REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 2025 OF 2022

PRASAD PRADHAN & ANR. …APPELLANT(S)

VERSUS

THE STATE OF CHHATTISGARH …RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. This appeal, by special leave, arises from the judgment and order of the Chhattisgarh High Court[1], affirming the conviction recorded, and the sentence imposed, upon the present appellants.

2. The State of Chhattisgarh (hereafter "the state") prosecuted the appellants in relation to an incident, leading to the death of one Vrindawan. The prosecution's allegation was that the appellant/accused and Vrindawan, the deceased, were cousins. On the afternoon of 28.02.2012, when the deceased was getting his land levelled through a JCB machine, the appellants reached the place and attacked him. Vrindawan sustained several injuries including head injuries.

[1] Dated 20.02.2019 in Cr. A. No. 178/2013

He was taken to the hospital and was examined by Dr. Bhageshwar Patel (PW11). As serious head injuries were involved Vrindawan was operated upon by Dr. S.N. Madhariya (PW15). However, Vrindawan could not survive and died on 22.03.2012. Dr. S.K. Bagh (PW14) conducted the post-mortem and in his report (Ex. P-28), stated that death was caused by injuries sustained by the deceased on the head.

3. The police registered a case under Section 302 read with 34 Indian Penal Code (hereafter "IPC") against all accused, based on a first information report (hereafter 'FIR') lodged by Aarti Pradhan (PW1) the deceased Vrindawan's daughter. The FIR (Ex. P-1) alleged that the appellants reached the spot, abused Vrindawan and then assaulted him. The allegation against A-1 Prasad Pradhan was that he was armed with an axe and attacked the deceased on the head. Against A-2 Lingraj Pradhan, the allegation was that he was armed with an axe and had assaulted the deceased on the legs. Regarding the third accused person - Soudagar Pradhan, who is grandson of A-1 and son of A-2, the allegation was that he went to the spot and caught hold of the deceased. Soudagar Pradhan, however, is not an appellant before this court.

4. After the final report was filed, the trial court charged all three accused persons of sharing common intention and then committing the murder of Vrindawan – they were charged for offences under Section 294, 323 read with 34, 302 read with 34, IPC. The appellants, having abjured guilt, were put to trial.

The prosecution examined as many as 15 witnesses. Aarti Pradhan (PW1), Narrotam (PW2), Safed Pradhan (PW3), Rukni (PW4), Ayodhya Bai (PW5) and Navin Sahu (PW6) are relatives of the deceased. The appellants examined two defence witnesses. The court held all the appellants guilty of commission of the offence alleged against them and sentenced them: life imprisonment, for the offence of murder, and six months rigorous imprisonment for the offence under Section 323 IPC. The appellants' appeal before the High Court was partly allowed by the impugned judgment. The High Court acquitted Soudagar Pradhan on both counts, but affirmed the conviction and sentence of the present appellants (A1 and A2). They are, resultantly, before this court.

Contentions of the appellants

5. The appellants argue that the prosecution evidence ought to be discarded. The credibility of the three eyewitnesses is impeached, as they were related to the deceased and further, according to the appellants, their statements otherwise suffer from material contradictions and are implausible. Learned counsel submitted that taken as a whole, the evidence cannot lead one to conclude that the finding of common intention is made out. Learned counsel argued that the dispute arose in a flash, suddenly at the spot when the deceased -Vrindawan started getting the disputed land levelled, due to which the appellants (who lived in the same locality in adjacent houses) went out of their houses, and allegedly assaulted the deceased. Therefore, in these circumstances, it is argued, the appellants are

liable only to the extent of their individual overt acts. It was argued alternatively, that the incident happened all of a sudden and without premeditation. The appellants had no intention to cause death but deter Vrindawan from doing any activity on the disputed land. Therefore, the conviction of the appellants may not travel beyond Section 304 Part-II IPC.

6. Learned counsel for the appellants also argues that the death of Vrindawan took place after about 20 days of the incident on account of complication in the surgery and it cannot be said that the cause of death was injury as the prosecution could not prove that injury caused to the deceased, in ordinary course of nature, was sufficient to cause death. Learned counsel highlighted that the injury caused by the appellants, particularly the head injury, was stitched in and had healed. Learned counsel emphasized that Vrindawan died as a result of cardio-respiratory failure, as stated by PW14. Such being the case, the finding of the courts below that the appellants were guilty of the offence of Section 302 IPC was clearly in error of law. It was argued that *arguendo,* if the prosecution could be said to have proved the attack by the appellants on the deceased, the cause of death neither being immediate nor a direct result of it, there is no question of the ingredients of the offence of murder under Section 302 IPC having been proved beyond reasonable doubt.

