

BHAGWAN SINGH

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v.

STATE OF UTTARAKHAND

(Criminal Appeal No. 407 of 2020)

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MARCH 18, 2020

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Penal Code, 1860: ss. 304-II and 308 – Culpable homicide not amounting to murder – In a marriage ceremony, father of the groom-appellant aimed the gun towards the roof and then fired – Gun shot firing resulting in death of two and injuries to others – Conviction of appellant u/ss. 302 and 307 and sentenced to life imprisonment and 5 years' rigorous imprisonment along with a fine – Upheld by the High Court, however, acquitted for offence u/s. 25 of the Arms Act – On appeal, held: Appellant cannot escape the consequences of carrying the gun with live cartridges with the knowledge that firing at a marriage ceremony with people present there was imminently dangerous and was likely to cause death – Appellant is guilty of causing fatal injuries which are attributable to him – Appellant had the requisite knowledge essential for constituting the offence of 'culpable homicide' u/s.299 and punishable u/s.304- II – Thus, he is guilty u/s.304-II and not u/s.302 and sentence of life imprisonment awarded to appellant is reduced to 10 years' rigorous imprisonment – Appellant is liable to be punished for 'attempt to commit culpable homicide' not amounting to murder u/s.308, in place of s.307 for the injuries caused to other three victims and sentence is substituted accordingly.

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Partly allowing the appeal, the Court

HELD: 1.1 The prosecution version to the extent that the appellant aimed at A and then fired the shot(s) is rejected. The evidence on record contrarily shows that the appellant aimed the gun towards the roof and then fired. It was an unfortunate case of mis-firing. The appellant of course cannot absolve himself of the conclusion that he carried a loaded gun at a crowded place where his own guests had gathered to attend the marriage

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- A **ceremony. He did not take any reasonable safety measure like to fire the shot in the air or towards the sky, rather he invited full risk and aimed the gun towards the roof and fired the shot. He was expected to know that pellets could cause multiple gunshot injuries to the nearby persons even if a single shot was fired.** The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to ‘culpable homicide’ within the meaning of Section 299, though punishable u/s. 304 Part 2 IPC. [Para 16] [963-G-H; 964-A-C]
- B **consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to ‘culpable homicide’ within the meaning of Section 299, though punishable u/s. 304 Part 2 IPC. [Para 16] [963-G-H; 964-A-C]**
- C **1.2 Incidents of celebratory firing are regrettably rising, for they are seen as a status symbol. A gun licensed for self-protection or safety and security of crops and cattle cannot be fired in celebratory events, it being a potential cause of fatal accidents. Such like misuse of fire arms convert a happy event**
- D **to a pall of gloom. Appellant cannot escape the consequences of carrying the gun with live cartridges with the knowledge that firing at a marriage ceremony with people present there was imminently dangerous and was likely to cause death. [Para 17] [964-C-D]**
- E **1.3 The appellant had the requisite knowledge essential for constituting the offence of ‘culpable homicide’ under Section 299 and punishable under Section 304 Part-2 of IPC. He is thus held guilty under Section 304 Part-2 and not under Section 302 IPC. On the same analogy, the appellant is liable to be punished for ‘attempt to commit culpable homicide’ not amounting to murder under Section 308, in place of Section 307 IPC for the injuries caused to the other three victims. [Para 19] [965-A-B]**
- F **1.4 The conviction of the appellant under Section 302 IPC is modified to Section 304 Part-2 IPC and that under Section 307 IPC is altered to Section 308, IPC. As a necessary corollary, the sentence of life imprisonment awarded to the appellant for committing the offence under Section 302 IPC, is reduced to 10 years’ rigorous imprisonment and the sentence awarded to him under Section 307 IPC is substituted with Section 308 IPC, without any alteration in the fine imposed by the trial court. [Para 20] [965-C-D]**

Kunwar Pal v. State of Uttarakhand (2014) 12 SCC 434 : [2013] 10 SCR 239 - referred to.

