State Of Karnataka vs Vedanayagam on 23 November, 1994

Equivalent citations: 1995 SCC (1) 326, JT 1994 (7) 559, AIRONLINE 1994 SC 371, (1994) 3 CRIMES 1017, (1994) 4 CURCRIR 845, (1994) 7 JT 559 (SC), (1995) 1 ALLCRILR 15, 1995 (1) SCC 326, 1995 CRILR(SC MAH GUJ) 69, 1995 CRILR(SC&MP) 69, 1995 SCC (CRI) 231

Author: M.M. Punchhi

Bench: M.M. Punchhi

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
VEDANAYAGAM

DATE OF JUDGMENT23/11/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 SCC (1) 326 JT 1994 (7) 559
1994 SCALE (4)1038

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- The question that arises for consideration in this appeal filed by the State of Karnataka is whether the offence committed by the respondent, the sole accused in the case, amounts to murder punishable under Section 302 IPC or culpable homicide punishable under Section 304 Part 11 IPC and whether the High Court is right in holding that whenever there is only single injury the offence would be only culpable homicide though the medical evidence is to the effect that the same is necessarily fatal and

sufficient in the ordinary course of nature to cause death?

2.The deceased Sugumaran, PW 1 Pooswamy and other material witnesses were all workers in Kolar Gold Field and were residing in a place called Gorgaum. The house of the accused was about 26 feet from PW 1's house. The deceased, who was son of PW 1's sister, was living with his mother PW 3, Muniyamma in another house. The accused developed illicit intimacy with Chudamani, wife of PW 1. On 9-7-1984 at about 11 p.m., PW 1 saw the accused making signs to his wife Chudamani and seeing PW 1, he ran away. On 13-7-1984 at about 3 p.m., PW 3 and the mother of the accused were quarrelling near the house of PW 1. PW 1 rushed to the house of PW 3 and fetched her son, the deceased. The accused in the meanwhile, on hearing the quarrel, entered the scene with a knife MO 1 in his hand and on seeing the deceased the accused gave a knife blow on the left side of his chest as a result of which the deceased fell down and died instantaneously. PW 1 chased the accused but could not catch him. Thereafter he went to the police station and gave a report, Ex. P-1. PW 10 SI took up the investigation, held the inquest and sent the dead body for postmortem. The doctor, who conducted the postmortem, found one stab injury on the left side of the chest and opined that the death was a result of the said injury to the vital organs. After completion of the investigation, the charge- sheet was laid. The accused pleaded not guilty. The trial court accepted the prosecution case and held that a clear case under Section 302 IPC is made out and accordingly convicted the accused and sentenced him to undergo imprisonment for life. On appeal the High Court confirmed the finding of the trial court namely that it was the accused who caused the fatal injury but relying on the judgment of this Court in Tholan v. State of TN. 1, however, held that having regard to the genesis of the matter i.e. that there was no premeditation and since the accused inflicted only one blow with the dagger MO 1 which unfortunately landed on the chest, it cannot be said that "the accused intended to cause the death of the deceased". The High Court also observed that on seeing the deceased the accused who had already a knife in his hand "

> gave only one blow to Sugumaran and unfortunately it landed on the chest of the deceased" and that "there are no circumstances placed before us to indicate that the accused wanted to finish off Sugumaran or intended to finish off Sugumaran. Therefore, under these circumstances, it is rather very difficult to infer that the accused inflicted the blow on the chest of the deceased with an intention to bring about his death". The High Court further held that "[t]herefore, according to the principle laid down in Tholan case1, we think that the offence, however, unfortunate it may be, would come down to Section 304 Part II IPC".

3.It is the above finding of the High Court that is challenged in this appeal by the State. Both the courts below have held that on seeing the deceased, Sugumaran, the accused who was armed with a dagger MO 1, plunged it into the left side of the chest of the deceased as a result of which he died instantaneously. The doctor, who conducted the postmortem, noted the following injury:

> "(a) a punctured wound 2" by 1/2" over the chest on the left side over the 2nd costal cartilage 1" from the mid-sternum situated obliquely. It has clean cut edges and sharp angles at both the extremes. Edges are over cut. The edges of the wound clean not bruised. On probing the wound with a blunt probe it had freely entered the thoracic

cavity.

On dissection it is noticed that the wound had passed through the substance (T) of the sternum, 2nd costal cartilage anterior border of the lower lobe of the left lung and entered the chamber of the right ventricle 2" above the ... (not clear) of the heart."

