Stalin vs The State Thr Rep By The Inspector Of ... on 9 September, 2020

Equivalent citations: AIRONLINE 2020 SC 718

Author: M. R. Shah

Bench: M. R. Shah, R. Subhash Reddy, Ashok Bhushan

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 577 OF 2020
[Arising out of SLP (Crl.) No. 3171 of 2019]

Stalin .. Appellan

Versus

State represented by the Inspector of Police .. Responde

JUDGMENT

M. R. Shah, J.

Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.01.2017 passed by the Madurai Bench of the High Court of Judicature at Madras in Criminal Appeal (MD) No. 122 of 2016 by which the High Court has dismissed the said appeal and has confirmed the Judgment and Order of conviction and sentence passed by the learned IV 15:54:52 IST Reason:

> Additional District and Sessions Court, Tirunelveli in Sessions Case No. 354 of 2012, convicting the appellant herein – the original accused for the offence punishable under Section 302 IPC, the original accused has preferred the present appeal.

3. At the outset, it is required to be noted that vide order dated 01.04.2019, this Court has issued a notice in the present appeal limited to the extent as to whether the conviction ought to have been under Section 304 Part II or Section 302 IPC. Therefore, this Court is required to consider whether

the appellant herein – the original accused has been rightly convicted for the offence punishable under Section 302 IPC or is to be convicted for any other lesser offence, viz. Section 304 Part II IPC.

4. Learned counsel appearing on behalf of the appellant – original accused has vehemently submitted that as it is a case of a single blow, Section 302 IPC shall not be attracted. It is submitted that even the so□called motive alleged for the incident is prior to four months of the incident in question and, therefore, as such, the prosecution has failed to establish and prove the motive for the accused to kill the deceased.

4.1 It is submitted that, as such, the occurrence had taken place out of a sudden and grave provocation and therefore the offence would fall under Exception I to Section 300 IPC and, therefore, the appellant has to be convicted for the lesser offence than Section 302 IPC.

4.2 Learned counsel appearing on behalf of the appellant – accused has heavily relied upon the decisions of this Court in the cases of Kunhayippu v. State of Kerala (2000) 10 SCC 307 and Musumsha Hasanasha Musalman v. State of Maharashra (2000) 3 SCC 557 in support of his submission that for causing a single stab injury, Section 302 IPC shall not be attracted. 4.3 Making the above submissions and relying upon the above decisions of this Court, it is prayed to convert the conviction from Section 302 IPC to Section 304 Part II IPC.

5. Learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case and on appreciation of the entire evidence on record, both □the learned Trial Court as well as the High Court have rightly convicted the accused for the offence punishable under Section 302 IPC. It is vehemently submitted that the accused caused the injury by a knife blow on the vital part of the body – Lever. It is submitted that considering the fact that the accused was having a knife; the injury inflicted by the accused was on the vital part of the body; and that there was no any grave and sudden provocation established and proved, it is submitted that both the Courts below have rightly convicted the accused for the offence punishable under Section 302 IPC.

5.1 Learned counsel appearing on behalf of the State has vehemently submitted that there is no absolute proposition of law laid down by this Court in any of the decisions that in case of a single blow, Section 302 IPC shall not be attracted. It is submitted that it is held by this Court in catena of decisions that number of injuries is irrelevant; it is not always the determining factor for ascertaining the intention. It is submitted that as held by this Court, it is the nature of injury; the part of body where it is caused; the weapon used in causing such injury which are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. Learned counsel appearing on behalf of the State has relied upon the following decisions of this Court on the single injury and, in such a case, whether Section 302 IPC would be attracted or not:

(i) Mahesh Balmiki v. State of M.P. (2000) 1 SCC 319;

(ii) Dhirajbhai Gorakhbhai Nayak v. State of Gujarat (2003) 9 SCC 322;

(iii) Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444;

(iv) Bavisetti Kameswara Rao v. State of A.P. (2008) 15 SCC 725;

(v) Arun Raj v. Union of India. (2010) 6 SCC 457;

