

BALA BAINÉ LINGA RAJU

V.

STATE OF A.P.

Criminal Appeal No. 911 of 2009

MAY 05, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Probation of Offenders Act, 1958 – ss. 4 and 5 – Applicability of the Act – Appellant stabbed husband of PW2 with a scissor causing injuries to his lung and heart which proved fatal – Trial court convicted appellant u/s.304 Part I IPC and sentenced him to undergo seven years' imprisonment – High Court upheld conviction but directed release of appellant under the Act by purporting to grant appropriate amount of compensation to PW2 – Held: S.4 of the Act empowers the court to release a person on probation of good conduct, if the offence is not punishable with death or imprisonment for life – Appellant was found guilty under s.304 Part I IPC which provides for imprisonment for life or imprisonment of either description for a term which may extend to imprisonment for life – Thus, provisions of the said Act were not applicable in case of appellant – High Court erred in invoking the provisions of the Act – Judgment of conviction and sentence passed by trial court accordingly restored – Penal Code, 1860 – ss. 300 and 304 Part I.

According to the prosecution, in course of a verbal quarrel, appellant came out of his house with a scissor and stabbed the husband of PW2 causing injuries to his lung and heart which proved fatal. Appellant was charged for alleged commission of offence under s.302 IPC. The trial court, however, convicted the appellant u/s.304 part I IPC and sentenced him to undergo seven years' imprisonment. On appeal, the High Court upheld the conviction but directed release of the appellant under the

A Probation of Offenders Act, 1958 by purporting to grant appropriate amount of compensation to PW2 .

The question which arose for consideration in the present appeal was whether invocation of the Probation of Offenders Act, 1958 by the High Court was justified.

B Disposing of the appeal, the Court

C HELD:1. Appellant was inside the house. He admittedly was not a party to the quarrel. So far as he was concerned, neither PW-2 nor the deceased caused any provocation to him. The manner in which the assault had taken place must also be noticed inasmuch as he had injured the lung and heart of the deceased. [Para 9] [600-B-C]

D 2.1. S.300 IPC provides that culpable homicide would be murder if the act by which the death is caused is done with the intention of causing death or if it is done inter alia 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. Once it is held that injury was caused on a vital part of the body with knowledge that it may cause death or such injury which is likely to cause death, the ingredients of provisions of s.300 must be held to have been proved in view of the decision of this Court in *Virsa Singh*. This case, thus, although attracts the principles of *Virsa Singh* in terms whereof it was possible to arrive at a conclusion that the appellant in fact is guilty of commission of an offence under s.302 IPC, in absence of any appeal having been preferred by the State from the judgment of conviction and sentence passed by the Trial Judge, this Court is not in a position to arrive at the said conclusion. [Paras 10, 13, 14] [600-C-D; 603-A-D]

H *Virsa Singh v. State of Punjab* AIR (1958) SC 465; *Kesar Singh & Anr. v. State of Haryana* (2008) 6 SCALE 433; *State of Andhra Pradesh v. Rayavarapu Punnayya and Anr* (1976)

4 SCC 382; *Mohd. Asif v. State of Uttaranchal* (2009) 3 SCALE 695 and *Mavila Thamban Nambiar v. State of Kerala* AIR 1997 SC 687 – referred to. A

3.1. The Probation of Offenders Act, 1958 was enacted to provide for the release of offenders on probation or after due admonition and for matters connected therewith. S.4 of the said Act empowers the court to release a person on probation of good conduct, subject to the conditions that the offence is not punishable with death or imprisonment for life. Only in the event, the provisions of the said Act are applicable, s.6 of the Act can be taken recourse to. [Paras 15, 16] [603-D-F] B C

3.2. Appellant was charged with commission of an offence under s.302 IPC. He has been found guilty under s.304 Part I thereof which provides for imprisonment for life or imprisonment of either description for a term which may extend to imprisonment for life. In this view of the matter, the provisions of the Probation of Offenders Act, 1958 are not applicable. [Para 17] [603-F-G] D

3.3. The High Court was not correct in invoking the provisions of the Probation of Offenders Act, 1958. While setting aside that part of the judgment of the High Court, the judgment of conviction and sentence passed by the Trial Judge is restored. [Para 19] [604-B-C] E

Case Law Reference F

AIR (1958) SC 465	referred to	Para 11
(2008) 6 SCALE 433	referred to	Para 12
(1976) 4 SCC 382	referred to	Para 12
(2009) 3 SCALE 695	referred to	Para 12
AIR 1997 SC 687	referred to	Para 13

A From the Judgement and Order dated 23.04.2007 of the Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 1159 of 2002

Anand, D. Bharat Kuma, Abhijit Sengupta, for the Appellant.

