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MAJOR SINGH

v.

STATE OF PUNJAB & ANR.

(Criminal Appeal Nos. 2405-06 of 2014)

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JUNE 16, 2022

**[A. S. BOPANNA AND VIKRAM NATH, JJ.]**

C *Penal Code, 1860 – s.304 Part II – Distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder – Held: There is a subtle distinction of degree of intention and knowledge involved in both the crimes – Intention is pivotal to decide whether the accused has committed culpable homicide amounting to murder or culpable homicide not amounting to murder – Along with intention, knowledge and the degree of crime, i.e. how the deceased was killed, plays an important role in deciding*

D *– In the present case, the accused-appellant had no intention to kill his uncle – Lack of intention can easily be seen through the acts committed by the appellant – He was furious about getting yelled by his uncle a day before, which acted as a provocation for the accused – The appellant was armed with a wooden leg of the cot in*

E *his hand which cannot be termed as a dangerous weapon – He had given a single blow to the deceased and therefore it cannot be said that the appellant had intention of killing the deceased who was his own uncle – Maybe he wanted to punish his uncle for the reprimand, he received the previous day – Further it cannot be said that the*

F *appellant had the knowledge that the deceased would die through a single blow – Thus, the deceased is not liable to be convicted u/s.302 IPC but would be liable to be convicted under s.304 Part-II IPC.*

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*Mohd. Rafiq v. State of Madhya Pradesh, (2021) 10 SCC 706 – referred to.*

**Case Law Reference**

**(2021) 10 SCC 706**

**referred to**

**Para 14**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal A  
Nos. 2405-06 of 2014.

From the Judgment and Order dated 03.04.2014 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.D-421-DBA of 2002 and Criminal Revision No.391 of 2002.

Gagan Gupta, Adv. for the Appellant. B

R. K. Rathore, Ms. Jaspreet Gogia, Advs. for the Respondents.

The following Order of the Court was passed:

**ORDER** C

1. The present set of appeals filed by accused-appellant, Major Singh (hereinafter referred to as ‘the appellant’) arises from the order dated 03.04.2014 passed by Punjab and Haryana High Court in Criminal Appeal No. 421 of 2002 and Criminal Revision No. 391 of 2002, whereby the appeal and revision petition were allowed, the acquittal by the Trial Court was set aside and the appellant was convicted under section 302 IPC<sup>1</sup> and sentenced to undergo imprisonment for life and pay fine of Rs.5,000/-. D

**FACTS:**

2. Prosecution’s case arises from a two-day incident and it unfolds as follows: E

i. On 20.07.1998, a day preceding the unfortunate incident, appellant had quarreled with his uncle Makhan Singh (deceased) and had abused the uncle. Due to this argument between them, Makhan Singh had severely reprimanded the appellant. F

ii. On the day of the incident, i.e. on 21.07.1998 at about 10:30/11:00 A.M., Makhan Singh, father of Sukhraj Singh (complainant) was going towards bus stand of their village. On his way over, Major Singh came from the other side of the bus stand holding a wooden ‘Bahi’ (wooden side of a cot frame). He abused Makhan Singh for shouting and insulting him on the previous day and threatened to teach Makhan Singh a lesson. Thereafter, the accused dealt a ‘Bahi’ blow to Makhan Singh on his head as a result of which Makhan Singh fell down. G

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<sup>1</sup> IPC – Indian Penal Code, 1860

- A Immediately after which Major Singh ran away from the spot with the 'Bahi'. After this both Sukhraj Singh and Charanjit Singh, who were standing in front of the shop of Dilbag Singh, took their father, who was bleeding from the head to Civil Hospital, Giddarbaha. As his condition was serious, the doctor referred him to Dayanand Medical College, Ludhiana. Makhan Singh succumbed to the injuries on 22.07.1998, that is a day after the incident.

3. Sukhraj Singh went to the Police Station, where he met ASI Arnail Singh at Husnar Chowk, Gidderbaha and his statement was recorded in writing. The police, after making endorsement, sent the same to police station-Kotbhai for registration of FIR. The police visited the spot and prepared rough site plan and blood-stained earth was lifted from the spot.

4. On the day of the death of the incident, police visited DMC, Ludhiana and prepared the inquest report. The offence was enhanced to section 302 IPC and the body of the deceased was sent for post mortem. Post-mortem report found eight injuries and, according to the doctor, the cause of death was due to shock and hemorrhage as a result of head injury.

5. Appellant was arrested on 09.08.1998. As per the prosecution, he confessed about the concealment of 'Bahi' by him in the wheat chaff room at his residence. In the presence of Head Constable Gurdass Singh and Charanjit Singh, the 'Bahi' stained in blood was recovered from the place disclosed by the appellant. The police sent the blood-stained earth, plain earth along with 'Bahi' for chemical examination. In the report of chemical examiner, it was found that the stain on the 'Bahi' and the blood recovered from the spot were of the same person, i.e. the deceased.

