Arun Raj vs Union Of India & Ors on 13 May, 2010

Equivalent citations: 2010 AIR SCW 3359, 2010 (6) SCC 457, 2011 CRI LJ (SUPP) 918 (SC), (2010) 2 MADLW(CRI) 1086, (2010) 46 OCR 690, (2010) 2 DLT(CRL) 1049, (2010) 70 ALLCRIC 200, (2010) 3 ALLCRILR 497, (2011) 1 MAD LJ(CRI) 713, (2010) 4 MH LJ (CRI) 87, (2010) 3 RECCRIR 230, (2010) 5 SCALE 608, (2010) 3 CURCRIR 20, (2010) 2 ALLCRIR 2311, (2010) 2 ALD(CRL) 325, (2010) 91 ALLINDCAS 110 (SC), 2010 (3) SCC (CRI) 155, 2010 (3) KCCR SN 61 (SC)

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Bench: H.L. Dattu, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1123 OF 2008

Arun Raj .....Appellant

Versus

Union of India & Ors. .....Respondents

JUDGMENT

H.L. Dattu, J.

1) This appeal by special leave is limited to a particular question only, namely, correctness of the conviction of the appellant Arun Raj for an offence under Section 302 of Indian Penal Code and the propriety of the sentence passed thereunder by the Presiding Officer of General Court Martial under the Indian Army Act. The short facts are these - The appellant joined the Indian Army in the year 1983 and in the year 1998 he was working as Ex-Signalman (Lance Nayak) of 787 (Independent) Air Defence Brigade Signal Company. On 22.3.1998, one Mr. S.S.B Rao (PW-4) was the Section

In-Charge of Operator Section. At about 1 PM, Mr. Rao returned from lunch and the appellant reported to him that Havildar R.C Tiwari (deceased) and Havildar Inderpal (PW-3) abused him by using the word "Gandu". On Mr. Rao making an inquiry into the same, they replied in the negative, despite the appellant making repeated assertion that they insulted him using the said word. The appellant also brought to the information of Mr. Rao that in the previous night there was a heated discussion between the appellant and the deceased and Inderpal, and the matter was reported to the superior officer. Paulose (PW-1), after having his lunch, returned to the barrack from the rank mess and he was relaxing in the cot. At this point of time, he saw the appellant coming towards the door. He was wearing a half T-shirt and lungi. The cot of the deceased was near the door and he was sleeping on it. The appellant took out a knife which was hidden in the lungi and stabbed the deceased on the right side of the chest. On witnessing the incident, PW-1 was shocked and shouted to the appellant as to why he did it. On hearing the shout of PW-1, people came in and gathered immediately. The appellant was separated by the crowd and the deceased was sent to the hospital where he finally succumbed to the injury. Major Prabal Datta (PW-9) testified that there was no external injury on the body of the deceased except the stab injury caused by a knife.

2) An FIR was lodged at the Dehu Road Police Station vide CR-

26 of 1998 under Section 302 of Indian Penal Code. Thereafter, investigation commenced, during the course of which the body of the deceased was sent for post mortem and an inquest Panchnama was also prepared. On completion of the investigation, the charge- sheet was prepared against the appellant/accused and forwarded to the Judicial Magistrate 1st Class, Vadgaon Maval. In the meantime, since the appellant belonged to the armed forces, court martial proceedings were initiated under the provisions of the Army Act. Charges were framed against the appellant under Section 302 read with Section 69 of the Army Act for committing civil offence, i.e., knowingly causing the death of the deceased on 22.3.1998. On the appellant pleading not guilty, the General Court Martial proceeded to record the evidence of witnesses. The prosecution examined 18 witnesses. The General Court Martial after appreciating the facts and the evidence on record, found the appellant guilty of the offence for which he was charged and after hearing his submission with regard to the quantum of sentence, sentenced the appellant to undergo 7 years of rigorous imprisonment and he was also dismissed from service for committing the offence of murder punishable under Section 69 of the Army Act read with Section 302 of IPC. However upon revision, the Confirming Authority by an order dated 15.12.1998 held that the sentence awarded by the General Court Martial after finding the appellant guilty of murder under Section 69 of the Army Act read with Section 302 of IPC, was not justiciable and further observed that once the appellant was held guilty under the abovementioned Sections, he could be either sentenced to life imprisonment and fine or sentenced to death. Accordingly, the General Court Martial by an order dated 15.1.1999, revised the sentence and sentenced the appellant to imprisonment for life and dismissal from service, which was subsequently confirmed by the Confirming Authority. Being aggrieved by this order, the appellant filed a petition before the Chief of Army Staff under Section 164 of the Army Act, which was rejected. The appellant being aggrieved by the same filed a writ petition before the Bombay High Court.

