Supreme Court of India
Jagrup Singh vs State Of Haryana on 7 May, 1981
Equivalent citations: 1981 AIR 1552, 1981 SCR (3) 839
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
JAGRUP SINGH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT07/05/1981

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
SEN, A.P. (J)

CITATION:
1981 AIR 1552 1981 SCR (3) 839
1981 SCC (3) 616 1981 SCALE (3)1807
CITATOR INFO :
F 1982 SC 55 (8)
R 1982 SC1466 (7)
R 1983 SC 284 (17,18)
F 1983 SC 463 (7)
F 1984 SC 759 (12)

ACT:
Penal Code-Section 300, clause Thirdly-When applicable-Accused hit the deceased in the heat of moment, without premeditation resulting in death-Whether falls under Exception 4 to section 300 I.P.C.

HEADNOTE:
The appellant and the deceased were collaterals. On the death of his brother, the deceased was looking after the affairs of his brother's wife and children. Some while before on the day of occurrence, the deceased attended the marriage of his brother's daughter.

The prosecution case against the appellant was that he nursed a grievance against the deceased that it was he who induced his sister-in-law not to invite him, (the appellant) and his brothers to the marriage and incensed by such insult he wanted to teach the deceased a lesson. After the marriage, armed with a gandhala (a common agricultural

implement with a flat, rectangular iron strip with three sides blunt, embedded in a wooden handle which is used for digging holes) the appellant and his brothers emerged suddenly and in a joint assault the appellant struck a blow on the head of the deceased with the blunt side of the gandhala.

The Sessions Judge held that the appellant struck the blow on the head with intent to cause such bodily injury as was sufficient in the ordinary course of nature to cause death and that, therefore, he was guilty of culpable homicide amounting to murder punishable under section 302 I.P.C.

Affirming the conviction and sentence the High Court was of the view that there was no specific and positive evidence as to the motive for the murder but that it was more probable that the accused had joined the marriage and that "something happened on the spur of the movement", which resulted in the infliction of the injury leading to the death of the deceased.

In appeal it was contended that the offence amounted to culpable homicide not amounting to murder punishable under section 304 part II I.P.C. because all that could be attributed to the appellant was knowledge that a blow struck on the head with the blunt side of the gandhala would cause an injury, which was likely to cause death but that in any event when he struck the blow he could not be attributed with intention to cause death.

Allowing the appeal,

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HELD: The appellant having been found to have struck the deceased with the blunt side of the gandhala in the heat of the moment without premeditation

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and in a sudden fight all the requirements of Exception 4 to section 300 are met. Having held that it was more probable that the appellant had also attended the marriage but that something had happened on the spur of the moment resulting in the infliction of the injury and eventual death of the deceased the High Court erred in applying clause. Thirdly of section 300.

Giving a solitary blow on a vital part of the body resulting in death cannot always necessarily reduce the offence to culpable homicide not amounting to murder punishable under section 304 part II of the Code. If a man deliberately struck another on the head with a heavy log or an iron rod or a lathi so as to cause a fracture of the skull, in the absence of any circumstances negativing the presumption, he must be deemed to have intended to cause death or such bodily injury as is sufficient to cause death. The intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon death. [843 B-C]

Under clause Thirdly of section 300 culpable homicide

is murder if the act which causes death is done with intention of causing a bodily injury and that injury is sufficient in the ordinary course of nature to cause death i.e. the injury found was one that was intended to be inflicted. [844 F-G]

Virsa Singh v. State of Punjab [1958] S.C.R. 1495 at 1503 applied.

Gudur Dusadh v. State of Bihar [1972] 3 S.C.R. 505, Chahat Khan v. State of Haryana, A.I.R. 1972 S.C. 2574, Chamru Budhwa v. State of Madhya Pradesh, A.I.R. 1954 S. C. 652, Willie (Williams) Slaney v. State Of Madhya Pradesh [1955] 2 S.C.R. 1140, Harjinder Singh (alias Jinda) v. Delhi Admn. [1968] 2 S.C.R. 246 & Lakshman Kalu Nikalje v. State of Maharashtra [1968] 3 S.C.R. 685 referred to.