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Case Law Reference

[2013] 10 SCR 239	referred to	Para 10
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 407 of 2020.	B
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From the Judgement and Order dated 26.07.2017 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 304 of 2013.	C
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Siddharth Luthra, Sr. Adv., Ms. Supriya Juneja, Aditya Singla, Ms. Mehaak Jaggi, Cheshta Jetley, Ms. Akansha Mehta, Harsh Yadav, Aryan Dev Uniyal, Advs. for the Appellant.	C
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Jatinder Kumar Bhatia, Krishnan Mishra, Advs. for the Respondent.	D
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The following Judgment of the Court was delivered:

JUDGMENT

1. Leave granted.

2. This Criminal Appeal is directed against the judgment dated 26th July, 2017 passed by the High Court of Uttarakhand whereby the appellant's criminal appeal against the judgment and order dated 11th/ 12th July, 2013 rendered by Learned Sessions Judge, Bageshwar convicting the appellant under Sections 302 and 307 of Indian Penal Code (for short, 'IPC') and sentencing him to undergo life imprisonment (under Section 302, IPC) and 5 years' rigorous imprisonment (under Section 307, IPC) along with a fine of Rs. 20,000/- in default whereof he was directed to undergo 6 months' additional rigorous imprisonment, was dismissed. The appellant was, however, acquitted for offence punishable under Section 25 of the Arms Act for want of the requisite sanction.	E
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3. It may be mentioned at the outset that notice of the special leave petition was issued on the limited question to determine the nature of offence committed by the appellant i.e. whether it falls under the ambit of Section 302 or 304 of IPC. To determine this question the facts may be briefly noted.	F
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Facts:

On 21st April, 2007, the marriage ceremony of the Appellant's son was taking place at village Dafaut, Uttarakhand, when around	G
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- A 5:30 pm as soon as the marriage procession reached the Appellant's courtyard - he suddenly fired celebratory gunshots. The pellets struck 5 persons standing in the courtyard namely, Smt. Anita W/o Chanchal Singh, Khushal Singh @ Sonu, Ummed Singh (P.W.6), Smt. Vimla W/o Devendra Singh (P.W.5) and Smt. Vimla W/o Bhupal Singh (P.W.7). The injured were taken to the hospital where two of them – Anita and Khushal Singh @ Sonu succumbed to their injuries. Later at about 8:40 pm, Dharam Singh (P.W.3) filed an FIR at PS Kothwali, Bageshwar, narrating in full detail the incident of which he himself was a witness.
- C 5. After the conclusion of investigation, initially a charge sheet under Section 304, IPC was filed but later on the appellant was charged under Sections 302 and 307, IPC along with Section 25 of the Arms Act.
- D 6. The Ld. Sessions Judge held the appellant guilty of offences under Sections 302 and 307, IPC based on testimonies of eye witnesses and injured witnesses. It was noted that Appellant fired shots from his son's licensed gun causing fatal injuries to Smt. Anita and Khushal Singh and injuring three others. He was consequently sentenced in the manner as briefly noticed in the opening paragraph of the order.
- E 7. The appellant went in appeal before the High Court. His primary contention was that he had no intention to cause anyone's death. He stated that the firing was accidental and was caused by a ball with which some children were playing. The ball struck against the gun in his hand and led to the firing of shots. The occurrence was an admitted fact and the only plea taken was that it being a case of accidental firing, Section 300 punishable under Section 302, IPC was not attracted.
- F 8. The High Court rejected the appellant's plea and held as follows:
 - G *"There is no merit in the submission put forth by learned Advocates appearing for the appellant. PW2 Chanchal Singh has categorically deposed that the appellant has aimed at his wife Smt. Anita and fired. The bullet hit on her chest. She was taken to the hospital and declared dead. In his cross-examination, he has denied the suggestion that the ball has struck against the gun which led to accidental fire. PW3*
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Dharam Singh has also admitted that the injuries were caused by the accused with the firearm. The injured were taken to the hospital. He has also denied that it was a case of accidental fire. PW4 Tejpal Singh is another eyewitness. According to him the appellant fired. The pellets had hit Anita and his son Khushal @ Sonu. He has also denied the suggestion that it was an accidental fire. PW5 Vimla Devi W/o Devendra Singh has also corroborated the statements of eyewitnesses PW2 Chandchal (sic.) Singh and PW4 Tejpal Singh. According to her also, the appellant has fired and she suffered the pellet injuries and was taken to the hospital. PW6 Ummed Singh is another eye witness. According to him also, the appellant was seen holding a gun. He also received the injuries. He was taken to the hospital for treatment. He has also denied that it was a case of accidental fire. PW7 Vimla Devi W/o Bhupal Singh is also the eye witness. According to her, the appellant fired his gun and she along with others had received the pellet injuries. She was also taken to the hospital. He has admitted in the cross-examination that the appellant fired aiming Anita Devi and Khushal Singh.”

