The State Of Uttarakhand vs Sachendra Singh Rawat on 4 February, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 143 OF 2022

The State of Uttarakhand …Appellant

Versus

Sachendra Singh Rawat …Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.12.2018 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No. 110 of 2016, by which the High Court has allowed the said appeal preferred by the respondent – accused and has held that culpable homicide in the instant case is not murder and consequently has converted the sentence from life imprisonment to ten years rigorous imprisonment, the State of Uttarakhand has preferred the

2. That the respondent herein – original accused was charged and tried for the offence punishable under Section 302 IPC for having committed the murder of one Virendra Singh. As per the case of the prosecution, on 26.11.2014, the entire village was celebrating Mehendi Ceremony on the occasion of the wedding of one Anil. In the ceremony, the entire village participated including the deceased Virendra Singh and the accused Sachendra Singh Rawat. In the night, some altercations took place between the deceased Virendra Singh and the accused Sachendra Singh Rawat. But due to intervention of the villagers, the matter did not proceed further. After the dinner, at about 12:00 in the night, the accused attacked Virendra Singh by giving him blows by a “Danda/Phakadiyat” – a rough piece of wood, which he was carrying. The blow was on the head of the deceased. Virendra Singh ran towards his house for safety. The accused ran after the deceased with “Phakadiyat” in his hand. The deceased sustained multiple injuries on the head. There was a skull fracture and a frontal wound on left side. The complainant, who was the wife of the deceased tried to rescue her husband, but failed. Meanwhile, several blows were given to her husband. The mother-in-law of the complainant, Geeta Devi also came to the rescue of the deceased. Due to grievous injuries, Virendra

Singh fell unconscious. The deceased was initially taken to Dr. Sharma, who resided at Ghansali, which was only a few kilometers away, but considering the condition of the injured, he was referred to Mahant Indresh Hospital at Dehradun, where he was operated upon. After a few days, i.e., on 5.12.2014, Virendra Singh passed away. 2.1 That, the wife of the deceased lodged an FIR against the accused – respondent herein. Investigation was done by the police officer, in charge of the police station. During the course of the investigation, the investigating officer recorded the statements of the eye witnesses including the complainant, i.e., the wife of the deceased. The Investigating Officer also collected the medical evidence including post mortem report etc. Thereafter, on conclusion of the investigation, the Investigating Officer filed the charge sheet against the accused for the offence punishable under Section 302 IPC. As the case was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court where the accused was put to trial. Accused pleaded not guilty and he claimed to be tried by the trial Court for the offence punishable under Section 302 IPC.

2.2 To bring home the charge against the accused, the prosecution examined in all 14 witnesses. Many of the witnesses were the eye witnesses including the complainant, i.e., the wife of the deceased. The prosecution also examined Dr. Pankaj Arora, PW11 who had operated upon the deceased. After closure of the evidence on the prosecution side, a further statement of the accused under Section 313 Cr.P.C. was recorded. Thereafter, on appreciation of evidence and believing the evidence of eye witnesses, namely, Darshani Devi, the wife of the deceased and others and considering the nature of the injuries sustained by the deceased, the trial Court held that the culpable homicide was murder and thereby convicted the accused for the offence punishable under Section 302 IPC and imposed the sentence of life imprisonment. 2.3 Feeling aggrieved and dissatisfied with the judgment and order of conviction passed by the trial Court and sentencing him to undergo life imprisonment, the accused preferred Criminal Appeal No. 110/2016 before the High Court. By the impugned judgment and order, though the High Court has believed the evidence of all the eye witnesses including PW1 – the wife of the deceased, however, has held that culpable homicide did not amount to murder, solely on the ground that it is not a cold blooded murder; rather it is a sudden fight which ensued in the heat of passion between the two; as a result of a sudden quarrel in the marriage ceremony and that the weapon used was “Phakadiyat” which is a rough piece of wood and therefore it cannot be said that there was any intention on the part of the accused to kill and/or commit the murder of the deceased and therefore the case would fall under the Fourth exception to Section 300 IPC. After holding so and after altering the finding of murder to one of culpable homicide not amounting to murder, the High Court has converted the sentence from life imprisonment to ten years rigorous imprisonment.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the State has preferred the present appeal.