In the instant case the genesis of the quarrel was not known. The prosecution alleged that the appellant and his brothers had a grouse against the deceased and that they went to the marriage armed with weapons to teach the deceased a lesson. The defence version, on the other hand, was that they were invited to the marriage. In a controversy of such a nature the prosecution should have examined the sister-in-law of the deceased who was a material witness to ascertain the truth, failure to do which made the prosecution case infirm. [847 B-C]

Secondly when the appellant struck a blow with blunt side of the gandhala it could not be said that he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. If a man is hit with the blunt side on the head with sufficient force it is bound to cause death. The fact that the gandhala was used with sufficient force was not by itself sufficient to raise an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. He could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause death. Therefore, the case does not fall within clause Thirdly of section 300 I.P.C [845 E-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 403 of 1981.

From the judgment and order dated the 10th October, 1980 of Punjab & Haryana High Court in Crl. A. No. 954 of 1979.

Sushil Kumar for the Appellant.

K.C. Bhagat and R.N. Poddar for the Respondents. The Judgment of the Court was delivered by SEN, J. The short point involved in this appeal is whether the appellant is guilty of culpable

homicide amounting to murder punishable under s. 302, Indian Penal Code, or only of culpable homicide not amounting to murder punishable under s. 304, Part II, Indian Penal Code (hereinafter called 'the Code'). It is not disputed that the appellant, Jagrup Singh, struck a blow with the blunt side of a gandhala on the head of the deceased, Chanan Singh, who was his uncle, resulting in his death. It appears that after the death of Joginder Singh, the deceased Chanan Singh was looking after the family of his brother, Joginder Singh consisting of his widow Mst. Dalip Kaur and her children. He had settled the betrothal and marriage of Mst. Dalip Kaur's daughter, Tej Kaur. The prosecution case is that the appellant Jagrup Singh and his brothers, Billaur Singh, Jarmail Singh and Waryam Singh, co-accused, although they were collaterals of Joginder Singh, were not invited by Mst. Dalip Kaur to the marriage of her daughter Tej Kaur, at the instance of the deceased Chanan Singh. On account of this, there was ill-feeling between the parties.

On the fateful evening, i.e. On 20.3.1978, at 5.15 p.m. the marriage of Tej Kaur was performed. It is alleged that shortly thereafter, the appellant Jagrup Singh armed with a gandhala, his brothers Billaur Singh armed with a gandasa and Jarmail Singh and Waryam Singh armed with lathis emerged suddenly and made a joint assault on the deceased Chanan Singh and the three eyewitnesses, Gurdev Singh, PW 10, Sukhdev Singh, PW 11 and Makhan Singh, PW 12. The deceased along with the three eye-witnesses was rushed to the Rural Dispensary, Rori where they were examined at 6 p.m by Dr. Bishnoi, PW 3, who found that the deceased had a lacerated wound 9cm x 1/2cm bone deep on the right parietal region, 9 cm away from the tip of right pinna; margins of wound were red, irregular and were bleeding on touch; direction of wound was anterior-posterior. The deceased was in a serious condition and, therefore, he was referred by Dr Bishnoi to the Civil Hospital, Sirsa, where he died on the morning of 21.3.1978 at 2.10 a.m. Dr. Karan Singh, Senior Medical officer, Civil Hospital, Sirsa, PW 1, performed an atopsy on the dead body of the deceased. He found the following external injuries:

> A stitched contused wound 9 1/2 cm long situated on right side of the head, 9 cm above the top of pinna and 9 cm above the eye brow. Skull deep, direction anterio-posterior.

On dissection, he found the following internal injury:

> A fracture line running starting from the lower and the anterior part of parietal bone injuring the middle meningeal artery near its entrance into the skull and traversing medially across the base of right middle fossa, crossing the mid-line and extending slightly to the left of mid-line. There was a dark red haemotoma (extra-dural) 3" 2x3" overlying the parietal and temporal lobes of brain on right side and the area was compressed.

