



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1266 OF 2014

**NANDKUMAR @ NANDU MANILAL MUDALIAR
...Appellant(s)**

VERSUS

**STATE OF GUJARAT
...Respondent(s)**

J U D G M E N T

N.V. ANJARIA, J.

The appellant herein has challenged the judgment and order dated 04.12.2009 passed by the Division Bench of the High Court of Gujarat in Criminal Appeal No.137 of 2000. Thereby the High Court confirmed the judgment and order dated 31.01.2000 of

the City Sessions Court, Ahmedabad in Sessions Case No.25 of 1999, convicting the appellant for the offences punishable under Sections 302 and 504, Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'). The appellant-convict came to be sentenced to imprisonment for life with fine of Rs.2000/- and in default to undergo simple imprisonment for one year. In respect of the offence under Section 504, IPC he was sentenced to undergo rigorous imprisonment for one year, to pay fine of Rs.1000/- and to undergo the simple imprisonment in default for three months, both the sentences were to run concurrently.

2. The charge was framed against the appellant under Sections 504, 324, IPC and Section 302, IPC subsequently added at exhibit-1, for committing murder of one Louis Williams in the late night of 13.06.1998 at the residence of said Louis - the complainant.

3. As per the prosecution story, on 12.06.1998 at about 8.00 p.m., the appellant and his brother Tanvel were quarrelling with each other. One Rajesh, who was a nephew of the complainant-deceased, intervened. At that time the accused stated to have inflicted injuries on the thigh to the said Rajesh by using knife. No police complainant was lodged against the accused in that regard as it was an internal

quarrel. Rajesh took treatment in a private hospital, and after taking treatment, had been sleeping in his house. In the intervening night of the same day at about 1.00 p.m. the accused named Nandkumar @ Nandu went to the house of the deceased, and hurled abusive language. The complainant got up to come out of his house. As the appellant was abusive, the deceased interfered. The appellant inflicted stab injury by knife on the deceased on the left side of the back and on the right hand. The appellant thereafter ran away from the place taking the knife.

3.1 It was stated that there was no vehicle available since it was late night to take the victim Louis to the hospital, however a person in the neighbour who had a rickshaw helped to take the injured Louis to the L.G. Hospital, accompanied by his sister Gajraben (PW 2). The police constable on duty of the hospital informed the Kanabha police station telephonically about admission of the said Louis to the hospital, who had been inflicted with stab wound. A Wardhi was sent, which was received by the police officer concerned on the morning of the next day on 13.06.1998. The First Information Report was recorded thereafter, as the competent police officer went to the hospital. At that time, offence under Sections 324 and 504 came to be registered as per C.R. No.I-107/98.

3.2. The injured victim having been treated for the said injuries, came to be discharged from the hospital. An operation was performed by the doctor regarding injuries. It appears that the complainant-victim was again admitted to the hospital and died while receiving the treatment in the afternoon of 26.06.1998. The cause of the death was indicated to be Septicemia. The charge for the offence under Section 302, IPC was added. The post-mortem of the dead body of the deceased was conducted. The appellant voluntarily surrendered at the police station on 29.06.1998 going there with knife and the said weapon was thus recovered.

3.3 The charge against the appellant was framed for the offences under Sections 504, 324 and 302, IPC. The trial was held in which the prosecution examined 14 witnesses. In the statement under Section 313 of the Code of Criminal Procedure, 1973, the appellant pleaded innocence and said that he was falsely implicated. At the end of the trial, as stated above, the appellant was convicted and sentenced in respect of the offences under Sections 302 and 504, IPC, whereas came to be acquitted in respect of the offence under Section 324, IPC.

3.4 While convicting the appellant, the Trial Court, after discussing the evidence, took the view that

the knife injury was caused on the abdomen of the deceased and the said injury was found by the doctor to be sufficient in formal course to cause death. According to the Trial Court, merely because the deceased succumbed to the injuries after 10 days of the incident, it could not be said that the injury was not such which would cause death of a person in the normal course. It was further reasoned that the nature of the main injury, as per the medical evidence, was possible by the sharp knife which was muddamla article No.3 and that the appellant-assailant injured the stomach of the deceased and that the stitches were taken and the spleen was removed. According to the Trial Court, the murder was committed intentionally and knowingly.

