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BUNNILAL CHAUDHARY

v.

STATE OF BIHAR

B

JULY 5, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

C *Penal Code, 1860:*

Sections 299 and 300, clause 'thirdly'—Single knife injury caused on left side of chest of victim—Death of victim—Medical report not pointing out that injury was sufficient in ordinary course of nature to cause death—Held, case falls under third part of Section 300 and accused is guilty of offence D *punishable under Section 304 (part II) IPC—Ingredients of Section 300, clause 'thirdly' and Section 299 explained.*

Section 302/149—One out of the ten accused giving a single knife blow on chest of victim resulting in his death—Conviction by trial court of all accused u/s 302/149—High Court convicting the attacking accused u/s 302 E *and seven others u/s 302/149—On appeal conviction u/s 302 altered to one u/s 304 (part II) IPC—As regards the other accused persons—Held, it has not been proved that accused came on the scene of occurrence with an intention to commit murder of victim nor were they stated to have given any blow to him—Their conviction is set aside.*

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Appellants in both these appeals and two others were prosecuted under Sections 302/49, 147 and 148 IPC. The prosecution case was that with regard to balance payment of sale of a she-buffalow there developed an ill-will between the accused and the informant. On the day of the incident, the accused were stated to have surrounded PW 5, the father of G **the informant. Meanwhile informant's younger brother also reached the scene; the accused chased him and A-1 caused a knife injury on the left side of his chest. When his father tried to intervene, A-5 gave a knife blow on his head. On hearing the noise many people reached the scene and the**

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accused fled away. The injured brother of the informant was taken to the Hospital where he was declared dead. A

The trial court convicted all the ten accused, inter alia, u/s 302/49 and sentenced them to imprisonment for life. On appeal, the High Court converted the conviction of A-1 from s.302/149 to s.302 IPC and acquitted two of the accused of the charges. Conviction and sentence of the remaining accused u/s 302/349 IPC was affirmed. Aggrieved, A-1 filed Crl. Appeal No.605/2005 and the others filed Crl. Appeal No.606/2005. B

Allowing Crl. Appeal No.606/2005 and partly allowing Crl. Appeal No.605/2005, the Court C

HELD: 1.1. It is not in dispute that the injury inflicted by A-1 on the left side of the chest of the deceased is single one. On examination, the doctor found the injury situated above nipple on the left side of the chest extending 1"X ½" penetrating wound. The doctor has not opined that the injury was sufficient in the ordinary course of nature to cause death. That was not even stated to be likely to cause death. No attempt was made by A-1 to cause serious injury on any vital part of the body of the deceased. There was no motive or intention of A-1 to have murdered the deceased. [271-B-D] D

1.2. Clause 'thirdly' of Section 300 IPC requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts: the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. The first part is complied with, because the injury which was intended to be caused was the one which was found on the person of the deceased. But the second part, is not fulfilled because but for the fact that the injury caused had penetrated the lung, death might not have ensued. In other words, looking at the matter objectively, the injury which A-1 intended to cause, did not include specifically the cutting of the left lungs but to wound A-1 in the neighbourhood of the nipple on left side of chest. Therefore, Clause 'thirdly' of Section 300 does not cover the case. [271-E-G] E F G

2. Inasmuch as death has been caused, the matter must still come H

A within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. A-1 did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death B and that also was not the intention of A-1. The matter, therefore, comes within the third part. The act which was done was done with the knowledge that A-1 was likely by such act to cause the death of deceased. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 IPC as culpable homicide not amounting to C murder. The conviction of A-1 is accordingly altered from Section 302 to Section 304 (part II) IPC and in lieu of the sentence of imprisonment for life imposed on him, he is sentenced to rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- with default stipulation.