3. Shri Virendra Rawat, learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in holding that the murder of the deceased does not amount to culpable homicide. 3.1 It is submitted that the High Court has erred in observing and holding that the case would fall within the Fourth exception of Section 300 IPC.

3.2 It is vehemently submitted by the learned counsel appearing on behalf of the State that merely because the weapon used was a "Phakadiyat", that by itself cannot make the culpable homicide as not amounting to murder. It is submitted that the High Court has not properly appreciated and considered the repetitive blows given on the vital part of the body – head and the multiple injuries sustained by the deceased leading to his death.

3.3 It is further submitted that even the High Court has also not properly appreciated that after the first incident of altercation between the two at the place of marriage ceremony, due to the intervention of the villagers, the matter did not proceed further. However, at about 12:00 in the night, the accused attacked the deceased by a "Phakadiyat" which he was carrying and when the deceased ran towards his house for safety, the accused ran after him, reached his house and continued to give several blows. It is therefore submitted that the High Court has erred in observing and holding that the case would fall under Fourth exception to Section 300 IPC as there was no premeditation and it was a result of a sudden fight and due to a sudden quarrel in the mehendi ceremony.

3.4 It is submitted that the High Court has not properly appreciated the fact that the main incident of having beaten the deceased was subsequent to the first incident of altercation in the mehendi ceremony. It is submitted that by no stretch of imagination, it can be said that the incident had occurred due to a sudden fight in the heat of passion upon a sudden quarrel in the mehendi ceremony.

3.5 It is further submitted that the High Court has not at all considered the multiple grievous injuries sustained by the deceased on the head. It is submitted that the accused used "Phakadiyat" with such a force that there was a skull fracture and a frontal wound on left side and wounds with 34 stitches on the left side of the skull extended from mid of the left side of the skull along with coronal sutures of 16 cm. It is submitted that therefore the case would certainly fall under Clauses Thirdly and Fourthly to Section 300 IPC and therefore the trial Court rightly convicted the accused for the offence under Section 302 IPC. 3.6 In support of the above submissions, learned counsel appearing on behalf of the State has heavily relied upon the decision of this Court in the cases of Stalin vs. State, (2020) 9 SCC 524, in which this Court considered the earlier decisions of this Court on the point in the cases of Mahesh Balmiki vs. State of M.P., (2000) 1 SCC 319; Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat, (2003) 9 SCC 322; Pulicherla Nagaraju vs. State of A.P., (2006) 11 SCC 444; Singapagu Anjaiah vs. State of A.P., (2010) 9 SCC 799; State of Rajasthan vs. Kanhaiya Lal, (2019) 5 SCC 639; Arun Raj v. Union of India, (2010) 6 SCC 457; Ashokkumar Magabhai Vankar vs. State of Gujarat, (2011) 10 SCC 604; State of Rajasthan vs. Leela Ram, (2019) 13 SCC 131; Bavisetti Kameswara Rao vs. State of A.P., (2008) 15 SCC 725; and Virsa Singh vs. State of Punjab, AIR 1958 SC 465.

3.7 Making the above submissions and relying upon the aforesaid decisions, it is prayed to set aside the impugned judgment and order passed by the High Court quashing and setting aside the conviction of the accused for the offence under Section 302 IPC and to restore the judgment and order passed by the trial Court convicting the accused for the offence under Section 302 IPC and sentencing him to life imprisonment.

4. Ms. Neha Sharma, learned counsel appearing on behalf of the respondent – accused has tried to support the impugned judgment and order passed by the High Court holding that in the instant case the culpable homicide is not amounting to murder invoking Fourth exception to Section 300 IPC.