3) The learned Counsel for the appellant raised two contentions before the High Court of Judicature at Bombay in the Writ proceedings. Firstly, it was submitted that the charge framed against the appellant was vague, as a result of which, entire Court Martial proceedings was vitiated. The second submission was that the intervention of High Court was required as the facts and circumstances of the case does not justify the punishment of life imprisonment as the offence revealed from the material evidence is only punishable under Section 304 Part II and not under Section 302 of Indian Penal Code. As regards the first contention, the High Court has observed that as the appellant was informed of all the allegations put forth against him at the time of Court Martial proceedings, the charge framed against the appellant cannot be said to be vague. Considering the second contention, the High Court found the testimony of PW-1 Paulose who is the eyewitness and PW-3 Haveldar Indrpal to whom the dying declaration was given by the deceased, is reliable and, hence, observed that there is no doubt about the fact that appellant caused the death of the deceased by stabbing him with a knife. Therefore, the submission that there was no intention on the part of the appellant to kill the deceased as only one stab injury was found on deceased, was rejected by the Court. The High Court while considering the decision on which reliance was placed by learned counsel for the accused observed, that there was no sudden quarrel and the murder was not caused on spur of moment and no sufficient provocation is found for the offence committed by appellant to fall under section 304 Part II of Indian Penal Code. As the offence was found to be committed with enough time to mediate on the action to commit the murder of deceased, appellant was said to have intention to cause the death of the deceased. Thus, the High Court found the charge under Section 302 of Indian Penal Code proved and the procedure under Army Act followed without any infringement of principles of natural justice and, accordingly, the Writ Petition was dismissed vide judgment dated 25.8.2005.

4) We now come to the particular question to which this appeal is limited, namely, propriety of the conviction and sentence passed on the appellant for the offence under Section 302 IPC read with Section 69 of the Army Act, 1950. Mr.K.K.Mani, the learned counsel for the appellant contends, that, the death of the deceased was caused due to grave and sudden provocation and, therefore, offence would fall under Exception I of Section 300 I.P.C. Further, it is contended that the offence committed by the appellant is liable for punishment under Section 304 Part II of the I.P.C., as there is absence of any intention on part of the appellant to cause death. Mr.Mani also cited few decisions of this Court to support his submission that the single stab injury caused by the appellant to the deceased only amounts to offence punishable under Section 304 Part II and not under Section 302 of I.P.C. Per contra, the learned counsel for the Union of India submitted that, the findings of the Court Martial and the punishment upheld by the High Court need not be interfered by this Court as the facts and the evidence on record are enough to prove that the offence committed by the appellant falls under Section 302 of I.P.C. It is also contended that the scope of judicial review is for limited purpose and that cannot be used to re-appreciate the evidence recorded in Court Martial proceedings to arrive at a different conclusion.

5) We now consider the first contention of the learned counsel for the appellant. It is not in dispute that the cause of death of deceased is due to the stabbing by a knife by appellant. However, it is argued on behalf of the appellant that the appellant caused the said injury because on 23.03.1998 deceased Havildar R.C.Tiwari and Havildar Inderpal (PW-3) abused the appellant and he was

provoked to `punish' the deceased. Thus, the stab injury caused to the deceased was a result of such grave and sudden provocation and thus the incident took place on spur of moment. Therefore, the case of the appellant falls under Exception I of Section 300 of I.P.C.

At this state itself, it is relevant to notice Section 300 of I.P.C.:

> "Section 300. Murder Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or- 2ndly If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or- 3rdly If it is done 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-
>
> 4thly If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.
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> Exception I-When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
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> The above exception is subject to the following provisos:-
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> First-That the provocations not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
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> Secondly-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
>
> Thirdly-That the provocations not given by anything done in the lawful exercise of the right of private defence.
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> Explanation-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

6) The aforesaid Section provides five exceptions wherein the culpable homicide would not amount to murder. Under Exception I, an injury resulting into death of the person would not be considered as murder when the offender has lost his self-control due to the grave and sudden provocation. It is also important to mention at this stage that the provision itself makes it clear by the Explanation provided, that what would constitute grave and sudden provocation, which would be enough to prevent the offence from amounting to murder, is a question of fact. Provocation is an external

stimulus which can result into to loss of self-control. Such provocation and the resulting reaction need to be measured from the surrounding circumstances. Here the provocation must be such as will upset not merely a hasty, hot tempered and hypersensitive person but also a person with clam nature and ordinary sense. What is sought by the law by creating the exception is that to take into consideration situations wherein a person with normal behavior reacting to the given incidence of provocation. Thus, the protection extended by the exception is to the normal person acting normally in the given situation.

