

A

GUDAR DUSADH

v.

STATE OF BIHAR

February 15, 1972

B

[J. M. SHELAT, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

Indian Penal Code (Act 45 of 1860), s. 300, cl. thirdly—Single blow with lathi on head of deceased given deliberately—Nature of Offence.

C

Section 300, clause thirdly, of the Indian Penal Code, 1860, consists of two parts. Under the first part it has to be shown that there was an intention on the part of the accused to inflict the particular injury which was found on the body of the deceased. The second part requires that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. So far as the first part is concerned, the court has to see whether the injury which was found on the deceased was the one intended by the accused or whether it was accidental without his having intended to cause that bodily injury. Once it is found that the injury was not accidental and that the accused intended to cause the injury which was actually inflicted and found on the body of the deceased, the first part is satisfied. The court should then go into the second part and find, in the light of the medical evidence, whether the bodily injury inflicted was sufficient in the ordinary course of nature to cause death. If the court finds that the requirements of both the parts have been satisfied, the case is covered by the clause unless it falls within one of the exceptions. [508 C-F]

D

E

In the present case, the circumstances of the case showed that the assault by the accused on the deceased was premeditated and that the blow given by the accused to the deceased was not accidental. The fact that the accused aimed the blow on the head of the deceased with a lathi showed that it was his intention to cause the precise injury which was found on the head of the deceased. As the injury was deliberate and not accidental, and as according to the medical evidence the injury was sufficient in the ordinary course of nature to cause death, and as it actually resulted in the death of the deceased, the case would fall squarely within the ambit of clause 'thirdly' of s. 300, I.P.C., and the appellant would be guilty of the offence of murder. The fact that the accused gave only one blow would not mitigate the offence and make him guilty of culpable homicide not amounting to murder [508. F-H; 509 D-E]

F

G

Observations in *Chamru Budhwa v. State of M.P.*, A.I.R. 1954 S.C. 652, explained and distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 94 of 1969.

H

Appeal by special leave from the judgment and order dated January 30, 1968 of the Patna High Court in Criminal Appeal No. 539 of 1966.

Nur-ud-din Ahmed and *U. P. Singh*, for the appellant.

R. C. Prasad, for the respondent.

The Judgment of the Court was delivered by

Khanna, J. Gudar Dusadh appellant was tried along with 23 others in the court of Additional Sessions Judge Saran. Eighteen of the accused were acquitted by the trial court. The appellant was convicted under sections 302 and 147 Indian Penal Code and was sentenced to undergo imprisonment for life on the former count. No separate sentence was awarded to the appellant for the offence under section 147 Indian Penal Code. The remaining five accused were convicted under section 323 read with section 149 Indian Penal Code as well as for other minor offences with which we are not concerned. On appeal the Patna High Court maintained the conviction and sentence of the appellant, while some modification was made as regards the sentence awarded to the other five convicted accused. The appellant thereupon came up in appeal to this Court by special leave. The leave was, however, confined only to the question whether the offence committed by the appellant was murder or culpable homicide not amounting to murder.

The case relates to an occurrence which took place in village Khahla in district Saran at about 11 a.m. on August 14, 1965. Ramlal Bhagat, who was aged about 65 years, died as a result of the assault during the course of the occurrence while his son Ramashish Prasad (PW 10) received injuries. The case of the prosecution is that a day before the occurrence Prasadi Dusadh and Ganesh Dusadh killed a goat belonging to Baharan Bhagat (PW 8). On the advice of Ramlal Bhagat deceased, Baharan Bhagat lodged a report with the police at 3 p.m. on that day. On the morning of August 14, 1965 Ramlal and his son Ramashish went to their paddy field. While they were returning from the field at about 11 a.m. they were assaulted by the six convicted persons who had been hiding on the route. The appellant gave a lathi blow on the head of Ramlal as a result of which the latter fell down and died at the spot. One of the companions of the appellant then shouted that the assault was made because of Ramlal being responsible for the commencement of criminal proceedings by Baharan. Some injuries were also caused to Ramashish. The accused then set fire to one of their huts with a view to prepare some kind of defence. After that the accused fled away.

SHO Sarju Prasad Singh of police station Barauli on receipt of information that a large number of persons belonging to the party of the accused had collected to attack the other party in spite of the promulgation of an order under section 144 of the Code of Criminal Procedure, came to the place of occurrence but before that Ramlal had already been killed. Sarju Prasad Singh recorded the statement of Ramashish and on the basis of that

A statement, a formal information report was prepared at the police station. Post mortem examination on the body of Ramlal deceased was performed by Dr. R. S. Singh on August 15, 1965.

At the trial the plea of the appellant was that he had been falsely involved in the case at the instance of the Mukhia of the village who was inimical to the appellant.

The two courts below accepted the prosecution case that it was the appellant who had given a lathi blow on the head of Ramlal deceased as a result of which the latter died. It was held that the case against the appellant fell under clause "3rdly" of section 300 of Indian Penal Code. As such, the appellant was convicted under section 302 Indian Penal Code.