In his opinion, the death of the deceased was due to cerebral compression as a result of the head injury which was sufficient in the ordinary course of nature to cause death.

He High Court of Punjab and Haryana, agreeing with the Additional Sessions Judge, Sirsa, held that the appellant struck a blow on the head of the deceased with the blunt side of the gandhala with the

intent of causing such bodily injury which was sufficient in the ordinary course of nature to cause death and that being so, the appellant was guilty of culpable homicide amounting to murder punishable under s. 302 of the Code.

In assailing the conviction, learned counsel for the appellant contends that the appellant having struck a solitary blow on the head of the deceased with the blunt side of the gandhala, can be attributed with the knowledge that it would cause an injury which was likely to cause death and not with any intention to cause the death of the deceased. The offence committed by the appellant, therefore amounted to culpable homicide not amounting to murder, punishable under s. 304, Part Ir of the Code. He further contends, in the alternative, that there could be no doubt that the appellant acted in the heat of the moment when he bit the deceased and is, therefore, entitled to the benefit of Exception of s. 300 of the Code. On the other hand. Learned counsel for the State contends that the matter squarely falls within Clause Thirdly of s. 300 of the Code. He A submits that merely because the appellant rendered a solitary blow with the blunt side of the gandhala on the head would not necessarily imply that the offence amounted to culpable homicide not amounting to murder punishable under s. 304, Part II of the Code.

There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under s. 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron 'rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negativing a the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either Clause Firstly or Clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

The ingredients of Clause Thirdly of s. 300 of the Code were brought out by Vivian Bose, J. in Virsa Singh v. State of Punjab in his terse language:

> "To put it shortly, the prosecution must prove the following facts before it can bring a case under s. 300 "3rdly".
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> 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.
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> 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".

The learned Judge explained the third ingredient in the following words:

> 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 in jury 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.

These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh's case (supra) 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 s. 300 of the Code, culpable homicide is murder if both the following conditions are satisfied: (a) that the act which causes death 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.

The decision in Virsa Singh's case (supra) has throughout been followed as laying down the guiding principles. The decisions are too numerous and we may notice only two of them: Gudur Dusadh v. State of Bihar and Chahat Khan v. State of Haryana. In Gudur Dusadh's case, the day before the occurrence, the accused had killed a goat and on the advice of the deceased, the complainant lodged a report. On the next morning, while the deceased was returning from his fields along with his son, they were assaulted by the accused persons who had been hiding on the route. Thereafter, the accused set fire to the hut of the deceased. On these facts it was held that the act of the accused who had waylaid the deceased was a pre-meditated act, and, therefore, the accused had the necessary intention to commit murder. In Chahat Khan's case also, the deceased was waylaid by the accused who were armed with lathis. That case is destructive of the theory that a solitary blow on the head reduces the offence to culpable homicide not amounting to murder punishable under s. 304, Part II. From the evidence it emerged that the accused had both gun and a lathi, and he made full use of the lathi by using both the hands and struck a blow on the head of the deceased with sufficient force. The solitary blow with the lethi was sufficient in the ordinary course of nature to cause his death, and there was no occasion for using the gun which was hanging on his shoulders. Both these cases fell within Clause Thirdly as there was clear intention to cause such bodily injury which in the ordinary course of nature was sufficient to cause death.

Looking at the totality of the evidence, it would not be possible to come to the conclusion that when the appellant struck the deceased with the blunt side of the gandhala, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. A gandhala is a common agricultural implement consisting of a flat, rectangular iron strip, three sides of which are blunt, embedded in a wooden handle. The length of the iron strip is in continuation of the wooden handle and the end portion is sharp, which is used to dig holes in the earth to set up fencing on embankments in the field. If a man is hit with the blunt side on the head with sufficient force, it is bound to cause, as here, death. There can be no doubt that it was used with certain amount of force because there was cerebral compression. But that by itself is not sufficient to raise an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. He could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. The matter, therefore, does not fall within Clause Thirdly of s. 300 of the Code.

