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VEERAN & ORS.

v.

STATE OF M.P.

(Criminal Appeal No. 923 of 2011)

APRIL 13, 2011

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[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

Penal Code, 1860 – s. 300 exceptions 1, 4; s.304 Part I /149, s. 323/149, s. 147 and 148 – Altercation between the parties, resulted in fatal blow to victim and injuries to prosecution witnesses – Conviction u/s. 302/149, 147 and 148 by courts below – On appeal held: Appellant No.1 inflicted fatal blow to victim – No specific overt acts attributed to the remaining three accused except omnibus statement – Death caused by the accused was not pre-meditated as the incident took place as a result of sudden and grave provocation – Accused had no common intention to cause death of the victim as only appellant No. 1 had hit the victim with Gandasa on head, without there being any pre-meditation amongst themselves – Injuries were not sufficient in the ordinary course of nature to have caused death – Some of the accused also sustained injuries on their persons, which were caused by complainant party – Thus, the instant case falls under the Exceptions 1 and 4 to s. 300 – Appellant No.1 held guilty for commission of offences u/ss. 304 Part I /149, 147, 148 and awarded sentence already undergone that is around 15 years – Other accused held guilty for commission of offences u/ss. 323/149, 147 and 148 and awarded sentences already undergone which is more than 2 ½ years.

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The parties were in inimical terms. On the fateful day, altercation between the parties, resulted in fatal blow to 'D' and injuries to prosecution witnesses who tried to intervene when the accused were inflicting the injuries to

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the complainant party. After altercation between the parties, appellant No. 1, accused-O, R, L, A and G went back to their house and came out armed with Gandasa, Farsa and Lathis. Eight accused were charged and prosecuted for commission of offences under Sections 147, 148, 302 or 302/149 and 325 IPC. Accused nos.6 and 7 were acquitted. The remaining six accused were convicted for the said offences. They filed appeal before the High Court. 'R' and 'L' expired during the pendency of the appeal. As regards the remaining four accused, the High Court convicted them under Sections 302/149, 147 and 148 IPC and awarded life imprisonment and one year each respectively for the commission of the said offences. Therefore, the appellants filed the instant appeal.

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Partly allowing the appeal, the Court

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HELD: 1.1 Appellant No. 1 had caused a fatal injury to 'D' and other injuries were not grievous. It has neither been disputed nor challenged that deceased 'D' had met with homicidal death. [Para 10] [307-C-D]

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1.2 Perusal of the record shows that in the same incident some of the accused had also sustained injuries on their persons, which were caused by the complainant party. These injuries were proved by DW 4 and DW 5-doctors by their injury reports. [Para 11] [307-E-F]

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1.3 Evidence of all the three main eye witnesses, PW-6, PW-7 and PW-12 is consistent that appellant No. 1 had hit the deceased with Gandasa and the blow inflicted by him had proved to be fatal. As regards other accused, there appears to be omnibus statement that they all had hit the deceased but details of the same have not been given specifically. No specific overt acts have been attributed to the other remaining three accused except

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A omnibus statement. Thus, from the analysis of the said evidence, it is clear that it was appellant No. 1 who had caused the fatal blow on the person of deceased. [Paras 12 and 13] [307-H; 308-A-E-F]

B 1.4 A close look at the evidence of the main witness-
PW 12 makes it clear that the accused were not already
armed with lethal weapons to cause the death of 'D'. As
per his own admission, when they reached in front of the
house of 'R', wives of accused started abusing them,
C meaning thereby, at that time none of the accused were
there. [Para 14] [308-G]

D 1.6 Under the scheme of IPC, "culpable homicide" is
the genus and "murder" its species wherein all "murder"
is "culpable homicide" but all "culpable homicide" is not
"murder". [Para 16] [309-E]

E 1.7 In the instant case, it can be inferred that the fight
between both the parties was not pre-meditated as the
incident took place due to heated arguments and
altercations between them and could be termed as a
result of sudden and grave provocation; that there was
no intention to cause death of the deceased; that they
had no common intention to cause death of the deceased
as only appellant No. 1 had hit 'D' deceased with
F Gandasa on head, without there being any pre-meditation
amongst themselves; and that they were not aware that
the injuries caused by them were sufficient in ordinary
course of nature to cause death. [Para 17] [310-C-F]

G *Thangaiya vs. State of T.N.* (2005) 9 SCC 650 – referred
to.