The only question with which we were concerned in appeal is whether the offence committed by the appellant is murder or whether it is culpable homicide not amounting to murder. In this respect we find that according to Dr. R. S. Singh who performed the post mortem examination on the dead body of the deceased, the doctor found a lacerated wound 2" \times $\frac{1}{2}$ " bone deep on the left side of the head of the deceased. The injury was ante-mortem and had been caused by a weapon like lathi. On dissection the doctor found 3" long fracture of the left parietal bone about 2 $\frac{1}{2}$ " from the middle line of the top of the head. On removing the skull the doctor noticed large amount of blood and blood clots on the left side of the brain. Death, in the opinion of the doctor, was due to compression on the left side of the brain. The doctor further stated that the above injury was sufficient in the ordinary course of nature to cause death.

The appellant who caused the above injury to Ramlal deceased, in our opinion, was guilty of the offence of murder and he has been rightly convicted under section 302 Indian Penal Code. The appellant along with his companions was lying in wait to attack Ramlal and, according to the evidence on record which has been accepted by the High Court, he gave a blow on the head of Ramlal as a result of which Ramlal fell down and died instantaneously. It has also been found by the High Court that there was no altercation or exchange of abuses between Ramlal and the accused party. The circumstances of the case thus show that the assault was premeditated and the blow on the head of Ramlal was not accidental. The fact that the appellant gave only one blow on the head would not mitigate the offence of the appellant and make him guilty of the offence of culpable homicide not amounting to murder. The blow on the head of Ramlal with lathi was plainly given with some force and resulted in a 3" long fracture of the left parietal bone. Ramlal deceased died instantaneously and as such, there arose no occasion for

giving a second blow to him. As the injury on the head was deliberate and not accidental and as the injury was sufficient in the ordinary course of nature to cause death, the case against the appellant would fall squarely within the ambit of clause "3rdly" of section 300 Indian Penal Code. According to that clause, culpable homicide is murder 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. Section 300 also provides for some exceptions but we are not concerned with them in this case.

Clause "3rdly" consists of two parts. Under the first part, it has to be shown that there was an intention on the part of the accused to inflict the particular injury which was found on the body of the deceased. The second part requires that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. So far as the first part is concerned, the court has to see whether the injury which was found on the deceased was the one intended by the accused or whether it was accidental without his having intended to cause that bodily injury. Once it is found that the injury was not accidental and that the accused intended to cause the injury which was actually inflicted and found on the body of the deceased, the first part shall be satisfied. The court would then go into the second part of the clause and find in the light of medical evidence as to whether the bodily injury inflicted was sufficient in the ordinary course of nature to cause death. If the court finds that the requirements of both the parts have been satisfied, the case shall be held to be covered by clause "3rdly" unless it falls within one of the exceptions.

In the present case, both parts of the clause "3rdly" have been satisfied. As observed earlier, the injury which was inflicted by the accused on the head of Ramlal was not accidental. It is not the case of any one that the appellant aimed a blow on some other part of the body and because of some supervening cause like sudden intervention or movement of the deceased the lathi struck the head of the deceased. The fact that the appellant aimed a blow on the head of Ramlal with the lathi would go to show that it was the intention of the appellant to cause the precise injury which was found on the head of the deceased. The evidence of Dr. R. S. Singh who performed post mortem examination shows that the above injury was sufficient in the ordinary course of nature to cause death and actually resulted in the death of the deceased. The case of the appellant would thus be covered by clause "3rdly" of section 300 and he would be guilty of the offence of murder.

A Reference on behalf of the appellant has been made to the case of *Chamru Budhwa v. State of Madhya Pradesh*⁽¹⁾. There was in that case a severe exchange of abuses between the parties preceding the incident. While the abuses were being exchanged, the tempers rose high and both the parties came out of their respective houses in anger. In the course of the quarrel the appellant dealt a fatal blow on the head of the deceased with his lathi. It was held that the crime was committed by the appellant without premeditation in a sudden fight in the heat of passion and without the appellant having taken undue advantage or acted in a cruel or unusual manner. The case of the appellant was thus held to be covered by exception 4 to section 300 of Indian Penal Code and he was found guilty of the offence of culpable homicide not amounting to murder. It was also observed that the fatal injury inflicted by the appellant on the head of the deceased by one blow was not caused with the intention of causing death or such bodily injury as was likely to cause death. The last observation upon which reliance has been placed by Mr. Nuruddin on behalf of the appellant should be taken to have been made in the context of the facts of that case. The above case does not warrant the proposition that if the accused gives a deliberate blow on the head of the deceased with a lathi and thereby causes an injury as is sufficient in the ordinary course of nature to cause death and actually results in death, the case against him would not fall under clause "3rdly" of section 300 of Indian Penal Code.

E We are, therefore, of the view that the appellant was guilty of the offence of murder and not culpable homicide not amounting to murder and that he has been rightly convicted under section 302 Indian Penal Code. The appeal consequently fails and is dismissed.

V.P.S.

Appeal dismissed.

(1) A.I.R. 1954 S.C. 652.