(vi) Singapagu Anjaiah v. State of A.P. (2010) 9 SCC 799;

(vii) Ashokkumar Nagabhai Vankar v. State of Gujarat (2011) 10 SCC 604;

(viii) Vijay Ramkrishan Gaikwad v. State of Maharashtra (2012) 11 SCC 592;

(ix) Som Raj v. State of H.P. (2013) 14 SCC 246;

(x) State of Madhya Pradesh v. Kalicharan (2019) 6 SCC 809;

(xi) State of Rajasthan v. Leela Ram (2019) 13 SCC 131;

(xii) Ananta Kamilya v. State of West Bengal (2020) 2 SCC 511

6. Now, so far as the submission on behalf of the accused that the prosecution has failed to establish and prove the motive and/or that the motive alleged of the incident is prior to four months of the incident in question, learned counsel appearing on behalf of the State has vehemently submitted that, as rightly observed by the High Court, in a case where the eye□witnesses are available, the motive becomes insignificant. It is submitted that, in the present case, PWs 1, 2 and 3 are the eye□ witnesses to the incident and therefore, the motive is insignificant in the present case. Heavy reliance is placed on the decision of this Court in the case of Sukhpal Singh v. State of Punjab (2019) 15 SCC 622.

7. Heard learned counsel on behalf of the respective parties at length. As observed hereinabove, the only aspect which is required to be considered in the present appeal is whether the appellant – accused has committed an offence punishable under Section 302 IPC or any other lesser offence, more particularly, Section 304 Part II IPC?

7.1 It is the case on behalf of the appellant – accused that as it is a case of single injury, Section 302 IPC shall not be attracted and the case would fall under Section 304 Part II IPC. While considering the aforesaid submission, few decisions of this Court on whether in a case of single injury, Section 302 IPC would be attracted or not are required to be referred to:

> 7.1.1 In Mahesh Balmiki v. State of M.P., (2000) 1 SCC 319, this Court while deciding the question of whether a single blow with a knife on the chest of the deceased would attract Section 302 IPC, held thus: (SCC pp. 322□23, para 9) "9. ... there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the

> circumstances of each case. The nature of the injury, whether it is on the vital or non□ vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife□blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death." 7.1.2 In Dhirajbhai Gorakhbhai Nayak v. State of Gujarat (2003) 9 SCC 322, this Court while discussing the ingredients of Exception 4 of Section 300 IPC, held thus: (SCC pp.

327□28, para 11) "11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self□control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression

"undue advantage" as used in the provision means "unfair advantage"." 7.1.3 In Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444, this Court while deciding whether a case falls under Section 302 or 304 Part I or 304 Part II IPC, held thus: (SCC pp. 457□58, para 29):

> "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 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. 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 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 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 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 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 there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may." 7.1.4 In Singapagu Anjaiah v. State of A.P. (2010) 9 SCC 799, this Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus, (SCC p. 803, para 16):

> "16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased." 7.1.5 In State of Rajasthan v. Kanhaiya Lal (2019) 5 SCC 639 this Court in paragraphs 7.3, 7.4 and 7.5 held as follows:

> "7.3. In Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155] this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.
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> 7.4. In Ashokkumar Magabhai Vankar [Ashokkumar Magabhai Vankar v. State of Gujarat, (2011) 10 SCC 604 :
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> (2012) 1 SCC (Cri) 397] , the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.

7.5. A similar view is taken by this Court in the recent decision in Leela Ram (supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 21 as under: (SCC para 21) "21. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner." 7.1.6 In the case of Bavisetti Kameswara Rao (supra), this Court has observed in paragraphs 13 and 14 as under:

> "13. It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list

and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

14. In State of Karnataka v. Vedanayagam [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury. However, after a detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the decision in Virsa Singh v. State of Punjab [AIR 1958 SC 465] , the Court set aside the acquittal under Section 302 IPC and convicted the accused for that offence. The Court (in Vedanayagam case [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] , SCC p. 330, para 4) relied on the observation by Bose, J. in Virsa Singh case [AIR 1958 SC 465] to suggest that: (Virsa Singh case [AIR 1958 SC 465], AIR p. 468, para 16) “16. ... With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap.” The further observation in the above case were:

(Virsa Singh case [AIR 1958 SC 465] , AIR p. 468, paras 16 & 17) “16. ... 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 nor 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. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

17. ... It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact; ..." (emphasis supplied)" 7.2 From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence.

