A PAPPU @ HARI OM

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 599 of 2009)

MARCH 31, 2009

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[DR. ARIJIT PASAYAT, D.K. JAIN AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860: s.304(Part II) – Gun shot injuries on C *shoulder – Resulting in death – Conviction under s.302 – Affirmed by High Court – Held: Considering the part of body where bullet fired hit the deceased, appropriate conviction would be under s.304 Part II – Custodial sentence of 8 years would meet ends of justice – Accused having suffered custody* D *of more than that period ordered to be released forthwith.*

Prosecution case was that deceased along with prosecution witnesses was playing cards on Diwali night. Appellant and co-accused came there and asked them to E **permit them to play. Deceased objected to it which gave rise to quarrel between him and the appellant and co-accused. Both appellant and co-accused went away and after some time, they returned back. Appellant had 12 bore gun in his hand. Appellant fired gun shots which caused injuries on the right shoulder of deceased and he** F **fell down. He was taken to hospital where he was declared dead. Trial Court convicted appellant under s.302 IPC. High Court affirmed the conviction. Hence the appeal.**

G **Disposing of the appeal, the Court**

HELD:1. There was no reason to discard the prosecution version. PW-10 who reached the spot after hearing the sound of firing stated that when he reached

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the spot he found that deceased was lying in an injured condition. The deceased told that the accused persons had fired. Since there was wound on the chest of the deceased he was taken to the hospital. In his evidence PW-14 stated that on the night of occurrence at about 9.30 p.m. which was Diwali night he was playing cards with four others, co-accused and the appellant came there. There was exchange of hot words between the accused with the deceased and the appellant fired the shot and caused injuries on the chest of the deceased who died while being taken to the hospital. [Para 6] [234-E-G] A B C

2. 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. [Paras 10 and 11] [238-A-C] D E F

Rajwant and Anr. v. State of Kerala AIR (1966) SC 1874 and *Virsa Singh v. State of Punjab* AIR (1958) SC 465, relied on.

3. Under clause thirdly of Section 300IPC, 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 G H

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. Considering the part of the body where the bullet fired hit the deceased, the appropriate conviction would be under Section 304 Part II IPC. Custodial sentence of 8 years would meet the ends of justice. The record showed that the appellant has suffered custody of more than that period. He shall be released forthwith. [Paras 15 and 20] [240-B-D; 241-E]

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) 1 SCC 472;** *Thangaiya v. State of Tamil Nadu* **(2005) 9 SCC 650 and** *Sunder Lal v. State of Rajasthan* **(2007) 1 SCC 371, relied on.**

Case Law Reference:

AIR (1966) SC 1874	**relied on**	**Para 11**
AIR (1958) SC 465	**relied on**	**Para 12**
(1976) 4 SCC 382	**relied on**	**Para 19**
JT (2002) 6 SC 274	**relied on**	**Para 19**
(2003) 1 SCC 472	**relied on**	**Para 19**
(2005) 9 SCC 650	**relied on**	**Para 19**
(2007) 1 SCC 371	**relied on**	**Para 19**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 599 of 2009.

From the Judgment & Order dated 23.4.2007 of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in

Criminal Appeal No. 23 of 1998. A

Narendra Kumar (SCLSC) for the Appellant.

C.D. Singh, S. Chaudhary, V. Vandhan, Aditya Singh and Upsana Nath for the Respondents. B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Madhya Pradesh High Court, Jabalpur Bench, which affirmed the conviction of the appellant for the offences punishable under Sections 302 of the Indian Penal Code, 1860 (in short the 'IPC'). He was sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation. Accused Bal Kishan was convicted for offence punishable under Section 302 read with Section 34 IPC. The convictions were recorded by learned Additional Sessions Judge, Gohad, Bhind, M.P. in Sessions Case No.11/95. The conviction as recorded by the Trial Court was assailed by two separate appeals. As accused-appellant Bal Kishan died during the pendency of the appeal, the same stood abated. C D E

3. Prosecution version in a nutshell is as follows:

On 2.11.1994 at about 9.30 p.m. Ram Babu (PW-1), Jagdish (PW-12), Sanjeev Kumar (PW-14) and Ramesh (hereinafter referred as 'deceased' were playing cards near the house of Kishanlal under an electric pole. The appellant Pappu @ Hari Om alongwith co-accused Bal Kishan came there and asked the persons who were playing cards to permit them to play with them. Ramesh objected to it and this gave rise to quarrel between Ramesh and the accused Pappu @ Hari Ram & Bal Kishan. Both Balkishan and Pappu @ Hari Om went away after abusing Ramesh. After sometime, they returned back from the lane of Rahim Khan Ki Gali. Papu @ Hari Om had a 12 F G H

A bore gun in his hand. Both accused abused Ramesh and Pappu @ Hari Ram fired gun shots, which caused injuries on the right shoulder of Ramesh and he fell down. Bablu (PW-2) and other persons took him to the hospital on a handcart, where Ramesh was declared dead. The report of this incident was B lodged by Rambabu (PW-1), which is marked as Ex.P-1. On the basis of this report, Crime No.261/94 was registered against the accused.

4. Before the High Court the basic stand was that the C independent witnesses did not support the prosecution version and it was only the evidence of PW-14 who supported the prosecution version. Additionally, it was submitted that the case at hand is not one which is covered by Section 302 IPC. The High Court did not find any substance in the aforesaid plea and dismissed the appeal.

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5. Learned counsel for the appellant reiterated the plea taken before the High before this Court. Learned counsel for the respondent-State supported the judgment.

E 6. Coming to the plea relating to acceptability of evidence, PW-10 who reached the spot after hearing the sound of firing stated that when he reached the spot he found Ramesh was lying in an injured condition and was told by the deceased that the accused persons had fired. Since there was wound on the F chest of the deceased he was taken to the hospital. In his evidence Sanjeev Kumar (PW-14) stated that in the night of occurrence at about 9:30 p.m. which was Diwali night he was playing cards with four others, Balkishan and the present appellant came there. There was exchange of hot words between the accused with the deceased and the appellant fired G the shot and caused injuries on the chest of the deceased who died while being taken to the hospital. There is no reason to discard the prosecution version.

7. This brings us to the crucial question as to which was H 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.

8. 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	(2) with the intention of causing such bodily injury to cause death; or 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.

9. 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.

10. 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

A 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 B 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.

C 11. 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.

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12. 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 E 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 F 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 G inferential and has nothing to do with the intention of the offender.

13. The ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language H as follows:

"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly". A

First, it must establish, quite objectively, that a bodily injury is present. B

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. C

Once these three elements are proved to be present, the enquiry proceeds further and, D

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." E

14. 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 F G H

A 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."

B 15. 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 C 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, D 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.

16. Thus, according to the rule laid down in *Virsa Singh's* E case (supra), 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.

F 17. 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 G 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 H 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. A

18. 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. B

19. 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). C D

20. Considering the part of the body where the bullet fired hit the deceased, in our considered opinion the appropriate conviction would be under Section 304 Part II IPC. Custodial sentence of 8 years would meet the ends of justice. It appears from the record that the appellant has suffered custody of more than that period. He shall be released forthwith unless required to be custody in any other case. E

D.G. Appeal disposed of.