observed that in a case where death is due to injuries or wounds caused by a lethal B weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. Reference is also made to another decision of this Court in *State of M.P.* v. *Surpa*[2], expressing a similar view. Learned counsel has also contended that all through the C case of the prosecution was that the accused was firing towards the house of the deceased without aiming at any person and the bullet hit the deceased accidentally when she was closing the door of the house. It is urged that in case the appellant had any intention to commit the murder of the deceased or any member of her family, he would have gone to D their house and shot them. It is argued that even if the occurrence is admitted to have taken place in the manner alleged, the appellant cannot be held guilty for the commission of offence punishable under Section 302 IPC. It is asserted that the occurrence having taken place without pre-meditation, in the heat of the passion upon a sudden quarrel, the appellant E is entitled to the benefit of Exception 4 of Section 300 IPC.

9. Learned counsel for the State, on the other hand, supported the view taken by the High Court.

10. It cannot be laid down as a general proposition that in every F case where a firearm is allegedly used by an accused person, the prosecution must lead the evidence of a Ballistic Expert to prove the charge, irrespective of the quality of the direct evidence available on record. It needs little emphasis that where direct evidence is of such an unimpeachable character, and the nature of injuries, disclosed by post-mortem notes is consistent with the direct evidence, the examination of G Ballistic Expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon,

1. (1950) 1 S.C.R. 821.

H 2. (2002) 9 S.C.C 447.

examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence. (See: *Gurcharan Singh* v. *State of Punjab*[3])

11. In *Mohinder Singh's* case (supra) on which strong reliance is placed on behalf of the appellant, this Court has held that, where the prosecution case was that the accused shot the deceased with a gun, but it appeared likely that the injuries on the deceased were inflicted by a rifle and there was no evidence of a duly qualified expert to prove that the injuries were caused by a gun, and the nature of the injuries was also such that the shots must have been fired by more than one person and not by one person only, and the prosecution had no evidence to show that another person also shot, and the oral evidence was of witnesses who were not disinterested, the failure to examine an expert would be a serious infirmity in the prosecution case. It is plain that these observations were made in a case where the prosecution evidence was suffering from serious infirmities. Thus, in determining the effect of these observations, the facts in respect of which these observations came to be made cannot be lost sight of. The said case therefore, cannot be held to lay down an inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if Ballistic Expert is examined. In what cases, the examination of a Ballistic Expert is essential for the proof of the prosecution case, must depend upon the facts and circumstances of each case.

12. In the instant case, having regard to the ocular evidence adduced by the prosecution, there is no reason to discard the prosecution theory that the injury as a result whereof Smt. Premwati suffered complete paralysis of both the lower limbs etc. was caused by a bullet fired from a revolver. The nature of the injury as proved by Dr. P.S. Ahlawat (P.W.5), under whose treatment the deceased remained at Moradabad and Dr. S.P. Singh (P.W.7), who had conducted the post-mortem examination is wholly consistent with the prosecution version. It is clear that the bullet recovered by P.W.7 at the time of post-mortem of the victim had traversed to thoracic spine through the neck from the face near the angle of the jaw, hitting the fifth thoracic vertebra, badly damaging the underlying spinal cord. We are therefore, of the view that on the facts of the present case, the absence of Ballistic Expert's evidence is not fatal to the case of the prosecution,

3. (1963) 3 S.C.R. 585.

notwithstanding the fact that the Forensic Science Laboratory, in its report dated 18.2.1991, had not expressed a definite opinion about the bullet recovered from the place of occurrence.

13. Insofar as the testimonies of P.W.1 and P.W.2, the two star witnesses of the prosecution, are concerned, from the impugned judgment, it is manifest that the High Court, on analysis of their statements, has found these to be trustworthy. The High Court has observed that testimony of these two natural witnesses is of sterling character with no holes whatsoever. Based on this evidence, the High Court has found that it was the appellant who had opened fire from the revolver from his door, one of which had hit the victim, who had come to close the main door of her house. Nothing has been shown to us so as to warrant interference with the said finding recorded by the High Court. Therefore, in the context of this unimpeachable evidence, it stands proved that the appellant had gone to the house of the deceased; some unsavoury incident took place there; he returned to his house in a huff; took out the revolver of his father and fired shots towards the house of the deceased; one of the bullets hit the deceased and the same proved to be fatal. Having bestowed our anxious consideration to the evidence on record, in particular the testimony of P.W.1 and P.W. 2, we are of the opinion that the High Court was correct in coming to the conclusion that the appellant was responsible for causing the fatal injury to the deceased. We are also in agreement with the High Court that though as per the post-mortem report the deceased died of septicemia and toxemia because of bedsores, the basic cause of her death was the bullet injury caused to her by the appellant.

14. However, the next question for consideration is whether the offence established by the prosecution against the appellant is "murder" – as held by the High Court or "culpable homicide not amounting to murder" – as contended on behalf of the appellant?

15. The academic distinction between "murder" and "culpable homicide not amounting to murder" has been vividly brought out by this Court in *State of Andhra Pradesh* v. *Rayavarapu Punnayya and Anr.*,[4]. It has been observed that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said Sections. Minutely comparing

4 (1976) 4 SCC 382.

each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in *Virsa Singh* v. *State of Punjab*[5] and *Rajwant* v. *State of Kerala*[6], speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the court said that whenever a Court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304, Penal Code. It was, however, clarified that these were only broad guidelines to facilitate the task of the Court and not cast iron imperative.

16. Reverting to the facts in hand, as noted above, it stands proved that there being a direct causal connection between the hitting of the bullet, fired by the appellant, to the deceased and her death, the death of the deceased was caused by the appellant. However, having regard to the circumstances, briefly enumerated above, particularly the manner in which the appellant fired the shots, in our view, the appellant could not be attributed the *mens rea* requisite for bringing the case under clause (3) of Section 300 IPC. Concededly, there was no enmity between the parties

5 1958 SCR 1495
6 1966 Supp SCR 230

A and there is no allegation of the prosecution that before the occurrence, the appellant had pre-meditated the crime of murder. We are inclined to think that having faced some sort of hostile attitude from the family of the deceased over the cable connection, a sudden quarrel took place between the appellant and the son of the deceased, on account of heat of passion, B the appellant went home; took out his father's revolver and started firing indiscriminately, and unfortunately one of the bullets hit the deceased on her chin. At the most, it can be said that he had the knowledge that the use of revolver was likely to cause death and, as such, the present case would fall within the third clause of Section 299 IPC. Thus, in our opinion, C the offence committed by the appellant was only "culpable homicide not amounting to murder". Under these circumstances, we are inclined to bring down the offence from first degree "murder" to "culpable homicide not amounting to murder", punishable under the second part of Section 304 IPC.

D 17. Consequently, we partly allow the appeal; set aside the conviction of the appellant under Section 302 IPC and instead convict him under Section 304 Part II IPC. The sentence of rigorous imprisonment for five years would meet the ends of justice.

N.J. Appeal partly allowed.