[271-G-H; 272-A-C]

D 3. As far as the conviction of other accused persons is concerned, there is not an iota of evidence led by the prosecution to sustain the charge of Section 302/149 IPC against them and the only evidence, which has come on record, is the testimony of PW 10 - informant who stated that A-3 came and surrounded him on the spot. No witness has proved that the accused E persons had come on the scene of occurrence with an intention to commit the murder of the deceased. None of them had given any blow to the deceased with the weapons they allegedly were carrying with them. On scrutiny of the entire evidence on record, the conviction of the other accused persons is not sustainable. [272-E-F; 273-A]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 605 of 2005.

From the Judgment and Order dated 5.11.2003 of the High Court of Judicature at Patna, in Crl. A (DB) No. 465/99.

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Crl A. No. 606/2005.

S. Chandra Shekhar for the Appellant.

H Rituraj Biswas and Gopal Singh for the Respondent.

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. These two appeals arise out of common judgment and order dated 5th November, 2003 passed by the High Court of Judicature at Patna in Criminal Appeal No. 465/1999 by which the learned Judges have altered the conviction of Bunnilal Chaudhary (A-1) from Section 302/149 of the Indian Penal Code (for short 'I.P.C.') to one under Section 302, I.P.C., whereas the conviction and sentence imposed upon Birendra Chaudhary (A-2), Maniraj Chaudhary (A-3) Dashrath Chaudhary (A-4), Magister Chaudhary (A-5), Amarjit Chaudhary (A-8), Naresh Chaudhary (A-9) and Rajdhari Chaudhary (A-10) by the trial court under Section 302/149, I.P.C., is affirmed. By the impugned judgment, Bali Chaudhary (A-6) and Jagdish Chaudhary (A-7) have been acquitted of the charges. All the accused persons were sentenced to imprisonment for life. Both these appeals are taken up and heard together and shall stand disposed of by this common judgment.

Briefly stated the facts of this case are that on 13.12.94 P.W.-10, Yogendra Raut, at about 9.45 p.m. lodged *Fardbeyan* (Ex. P-5) in Police Station Sidhwalia stating therein that about 17 days from the said date his relative of Paithanpatti, P.S. Majha, had purchased a she-buffalo from one Sattan Choudhary, belonging to his village, for a sum of Rs.6,800/-. His relative had a sum of Rs.700/- short of the full payment of the price of the she-buffalo, but on his request, the balance amount was to be paid later on. His younger brother brought a sum of Rs.400/- from his relative. On the day of occurrence, i.e. 13.12.94, at about 7.45 p.m. Maniraj Choudhary (A-3), son of Sattan Choudhary, called Yogendra Raut at his house when he gave a sum of Rs.400/- to Sattan Choudhary and promised to pay the balance amount of Rs. 300/- on the following day. Maniraj Choudhary (A-3) took out a country-made pistol and pointed towards him. He shouted for help, which attracted his family members at the house of Sattan Choudhary. He came to his house along with his family members and later on took their dinner. His father, Brahmdeo Raut (PW-5), and his brother came out of their house and started going to *Bathan*. As soon as they reached mid-way from *Bathan* suddenly Bunnilal Chaudhary (A-1), Birendra Chaudhary (A-2), Maniraj Chaudhary (A-3), Dashrath Chaudhary (A-4), Magister Chaudhary (A-5), Bali Choudhary (A-6), Jagdish Chaudhary (A-7), Amarjit Chaudhary (A-8), Naresh Choudhary (A-9) and Rajdhari Chaudhary (A-10) holding a revolver and lathis in their hands came at the scene of occurrence and surrounded

A them. His younger brother, Shambhu Raut, reached there and all the accused persons chased him upto some distance when Bunnilal Choudhary (A-1) attacked Shambhu Raut with knife at the door of Ambika Ram. The blow was given on the left side of the chest. On seeing the incident, his father, Brahmdeo Raut (P.W.-5), came running to the house of Ambika Ram. His father was given knife blow on his head by Magister Chaudhary (A-5). On
B hearing their noise, many village people gathered at the scene of occurrence and on seeing them, all the accused persons fled away. His brother, Shambhu Raut, being seriously injured fell down at the door of Ambika Ram and blood was oozing out of the injury sustained by him. Shambhu Raut who was injured was put on a cot and taken to Sidhwalia Hospital for medical treatment
C where the Doctor had declared him dead. He took the dead-body of Shambhu Raut to the Police Station. On these premises, the Police recorded his statement (Ex. P-5).