The High Court has further held that:

“Appellant was standing on the roof. He aimed at Anita Devi. The bullet struck Anita Devi on her chest. Khushal Singh @ Sonu also received firearm injuries. Other persons also suffered the pellet injuries by firearm. Appellant was seen shooting by PW2 Chanchal Singh, PW4 Tejpal Singh, PW5 Smt. Vimla Devi W/o Devendra Singh, PW6 Ummed Singh and PW7 Vimla Devi W/o Bhupal Singh. It cannot be termed as the case of negligence. The accused had knowledge throughout that if the bullet is fired aiming at a particular person, it would result in his/her death.”

9. As stated earlier, this Court issued notice restricted to the nature of the offence. The appellant's culpability of causing the death of Smt. Anita and Khushal Singh by way of gunshot injury as concurrently established was thus neither intended to be interfered with nor the same has been seriously re-agitated before us.

Contentions:

10. Learned senior counsel for the appellant very passionately

- A contended that this is a case of celebratory firing which unfortunately caused unintentional death of two persons and injuries to three others. It is not ‘culpable homicide’ because the appellant had, while firing towards roof, no knowledge that the act was likely to cause death. He contended that such an act amounts to negligence of the nature as defined under Section 304-A, IPC. Learned senior counsel alternatively submitted that the appellant’s act at best would constitute culpable homicide not amounting to murder punishable under Section 304 Part-2, IPC, for the appellant can be said to have the knowledge that his act was likely to cause death but he had no intention to cause death or such bodily injury likely to cause death. Reliance was placed on the decision of this Court in *Kunwar Pal vs. State of Uttarakhand*¹.

- 11. Conversely, learned State Counsel reiterated that the appellant was rightly convicted under Section 302, IPC as the evidence on record does suggest that while standing on the roof he aimed at Smt. Anita and fired the gunshot and the bullet struck her chest. Similarly, Khushal Singh @ Sonu received firearms injuries. Both Anita and Khushal Singh admittedly died of those injuries.

Analysis:

- 12. We have heard learned counsel for the parties and perused the record. From the contents of FIR read with the statements of injured and eye-witnesses, it emerges out that there was a marriage function of son of the appellant and no sooner did the rituals of marriage were performed at about 5.30 p.m., the appellant fired from a licensed gun pointing towards the roof and caused injuries to 5 persons. Smt. Anita W/o Chanchal Singh and Khushal Singh @ Sonu were grievously injured who eventually succumbed to their respective injuries. Smt. Anita as well as Khushal Singh were present there in order to participate in the marriage celebrations which suggests that neither they nor their families had any animosity with the appellant. Similarly, Dharm Singh (P.W.3) – complainant, too had no axe to grind against the appellant. The eye-witness account further reveals that the shots were fired towards the roof and not aiming at any of the victims. It may thus be difficult to accept that the appellant had any intention to kill Smt. Anita or Khushal Singh.

- 13. Equally unfounded is the defence plea taken by the appellant that he was only holding the licenced gun and a ball thrown by the

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children who were playing with it, struck the gun causing accidental firing. The version of eye-witnesses completely belies such a defence story. Otherwise also, it does not appeal to common sense that a ball would strike the gun in appellant's hand resulting in an undesigned firing. Unless the safety lock of the gun was moved forward, the gun wouldn't go off automatically even if its butt was hit by a play-ball. Appellant's attempt to shelter behind Section 304-A, IPC is thus an exercise in futility and is liable to be rejected.