B D. Bharathi Reddy, for the Respondent.

The Judgement of the Court was delivered by

S.B. SINHA, J.

1. Leave granted.

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D
E 2. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 23.04.2007 passed by a learned Single Judge of the High Court of Judicature at Andhra Pradesh in Criminal Appeal No. 1159 of 2002 whereby and whereunder it, while upholding the judgment and conviction of sentence passed by the learned Additional Sessions Judge under Section 304 Part I of the Indian Penal Code and setting aside the order of sentence of imprisonment of seven years, released the appellant under the Probation of Offenders Act, 1958 (for short "the Act") by purporting to grant appropriate amount of compensation to PW-2, directing:

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H "...Thus, it is ordered that the appellant shall be released under Section 4 of Probation of Offenders Act, 1958 on his executing a personal bond for Rs. 10,000/- to keep peace for a period of two years and on his further payment of compensation of Rs. 1,00,000/- (Rupees one lakh only) to P.W.2, wife of the deceased, under Section 5 of the Probation of Offenders Act, 1958. As the provisions of the Probation of Offenders Act, 1958 do not provide for default sentence in case of failure to pay compensation and provide only for recovery of the same as fine, it is specifically ordered that the compensation awarded shall be treated as the one under Section 357 Cr.P.C. as well and in case of failure on the part of the appellant to pay compensation, he shall undergo imprisonment for three

years. Time for payment of compensation is three months from the date of receipt of a copy of this order.” A

3. This Court while issuing notice directed the appellant also to show cause as to why the sentence shall not be enhanced.

4. Before, however, we consider the merit of the matter, we may notice the factual matrix involved herein. B

The parties are neighbours. The incident took place on 24.08.1999 at village Chilkur. Allegedly, PW-2, wife of the deceased while feeding her child scolded him describing him as mischievous. Accused No. 2 thought that the said remarks of PW-2 were directed against her. She and her husband picked up a quarrel with PW-2. The deceased, the husband of PW-2, came there and got himself involved in the quarrel. Appellant who was inside the house came out with a scissor and stabbed the deceased. C D

5. The learned Trial Judge keeping in view the facts and circumstances of this case, opined:

“Hence, it won't attract the ingredients of the alleged offence under Section 302 I.P.C. and it attracts the offence under Section 304 Part I of I.P.C.” E

6. Appellant was sentenced to undergo seven years' imprisonment. He preferred an appeal thereagainst. By reason of the impugned judgment, as noticed hereinbefore, while maintaining the judgment of conviction and sentence passed by the learned Trial Judge under Section 304, Part I of the Indian Penal Code, the impugned direction was issued. F

7. Mr. Anand, learned counsel appearing on behalf of the appellant would contend that keeping in view the age of the appellant on the date of commission of the offence, the High Court should have invoked Section 6 of the Act and in that view of the matter, the impugned judgment cannot be sustained. G

8. Mrs. D. Bharathi Reddy, learned counsel appearing on H

A behalf of the respondent, on the other hand, supported the
impugned judgment.

9. Before adverting to the contentions raised by the parties,
we may notice that the lung and heart injuries were caused to
the deceased. He died "due to lot of bleeding".

B Appellant was inside the house. He admittedly was not a
party to the quarrel. So far as he was concerned, neither PW-2
nor the deceased caused any provocation to him. The manner
in which the assault had taken place must also be noticed
C inasmuch as he had injured the lung and heart of the deceased.
It is also not a case where the lives of the parents were in danger.

10. Section 300 of the Indian Penal Code provides that
culpabale homicide would be murder if the act by which the death
is caused is done with the intention of causing death or if it is
D done inter alia 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. Exception I appended thereto,
however, provides that culpabale homicide would not be murder
if the offender is deprived of the power of self-control by grave
and sudden provocation and causes the death of the person
E who gives provocation. The said 'Exception' is, however, subject
to the following provisos:

F "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."

G The Explanation appended thereto states that whether the
provocation was grave and sudden enough to prevent the
offence from amounting to murder would be a question of fact.

11. Applicability of the aforementioned provisions came
up for consideration in *Virsa Singh v. State of Punjab* [AIR 1958
H SC 465] wherein the following standard was laid down:

"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 and true' could readily appreciate and understand."