8. Now, so far as the submission on behalf of the accused that the motive alleged is of the incident prior to four months of the present incident and that the prosecution has failed to establish and prove is concerned, it is required to be noted that in the present case there are three eye-witnesses believed by both the Courts below and we also do not doubt the credibility of PWs 1, 2 and 3. As held by this Court in catena of decisions, motive is not an explicit requirement under the Penal Code, though "motive" may be helpful in proving the case of the prosecution in a case of circumstantial evidence. As observed hereinabove, there are three eye-witnesses to the incident and the prosecution has been successful in proving the case against the accused by examining those three eye-witnesses and therefore, as rightly observed by the High Court, assuming that the alleged motive is the incident which had taken place prior to four months or the prosecution has failed to prove the motive beyond doubt, the same shall not be fatal to the case of prosecution.

8.1 As observed and held by this Court in the case of Jafel Biswas v. State of West Bengal (2019) 12 SCC 560, the absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. When there are definite evidence proving an incident and eye-witness account prove the role of accused, absence in proving of the motive by prosecution does not affect the prosecution case.

9. Applying the law laid down by this Court in the aforesaid decisions, more particularly the decisions on the single injury and the facts on hand, it is required to be considered whether the case would fall under Section 302 IPC or any other lesser offence. PW3 – Nelson, who is an eye-witness to the incident right from the beginning, deposed that when the deceased – Kalidas served extra beer to two persons who came from outside, the accused became angry and told the deceased why

he is giving more beer to out□town people and not giving to local people and thereafter the problem started and in that scuffle the accused took out the knife and stabbed from behind. From the medical evidence, the deceased sustained the following injuries:

> "External Injuries:
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> A stab wound about 3 x 1.5 cm and 8 cm deep with clean edges present over the back on the right side corresponding to D11 vertebera present. Wound edges swollen, read with adherent blood."

10. As per Exception IV to Section 300 IPC, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage and not having acted in a cruel or unusual manner. In the present case, at the place of incident the beer was being served; all of them who participated in the beer party were friends; the starting of the incident is narrated by P.W.3, as stated hereinabove. Therefore, in the facts and circumstances, culpable homicide cannot be said to be a murder within the definition of Section 300 IPC and, therefore, in the facts and circumstances of the case narrated hereinabove and the manner in which the incident started in a beer party, we are of the opinion that Section 302 IPC shall not be attracted.

11. Now, the next question which is posed for consideration of this Court is whether the case would fall under Section 304 Part II IPC? Considering the totality of the facts and circumstances of the case and more particularly that the accused inflicted the blow with a weapon like knife and he inflicted the injury on the deceased on the vital part of the body, it is to be presumed that causing such bodily injury was likely to cause the death. Therefore, the case would fall under Section 304 Part I of the IPC and not under Section 304 Part II of the IPC.

12. In view of the above and for the reasons stated above, the appeal is allowed in part. The impugned judgment and order passed by the High Court confirming the conviction of the accused for the offence punishable under Section 302 IPC is hereby modified from that of under Section 302 IPC to Section 304 Part I IPC. The accused is held guilty for the offence punishable under Section 304 Part I IPC and sentenced to undergo 8 years R.I. with a fine of Rs.10,000/□and, in default, to further undergo one year R.I. The appeal is allowed to the aforesaid extent.

……J. (ASHOK BHUSHAN) ……J. (R. SUBHASH REDDY) .....J. (M. R. SHAH) New Delhi, September 9, 2020.