7. It was submitted that taken together, the appellants could, at the highest, be convicted of the offence of culpable homicide not amounting to murder under

Section 304 Part I IPC since it was neither their intention to kill the deceased nor was the injury sufficient to cause death in the ordinary course of nature – which was borne out by the circumstance of him surviving the attack for 20 days. It was submitted that the appellants should be granted the benefit of a modified conviction to one, under that provision. Justifying the submission, the learned counsel stated that there was a prior history of disputes between the appellants and the deceased. The deceased's conduct in calling for a heavy JCB machine, to get the tank on the property repaired, was a sudden provocation, given the history of bad blood, which the prosecution witness PW1 in fact, deposed to. Therefore, the exception to Section 300 IPC was attracted to the facts of this case.

8. It was submitted that the High Court erred in failing to give the benefit of doubt to the appellants, in the manner that it did to the third accused - Soudagar Pradhan. It was contended that the evidence and materials in respect of his alleged involvement were the same as in the case of the appellants; therefore, they too, were entitled to be treated in a like manner and acquitted.

Contentions of the state/respondent

9. It was argued, on behalf of the state, that the concurrent findings of the courts below - as well as the sentence imposed, do not call for interference, as they do not contain any glaring infirmity or error. Learned counsel relied on the depositions by the two doctors and also highlighted that the victim never recovered from his injuries; he was not even in a position to record a statement.

It was also argued that for the entire duration that the victim was alive after the incident, he was in the hospital, where he never recovered and died there itself.

10. It was argued that the credibility of PW1 as an eyewitness cannot be questioned; she was, in fact, also a victim of the attack and had received injuries on her leg, due to an axe blow given by one of the accused/appellants. Likewise, learned counsel stated that PW2, another brother of the deceased, had corroborated the evidence of PW1 on all material aspects. He had seen both accused, armed in the manner deposed to by PW1, attacking the deceased. Further, PW3, the wife of the deceased also corroborated the testimonies of the other two witnesses. Though she did not witness the actual assault, she had seen the two appellants armed with axes. PW4, sister-in-law of PW3, too, deposed that Vrindawan was attacked by the accused whilst he was engaged in cleaning near the septic tank and that the two appellants attacked him with axes.

11. Learned counsel argued that the medical examination of the deceased was conducted by Dr. Bhageshwar Patel (PW11), who prepared the medical report (Ex. P-21). The Surgeon, Dr. S.N. Madhariya (PW15) deposed that the back of the deceased's skull was broken and was operated upon. Dr. S.K. Bagh (PW14), who conducted post-mortem, clearly stated regarding cause of the death, in the present case, which pointed out to cardio- respiratory failure, due to multiple injuries. In the cross examination, the appellants could not elicit from the witness that the injury caused to the deceased in the ordinary course of nature was

insufficient to cause death or that the death occurred due to surgical complication and not because of injury.

12. Learned counsel for the state relied on this court's decisions in *Sudershan Kumar v. State of Delhi*[2], *State of Rajasthan v. Arjun Singh & Ors.*[3], *State of Rajasthan v. Kanhaiya Lal*[4], and *State of Rajasthan v. Leela Ram*[5] to urge that the facts of this case, do not support the appellants' contention that the offence of culpable homicide under Section 304 Part II is made out. It was submitted that the pre-existing dispute, in this case, could not be said to constitute a "grave and sudden" provocation. Further, the circumstance that the victim survived for some length of time, *ipso facto* is an irrelevant factor since the prosecution established that the cause of the death was directly linked to the injuries sustained, which in turn were inflicted by the appellants.

13. Learned counsel submitted that Exception 4 to Section 300 IPC is clearly not attracted in the facts of this case because the appellants had, in fact, behaved in an unusual and cruel manner and also took undue advantage of the situation because they were fully armed, and inflicted serious injuries upon the deceased, who was neither armed nor provoked them.

[2] 1975 (3) SCC 831
[3] 2011 (9) SCC 115
[4] 2019 (5) SCC 639
[5] 2019 (13) SCC 131

Analysis and conclusions

14. In this case, the nature of the attack by the appellants and the quality of eyewitness testimony of prosecution witnesses, especially PW1 to PW5, cannot be doubted. This court is of the opinion that the circumstance that most of the witnesses were related to the deceased does not *per se* exclude their testimony. The test of credibility or reliability when applied, is fully satisfied in respect of the strength of their testimonies. Although PW1 is the deceased's daughter, that is insufficient to doubt the veracity of what she recounted during the trial, which is that she saw the appellants attack her father with axes. She tried to intervene and save the deceased, upon which she was also given axe blows on her leg. There is no explanation on the part of the appellants as to why the witness should depose falsely; nor is there any explanation as to how she could have received her injuries. Most importantly, her testimony is corroborated by PW2, PW3 and PW4. Therefore, this court is of the opinion that all the material aspects of the factual accusations against the appellants and how they attacked the deceased in an unprovoked manner, cannot be doubted.

