



2026:AHC:146369-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2262 of 1989

Jai Narain

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Apul Misra, Y.K.Shukla
Counsel for Respondent(s)	:	

Court No. - 45

HON'BLE SALIL KUMAR RAI, J.

HON'BLE PADAM NARAIN MISHRA, J.

Heard Shri Apul Mishra, Senior Advocate assisted by Shri Devrat Mishra, counsel for the appellants and Ms. Archana Singh, A.G.A.-I for the State.

This appeal is directed against the judgment and order dated 25.11.1989 passed by the Additional Sessions Judge, Pilibhit in Sessions Trial No. 194 of 1984, whereby appellant No. 2, Kanauji Lal, along with appellant No. 1, Jai Narain, was convicted under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life. The other accused, Rajendra, was acquitted of the charge under Section 302/34 IPC but was convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 500/-. During the pendency of the appeal, appellant No. 1, Jai Narain, died and the appeal has been declared as abated so far as he was concerned. Consequently, the present appeal survives only at the instance of appellant No. 2, Kanauji Lal.

The prosecution case, in brief, is that the deceased, Gaidan Lal, and the appellant, Kanauji Lal, had remained close friends for a considerable period. Both had jointly purchased a tractor by raising a loan after mortgaging their respective agricultural holdings. Their relationship was further strengthened

from the deceased. On the morning of 15.05.1984, the deceased demanded that Jai Narain return the wheat or render an account thereof. Jai Narain declined to do so and asserted that he would settle the matter only after the deceased accounted for the financial liabilities arising out of the jointly purchased tractor. Kanauji Lal, who was present there, supported Jai Narain and insisted that the tractor accounts should be settled first. The deceased, however, persisted in demanding the return of the wheat. A heated exchange followed between the parties, which was eventually pacified by the intervention of the villagers. The parties thereafter dispersed.

The prosecution further alleges that at about 8.00 a.m., when the deceased was going to his agricultural field accompanied by his son, Shanti Swaroop (PW-1), Rajendra called him near the flour mill with the assurance that the dispute could be amicably settled. The deceased accordingly sat on a *takhat* placed outside the premises. Shortly thereafter, Kanauji Lal and Jai Narain also reached the spot. Kanauji Lal was carrying his licensed SBBL gun. The discussion soon degenerated into another quarrel regarding the same dispute. According to the prosecution, Jai Narain exhorted Kanauji Lal to kill the deceased, whereupon Kanauji Lal fired a single shot which hit the chest of the deceased. The deceased collapsed on the spot and succumbed to the injury almost instantaneously. The prosecution further alleges that after the deceased fell down, Kanauji Lal attempted to drag the body towards his cattle shed. Anarkali, the widow of the deceased, rushed to the spot and threw herself over the body, thereby preventing its removal. It is also alleged that Rajendra washed the blood stains from the *takhat* on which the deceased had been seated.

On the written report submitted by Shanti Swaroop at Police Station Barkhera at about 10.30 a.m. on the same day, a case was registered under Sections 302 and 201 IPC against Kanauji Lal, Jai Narain and Rajendra. The distance between the place of occurrence and the police station was about six miles. The prompt lodging of the First Information Report has not been questioned before us and lends assurance to the prosecution version regarding the genesis and time of the occurrence.

The investigation commenced immediately. The Investigating Officer

major blood vessels were found extensively lacerated. One *tikli* was recovered from the body. Four corresponding exit wounds were present on the lower left side of the chest. The doctor opined that death had occurred due to haemorrhage and shock resulting from the ante-mortem firearm injury.

During the course of investigation, blood-stained earth and plain earth were collected from the place of occurrence. Subsequently, the SBBL gun allegedly used in the commission of the offence, along with cartridges and the blood-stained clothes of the deceased, were recovered. The serological examination confirmed the presence of human blood on the articles sent for forensic examination. On completion of the investigation, a charge-sheet was submitted against all the accused under Sections 302 and 201 IPC, whereupon the case was committed to the Court of Session.