Both the courts below have clearly noted that the injury was a very serious one which brought about instant death. From the above description, it can be seen that the blow was aimed at the chest and the injury was inflicted with great force with a deadly weapon on the vital part. It entered the thoracic cavity, passed through the substance of the sternum, injured the lower lobe of the left lung and entered the chamber of the right ventricle. It is not a case where there was a quarrel between the accused and the deceased or where they grappled with each other so that it cannot be definitely said that the accused aimed the blow at a particular part of the body and therefore intended to cause that particular injury which was objectively found to be sufficient in the ordinary course of nature to cause death. No doubt there may be scope to contend that there was no premeditation and therefore clause Istly of Section 300 IPC namely that the accused intended to cause death, is 1 (1984) 2 SCC 133: 1984 SCC (Cri) 164: AIR 1984 SC 759 not attracted. But the important question is whether clause 3rdly of Section 300 IPC is attracted.

4. The scope of clause 3rdly of Section 300 IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh v. State of Punjab2, has throughout been followed in a number of cases by all the High Courts as well as the Supreme Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause 3rdly of Section 300 IPC is attracted. Analysing clause 3rdly and as to what the prosecution must prove, it was held in Virsa Singh case2 as under:

> "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 bodily injury, that is to say, that it was not accidental or 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 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"

It was further observed as under:

> "If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

(emphasis supplied) Thus it is clear that ingredient of clause 3rdly is not the intention to cause death but on the other hand the ingredient to be proved is the intention to cause the particular injury that was present. It is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances. In Emperor v. Sardarkhan Jaridkhan3, it was observed as under:

> "Where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended."

Commenting upon this observation Justice Bose in Virsa Singh case2 held thus:

> 2 1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 8 1 8 3 ILR (1 917) 41 Bom 27: 18 Bom LR 793 "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."

As to how the intention is to be inferred even in a case of single injury, Justice Bose further held as under:

> "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.
>
> 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)

5. This question was again considered in Jagrup Singh v. State of Haryana4 by a Bench of this Court consisting of Justice D.A. Desai and Justice A.P. Sen and following the ratio laid down in Virsa Singh case2 it was held as under: (SCC pp. 619-620, para 6) "There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in 4 (1981) 3 SCC 616: 1981 SCC (Cri) 768 the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Istly or clause 3rdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death." (emphasis supplied) Therefore there is no legal basis whatsoever for the High Court to hold that since the respondent-accused gave only one blow, though found to be sufficient in the ordinary course of nature to cause death, clause 3rdly of Section 300 is not attracted.

6. In Tholan case1 as well as other cases relied upon by the learned counsel for the defence, it was found that the genesis of the occurrence was such that there was a sudden quarrel, intervention or grappling or fight which threw a doubt about the necessary ingredient namely intention to cause that particular injury being there. In Jai Prakash v. State (Delhi Admn.)5 all the cases including Tholan case1 have been considered in the light of the principles laid down in Virsa Singh case2 and ultimately it was concluded as under: (SCC pp. 46-47, para 18) " In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only t o assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result. It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result. We may point out that we are not concerned with the intention to cause death in which case it will be a murder simplicitor unless exception is attracted. We are concerned under clause 3rdly with the intention to cause that particular injury which is a subjective inquiry and when once such intention is established and if the intended injury is found

objectively to be sufficient in the ordinary course of nature to cause death, clause 3rdly is attracted and it would be murder, unless one of the exceptions to Section 300 is attracted. If on the other hand this ingredient of 'intention' is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that clause 3rdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC." 5 (1991) 2 SCC 32: 1991 SCC (Cri) 299 : JT (1991) 1 SC 288

7. In the instant case, the accused had illicit intimacy with the wife of PW 1. From this it can be said that there was hostility between PW 1 and the accused. On the fateful day PW 3, the mother of the deceased and the mother of the accused were quarrelling with each other, and even by then the accused hearing the quarrel came out of his house armed with a dagger. Seeing this PW 1 went and brought the deceased. Then the accused shouted that: "You have defamed me. I would not leave you. I will kill." Saying this he stabbed on the left side of the chest of the deceased and the deceased fell down and died instantaneously. It is important to note that there was neither a quarrel nor a fight between the deceased and the accused. The words uttered by the accused against the deceased followed by the stabbing with the dagger on the left side of the chest of the deceased, would clearly indicate that he intended to cause that particular injury which was objectively found to be sufficient in the ordinary course of nature to cause death.

8.From all the above facts, there is no doubt whatsoever that the accused intended to cause that particular injury on the chest which necessarily proved fatal. Therefore clause 3rdly of Section 300 IPC is clearly attracted. The High Court erred in holding that "the accused did not intend to cause his death by inflicting the injury on the chest because there was no premeditation and therefore the offence would be culpable homicide". This view of the High Court is not correct and as discussed above clause 3rdly of Section 300 IPC is clearly attracted. For all these reasons we set aside the judgment of the High Court and restore the judgment of the trial court convicting the accused under Section 302 IPC and sentencing him to undergo imprisonment for life. Accordingly the appeal is allowed.