Supreme Court of India
Morcha vs The State Of Rajasthan on 13 September, 1978
Equivalent citations: 1979 AIR 80, 1979 SCR (1) 744
Author: J Singh
Bench: Singh, Jaswant

PETITIONER:
MORCHA

Vs.

RESPONDENT:
THE STATE OF RAJASTHAN

DATE OF JUDGMENT13/09/1978

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
KAILASAM, P.S.
KOSHAL, A.D.

CITATION:
1979 AIR 80 1979 SCR (1) 744
1979 SCC (1) 161

ACT:
Culpable homicide-Accused causing several injuries on the person of the deceased, out of which one injury which had injured the liver and caused the perforation of the larger colon was sufficient to cause the death in the ordinary course of nature-Medical opinion further was to the effect "that if immediate expert treatment had been available and the emergency operation had been performed, there were chances of survival of the deceased"-Whether it alters the nature of offence from one under Section 302 I.P.C. to one under Section 304 Part 11 I.P.C.
Penal Code, Sections 299, 300, 302, 304 r/w Evidence Act, Section 45 and Section 291 Criminal Procedure Code, 1973.

HEADNOTE:
The appellant was charged and tried for the offence under Section 302 I.P.C. for causing the murder of his wife. The Sessions Judge though on a consideration of the evidence led in the case including the direct testimony of Mst. Jelki(PW 3) and Mst. Modan (PW 8) found that the appellant attacked his wife. Mst. Gajri with dagger (Ext. I) and caused injuries on her person out of which injury No. 2

which had injured the liver and caused the perforation of the large colon was sufficient to cause her death in the ordinary course of nature, convicted him under Section 304 Part II I.P.C. and acquitted him of the charge under Section 302 Penal Code, in view of the fact that Dr. Laxmi Narain (PW 1) who conducted the postmortem examination of the body of Mst. Gajri had said in the course of his examination that "if immediate expert treatment had been available and emergency operation had been performed there were chances of the survival". In State appeal, the High Court altered the conviction of the appellant from one under Section 304 Part II I.P.C. to that under Section 302 I.P.C. and sentenced him to imprisonment for life. Hence the appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act (Act 28) 1970.

Dismissing the appeal, the Court

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HELD: 1. Explanation 2 to Section 299 of the Indian Penal Code clearly lays down that where death is caused by bodily injury the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented. The mere fact that if immediate expert treatment had been available and the emergency operation had been performed, there were chances of survival of the deceased can be of no avail to the appellant. [749H. 759A]

2. The injury in the opinion of the doctor being sufficient in the ordinary course of nature to cause death of the deceased, the case squarely fell within the ambit of clause, Thirdly of Section 300 I.P.C. [749G]

In the instant case, the appellant appears to have intended to cause the death of Mst. Gajri otherwise there was no necessity for him to carry the dagger with him when he went to the village of his in-laws to fetch his wife.

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That the appellant intended to cause the death of the deceased is further clear from the fact that he inflicted a through and through penetrating wound on the posterior axillary line which seriously injured the vital organs of the deceased viz. the liver and the large colon leading to internal haemorrhage and shock. [749F-G]

Virsa Singh v. The State of Punjab,[1958] S.C.R. 1495 and State of Andhra Pradesh v. Rayavarapu Punnayya and Anr., [1977] 1 S.C.R. 601; reiterated.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 43 of 1972.

From the Judgment and Order dated 11-5-71 of the Rajasthan High Court in D.B. Criminal Appeal No. 478/67.

Nemo: for the Appellant.

S.M. Jain for the Respondent.

The Judgment of the Court was delivered by JASWANT SINGH, J. This appeal under section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (Act 28 of 1970) raises a short question as to the nature of the offence made out against the appellant on the basis of the evidence adduced in Sessions Case No. 64 of 1966.

The Sessions Judge, Udaipur, who tried the appellant found on a consideration of the evidence led in the case including the direct testimony of Mst. Jelki (P.W. 3) and Mst. Modan (P.W. 8) that the appellant attacked his wife, Mst. Gajri with dagger (Exh. 1) and caused injuries on her person out of which injury No. 2 which had injured the liver and caused the perforation of the large colon was sufficient to cause her death in the ordinary course of nature. Despite this finding, the Sessions Judge convicted the appellant under section 304 Part II of the Indian Penal Code and acquitted him of the charge under section 302 of the Penal Code in view of the fact that Dr. Laxmi Narain (P.W. 1) who conducted the post mortem examination of the body of Mst. Gajri had said in the course of his examination that if immediate expert treatment had been available and emergency operation had been performed, there were chances of her survival. The Sessions Judge agreeing with the contention raised on behalf of the defence also found that according to the case of the prosecution itself, the accused had gone to the village of his in-laws to fetch Mst. Gajri and it was only on her refusal to accompany him that the incident took place; that he had no intention to kill Mst. Gajri and that at best what could be attributed to the appellant was the knowledge that the injury he was inflicting on the deceased was likely to cause her death.