On the basis of *fardbeyan* (Ex. P-5) P.S. Case No. 302/94 (Ex. P-4) came to be registered against all the ten accused persons under Sections 147,
D 148, 149, 324, 307 and 302 of the IPC. On completion of the investigation, charge-sheet against all the accused persons for the said offences was laid before the learned Chief Judicial Magistrate, Gopalganj, who committed the trial of the case to the Court of Sessions. The Sessions Judge transferred the case record to the Additional District & Sessions Judge, IV, Gopalganj, for
E trial.

In support of its case, the prosecution examined 12 witnesses, namely P.W.-1 Deonath Raut (eye witness), P.W.-2 Sheo Shankar Bind (eye witness), P.W.-3 Bikau Ram (eye witness), P.W.-4 Kanchan Raut (eye witness), P.W. 5 Brahmdeo Raut (eye witness), P.W.-6 Harishankar Bind, P.W. 7 Ram Nath
F Bind (eye witness), P.W.-8 - Gorakh Bind, P.W.-9 Smt. Nirmala Devi, sister of the deceased (eye witness), P.W.-10 Yogendra Raut (informant/eye witness) and P.W. 11 Dr. Vijay Kumar, who conducted autopsy on the body of the deceased Shambhu Raut on 14.12.1994. P.W.-12 Ugendra Kumar Singh was a formal witness who had proved the signature and handwriting of the Investigating Officer, Shah Nawaz Khan, and formal FIR (Ex. P-4), *Fardbeyan*
G as Ex. P-5, Inquest Report (Ex. P-6) and Seizure List (Ex. P-7) respectively. Shah Nawaz Khan, Investigating Officer, was not examined by the prosecution. PWs 1, 2, 3, and 4, the independent eye witnesses, have turned hostile to the prosecution and they were cross-examined at length by the learned Public Prosecutor but nothing substantial favourable to the prosecution could be
H elicited from their cross-examination. P.W. 7 Ram Nath Bind is a neighbour

of the informant. It is his evidence that his statement was not recorded by the Police during investigation of the case. In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused denied having given knife blow to the deceased as well as beatings to P.W. 5- Brahmdeo Raut. Their defence was that they were implicated in a false case by the complainant.

The learned Sessions Judge, after taking into consideration the evidence of P.W. 5, P.W. 9 and P.W. 10., the relative eye witnesses, found the accused persons guilty of committing the murder of Shambhu Raut in furtherance of their common object; convicted and sentenced them under Section 302/149 of the IPC. Maniraj Chaudhary (A-3), Dashrath Chaudhary (A-4), Bali Chaudhary (A-6), Jagdish Chaudhary (A-7), Amarjit Chaudhary (A-8), Rajdhari Chaudhary (A-10) were also found guilty under Section 147 of the IPC, whereas Bunnilal Chaudhary (A-1), (A-5), Birendra Chaudhary (A-2), Magister Chaudhary (A-5) and Naresh Chaudhary (A-9) were also held guilty under Section 148 IPC. Consequently, all the accused persons were sentenced to undergo imprisonment for life under Sections 302/149 of the IPC. Bunnilal Chaudhary (A-1), Birendra Chaudhary (A-2), Magister Chaudhary (A-5) and Naresh Chaudhary (A-9) were sentenced to rigorous imprisonment for three years under Section 148 IPC whereas Maniraj Chaudhary (A-3), Dashrath Chaudhary (A-4), Bali Chaudhary (A-6), Jagdish Chaudhary (A-7) and Amarjit Chaudhary (A-8) were sentenced to rigorous imprisonment for two years under Section 147 of IPC. All the sentences, however, were ordered to run concurrently.