12. This Court in *Kesar Singh & Anr. v. State of Haryana* [2008 (6) SCALE 433], wherein a Kassi (Spade) was used from the reverse side on the deceased, noticed the deviation from *Virsa Singh* tests beginning from *State of Andhra Pradesh v. Rayavarapu Punnayya and Anr*, [(1976) 4 SCC 382], to hold:

"Unfortunately, the propositions in *Virsa Singh* have not been rigidly followed subsequently. For example, in *State of Andhra Pradesh v. Rayavarapu Punnayya and Anr*, [(1976) 4 SCC 382], the enquiry became one of whether the accused intended to cause the ultimate internal injury that led to death i.e. the Court inferred, from the surrounding facts and circumstances in that case that the accused had intended to cause the hemorrhage etc that ultimately led to death."

This Court furthermore noticed the importance of the term "fight" used in Section 299 of the Indian Penal Code to opine:

"The word "fight" is used to convey something more than a verbal quarrel. It postulates a bilateral transaction in

A which blows are exchanged. In order to constitute a fight, it is necessary that blows should be exchanged even if they all do not find their target. [Ratanlal and Dhirajlal, Vol 2, page 1364, Footnote 4] No material in this regard has been brought on record.”

B Like the present case, therein also the court noted that only because a single knife blow had been given, the same, by itself, would not bring the case within the purview of ‘Thirdly’ of Section 300 of the Indian Penal Code wherefor the court is required to take into consideration the surrounding
C circumstances. It was held that *Virsa Singh* principle should be applied in the aforementioned fact situation.

The legal principle enunciated therein has recently been followed by this Court in *Mohd. Asif v. State of Uttaranchal* [2009
D (3) SCALE 695]

13. Mr. Anand, however, strongly relied upon a decision of this Court in *Mavila Thamban Nambiar v. State of Kerala* [AIR 1997 SC 687] to contend that almost in a similar situation this Court opined that only an offence under Section 304 Part II of the Indian Penal Code has been made out.
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We may notice the relevant part of the judgment, which reads as under:

F “...After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall under Section 304
G part II of the Indian Penal Code. The appellant had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with the pair of scissors on the vital part of would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from 302 IPC to one under Section 304 part II of the IPC.”

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In that case also, *Virsa Singh* (supra) has been deviated from. A

No reason has been assigned therein. Why conviction was altered from Section 302 to 304 Part II of the Indian Penal Code has not been disclosed. Once it is held that injury was caused on a vital part of the body with knowledge that it may cause death or such injury which is likely to cause death, the ingredients of provisions of Section 300 must be held to have been proved in view of the decision of this Court in *Virsa Singh* (supra). B

14. This case, thus, although attracts the principles of *Virsa Singh* (supra) in terms whereof it was possible to arrive at a conclusion that the appellant in fact is guilty of commission of an offence under Section 302 of the Indian Penal Code, we, in absence of any appeal having been preferred by the State from the judgment of conviction and sentence passed by the learned Trial Judge, are not in a position to arrive at the said conclusion. C D

15. It is on the aforementioned finding the applicability of the provisions of the Act may be noticed. It was enacted to provide for the release of offenders on probation or after due admonition and for matters connected therewith. E

16. Section 4 of the Act empowers the court to release a person on probation of good conduct, subject to the conditions that the offence is not punishable with death or imprisonment for life. Only in the event, the provisions of the said Act are applicable, Section 6 of the Act can be taken recourse to. F

17. Appellant was charged with commission of an offence under Section 302 of the Indian Penal Code. He has been found guilty under Section 304 Part I thereof which provides for imprisonment for life or imprisonment of either description of a term which may extend to imprisonment for life. In this view of the matter, the provisions of the Act are not applicable. G

18. Mr. Anand submits that the learned Trial Judge has not heard the appellant on the question of sentence as is provided for under Sub-section (2) of Section 235 of the Code of Criminal H

- A Procedure. Although the learned counsel is correct, but keeping in view the fact that the conviction of the appellant was under Section 304 Part I of the Indian Penal Code, we are of the opinion that even otherwise the sentence imposed on him is just and proper.
- B 19. We, therefore, have no hesitation in holding that the High Court was not correct in invoking the provisions of the Act. While setting aside that part of the judgment of the High Court, we restore the judgment of conviction and sentence passed by the learned Trial Judge. The appeal is disposed of with the
- C aforementioned directions.

B.B.B.

Appeal disposed of.