

“REPORTABLE”

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2454 OF 2009

State of RajasthanAppellant(s)

versus

Ram Kailash alias Ram VilasRespondent(s)

J U D G M E N T

M.Y. EQBAL, J.

This appeal by the appellant State is directed against the judgment and order dated 15.09.2008 passed by the High Court of Rajasthan at Jodhpur in D.B. Criminal Appeal No. 630 of 2004, whereby Division Bench of the High Court partly allowed the appeal of the accused-respondent and altered his conviction from Section 302 of the Indian Penal Code (IPC) to Section 304 Part-I, IPC and sentenced him to a period of eight years rigorous imprisonment and fine of Rs.50,000/-.

2. Facts in brief of the present case are that one Ram Chandra filed a report Ex.P-13 before the Superintendent of Police, Nagaur on 16.6.2001 stating *inter alia* that on the same day, when he and Mangla Ram were going from Bodwa to Dadariya Khurd for attending 'maira', one suzuki motorcycle came from the back side at a distance of ten kilometers away from Kuchera. Mangla Ram, who was sitting on the back side of the motorcycle, cried that someone from the suzuki motorcycle has fired upon him. Thereupon, he saw that accused Ram Kailash and driver Mangi Lal were on the suzuki motorcycle. Accused-respondent Ram Kailash fired with pistol, to whom, he and Mangla Ram Sarpanch identified. Sarpach Mangla Ram was taken to Kuchera hospital, and thereafter, to Nagaur and from there, he was referred to Jodhpur hospital. Upon this report, In-charge of Police Station Kuchera registered a case under Section 307/34 IPC and Section 3/25 of the Arms Act and commenced investigation. Injured Mangla Ram was operated at Jodhpur Hospital, where he died on 22.6.2001. Thereafter, police filed charge-sheet against

accused-respondent under Sections 302, 120-B IPC and 3/25 of the Arms Act. Accused Ghewar Ram was challaned under Section 302/34 and 120-B IPC and third person namely Durga Ram was declared as absconding. Later on Durga Ram was arrested and he was charged under Sections 302/34 and 120-B, IPC. Respondent was charged under Sections 302, 120-B, IPC and Sections 3/25 and 3/27 of the Arms Act. Accused Durga Ram was charged under Sections 120-B and 302 in alternative 302/34 IPC and accused Ghewar Ram was charged under Section 120-B IPC, to which they pleaded not guilty. Prosecution examined 33 witnesses. Statements of the accused were recorded under Section 313 Cr.P.C. Three witnesses were examined in defence.

JUDGMENT

3. From the documents on record and the impugned order, it is clear that the main injury on the person of deceased Mangla Ram as per the Medical Jurist M.S. Kothari was Kothari a cut wound of 5.5 cm x 5 cm x plural cavity deep on the lower part of the right chest and on the upper part of the

leg and in consequence of this, there were multiple wounds on account of abrasions and bruises on the right arm. According to him, these injuries were caused by fire arm. He advised X-ray of both these injuries. On the multiple wounds on the arm, there was no bone injury as per the Radiological Report, and fracture of 10th rib was found on the right side of the chest vide Radiological Report. As a result of these injuries caused on 16.6.2001, deceased Mangla Ram died on 22.6.2001. The main eye witness according to the FIR is Ram Chandra, who has been examined as PW-10. He has stated in his examination in chief that when he was going with Mangla Ram Sarpanch on the motorcycle, then, he saw Ghewar Ram, accused-respondent Ram Kailash, Durga Ram and Mangi Lal two kilometers before Kuchera near Suzuki motorcycle and another Rajdoot motorcycle, and on seeing them on motorcycle, they all four entered in the dhani of Sangramji. About ten kilometers away from Kuchera, Suzuki motorcycle came. The driver of which was Mangi Lal and the respondent was sitting on the rear side, who fired on them, which collided

with the right thigh of the Sarpanch. Thereafter, he went to the hospital and lodged the report.

4. Furthermore, there is a dying declaration of deceased Mangla Ram recorded on the very day of the incident, in which, he has stated that accused-respondent came on the motorcycle from his back side and fired on him. Someone else was driving the motorcycle. He felt unconscious till he reached Kuchera. This evidence clearly indicates that gunshot injury was inflicted by accused-respondent. Further upon the information of accused-respondent furnished under Section 27 of the Evidence Act and in pursuance to this, desi pistol and empty bag of 12 bore kartoos were recovered, which has been proved by Budha Ram PW-29, Ghewar Ram PW-30 and Banwari Lal PW-21. Though these three witnesses of recovery are police constables, but in view of the fact that recovery was made from the forest, it was not possible for the police officer to bring independent witnesses. As per the F.S.L. Report, blood that was found on the pellets was of human origin.

5. On completion of trial, Additional Sessions Judge (Fast Track), Nagaur acquitted accused Durga Ram and Ghewar Ram, whereas he convicted and sentenced accused-respondent as under:

Under Section 302 IPC Imprisonment of life and to pay a fine of Rs.20,000/-, and in default of payment of fine to further undergo one year's simple imprisonment.

Under Section 3/25 Arms Act Three years' R.I. and to pay a fine of Rs.2,000/-, and in default of payment of fine to further undergo one month's S.I.