3.5 When the Judgment and order of the Trial Court was appealed against before the High Court, the High Court did not find any discrepancy in the testimony of Gajraben (PW 2) who was stated to be eye-witness. By relying on her testimony as well as the testimony of Rajesh (PW4) and further reading together the medical evidence, held that the offence of murder against the appellant was established. The High Court noted that the injuries suffered by the victim subsequently developed into septic condition and the victim died of Septicemia.

4. Heard learned counsel for the respective parties.

5. Looking at the material evidence and relevant aspects of the case, the accused was inflicted with three injuries by the appellant with knife. The evidence of Dr. Dharmila Shah (PW 8) mentioned the injuries sustained by the deceased as available from the medical report. The injuries were (i) speared wound of the size of 5 x 2 cm below the belly and on the left side, (ii) cut wound of 2 x $\frac{1}{2}$ x .25 cm of L shape on the hand, (iii) crushed wound of the size of 3 x 1 x $\frac{1}{2}$ cm on the right hand. It was suggested in the evidence of PW 8 that when the belly was opened and the injuries were examined, further noticed was the cut of 5 cm on the back and that it was bleeding. There was a speared wound of the size of 2 x $\frac{1}{2}$ x 1 cm on the stomach. There was also an injury on the small intestine which was a related wound.

5.1 PW 8 stated that when the deceased was admitted for primary treatment in the hospital, he was admitted by one Dr. Brijesh Patel, as injured patient who had gone to America. It was stated that the patient was in a conscious state when admitted as patient for treatment of the injuries and that Gajraben had given consent for the operation of the deceased. The deceased was admitted on 13.06.1998 and remained as

injured patient till 26.06.1998, who died on 26.06.1998 at around 12.15 p.m. while being treated as he developed septic condition in the wounds.

5.2 While the Trial Court has accepted the evidence of Gajraben (PW 2) and Rajesh (PW 4) and the High Court has proceeded to confirm the reasoning by affirming the conviction and sentence, a factual contention is coming forth that both PWs 2 and 4 were relatives of the deceased therefore, interested witnesses. Gajraben was sister of the deceased who took him to the hospital and also signed the concerned papers for the operation. Rajesh (PW4) was his nephew. It was sought to be highlighted that there was no independent eye-witness other than the said two witnesses. It was emphasised that the death occurred after gap of thirteen days.

5.3 While advocate for the appellant in the first place assailed the very conviction, as alternatively submitted that in any case, the appellant could have been convicted and sentenced for an offence lesser than under Section 302, IPC. It was submitted that even if the act on the part of the appellant leading to the death of the victim was 'culpable homicide', it did not amount to offence of 'murder'.

5.4 In Chapter XVI of the Indian Penal Code, 1860, Section 299 defines 'culpable homicide'.

‘Murder’ is defined under Section 300, IPC. The exceptions are provided in Section 300, IPC as to under which circumstances the ‘culpable homicide’ would not become murder. Section 304, IPC deals with situations, where the ‘culpable homicide’ does not amount to murder. In other words, it would not fall within the definition of ‘murder’. Section 300, IPC, although defines the offence which would become ‘culpable homicide amounting to murder’, it has, as stated above several exceptions.

5.5 Section 304, IPC has two parts namely; Section 304 Part I and Section 304 Part II. The distinction between these two Parts of Section 304, IPC is required to be considered having regard to the provisions of Sections 299 and 300, IPC. Whether the offender had intention to cause death or he had no such intention brings out the vital distinction.

5.6 In ***Kesar Singh & Anr. v. State of Haryana***¹, this Court observed thus,

“The distinguishing feature is the mens rea. What is prerequisite in terms of clause (2) of Section 300 is the knowledge possessed by the offender in regard to the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal. Intention to cause

¹ (2008) 15 SCC 753

death is not an essential ingredient of clause (2). When there is an intention of causing a bodily injury coupled with knowledge of the offender as regards likelihood of such injury being sufficient to cause the death of a particular victim would be sufficient to bring the offence within the ambit of this clause.”