4.1 It is submitted by the learned counsel appearing on behalf of the accused that cogent reasons have been given by the High Court after considering the surrounding circumstances and other considerations that the culpable homicide is not amounting to murder and that the case would fall under Fourth exception to Section 300 IPC. 4.2 It is submitted that as rightly observed by the High Court as the weapon used by the accused was a "Phakadiyat" which is a rough piece of wood, it cannot be said that there was any premeditation and/or any intention on the part of the accused to kill and/or commit the murder of the deceased.

4.3 It is further submitted that the High Court has rightly observed and held that the incident occurred in a sudden fight in the heat of passion on a sudden quarrel in the mehendi ceremony and that the weapon used was "Phakadiyat" which is used as a firewood primarily where food is being cooked and where in the heat of passion the accused picked up the "Phakadiyat" and used the same and therefore the case would fall under Fourth exception to Section 300 IPC. It is therefore submitted that the High Court has rightly altered the finding of murder to one of culpable homicide not amounting to murder and has rightly converted the sentence from life imprisonment to ten years rigorous imprisonment. 4.4 Making the above submissions, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the trial Court convicted the accused for the offence under Section 302 IPC for having killed one Virendra Singh. It can be seen that the incident took place in two places. The first incident of altercation between the accused and the deceased was at the place of mehendi ceremony. At that time, due to the intervention of the villagers, the matter did not proceed further. That thereafter, the second incident took place at about 12:00 in the night, which can be said to be the actual incident which happened when the accused attacked the deceased by "Phakadiyat" and gave several blows to the deceased. The deceased ran towards his house and the accused also followed him and continued to give blows on the head, thigh etc. Therefore, the second incident cannot be said to be a result of sudden fight in the heat of passion upon a sudden quarrel. The accused chased the deceased at about 12:00 in the mid night and even after the deceased reached his house, he was beaten by the accused in front of his house which is witnessed by his wife, PW1. Therefore, as such, the High Court has erred in observing and/or accepting the case on behalf of the accused that the incident had taken place due to a sudden fight in the heat of passion upon a sudden quarrel in the mehendi ceremony. The second incident had not taken place at all during the mehendi ceremony. The second incident had taken place near the house of the deceased and that too after the first incident was over, everybody went to their houses and thereafter at 12:00 in the mid night the second incident had taken place in which the accused gave several blows to the deceased by "Phakadiyat" on the head, thigh etc. Therefore, the High Court has erred in observing that the case would fall under Fourth exception to Section 300 IPC.

5.1 Even otherwise, the High Court has not properly appreciated and/or considered the multiple injuries sustained by the deceased. As per the medical evidence, the following injuries were found on the body of the deceased:

> "On external examination of the dead body following conditions and injuries were found:
>
> Average built, rigor mortis present at both upper limbs extended upto the lower half of the thighs, eyes partially open, cornea was dried xerosis, nostrils with blood clots.
>
> (i) Stitched wounds with 34 stitches with left side of the skull extended from mid of the left side of the skull along with coronal sutures of 16 cm. Sutures were metallic.
>
> (ii) Tracheotomy opening with secretion present in the wound, inside the trachea along with lacerated wound 4cm in size with sharp and well defined margins.
>
> (iii) Multiple contused wounds which were 1 to 2 cm in size bluish black in colour at the left side of the shin of leg at upper two-third region.

On internal examination of the dead body following conditions and injuries were found:

> (i) Skull fracture at the frontal wound on left side. Sharp well defined parietal bone wound which was suggestive of craniotomy with well defined margin.
>
> (ii) Brain lacerated and clots present in the frontoparietal.

Lacerated brain wound extended up to the frontoparietal and temporal." The main cause of death was injuries sustained by the deceased on his head.