6. After compliance of section 207 CrPC<sup>2</sup>, the case was committed to the Sessions Court, vide order dated 13.10.1998 and charge was framed against the accused under section 302 IPC on 17.11.1998. The accused pleaded not guilty and claimed to be tried.

7. The prosecution examined eight witnesses as PW1 to PW-8 and also filed documentary evidence. After the evidence by the

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H <sup>2</sup> CrPC – Criminal Procedure Code, 1973

prosecution was recorded, the accused was examined under section 313 CrPC and the entire incriminating material was put to him. He denied all the allegations against him and reiterated his innocence. He claimed to be falsely implicated in this case due to the occurrence of the squabble between him and the deceased, a day before the incident. He stated that the deceased had received injuries due to a scooter accident. However, the accused did not produce any evidence in defence.

**TRIAL COURT JUDGMENT:**

8. The learned Additional Sessions Judge, Muktsar vide order 13.07.2001, acquitted the appellant on the following findings:

(i) There was a delay of 4½ hours in recording the FIR. Even the late arrest of the accused on 03.08.1998 shows that the prosecution was not sure about the real story behind the incident.

(ii) The motive behind the occurrence of the incident was neither serious nor proved beyond reasonable doubt by the prosecution.

(iii) Sukhraj Singh (complainant) and ASI Jarnail Singh, the Investigating Officer were acquainted with each other.

(iv) The time of occurrence as claimed is not established.

(v) Statements of eye witnesses, Sukhraj Singh and Charanjit Singh were not found to be credible.

(vi) Further, the prosecution had not examined Teja Singh, Manohar Singh and Darbara Singh who had witnessed the incident.

(vii) Medical evidence is contradictory to the ocular testimony. Even the case history mentioned in the bed head ticket of DMC, Ludhiana is contrary to the ocular version.

(viii) The scaled site plan does not tally with the rough site plan.

9. Aggrieved by the acquittal, the State of Punjab and the complainant filed an appeal and revision respectively before the High Court.

**HIGH COURT JUDGMENT:**

10. The High Court, set aside the acquittal of the accused and was of the opinion that the Trial Court has misread the evidence. Following

A reasons were recorded by the High Court while convicting the accused under section 302 IPC –

B i. Prosecution's case could not be thrown out only on the ground of delay in registering FIR. Makhan Singh was in a serious condition and the first priority of the complainant was to save his father, who was profusely bleeding from the injury in his head.

ii. The fact as to whether ASI Jarnail Singh was known to the complainant is immaterial. Complainant had a right to inform the police. There is nothing to show that ASI did any favour to the complainant.

C iii. The occurrence took place during day time as recorded by the eye witnesses and the doctor had sent the intimation to police at 11.15 a.m., which corroborates the time of the incident. There is nothing to disbelieve the time of occurrence.

D iv. As per the post mortem report, the deceased had suffered eight injuries. Dr. Aman Kapoor (PW 2) has stated that the main injury was on the head and rest of the injuries were apparently as a result of the fall. These injuries were swelling and abrasions.

E v. The Trial Court gave undue importance to the history mentioned at the time of admission in DMC, Ludhiana wherein it is stated that the deceased sustained injuries while travelling on scooter when he was hit by someone over the head. There might be some error in recording the history, as the son who brought his father to DMC, Ludhiana was under a state of shock on account of the serious condition of his father. This does not affect the merit of the case.

G vi. If some structure existing little away from the place of occurrence, has not been shown in the site plan, it does not mean that the site plan prepared by the Investigating Officer is incorrect. Minor omissions in the site plan does not mean that rough site plan prepared by Investigation Officer is contradictory to the scaled site plan.

H vii. There is no reason to disbelief prosecution's story on the ground that the arrest was made on 03.08.1998. It is quite possible that the accused might have run away apprehending his arrest.

viii. Parties are relatives. Because of mere altercation, there was no reason for the complainant to falsely implicate the appellant, who is real nephew of the deceased. There is only one accused and one injury was given by the accused. Therefore, possibility of false implication is ruled out. Even the 'Bahi' was recovered on the pointing out of the appellant.

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ix. None of the family members of the appellant or any other independent resident of the village came forward to support the defence version of the appellant apparently for the reason that they might be convinced that appellant was responsible for the death of the deceased.

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x. Ocular version is truthful and trust worthy and is fully supported by the medical evidence.

xi. The appellant does not fall under exception 4 of section 300 IPC as the occurrence had not taken place all of a sudden and without any predetermination. The appellant came to the spot having a grudge against the deceased due to the quarrel that took place on the previous day of the incident and also, the manner in which the appellant gave a blow of wooden arm of cot ('Bahi') with great force on the head of an old and feeble man, which resulted into fracture of his skull and death on the next day.

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11. Aggrieved by the conviction of the High Court, the appellant has preferred this appeal before this Court.

### **ANALYSIS:**

12. The prosecution has established that the death of the deceased was homicidal. As per the post mortem report, the deceased had suffered eight injuries. Dr. Aman Kapoor (PW 2) states in the report that the main injury was on the head and both the eye witnesses Sukhraj Singh (PW 3) and Charanjit Singh (PW4) have claimed the appellant had hit their father on his head with a 'Bahi'. The recovery of 'Bahi', i.e. the weapon used to cause the fatal injury to the deceased was recovered by police only after the appellant had confessed about the place of hiding.