To prove its case, the prosecution examined Shanti Swaroop (PW-1), the son of the deceased and the informant, and Gokaran Prasad (PW-2) as eyewitnesses to the occurrence. The doctor who conducted the post-mortem examination was examined as PW-4 and proved the post-mortem report. The Investigating Officer entered the witness box as PW-5, while PW-3 was examined as a formal witness. The accused denied the prosecution allegations in their statements recorded under Section 313 Cr.P.C. and pleaded false implication on account of previous enmity. Rajendra specifically asserted that he had been implicated merely because he happened to be the nephew of Kanauji Lal.

The trial court, upon appreciation of the evidence on record, accepted the testimony of PW-1 and PW-2 insofar as Kanauji Lal and Jai Narain were concerned and held that the prosecution had proved beyond reasonable doubt that Kanauji Lal fired the fatal shot at the exhortation of Jai Narain. However, the trial court found no material to conclude that Rajendra had shared the common intention to commit the murder and, accordingly, acquitted him of the charge under Section 302/34 IPC while convicting him under Section 201 IPC. Kanauji Lal and Jai Narain were consequently convicted under Section 302 read with Section 34 IPC and sentenced to imprisonment for life.

prosecution case is accepted in its entirety, the facts proved on record do not attract the offence of murder punishable under Section 302 IPC. It is urged that the occurrence was the outcome of a sudden quarrel arising out of an existing dispute between the parties and that the surrounding circumstances unmistakably indicate that the appellant possessed only the knowledge that his act was likely to cause death, but lacked the intention necessary to constitute murder under Section 300 IPC. It is, therefore, submitted that the conviction deserves to be altered to one under Section 304 Part II IPC.

Per contra, learned Additional Government Advocate has supported the judgment of the trial court. It is submitted that the appellant had reached the place of occurrence armed with an SBBL gun and deliberately fired at the chest of the deceased, a vital part of the body. According to the learned A.G.A., the use of a deadly weapon coupled with the situs of the injury clearly establishes the intention to cause death or, at any rate, the intention to inflict such bodily injury as was sufficient in the ordinary course of nature to cause death. It is, therefore, contended that the conviction recorded under Section 302 IPC warrants no interference.

Having bestowed our anxious consideration to the rival submissions and having carefully examined the entire evidence on record, we find that the principal controversy before us is not whether the appellant caused the death of the deceased. That fact stands established beyond reasonable doubt by the consistent testimony of the eyewitnesses, which receives complete corroboration from the medical evidence. The real question is whether, on the facts proved by the prosecution, the mental element accompanying the act of the appellant answers the description of intention contemplated under Section 300 IPC or whether the case discloses only the knowledge envisaged under Section 299 IPC.

Sections 299, 300 and 304 of the Indian Penal Code embody the legislative distinction between culpable homicide and murder. Section 299 defines culpable homicide, while Section 300 specifies the circumstances in which culpable homicide amounts to murder. Section 304 prescribes the punishment where the act does not amount to murder, either because it does not satisfy any of the clauses of Section 300 or because it falls within one of

The Supreme Court, in **Anbazhagan v. State**, (2024) 20 SCC 500, after referring to the earlier decision in **Jawahar Lal v. State of Punjab**, (1983) 4 SCC 159, reiterated that the determination of the accused's mental element cannot rest upon any isolated circumstance, such as the fact that only one injury was inflicted or that the injury proved fatal. The Court emphasised that the enquiry has to be directed towards the entire factual matrix. The nature of the weapon used, the part of the body targeted, the force employed, the extent of the injury and the manner of assault are undoubtedly relevant considerations. Equally relevant, however, are the circumstances preceding the occurrence, the events immediately attendant upon the assault, the relationship between the parties, the genesis of the dispute and the conduct of the accused before and after the occurrence. These surrounding circumstances frequently provide the clearest indication of the accused's state of mind.