7) The scope of the "doctrine of provocation" was stated by Viscount Simon in Mancini v. Director of Public Prosecution, (1942) A.C. 200 at p.206: "it is not all provocation that will reduce the crime of murder to manslaughter. Provocation to have that result, must be such as temporarily deprive the person provoked of the power of self-control as result of which he commits the unlawful act which caused death. The test to be applicable is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in Rex v. Lesbini, (1914) 3 K.B.1116 so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

8) It is, therefore, important in the case at hand to consider the reasonable relationship of the action of appellant of stabbing the deceased, to the provocation by the deceased in the form of abusing the appellant. At this stage, it would be useful to recall the relevant chain of events in brief to judge whether there was sufficient provocation and the criterion under the provision are satisfied to bring the offence under the Exception I. As is already stated, on the previous night of the incidence, there was altercation between the appellant and deceased, as the deceased had abused the appellant. On 23.3.1998 at about 1.00 PM, the deceased complained to the Higher Officer-Mr.S.S.B.Rao about the said incident. Thereafter, he returned to his barrack and was present there before the happening of the incident. In the testimony, (PW-1) Paulose states that he was also present in the same barrack after he came back from Other Rank Mess at 2.15 PM and was relaxing on his cot which was in the corner of the same barrack. At that time he saw the appellant coming towards the door on which he thought that the appellant was coming for either urinal or to collect his clothes spread out in sun. The appellant who was wearing a half T-shirt and lungi came near the cot of the deceased which was at the door and took out a knife from the lungi and stabbed on the right side of chest of the deceased when he was asleep. PW-1 agreed at the time of examination of witness, that he was shocked to see the appellant stab the deceased and he also shouted at the appellant asking him what was he doing. Thus, PW- 1 was unable to relate the actions of appellant to the abuses by deceased or the altercation which happened the previous night. Further, it is clear from the testimony of the PW-1 and the evidence collected (ME-1), that the knife which was completely made of iron and had a sharp edge was hidden at the waistline of the lungi of the appellant. Major Prabal Datta, PW-9 was the Regimental Medical Officer at 19 AD Regt. In his cross examination, he has stated, that there

was not much time lag between the occurrence of the incident and the deceased being rushed to the hospital. The facts like that there was time lag of 40- 45 minute after appellant had come from the office of Higher Officer after complaining and was present with the appellant in the same barrack without any conversation between them, that he had got the knife which was sharp enough to have the knowledge that it might cause death of a human being when stabbed, that the knife was hidden and removed by appellant only when he was about to stab the deceased, that the appellant stabbed the deceased on the chest which is a fragile portion of the body and can cause death when stabbed by sharp weapon and also that the eyewitness was unable to link the abusing and the altercation of the deceased and appellant to the action of stabbing, rules out the possibility of the offence being committed due to `grave and sudden' provocation. The appellant clearly had time to deliberate and plan out the death of Havildar R C Tiwari (the deceased). We, therefore, conclude that the first contention of the learned counsel for the appellant has no merit and the appellant cannot get benefit of the Exception I to Section 300 of I.P.C.

9) We now turn to second point urged on behalf of the appellant. It is contended by learned counsel that there was no intention on the part of the appellant to cause the death of the deceased and, hence, Section 304 Part II of the IPC which deals with culpable homicide not amounting to murder, will be attracted. Alternatively, it is contended that the appellant dealt one single blow on the deceased, and hence, intention to cause death cannot be attributed to the appellant and, hence, the act of the appellant will not fall under Section 302 of IPC but under Section 304 Part II. In light of these contentions, it is necessary to look into the wordings of the relevant provision. Section 304 of IPC reads:-

> "Section 304. Punishment for culpable homicide not amounting to murder Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life ,or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

10) Essentially the ingredients for bringing an act under Part II of the Section are:-