In Chamru Budhwa v. State of Madhya Pradesh in somewhat similar circumstances, where there was exchange of abuses between the two parties both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of the skull resulting in the death. In view of the fact the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under s. 304, Part II of the Code. In Willie (Williams) Slaney v. State of Madhya Pradesh there was, as here, a sudden quarrel leading to an exchange of abuses and in the heat of the moment a solitary blow with a hockey-stick had been given on the head. The court held that the offence amounted to culpable homicide not amounting to murder punishable under s. 304, Part II.

At this stage, we think, it desirable to refer to two other decisions in Harjinder Singh (alias Jinda) v. Delhi Admn. and Lakshman Kalu Nikalje v. State of Maharashtra, where the court, relying upon the principles enunciated by Vivian Bose, J. in Virsa Singh's case (supra), excluded the application of Clause Thirdly, because the third ingredient laid down, viz. the intention to cause the particular injury which was likely to cause death, was not present.

In Harjinder Singh's case (supra) there was a sudden commotion when the accused took out a knife and stabbed the deceased who intervened in a fight. At this stage, the deceased was in a crouching position presumably to intervene and separate the two persons fighting. It could not, therefore, be said with any definiteness that the accused aimed a blow at a particular part of the thigh that it would cut the femoral artery which would result in the death of the deceased. It was, therefore, not possible to apply Clause Thirdly of s. 300 of the Code. In Laxman Kalu Nikalje's case (supra) there was a sudden quarrel and the accused lost his temper and whipped out a knife and gave one blow. Although it was given on the chest, it was not on a vital part of the chest and but for the fact that the knife cut the auxiliary artery, death might not have ensued.

In the present case, there is no doubt that there was a sudden quarrel and the appellant assaulted the deceased with the blunt side of the gandhala on the head in the heat of the moment. What actually was the immediate cause for the assault by the appellant on the deceased at the marriage ceremony of Tej Kaur, is not clear. The genesis of the quarrel resulting in the head injury to the

deceased is not known. The prosecution came with a positive case that the appellant, together with his three brothers, who had not been invited to the marriage of Tej Kaur by Mst. Dalip Kaur at the instigation of deceased Chanan Singh, came armed with different weapons to teach the deceased a lesson. But the prosecution has failed to examine Mst. Dalip Kaur and the defence version is that the appellant and his brothers had been invited to the marriage of Tej Kaur by Mst. Dalip Kaur.

In view of these infirmities in the prosecution case, the High Court was constrained to observe:

> In the absence of any specific and positive evidence whether oral or documentary, it is not possible to arrive at any positive conclusion that this circumstance furnished any motive for the accused to attack Chanan Singh (deceased) and three other prosecution witnesses. After a careful perusal of the entire prosecution evidence, it appears more probable that the accused had also joined in the marriage as the collaterals, but something happened on the spur of the moment which resulted in the infliction of injury by Jagrup Singh on the person of Chanan Singh which resulted into his death. In the first information report, it had not been disclosed, as was subsequently made out at the trial, that the accused had come from the house of Jarmail Singh, accused, armed with weapons.

(emphasis supplied) In our judgment, the High Court having held that it was more probable that the appellant Jagrup Singh had also attended the marriage as the collateral, but something happened on the spur of the moment which resulted in the infliction of the injury by Jagrup Singh on the person of the deceased Chanan Singh which resulted in his death, manifestly erred in applying Clause Thirdly of s. 300 of the Code. On the finding that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without pre-meditation and in a sudden fight, the case was covered by Exception 4 to s. 300. It is not suggested that the appellant had taken undue advantage of the situation or had acted in a cruel or unusual manner. Thus, all the requirements of Exception 4 are clearly met. That being so, the conviction of the appellant Jagrup Singh, under s. 302 of the Code cannot be sustained.

The result, therefore, is that the conviction of the appellant under s. 302 is altered to one under s. 304, Part II of the Indian Penal Code. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years.

P.B.R Appeal allowed.