The Supreme Court further observed that intention, being a state of mind, is seldom capable of direct proof and has necessarily to be inferred from the proved facts. There is no inflexible rule that the infliction of a single injury necessarily negatives the intention required under Section 300 IPC, nor can the use of a deadly weapon or the fatal nature of the injury, by themselves, be regarded as conclusive of the existence of such intention. Whether the accused acted with guilty intention or merely with guilty knowledge is essentially a question of fact to be determined upon a cumulative assessment of all the surrounding circumstances. Where the evidence establishes an intention to inflict the particular bodily injury which is sufficient in the ordinary course of nature to cause death, the case would ordinarily fall within Clause Thirdly of Section 300 IPC. Conversely, where the surrounding circumstances disclose absence of premeditation, a sudden quarrel, a sudden fight, an accidental or unintended injury, or an intention merely to cause a simple injury coupled only with the knowledge that death was a likely consequence, the offence would appropriately fall within Section 304 Part II IPC.

It is in the light of these settled principles that the evidence in the present case is required to be examined. The determination cannot rest solely on the circumstance that the appellant used an SBBL gun or that the firearm injury

The evidence on record unmistakably establishes that the appellant and the deceased had enjoyed cordial relations for several years preceding the occurrence. They had jointly purchased a tractor by raising a loan after mortgaging their respective agricultural lands, thereby entering into a financial arrangement founded on mutual confidence. Their relationship was further reinforced by close matrimonial ties between the two families. The prosecution has not brought on record any evidence to indicate that the appellant bore any longstanding grudge or hostility against the deceased. On the contrary, the evidence suggests that their relationship had remained cordial and that no dispute had arisen between them until the events immediately preceding the occurrence.

The genesis of the occurrence also assumes considerable significance. The prosecution itself attributes the immediate cause of the dispute not to any disagreement between the appellant and the deceased but to Jai Narain's refusal to return or account for the four sacks of wheat borrowed from the deceased. It was only when the deceased insisted upon repayment that Jai Narain sought to link the issue with the unsettled accounts relating to the jointly purchased tractor. The appellant appears to have intervened in support of Jai Narain, who had become closely related to him by reason of the marriage performed scarcely a week earlier. Significantly, there is no evidence to suggest that, at any point of time prior to the occurrence, the appellant himself had demanded settlement of the tractor accounts or had raised any grievance against the deceased on that score. Had there existed any deep-seated animosity arising out of the tractor transaction, one would reasonably expect some evidence of previous discord between them. The prosecution has led none.

The sequence of events preceding the occurrence also does not disclose any pre-conceived plan to eliminate the deceased. The first altercation ended with the intervention of the villagers, whereafter the parties dispersed. It is the prosecution case itself that the deceased was thereafter called by Rajendra on the pretext that the dispute could be amicably resolved. The deceased, believing that an effort was being made to bring about a settlement, voluntarily went to the place where the parties again assembled. These circumstances are inconsistent with a carefully designed plan to

prosecution does not allege that immediately upon reaching the spot the appellant opened fire. On the contrary, another exchange of words took place regarding the same dispute. It was during the course of this altercation that Jai Narain is stated to have exhorted the appellant to kill the deceased. According to the eyewitnesses themselves, the firearm was discharged immediately thereafter. This sequence of events indicates that the fatal act was committed during the heat of the altercation and not pursuant to any prior determination to cause death. The exhortation attributed to Jai Narain, whether accepted in its entirety or not, is itself indicative of the fact that the decision to use the firearm was taken in the course of the quarrel and not before it.

Much emphasis has been laid by the learned A.G.A. on the circumstance that the appellant had come to the place of occurrence carrying an SBBL gun. It is undoubtedly true that the appellant was armed with a firearm and that the shot struck the chest of the deceased. These are relevant circumstances and cannot be ignored. At the same time, they do not conclude the enquiry. As noticed earlier, the Supreme Court has repeatedly held that neither the nature of the weapon nor the situs of the injury is by itself decisive of the question whether the accused acted with the intention required under Section 300 IPC. The Court must evaluate these circumstances in conjunction with the entire factual background. In the present case, the long-standing cordial relationship between the parties, the absence of previous hostility, the sudden revival of the quarrel regarding the wheat transaction, the intervention of the appellant on behalf of his *samdhi*, and the firing of a single shot in the midst of the altercation are all circumstances which cannot be ignored while assessing the appellant's state of mind.