Under Section 3/27 Arms Act Seven years' R.I. and to pay a fine of Rs.3,000/-, and in default of payment of fine to further undergo two months' S.I.

All the sentences were ordered to run concurrently.

6. Aggrieved by the decision of the trial court, accused-respondent preferred appeal before the High Court, which observed as under:

“9. In the present case, two persons were riding on the motorcycle namely Mangla Ram on the back side and Ram Chandra was driving the motorcycle, and they were followed by two persons on the motorcycle including accused appellant Ram Kailash @ Ram

Vilas, who fired on them, which collided on the lower side of the right chest of Mangla Ram, and after six days of the incident, he died. This gun shot injury was of-course of such a nature as opined by the doctor was likely to cause death and was fired with an intention, but the offender was not knowing that as to whom he is causing harm out of the two on the motorcycle. In the absence of it and also of the fact that there was only one gun shot injury, it is a case of intentional causing bodily injury as is likely to cause death, which covers under clause (b) of Section 299 IPC punishable under Section 304 Part-I IPC. It is not a case of intentional act of causing bodily injury with knowledge of likely death but an intentional act of causing death by inflicting injury with fire arm. Had it been a simple case of knowledge without there being intention, then the case would fall under Section 304 Part-II IPC.

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11.it can safely be said that the present case falls under Section 304 Part-I IPC instead of Section 302 IPC. So far as offences under Sections 3/25 and 3/27 of the Arms Act are concerned, they have rightly been held to be proved on account of the fact that accused has not been able to establish that he was having valid licence of the recovered pistol, which he used in the commission of the crime.”

7. Allowing respondent's appeal in part, the Division Bench of the High Court held thus:

“While altering the conviction and sentence of accused appellant Ram Kailash @ Ram Vilas from offence under Section 302 IPC to Section 304 Part-I IPC, he is sentenced for a period of eight years' rigorous imprisonment and to pay a fine of Rs.50,000/-, and in default of payment of fine to further undergo one year's rigorous imprisonment. However, the conviction and sentences under Sections 3/25 and 3/27 of the Arms Act are maintained. The fine of Rs.50,000/-

imposed under Section 304 Part-I IPC shall be paid to the legal heirs of deceased Mangla Ram. However, the fine imposed under Sections 3/25 and 3/27 of the Arms Act for a sum of Rs.2,000/- and Rs.3,000/- respectively shall be deposited in the State fund.”

8. Hence, State of Rajasthan has preferred present appeal by special leave being aggrieved by the judgment of the High Court.

9. We have heard the learned Additional Advocate General for the State of Rajasthan and the learned counsel appearing for the respondent-accused. We have also examined the facts of the case and evidence both oral and documentary adduced on behalf of the prosecution. In our considered opinion the Trial Court rightly convicted the respondent accused under Section 302, IPC whereas, the High Court grossly erred in holding that it is a case of Section 299 Clause (b) read with Section 304 Part-I, IPC only. The reason given by the High Court that, the respondent did not know as to whom he was causing harm out of the two on the motorcycle and it was only one gunshot injury which resulted in death is not tenable in

law. The High Court has failed to take into consideration the doctrine of transfer of malice as provided in Section 301 of the Court. The facts and the law applicable thereto in such a case has been discussed by this Court in the case of **State of Andhra Pradesh vs. Rayavarapu Punnayya and another**, AIR 1977 SCC 45:-

“21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is ‘murder’ or ‘culpable homicide not amounting to murder’ on the facts of a case, it will be convenient for it to, approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of ‘murder’ contained in Section 300. If the answer to this question is in the negative the offence would be ‘culpable homicide not amounting to murder’, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be ‘culpable homicide not amounting to murder’, punishable under the First Part of Section 304, Penal Code.”

10. Keeping in view the above test and on the perusal of the Trial Court and the High Court judgment and the evidences on record, it is not a disputed fact as to whose fire shot resulted in the death of the deceased. The only question which is to be examined here is whether the offence committed by the respondent is culpable homicide amounting to murder punishable under Section 302 or culpable homicide not amounting to murder punishable under Section 304 Part-I. Here, the intention on the part of the respondent-accused in causing bodily injury as is likely to cause death is also not a disputed fact. The only thing which is to be tested is whether the bodily injury is covered under either of the Clauses of Section 300 of the Indian Penal Code.

11. We are, therefore, of the view that the High Court has further erred in not taking into consideration Section 301, IPC in forming its opinion before converting the sentence from Section 302 to Section 304 Part-I. Moreover, in view of the

fact that respondent-accused knew that his act of shooting the deceased person is likely to cause death of that person to whom harm is caused. It cannot be believed that respondent-accused did not know about the likelihood of causing death, though, he may not know as to whom he is causing bodily harm, but his act in totality and in the light of evidences on record clearly prove the ingredients of Section 300, IPC.

12. For the reason aforesaid, we are of the view that the judgment of the High Court converting the sentence from Section 302 to Section 304 Part-I, IPC cannot be sustained. In the light of the above, this appeal is allowed and the judgment of the High court is set aside and restore the conviction and sentence passed by the Trial Court under Section 302, IPC read with other sections of the Arms Act.

.....**J.**
(M.Y. Eqbal)

.....**J.**
(Arun Mishra)

New Delhi
January 28, 2016