5.2 From the aforesaid multiple injuries sustained by the deceased, it can be seen that the accused used the "Phakadiyat" with such a force that it resulted in skull fracture at the frontal wound on the left side; stitched wounds with 34 stitches with left side of the skull extended from mid of the left side of the skull along with coronal sutures of 16 cm; brain lacerated and clots present in the frontoparietal and lacerated brain wound extended up to the frontoparietal and temporal. Thus, having caused the grievous injuries with such a force, how can the accused get the benefit of fourth exception to Section 300 IPC. The case would certainly fall under Clauses Thirdly and/or Fourthly to Section 300 IPC.

6. In light of the above factual scenario, few decisions of this Court on the point whether culpable homicide would tantamount to murder or not, are required to be referred to and considered.

a) In the case of Virsa Singh (supra), in paragraphs 16 & 17, it was observed and held as under:

> '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 in original)

b) In Dhirajbhai Gorakhbhai Nayak (supra), on applicability of Exception 4 of Section 300 IPC, it was observed and held in paragraph 11 as under:

> "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"."

c) In the case of Pulicherla Nagaraju (supra), this Court had an occasion to consider the case of culpable homicide not amounting to murder and the intention to cause death. It was observed and held by this Court that 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. In paragraph 29, it was observed as under:

"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."

d) In the case of Singapagu Anjaiah (supra), in a similar set of facts and circumstances, this Court concluded that the accused intended to cause death of the deceased. In paragraph 16, it was observed as under:

> "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."

e) In Kanhaiya Lal (supra), it was held by this Court in paras 7.4 and 7.5 as follows:

7.4. In Ashokkumar Magabhai Vankar [Ashokkumar Magabhai Vankar v. State of Gujarat, (2011) 10 SCC 604, 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 [State of Rajasthan v. Leela Ram, (2019) 13 SCC 131 and after considering a catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether a case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment [Leela Ram v. State of Rajasthan, 2008 SCC OnLine Raj 945] 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 19 as under: (Leela Ram case [State of Rajasthan v. Leela Ram, (2019) 13 SCC 131, SCC pp. 140-41) '19. ... 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. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the fact that the accused gave several blows/multiple blows on the vital part of the body – head which resulted into grievous injuries and he used "Phakadiyat" with such a force which resulted in Skull fracture and a frontal wound on left side and wounds with 34 stitches on the left side of the skull extended from mid of the left side of the skull along with coronal sutures of 16 cm, we are of the opinion that the case would fall under Clauses thirdly and fourthly of Section 300 IPC. Clauses thirdly and fourthly of Section 300 IPC read as under:

"Thirdly.—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— Fourthly.—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." Therefore, as per Section 300 IPC, if the case falls within Clauses thirdly and fourthly to Section 300

IPC, culpable homicide can be said to be amounting to murder. Therefore, in the facts and circumstances of this case, the High Court has committed a grave error in observing that culpable homicide did not amount to murder, by applying exception Fourth to Section 300 IPC. As observed hereinabove, exception Fourth to Section 300 IPC ought not to have been applied by the High Court at all considering the fact that the main second incident had taken place subsequently at 12:00 in the night, much after the first incident of altercation was over in the mehendi ceremony. The impugned judgment and order passed by the High Court is unsustainable both, on facts as well as on law.

8. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order passed by the High Court altering finding of murder to one of culpable homicide not amounting to murder and consequently converting the sentence from life imprisonment to ten years rigorous imprisonment is hereby quashed and set aside. The respondent-accused is held guilty for the offence under Section 302 IPC for having killed and/or committed the murder of the deceased Virendra Singh and he is sentenced to undergo life imprisonment. Accordingly, the judgment and order passed by the trial Court convicting the accused for the offence under Section 302 IPC and sentencing him to life imprisonment is hereby restored.

.....J. [M.R. SHAH] NEW DELHI; .....J. FEBRUARY 04, 2022. [B.V. NAGARATHNA]