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13. We are, thus, satisfied that the prosecution has, beyond reasonable doubt, established the occurrence in the manner as set up. The deceased died due to the injury caused by accused. The only question

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A which requires our consideration is with regard to whether the case falls within the ambit of culpable homicide amounting to murder punishable under section 302 IPC as has been held by High Court or it was culpable homicide not amounting to murder punishable under section 304 IPC, as has been pleaded by the counsel for the appellant in the alternative.

B 14. Distinction between whether an offence is culpable homicide amounting to murder or culpable homicide not amounting to murder has been dealt by this Court recently in the case of **Mohd. Rafiq vs. State of Madhya Pradesh**<sup>3</sup> after taking into consideration earlier judgments on the point. The Court held that even though it is difficult to distinguish  
C whether the punishment for offence would fall under section 302 or section 304 of IPC, there is a subtle distinction of degree of intention and knowledge involved in both the crimes. Relevant paragraphs of the judgment are reproduced below:

D “Para 11 - The question of whether in a given case, a homicide is murder, punishable under Section 302 IPC, or culpable homicide, of either description, punishable under Section 304 IPC has engaged the attention of courts in this country for over one and a half century, since the enactment of the IPC; a welter of case law, on this aspect exists, including perhaps several hundred rulings  
E by this court. The use of the term “likely” in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines murder, however refrains from the use of the term likely, which reveals absence of ambiguity left  
F on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both, involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among  
G both the crimes.

Para 12 - The decision in *State of Andhra Pradesh v. Rayavarapu Punnayya & Anr.* notes the important distinction between the two

H <sup>3</sup> (2021) 10 SCC 706

provisions, and their differing, but subtle distinction. The court A  
pertinently pointed out that:

12. In the scheme of the Penal Code, “culpable homicide” is  
genus and murder its specie. All murder is “culpable homicide”  
but not vice- versa. Speaking generally, “culpable homicide” B  
sans “special characteristics of murder”, is “culpable homicide  
not amounting to murder”. For the purpose of fixing punishment,  
proportionate to the gravity of this generic offence, the Code  
practically recognises three degrees of culpable homicide. The  
first is, what may be called, “culpable homicide of the first C  
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 D  
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.

13. The academic distinction between “murder” and “culpable  
homicide not amounting to murder” has vexed the courts for more E  
than a century. 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 F  
the keywords used in the various clauses of Sections 299 and  
300;

Para 13 - The considerations that should weigh with courts, in  
discerning whether an act is punishable as murder, or culpable  
homicide, not amounting to murder, were outlined in Pulicherla G  
Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh. This  
court observed that:

“29. Therefore, the Court should proceed to decide the pivotal  
question of intention, with care and caution, as that will decide  
whether the case falls under Section 302 or 304 Part I or 304 H



- A Part II. Many petty or insignificant matters -plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases.
- B There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for
- C the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the
- D following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden
- E quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for
- F such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and
- G there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”

15. Intention plays a vital role in criminal jurisprudence. An offence may not be said to be committed if the prosecution fails to prove the intention to commit that crime. Intention is pivotal to decide whether the

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accused has committed culpable homicide amounting to murder or culpable homicide not amounting to murder. Along with intention, knowledge and the degree of crime, i.e. how the deceased was killed, plays an important role in deciding. A

16. In the present case, the appellant had no intention to kill his uncle. Lack of intention can easily be seen through the acts committed by the appellant. He was furious about getting yelled by his uncle a day before, which acted as a provocation for the accused. The appellant was armed with a wooden leg of the cot in his hand which cannot be termed as a dangerous weapon. He had given a single blow to the deceased and therefore it cannot be said that the appellant had intention of killing the deceased who was his own uncle. Maybe he wanted to punish his uncle for the reprimand, he received the previous day. Further it cannot be said that the appellant had the knowledge that the deceased would die through a single blow. B C

17. We are thus of the opinion that the deceased is not liable to be convicted under section 302 IPC but would be liable to be convicted under section 304 Part-II IPC. D

18. The appellant was arrested on 09.08.1998 and was released on 13.07.2001 after the acquittal by the Trial Court. He again surrendered after the conviction by the High Court on 04.10.2014. He has already undergone more than eight years of incarceration. His sentence shall be reduced from life imprisonment to period already undergone. The fine imposed by the High Court would remain as it is. E

19. Accordingly, the Appeals are partly allowed. The judgment of the High Court is modified to the following extent: F

(i) The conviction and sentence of life imprisonment under Section 302 IPC is set-aside.

(ii) The appellant is convicted under Section 304 Part-II IPC.

(iii) The appellant is awarded sentence of the period already undergone along with fine as imposed by the High Court. G

(iv) The appellant may be released forthwith, if he is not wanted in any other criminal case.