On the matter being taken in appeal by the State, the High Court found that the Sessions Judge was in error in acquitting the appellant of the offence under section 302 of the Indian Penal Code ignoring the evidence to the effect that a penetrating wound 11/2" X1/2" was caused by the appellant with a dagger on the posterior axillary line 10" from the top of the shoulder and 5" from the spine which had caused injury to the liver and perforation of the large colon and was sufficient to cause death in the ordinary course of nature. Accordingly, the High Court altered the conviction of the appellant from the one under section 304 Part II of the Indian Penal Code to that under section 302 of the Penal Code and sentenced him to imprisonment for life.

Mr. K.K. Luthra who was appointed as amicus curiae in the case not having cared to appear despite long and anxious waiting, we have gone through the entire record with the assistance of counsel for the respondent. The grounds of appeal submitted by the appellant which are very inartistically drafted can at best be interpreted to urge only one thing viz. that the High Court went wrong in upsetting the judgment and order of the Sessions Judge and convicting the appellant under section 302 of the Indian Penal Code instead of under section 304 Part II of the Penal Code as ordered by the Sessions Judge. This contention, in our judgment, is entirely misconceived. It completely

overlooks the circumstances attending the commission of the offence viz. that the appellant went armed with a dagger and despite the willingness expressed by Mst. Gajri to accompany him next morning, he inflicted without the slightest provocation two injuries on her person (1) which landed on her right palm 3/4" above the second metacarpo phalangeal joint in the process of warding off the blow and (2) a penetrating wound, as stated above. The whole affair appears to be pre-planned and pre-meditated and as such the case squarely falls within the purview of clause thirdly of section 300 of the Indian Penal Code. We are fortified in this view by two decisions of this Court viz. Virsa Singh v. The State of Punjab and State of Andhra Pradesh v. Rayavarapu Punnayya & Anr. In Virsa Singh v. The State of Punjab (supra) where the accused thrust a spear into the abdomen of the deceased which resulted in his death and in the opinion of the doctor, the injury was sufficient to cause death in the ordinary course of nature, it was held that even if the intention of the accused 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. The following observations made by this Court in that case are worth quoting:-

> "If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, clause 'thirdly' would be unnecessary because the act would fall under the first part of the section, namely-
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> "If the act by which the death is caused is done with the intention of causing death." In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender: "If it is done with the intention of causing bodily injury to any person."
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> It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for interference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present. Once that is found, the enquiry shifts to the next clause-
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> "and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."
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> The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be

present, then the earlier part of the clause we are now examining-

"and the bodily injury intended to be inflicted" is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad based and simple and based on commonsense: the kind of enquiry that "twelve good men are true" could readily appreciate and understand.

To put it shortly, the prosecution must prove the following facts before it can bring a case under s. 300, "thirdly";

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.

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, thirdly. 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 present is 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."

Similar view was expressed by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya & Anr. (Supra).

In the present case, the appellant appears to have intended to cause the death of Mst. Gajri otherwise there was no necessity for him to carry the dagger with him when he went to the village of his in-laws to fetch his wife. That the appellant intended to cause the death of the deceased is further clear from the fact that he inflicted a through and through penetrating wound on the posterior axillary line which seriously injured the vital organs of the deceased viz. the liver and the large colon leading to internal haemorrhage and shock. The injury in the opinion of the doctor being sufficient in the ordinary course of nature to cause the death of the deceased, the case squarely fell within the ambit of clause thirdly of section 300 of the Indian Penal Code as held by this Court in the decisions referred to above.

The mere fact that if immediate expert treatment had been available and the emergency operation had been performed, there were chances of survival of the deceased can be of no avail to the appellant.

Explanation 2 to section 299 of the Indian Penal Code clearly lays down that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

For the foregoing reasons, we are of the view that the Sessions Judge was wholly wrong in convicting the appellant under section 304 Part II of the Indian Penal Code and acquitting him of the charge under section 302 of the Penal Code and the High Court was wholly right in convicting the appellant under section 302 of the Penal Code instead of under section 304 Part II of the Penal Code.

In the result, we do not find any merit in this appeal which is dismissed.

S.R. Appeal dismissed.