15. The question, then, is whether the appellants are guilty of the offence of murder, punishable under Section 302, or whether they are criminally liable under the less severe Section 304, IPC. As noted in several judgments, this question has engaged the courts for over a century. The distinction between these two is

discernible in the manner they are defined, under Section 299[6] IPC and Section 300[7] IPC. In a decision, which is now considered to be the *locus classicus* on the issue, *Virsa Singh v. State of Punjab*,[8] this court stated as follows:

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[6] ***Section 299*** *Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*
Illustrations
(a) A lays slicks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.
(b) A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.
(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.
Explanation I.--A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.
Explanation 2.--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.
Explanation 3.--The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought form, though the child may not have breathed or been completely born.

[7] ***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--*

> *Secondly.--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--*
>
> *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.*

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.--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.

The above exception is subject to the following provisos:--

First.--That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

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 provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.--Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills. Y, Z"s child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to, A, A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.--Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.--Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.--Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z"s youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

> *"The prosecution must prove the following facts before it can bring a case under S. 300 '3rdly'. 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. It must be proved that there was an intention to inflict that particular 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 was 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."*

16. In *State Of Andhra Pradesh v. Rayavarapu Punnayya & Anr.*[9] another oft-cited judgment, this court observed as follows:

> *"Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.*
>
> *Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.*

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[8] [1958] S.C.R. 1495
[9] 1977 SCR (1) 601

In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of "probable" as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant v. State of Kerala [AIR 1966 SC 1874: 1966 Supp SCR 230: 1966 Cri LJ 1509.] is an apt illustration of this point."

The court then quoted the decision in *Virsa Singh* (supra), and held that:

"Thus according to the rule laid down in Virsa Singh's case (supra) even if the intention of 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. Illustration (c) appended to S. 300 clearly brings out this point.

Clause (c) of S. 299 and clause (4) of S. 300 both require knowledge of the probability of the causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that cl. (4) of S. 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general--as distinguished from a particular person or persons---being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid."

A later decision, *Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh*[10] considered these aspects and held that:

> *"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."*

[10] (2006) 11 SCC 444

17. The question in cases, like the present one is, therefore, whether the injury caused due to the attack is one which falls within the description of Section 300 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 if it falls within the mischief of Section 300 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").*

18. The requirement of Section 300 thirdly is fulfilled if the prosecution proves that the accused inflicted an injury which would been sufficient to have resulted in death of the victim. The determinative fact would be the intention to cause such injury and what was the degree of probability (gravest, medium, or the lowest degree) of death which determines whether the crime is culpable homicide or murder.

19. The case law on the issue of the nature of injury being so dangerous as to result in death (Section 300 fourthly), have emphasised on the accused's disregard to the consequences of the injury, and an element of callousness to the result, which denotes or signifies the intention. In *State of Madhya Pradesh v. Ram Prasad*,[11] this court held that:

[11] 1968 (2) SCR 522

> *"Although Clause fourthly is usually invoked in those cases where there is no intention to cause the death of any particular person (as the illustration shows) the Clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death. In the present case, Ram Prasad poured kerosene upon the clothes of Mst. Rajji and set fire to those clothes. It is obvious that such fire spreads rapidly and burns extensively. No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore, it is obvious that Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must be taken to fall within 4thly of Section 300, Indian Penal Code. In other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death of Mst. Rajji. He committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death. We are accordingly of the opinion that the High Court and the Sessions Judge were both wrong in holding that the offence did not fall within murder."*

Similarly, three Judges of this Court, in *Santosh S/o. Shankar Pawar v. State of Maharashtra*[12] observed,

> *"13. Even assuming that the Accused had no intention to cause the death of the deceased, the act of the Accused falls under Clause Fourthly of Section 300 Indian Penal Code that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death."*

20. Turning back to the facts of this case, the concurrent findings which this court sees no difficulty in accepting are that *firstly*, the appellants were aggressors; *secondly*, they attacked the deceased, with axes; *thirdly*, the deceased was unarmed; *fourthly*, during the attack, the victim's daughter, PW1 reached the spot, and tried to dissuade the appellants; *fifthly*, the appellants continued their

[12] (2015) 7 SCC 641

assault on the victim and also attacked the witness with an axe; *sixthly*, since three injuries sustained by the appellant, were on the head, he fell down; *seventhly*, the victim was rushed to the hospital, and had to be shifted to another speciality hospital, for surgery. *Eighthly*, the deceased was not able to record his statement; he was never discharged and died in the hospital, after 20 days. *Lastly*, the doctor who conducted the post-mortem (PW-14), stated that the injuries were caused by a hard and blunt object, and death of the deceased was due to cardio respiratory failure *"as a result of multiple injuries on his body and their complications"*. Apart from the head, there were several other injuries, in the form of abrasions, contusions on the elbow, the lower back, fracture of rib cage, etc. At the time of death, Vrindawan was aged 55 years.