> (i) act is done with the knowledge that it is likely to cause death,
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> (ii) there is no intention to cause death, or to cause such bodily injury as is likely to cause death.
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> 11) The first ingredient is easily solved by referring to the weapon used by the appellant to strike a knife blow to the appellant. The appellant in this instance has used a kitchen knife. A kitchen knife with sharp edges is a dangerous weapon and it is very obvious that the appellant was aware that the use of such a weapon can cause

death or serious bodily injury that is likely to cause death. As far as the second ingredient is concerned, the appellant's learned counsel contended that the fact that there was one single blow struck, proves that there was no intention to cause death. In support of the plea, reliance is placed on the decisions of this court in the case of Bhera v. State of Rajasthan, [(2000) 10 SCC 225], Kunhayippu v. State of Kerala, [(2000) 10 SCC 307], Masumsha Hasansha Musalman v. State of Maharashtra, [(2000) 3 SCC 557], Guljar Hussain v. State of U.P., [1993 Supp (1) SCC 554], K. Ramakrishnan Unnithan v. State of Kerala, [(1999) 3 SCC 309], Pappu v. State of M.P., [(2006) 7 SCC 391], Muthu v. State by Inspector of Police, Tamil Nadu, [(2007) 12 Scale 795]. A brief perusal of all these cases would reveal that in all these cases there was a sudden and instantaneous altercation which led to the accused inflicting a single blow to the deceased with a sharp weapon. Hence, there has been conviction under Section 304 Part II as delivering a single blow with a sharp weapon in a sudden fight would not point towards intention to cause death. These cases are clearly distinguishable from the case at hand, purely on the basis of facts. In the present case, there has been no sudden altercation which ensued between the appellant and the deceased in the present case. The deceased called the appellant `gandu' following which there was a heated exchange of words between the two, the day before the murder. The next day, however, the appellant concealed a kitchen knife in his lungi and went towards the cot of the deceased and struck the deceased a blow on the right side of the chest, while the deceased was sleeping. The fact that the appellant waited till the next day, went on to procure a deadly weapon like a kitchen knife and then proceeded to strike a blow on the chest of the appellant when he was sleeping, points unerringly towards due deliberation on the part of the appellant to avenge his humiliation at the hands of the appellant. The nature of weapon used and the part of the body where the blow was struck, which was a vital part of the body helps in proving beyond reasonable doubt, the intention of the appellant to cause the death of the deceased. Once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows. This court in the case of State of Rajasthan v. Dhool Singh, [(2004) 12 SCC 546] while dismissing a similar contention has stated that, "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 respondent caused the death of the deceased with an intention of causing death or not. In the instant case, it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft. in length on a vital part of body, namely, the neck. This act of the respondent though solitary in number had severed sternoclinoid muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury, in our opinion, not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim. The reasoning of the High Court as to the intention and knowledge of the respondent in attacking

and causing death of the victim, therefore, is wholly erroneous and cannot be sustained."

12) In the case of Virsa Singh v. State of Punjab, [AIR 1958 SC 465], this court while referring to intention to cause death laid down:-

"27. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under s. 300, 3rdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. 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."

This court further observed:-

"33. 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 this 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; and whether the conclusion should be one way or the other is a matter of proof, where necessary, by calling in aid all reasonable inferences of fact in the absence of direct testimony. It is not one for guess-work and fanciful conjecture."

13) In Anil v. State of Haryana, [(2007) 10 SCC 274], while referring to Virsa Singh (supra) this court laid down:-

"19. In Thangaiya v. State of T.N., relying upon a celebrated decision of this Court in Virsa Singh v. State of Punjab 1958 CriLJ 818 , the Division Bench observed:

17. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case 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 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, 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.
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> 18. Thus, according to the rule laid down in Virsa Singh case even if the intention of the appellant 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.

14) In the aforesaid decision, this Court held that there is no fixed rule that whenever a single blow is inflicted Section 302 would not be attracted.

15) It is clear from the above line of cases, that it is necessary to prove first that there was an intention of causing bodily injury; and that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. From the evidence on record, it is very clear that the appellant intended to cause death. In light of this finding, the evidence on record makes it clear that Section 304 Part II of the IPC will not be attracted. Further PW-1, in his cross- examination asserts that the deceased held his hand out after he was stabbed in the chest. It is very likely that this action on the part of the deceased prevented the appellant from stabbing him multiple number of times. The argument might deserve some merit in case there is a sudden altercation which ensues in the heat of the moment and there is no deliberate planning. In the present case, as stated above there was due deliberation on the part of the appellant and he assaulted the deceased a day after he misbehaved with him. Hence, the contention of the learned counsel that the appellant had no intention to cause death of the deceased has no merit and, accordingly, it is rejected.

16) We, accordingly, hold that the conviction of the appellant for the offence under Section 302 of Indian Penal Code, is not bad in law. In our opinion, the appeal has no merit and, accordingly, it is dismissed.

.....J. [Dr. MUKUNDAKAM SHARMA] .....J. [H.L. DATTU] New Delhi, May 13, 2010.