The trial court appears to have proceeded substantially on the premise that since the appellant had fired at the chest of the deceased with a firearm, the offence must necessarily amount to murder. Such an approach overlooks the distinction which the law has consistently maintained between the act and the mental element accompanying the act. The physical act of causing death may remain the same; what determines the nature of the offence is the state of mind with which that act is committed. It is for this reason that the Supreme Court in *Anbazhagan* cautioned that the enquiry cannot be confined

which he knew to be sufficient in the ordinary course of nature to cause death. At the same time, it would be wholly unrealistic to suggest that the appellant was unaware of the likely consequences of his act. A person who discharges a firearm at another, even in the course of a sudden quarrel, must ordinarily be attributed with the knowledge that such an act is likely to cause death. The knowledge contemplated by Part III of Section 299 IPC is, therefore, clearly established. What is not established beyond reasonable doubt is the higher degree of *mens rea* necessary to attract Clause Thirdly of Section 300 IPC.

The cumulative effect of the circumstances, therefore, persuades us to hold that the present case falls outside the ambit of Section 300 IPC and is more appropriately covered by Section 304 Part II IPC. The conviction of the appellant under Section 302 IPC recorded by the trial court cannot, therefore, be sustained and deserves to be altered accordingly.

The conviction of the appellant is accordingly altered from Section 302 read with Section 34 IPC to Section 304 Part II IPC.

The only question that now survives for consideration is the appropriate sentence to be imposed upon the appellant.

Ordinarily, an offence punishable under Section 304 Part II IPC would merit a substantial term of imprisonment, having regard to the gravity of the consequence resulting from the act. At the same time, sentencing is not an inflexible exercise. It must be informed not merely by the nature of the offence but also by the circumstances attending its commission, the passage of time since the occurrence, the conduct of the accused and other mitigating circumstances which have emerged on the record.

The occurrence in the present case took place on 15.05.1984, more than four decades ago. During this prolonged period, the appellant has remained under the shadow of criminal proceedings. It has been brought to our notice that he is now about ninety years of age. There is nothing on record to indicate that after the present occurrence he was involved in any other criminal activity. The incident itself arose out of a sudden quarrel relating to a dispute with Jai Narain, the deceased appellant and a co-accused, and was not the result of

ensure that the punishment is proportionate to the degree of criminality established by the evidence. Once it is held that the prosecution has failed to prove the intention necessary to constitute murder and that the case falls under Section 304 Part II IPC, the sentence must reflect that altered degree of culpability. In the peculiar facts of the present case, particularly the advanced age of the appellant, the extraordinary lapse of time since the occurrence and the circumstances in which the offence was committed, we are of the considered opinion that the ends of justice would be adequately served by sentencing the appellant to the period already undergone coupled with payment of heavy fine.

Accordingly, while altering the conviction of the appellant from Section 302 read with Section 34 IPC to Section 304 Part II IPC, we sentence him to the period of imprisonment already undergone and a fine of Rs. 1,00,000/- (Rupees One Lakh) which shall be deposited by the appellant before the trial court within a period of three months from today. In the event of failure to deposit the aforesaid amount within the stipulated period, the appellant shall undergo rigorous imprisonment for one year.

The conviction of Rajendra under Section 201 IPC is not the subject matter of the present appeal. No further orders are, therefore, required in that regard.

The appeal is, accordingly, ***partly allowed***. The conviction and sentence of the appellant under Section 302 read with Section 34 IPC are set aside. Instead, the appellant is convicted under Section 304 Part II IPC and sentenced in the manner indicated above.

Since the appellant is on bail, he shall not be required to surrender, subject to his depositing the amount of fine within the period stipulated herein. His bail bonds and sureties shall stand discharged upon such deposit. In case of default, the trial court shall take appropriate steps in accordance with law to enforce the sentence and recover the fine as directed above.

Let the trial court record be transmitted forthwith to the trial court and the judgement be also certified to the trial court for information and compliance.