21. There is evidence in the form of statements of both PW1 (Vrindawan's daughter) and PW2 (Vrindawan's brother, Narottam) that the deceased and the appellants had pre-existing disputes. However, both these witnesses corroborated each other and stated that the quarrel or dispute pertained to land had existed for a long time. PW2, in fact, stated that partition of properties had taken place amongst the brothers, despite which these quarrels had persisted.

22. The question then is - was there a "sudden quarrel" between the deceased and the appellants so that the case would not be murder, but culpable homicide, in terms of Exception 4 (*"if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having*

taken undue advantage or acted in a cruel or unusual manner"). In the opinion of this court, there was no "sudden quarrel". The testimonies of the two important eyewitnesses, PW1 and PW2, establish that when the deceased was levelling the septic tank on his property, the accused/appellants started abusing him; he asked them not to. The appellants, who were in the adjacent property, climbed the wall, entered the deceased's house, and attacked him with axes. These facts do not constitute a "sudden quarrel", given that the appellants abused the deceased, in an unprovoked manner, and then they went to where he was, armed with axes, and assaulted him. *Arguendo*, even if the facts are assumed to disclose that there was a sudden fight, it cannot be said that the accused failed to act in a cruel manner, or did not take undue advantage. This is because they were armed: a fact which shows pre-meditation on their part. Moreover, they both attacked Vrindawan on the head, which is a vital part of the body, thus taking undue advantage of their situation.

23. Again, on the question of whether the facts of this case are covered by the first exception to Section 300, i.e., that the accused/appellants did what they were accused of (which is to attack and inflict grave injuries that led to the death of Vrindawan), because of their loss of self-control, on account of a grave and sudden provocation – the answer must be the same, which is that the provision (Exception 1 to Section 300) cannot be attracted. Apart from a long-standing pre-existing dispute, what caused "sudden" provocation to the appellants, has not

been shown by them. Neither did they lead any evidence, to fall within Exception 1, nor did the evidence on record substantiate such a contention. Speaking of what is grave and sudden provocation, this court in *K.M. Nanavati v. State of Maharashtra*[13] explained the standard of reasonableness for applying the "grave and sudden" provocation, in the following manner:

> *"84. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an Accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision: it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the Accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the Accused regained his self-control and killed Ahuja deliberately.*

> *85. The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the Accused, placed in the situation in which the Accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an Accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation"*

[13] 1962 SCR Supl. (1) 567

24. If one were to apply the above tests to the present case, what is evident is that while there were pre-existing disputes of some vintage, between the appellants and the deceased, there is nothing to show that they had been aggravated. It is also, likewise, not clear whether the deceased said anything to the appellants which triggered their ire, leading to loss of self-control as to result in "grave and sudden provocation". In any case, if there were something, the appellants ought to have brought the relevant material or evidence on record, as what facts did exist, was within their peculiar knowledge.

25. During the hearing, the appellants counsel had urged that Vrindawan died 20 days after the attack, and the lapse of such a time shows that the injuries were not sufficient to cause death in the ordinary course of nature. On this aspect, there are several judgments, which emphasize that such a lapse of time, would not *per se* constitute a determinative factor as to diminish the offender's liability from the offence of murder to that of culpable homicide, not amounting to murder. In *Om Parkash v. State of Punjab*,[14] the death occurred 13 days after the attack; the accused was convicted of murder. Similarly, in *Patel Hiralal Joitaram v. State of Gujarat*,[15] the death occurred a fortnight after the attack, and in *Sudershan Kumar* (supra), the death occurred 12 days after the attack.

26. There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the

[14] 1992 (3) SCR 921
[15] 2002 (1) SCC 22

death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is important is *the nature of injury, and whether it is sufficient in the ordinary course to lead to death.* The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the post-mortem clearly deposed that death was caused due to cardio respiratory failures, *as a result of the injuries* inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked.

27. In view of the above discussion, this court is of the opinion that there is no infirmity in the impugned judgment. The conviction and sentence imposed on the appellants do not therefore, call for interference. The appeal is consequently dismissed, without order on costs.

.....J.
[KRISHNA MURARI]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI,
JANUARY 24, 2023.