H 1.8 From the evidence of doctors examined by
prosecution, it is clear that PW-6, PW-7 and PW-12 had

also sustained injuries, which were caused by other accused. It appears that the death caused by the accused was not pre-meditated, accused had no common intention to cause death of deceased, the injuries were not sufficient in the ordinary course of nature to have caused his death, thus, the instant case falls under the Exceptions 1 and 4 to Section 300 IPC. Thus, appellant No. 1 is held guilty for commission of offences under Section 304 Part I /149 and under Section 147, 148 IPC and awarded the sentence already undergone that is around 15 years whereas others are held guilty for commission of offences under Section 323/149, 147 and 148 I.P.C. and awarded the sentences already undergone which is more than 2 ½ years. [Paras 19, 20 and 21] [312-C-G]

Case Law Reference:

(2005) 9 SCC 650 Referred to Para 18

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 923 of 2011.

From the Judgment & Order dated 16.7.2009 of the High Court of Madhya Pradesh at Jabalpur in CrI. Appeal No. 472 of 1994.

R.P. Gupta, Parmanand Gaur for the Appellants.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

DEEPAK VERMA, J. 1. Leave granted.

2. The perennial question whether accused deserve to be convicted under Section 302 of the Indian Penal Code, (hereinafter shall be referred as 'I.P.C.') as held by the trial court and upheld by the High Court or whether the conviction should

A be converted under Section 304 of the I.P.C, has once again
cropped up for consideration before us, in this Appeal.

B 3. In the instant case, eight accused were charged and
prosecuted for commission of offences under Section 147, 148,
302 or 302/149 and 325 of the IPC. After trial, giving benefit
of doubt, Suresh and Badelal – accused nos.6 & 7 respectively,
were acquitted by Additional Sessions Judge, Gadarwara,
Narsingpur in Sessions Case No. 21/93 vide its Judgment and
Order dated 21.4.1994. Six convicted accused preferred
C Criminal Appeal No. 472 of 1994 in the High Court of Madhya
Pradesh at Jabalpur. During the pendency of the appeal,
Accused No. 3 - Rewaram and Accused No. 4 - Lakhan Lal
died. Thus, appeal in respect of these two accused stood
abated. However, as regards the remaining four accused, the
D High Court upheld the conviction and sentence awarded by the
Trial Court. Now, in this appeal, it is prayed before us to
consider, in the peculiar facts and circumstances of this case,
whether, the four surviving convicted Appellants Veeran, Onkar,
Ganesh and Ashok deserve to be convicted under Section 302/
149, 147 and 148 of the IPC, who have been awarded life
E imprisonment and one year each respectively for the
commission of the aforesaid offences or it deserves to be
converted under Section 304 of the IPC.

4. Prosecution story in nutshell is as under :

F It is said, PW-6 Mayabai, real sister of deceased Daddu
had become pregnant on account of accused Onkar and
Ganesh. Panchayat was called to resolve the dispute.
Panchayat passed a resolution to outcaste deceased Daddu,
PW-6 Mayabai and their family members. On account of this,
G they were in inimical terms. On 4.11.1992, Radhelal, uncle of
deceased Daddu, was not in his house. Deceased Daddu, and
Narmada @ Narbadi were required to sleep at Radhelal's
house and hence were proceeding towards his house at about
8:00 p.m for this purpose. Narmada @ Narbadi was brother-
H in-law of deceased Daddu. When they reached the house of

Radhelal, wives of accused Veeran, Onkar and Rewaram started abusing them saying that these persons had lost their reputation because of the misconduct committed by PW-6 - Mayabai, sister of deceased Daddu, after which Daddu (deceased) asked the ladies not to abuse them. At that time accused Veeran, Onkar and Rewaram came out from their house but went back to their respective houses. However, before leaving they challenged deceased Daddu, to come out of the house. Daddu came out of his house and at that point of time, accused Lakhan, Ashok and Ganesh also came to the spot armed with Gandasa, Farsa and Lathis. etc. All of them told Daddu that he was crossing all limits and he should behave in proper and orderly manner. After some altercation, they started beating Daddu (deceased) with the weapons they were carrying.

5. It is said that Veeran caused injuries on the head of Daddu. On account of injuries sustained by Daddu, he fell down. Even though, Narmada @ Narbadi raised protest but they did not stop. Mayabai - PW6, Rambai and Trivenibai – PW7 (sisters of deceased Daddu), Shiv Prasad and Kailash – PW9, (cousin of deceased) of the same village came to intervene but the accused persons did not stop. After inflicting injuries on Daddu, thinking him to be dead, accused left the spot. Narmada @ Narbadi and Mayabai also sustained injuries as they were trying to intervene. Daddu was then taken in a bullock cart to Police Station, Gotetoriya, Narsinghpur by Mayabai and others. FIR was lodged by Mayabai on 4.11.92 at 23.30 Hrs. naming all the eight accused in the same and giving details of the injuries caused by each one of them, with the weapons they were carrying. Thereafter, Daddu was taken to Civil Hospital, Gadarwara but before any medical help could be provided to him, he was declared 'brought dead' by the Doctors attending on him.