(Para 10)

5.6.1 For the above purpose, the exceptions contained in Section 300, IPC are taken into consideration. In the same judgment, the Court further explained the distinction between ‘culpable homicide amounting to murder’ and ‘not amounting to murder’, stating,

“Culpable homicide is genus, murder is its specie. The culpable homicide, excluding the special characteristics of murder, would amount to culpable homicide not amounting to murder. The Code recognises three degrees of culpable homicide. When a culpable homicide is of the first degree, it comes within the purview of the definition of Section 300 and it will amount to murder. The second degree which becomes punishable in the first part of Section 304 is culpable homicide of the second degree. Then there is culpable homicide of third degree which is the least side of culpable homicide and the punishment provided for is also the lowest among the punishments for the three grades. It is punishable under the second part of Section 304.” (Para 11)

5.7 In other words, where the two ingredients namely that the infliction of bodily injury on deceased was caused intentionally and secondly that it was sufficient to cause death in the ordinary course of nature, are satisfied, the offence would amount to murder. There may be circumstances which may emerge from the facts and evidence of a given case that the offence becomes ‘culpable homicide not amounting to murder’.

5.8 In *Virsa Singh v. State of Punjab*² and further in *Shankar Narayan Bhadolkar v. State of Maharashtra*³, this Court stated that divided into two Parts, Section 304, IPC deals with the situations where ‘culpable homicide’ would not be a murder. The conceptualisation of the ‘culpable homicide not amounting to murder’ were explained in the following way, as quoted in para 4 of the *Kesar Singh*¹,

“If an injury is inflicted with the knowledge and intention that it is likely to cause death, but with no intention to cause death the offence would fall within the definition of Section 304 Part I, however, if there is no intention to cause such an injury, but there is knowledge that such an injury can cause death, the offence would fall within the definition of Section 304 Part II. Thus, is intention. If intention to cause such an

² AIR 1958 SC 465

injury as is likely to cause death, is established, the offence would fall under Part I but where no such intention is established and only knowledge that the injury is likely to cause death, it would fall under Part II.”

6. In the context of the above parameters as to what would constitute murder under Section 302, IPC and under what circumstances the ‘culpable homicide’ would not amount to murder, recollecting the basic facts of the present case, looking to the kind and nature of injuries referred to above which is available from the medical evidence, it could not be said that the injuries were not of the nature which were sufficient to cause death in ordinary course. The assailant used knife and inflicted serious injuries on the body of the deceased, including below the belly. Looking to the act on part of the appellant, it has to be concluded that the accused was liable to be attributed with the knowledge that the injuries which he was to inflict by using the weapon in hand, would be sufficient to result into death in ordinary course.

6.1 At the same time, the sequence of incident highlights that there was an altercation involving the nephew of the appellant and the deceased in the evening time and subsequently in the night at around 10 p.m., the appellant went to the house of the accused

where he started abusing the deceased and ultimately assaulted him to inflict the injuries with knife. There was an element of impulse, anger and self-provocation on part of the appellant.

6.2 Given the above aspects and in the totality of facts and circumstances emerging in the whole incident, it would not be correct to presume or view in respect of the conduct on part of the appellant that the appellant acted with premeditation to kill or that he acted in assailing the deceased with an intention to cause death. The degree of the offence committed could not be said to be partaking the act of murder as defined under Section 300, IPC, since it could be concluded that the intention to cause death was missing. The appellant could not have been convicted and sentenced under Section 302, IPC.

6.3 The other attending aspects which may be relevant in judging the nature of the offence committed by the appellant were that the injuries did not result into instantaneous death of the deceased. Thus, the attack by the appellant remained with the knowledge but without intention to cause death. Admittedly, the death of the deceased was after 13 days. Not only that he died while under treatment in the hospital but he had developed septic conditions in the injuries

suffered by him. The cause of death was medically identified as 'Septicemia'.

7. Taking above factors cumulatively, this Court is of the view that the conviction of the appellant deserves to be converted from under Section 302, IPC to under Section 304 Part I, IPC. The act on part of the appellant has to be treated as 'culpable homicide not amounting to murder' falling under Section 304 Part I, IPC. This Court holds accordingly.

8. This Court in its order dated 13.06.2014 while granting leave noted that the appellant had already served in jail for more than 14 years and came to be enlarged on bail.

9. As a result of the above discussion, the conviction and sentence of the appellant under Section 302, IPC is set aside and the same is converted into one under Section 304 Part I, IPC.

10. The sentence of 14 years already undergone by the appellant shall be treated as sufficient and subserve the interest of justice. The bail bond of the appellant furnished to the Trial Court shall stand discharged.

11. The present appeal is accordingly allowed to the above extent.

In view of disposal of the appeal as above, all pending interlocutory applications would not survive and are accordingly disposed of.

....., J.
[K. VINOD CHANDRAN]

....., J.
[N.V. ANJARIA]

NEW DELHI;
NOVEMBER 10, 2025.
(VK)