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14. In this backdrop, the short question which falls for consideration is whether the appellant's act of causing death of Smt. Anita and Khushal Singh tantamounts to offence of 'murder' as held by the trial court and the High Court or any lesser offence as urged by Shri Siddharth Luthra, learned senior counsel for the appellant. Sections 299 as well as 300, IPC provide for situations in which death is caused by an act with the intention of causing death or such bodily injury which the offender knows is likely to cause death. Both Sections 299 and 300 deal with instances in which death is caused by an act with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom injury is inflicted. These provisions also deal with cases where there is no intention of either causing death or a bodily injury which is ordinarily sufficient to cause death. The absence of intention to cause death or bodily injury which is in the ordinary course of nature likely to cause death is, therefore, not conclusive. What is required to be seen is whether the act is one where the offender must be deemed to have had the knowledge that he was likely, by such act, to cause death.

15. The trial court as well as the High Court have proceeded on the premise that the appellant's act by firing from the gun which was pointed towards the roof, was as bad as firing into a crowd of persons so he ought to have known that his act of gun-shot firing was so imminently dangerous that it would, in all probability, cause death or such bodily injury as was likely to cause death.

16. The facts and circumstances of the instant case, however, do not permit to draw such a conclusion. We have already rejected the prosecution version to the extent that the appellant aimed at Smt. Anita and then fired the shot(s). The evidence on record contrarily shows that the appellant aimed the gun towards the roof and then fired. It was an unfortunate case of mis-firing. The appellant of course cannot

- A absolve himself of the conclusion that he carried a loaded gun at a crowded place where his own guests had gathered to attend the marriage ceremony. He did not take any reasonable safety measure like to fire the shot in the air or towards the sky, rather he invited full risk and aimed the gun towards the roof and fired the shot. He was expected to know that pellets could cause multiple gun-shot injuries to the nearby persons even if a single shot was fired. The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to 'culpable homicide' within the meaning of Section 299, though punishable under Section 304 Part 2 of the IPC.

- 17. Incidents of celebratory firing are regrettably rising, for they are seen as a status symbol. A gun licensed for self-protection or safety and security of crops and cattle cannot be fired in celebratory events, it being a potential cause of fatal accidents. Such like misuse of fire arms convert a happy event to a pall of gloom. Appellant cannot escape the consequences of carrying the gun with live cartridges with the knowledge that firing at a marriage ceremony with people present there was imminently dangerous and was likely to cause death.
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- 18. A somewhat, similar situation arose in *Kunwar Pal (Supra)* wherein this Court held as under:
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- "12. We find that the intention of the appellant to kill the deceased, if any, has not been proved beyond a reasonable doubt and in any case the appellant is entitled to the benefit of doubt which is prominent in this case. It is not possible therefore to sustain the sentence under Section 304 Part I IPC, which requires that the act by which death is caused, must be done with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death. Though it is not possible to attribute intention it is equally not possible to hold that the act was done without the knowledge that it is likely to cause death. Everybody, who carries a gun with live cartridges and even others know that firing a gun and that too in the presence of several people is an act, is likely to cause death, as indeed it did. Guns must be carried with a sense of responsibility and caution and are not meant to be used in such places like marriage ceremonies."*
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19. Resultantly, we hold that the appellant had the requisite knowledge essential for constituting the offence of ‘culpable homicide’ under Section 299 and punishable under Section 304 Part-2 of IPC. He is thus held guilty under Section 304 Part-2 and not under Section 302 of IPC. On the same analogy, the appellant is liable to be punished for ‘attempt to commit culpable homicide’ not amounting to murder under Section 308, in place of Section 307 of IPC for the injuries caused to the other three victims. To this extent, the appellant’s contentions merit acceptance.

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Conclusion:

20. For the above-stated reasons, the appeal is allowed in part. The conviction of the appellant under Section 302, IPC is modified to Section 304 Part-2, IPC and that under Section 307, IPC is altered to Section 308, IPC. As a necessary corollary, the sentence of life imprisonment awarded to the appellant for committing the offence under Section 302 IPC, is reduced to 10 years’ rigorous imprisonment and the sentence awarded to him under Section 307, IPC is substituted with Section 308 IPC, without any alteration in the fine imposed by the trial court.

Nidhi Jain

Appeal partly allowed.