6. After completion of investigation, the accused were prosecuted for commission of the aforesaid offences by the Trial Court. As mentioned hereinabove, accused Suresh and

A Badelal were acquitted, whereas Rewaram and Lakhan expired during the pendency of the appeal before the High Court. Thus, now only four accused are before us. In Criminal Appeal, High Court confirmed the judgment and order of conviction against all the four Appellants and found them guilty
 B for commission of offences under Section 302/149, 147 and 148 of the IPC. Hence, this appeal.

C 7. We have, accordingly, heard Shri R.P.Gupta, learned Senior Counsel assisted by Shri Parmanand Gaur, for the Appellants, Smt. Vibha Datta Makhija for Respondent-state and perused the record.

D 8. At the outset, learned counsel for the Appellants contended that looking to the nature of the injuries sustained by deceased, both the courts below, committed grave error in
 E finding the Appellants guilty for commission of offences under Section 302/149, 147 and 148 of the IPC. It was further submitted that Appellant No. 1 - Veeran, the so called main accused has already undergone a sentence of more than 15 years, whereas others are in jail for over 2 ½ years. It has also
 F been submitted that some of the accused had also sustained injuries, which have not been explained properly by the prosecution. The incident had occurred at the spur of the moment and there was neither common object nor common intention in the mind of accused to commit murder of deceased Daddu. According to them, thus, the offence deserves to be converted under Section 304 of the IPC as far as Veeran is concerned, more so when he has already undergone more than 15 years in Jail and others deserve to be convicted for lesser offences as no specific overt act could be attributed to them.

G 9. On the other hand, Smt. Vibha Datta Makhija, learned Counsel for Respondent State, vehemently opposed and contended that looking to the nature of injuries inflicted on vital parts of the body of the deceased, with deadly weapons, no scope of doubt remains that they had common intention to kill
 H the deceased. In any event, the accused were aware of the fact

that the nature of injuries caused by them would be sufficient in ordinary course of nature to cause death. It was, therefore, contended that no case for showing any leniency was made out and the concurrent findings of the two courts below need not be disturbed. Consequently, this Appeal deserves to be dismissed.

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10. Post Mortem Report shows that deceased Daddu had sustained in all, eight injuries, out of the which four were incised wounds and others were either contusion or abrasion. As per this report, deceased had died of shock and Haemorrhage. Injury No. 8 was sufficient to cause death. This Post Mortem Report has been duly proved by autopsy surgeon. It has neither been disputed nor challenged before us that deceased Daddu had met with homicidal death. Now, the question that arises for consideration in this Appeal is whether, in the facts and circumstances of the case, conviction of the Appellants under Section 302/149 of the IPC can still be upheld or it deserves to be converted under Section 304 of the IPC.

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11. Perusal of the record shows that in the same incident some of the accused i.e. Suresh, Badelal, Rewaram and Ganesh had also sustained injuries on their persons, which were caused by the complainant party. These injuries have been proved by D.W.4 - Dr. O.P. Nayak & D.W. 5 - Dr. Patel, vide their injury reports. It is also clear from the record that accused did not try to cause any pre-determined injuries on the person of deceased, which could have proved fatal. There does not appear to be any premeditation on the part of accused to commit the crime. It occurred all of a sudden and at the spur of the moment. There is nothing to suggest that the accused were already aware that the deceased and his brother-in-law were to come at the spot where the crime was committed.

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12. Evidence of all the three main eye witnesses, PW-6 Mayabai, PW-7 Trivenibai and PW-12 Narmada @ Narbadi is consistent that Veeran had hit the deceased with *Gandasa* and the blow inflicted by him had proved to be fatal. As regards

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A other accused, there appears to be omnibus statement that they all had hit the deceased but details of the same have not been given specifically. No specific overt acts have been attributed to the other remaining 3 accused except omnibus statement as mentioned hereinabove.

B 13. P'W-6 Mayabai, has deposed that on reaching the spot, she had seen eight persons, namely, Veeran, Rewaram, Ganesh, Lakhan, Onkar, Ashok, Badelal, Suresh, beating her brother Daddu. Veeran was having Gandasa, Rewaram, Onkar and Ashok were armed with Farsas, while Ganesh and Lakhan had Lathis. Similar is the statement of PW-7 Trivenibai, who has deposed that Mayabai, Rambai, Kailash had reached the spot where Veeran, Ganesh, Rewaram, Lakhan, Ashok, Suresh and Badelal were beating her brother Daddu. Veeran was having Gandasa, Ashok - Farsa, Onkar - Rewaram - Farsa, Badelal - Ganesh and Suresh had Lathis. PW-12 Narmada @ C D Narbadi was in fact with Daddu, when they were going to the house of Radhelal to sleep at night. According to him, Veeran was having Gandasa and he had hit with it on the head of Daddu. His evidence appears to be convincing and natural as E he was accompanying the deceased Daddu, when the incident had taken place. Recovery of Gandasa was made from the possession of Veeran. Thus, from the analysis of the aforesaid evidence, it is clear that it was Veeran, who had caused the fatal blow on the person of deceased.

F 14. A close look at the evidence of the said main witness makes it clear that the accused were not already armed with lethal weapons to cause the death of Daddu. As per his own admission, when they reached in front of the house of Radhelal, wives of accused started abusing them, meaning thereby, at G that time none of the accused were there. The contention of the learned counsel for the State that the accused had common intention to cause death of Daddu thus stands repelled.

H 15. Looking to the facts and feature of the case and also keeping in mind that it was Accused No. 1 - Veeran who had

caused a fatal injury to deceased Daddu and other injuries were not grievous, it would be in the fitness of things to convert the conviction of the Appellant No. 1 under Section 304 Part I of IPC and to award him sentence already undergone, which is about 15 years.

16. To understand the legal complexities of the matter, we would consider the import of Sec 299 and 300 of IPC, reproduced hereinbelow:

Section 299 of IPC reads as follows:-

"299. Culpable homicide.- 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."

In the instant case, there has been death of Daddu caused on account of injuries by aforementioned accused. The two courts below have convicted accused for the offence of murder under Section 302 of IPC. In plethora of cases, this Court has held that under the scheme of IPC, "culpable homicide" is the genus and "murder" its species wherein all "murder" is "culpable homicide" but all "culpable homicide" is not "murder".

Exception 1 to 5 to Section 300 of IPC indicate the circumstances where "culpable homicide" is not "murder". Exception 1 and 4 which are relevant for the present appeal read as follows :

"Section 300. Murder :

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

A mistake or accident.
Exception 2. -
Exception 3. -

B 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.

C Exception 5. -”

17. In the instant case, it can be inferred that :

- D (i) The fight between both the parties was not premeditated as the incident took place due to heated arguments and altercations between them and could be termed as a result of sudden and grave provocation.
- E (ii) There was no intention to cause death of the deceased.
- F (iii) They had no common intention to cause death of the deceased as only Veeran had hit Daddu (Deceased) with Gandasa on head, without there being any premeditation amongst themselves.
- (iv) They were not aware that the injuries caused by them were sufficient in ordinary course of nature to cause death.

G 18. Also, fine distinction between Section 299 and Section 300 of IPC has been eloquently and beautifully carved out by Hon'ble Dr. Justice Arijit Pasayat in a recent judgment, after considering all the previous judgments of this Court. We may quote profitably the following paras of the judgment reported
H in (2005) 9 SCC 650 titled *Thangaiya Vs. State of T.N.* :

"17. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh v. State of Punjab AIR 1959 SC 465:1958 SCR 1495 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 Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or 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.

18. Thus, according to the rule laid down in *Virsa Singh* case even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

19. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act 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 clause (4) of Section 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

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A the risk of causing death or such injury as aforesaid.

B 20. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages”.

C 19. From the evidence of doctors examined by prosecution, it is clear that PW-6 Mayabai, PW-7 Trivenibai, and PW-12 Narmada @ Narbadi had also sustained injuries, which were caused by other accused. Thus, Appellant No. 1 Veeran is held guilty for commission of offences under Section 304 Part I/149 of the IPC and others are held guilty under Section 323/149 of the IPC together with Section 147, 148 of the IPC. All of them are awarded the sentences already undergone by them i.e. Veeran about 15 years and others more than 2 ½ years.

E 20. From the upshot of the aforesaid discussions, it appears that the death caused by the accused was not premeditated, accused had no common intention to cause death of deceased, the injuries were not sufficient in the ordinary course of nature to have caused his death, hence the instant case falls under the Exceptions 1 and 4 to Section 300 of IPC.

F 21. In the light of the foregoing discussion, appeal is allowed in part. Appellant No. 1, Veeran is held guilty for commission of offences under Section 304 Part I /149 and under Section 147, 148 of the IPC and awarded the sentence already undergone whereas others are held guilty for commission of offences under Section 323/149, 147 & 148 of the I.P.C. and awarded the sentences already undergone. The Appellants be thus, released forthwith, if not required in any other case.

H N.J.

Appeal partly allowed.