On appeal, the learned Judges of the High Court have discussed the matter both from the point of view of actual evidence led in the case and also probabilities and altered the conviction of Bunnilal Chaudhary (A-1) from Section 302/149 IPC to Section 302 IPC simpliciter and acquitted Bali Chaudhary (A-6) and Jagdish Chaudhary (A-7) of the charges. The conviction and sentence of other accused persons under Section 302/149 IPC recorded by learned trial court has been left unchanged.

Bunnilal Chaudhary (A-1) filed Criminal Appeal No.605/2005 and Criminal Appeal No. 606/2005 has been filed by Magister Chaudhary (A-5), Birendra Chaudhary (A-2), Maniraj Chaudhary (A-3), Dashrath Chaudhary (A-4), Amarjit Chaudhary (A-8), Naresh Chaudhary (A-9) and Rajdhari Chaudhary (A-10) after obtaining leave of this Court.

We have scrutinized the evidence of the injured P.W. 5 - Brahmdeo

A Raut, father, P.W.9 - Smt. Nirmala Devi, sister, and P.W. 10 - Yogendra Raut, informant - brother of the deceased and P.W. 11 - Dr. Vijay Kumar, who conducted the post mortem on the dead body of Shambhu Raut, and also the judgment of the High Court and that of the Additional Sessions Judge. We think that on a proper perusal of all the circumstances of the case, the view expounded by the High Court cannot be preferred in its entirity. P.W.
B 10 reported in FIR (Ex. P4) that on the day of occurrence at about 7.45 p.m. he had gone to the house of his co-villager Sattan to give him Rs. 400/- and promised to pay the balance sum of Rs. 300/- on the next day. Maniraj Chaudhary-A.3, son of Sattan, suddenly took out a pistol and pointed it towards the informant, but in his deposition before the trial court his version
C was that his son Shambhu had gone to Sattan's house to give him Rs.400/- where A.3-Maniraj Chaudhary made a demand of Rs. 300/- more, as a result verbal discussion ensued between them and it was Birendra Chaudhary (A-2) who took out the pistol. P.W. 7-Ram Nath Bind, a neighbour who is alleged to be an eye witness, has stated that on hearing noise from the house of Sattan, he went there and found Maniraj Chaudhary (A-3) and Shambhu
D exchanging heated words with each other. He has not stated that a pistol was took out either by Maniraj-A-3 or Birendra Chaudhary A-2 as stated by P.W. 10 informant in FIR (Exhibit P-4) and in his deposition before the trial court. It is the evidence of P.W. 9 Smt. Nirmala Devi, sister of the deceased, that on hearing noise from the house of Sattan, she went there and saw A-3
E Maniraj and her brother Shambhu Raut quarrelling with each other. She has also not stated that A-2 or A-3 took out a pistol and threatened her brother Shambhu therewith. Evidences of P.W. 5, P.W. 9 and P.W. 10 have clearly proved that when Shambhu Raut ran towards west side of the cattle shed and reached near the door of the house of one Ambika Ram (not examined), he was apprehended by Bunnilal Chaudhary (A-1) there and was given one
F blow of knife which landed on the left side of the chest of Shambhu Raut. Shambhu Raut was rushed to the clinic of Dr. Mahesh Singh in an injured condition where he was declared dead by the Doctor. The dead body of Shambhu Raut was taken to police station where *fardbeyan* (Ex. P-5) of P.W. 10-informant was recorded by the Police Officer. Dr. Vijay Kumar P.W.-11
G conducted post mortem on the dead body of Shambhu Raut and found 1" X ½" penetrating wound, second intercoastal space 4" above left nipple. On dissection, left lung was found punctured. Central part of chest cavity was filled with blood and aorta was punctured. The injuries were, anti-mortem in nature, caused within 24 hours of the examination. What is remarkable is that Dr. Vijay Kumar could not ascertain the cause of death.

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Mr. S. Chandrashekhar, learned counsel appearing on behalf of Bunnilal Chaudhary, vehemently contended that if Bunnilal is held guilty for inflicting fatal injury on the person of the deceased Shambhu Raut then, he is liable for culpable homicide not amounting to murder as he had lacked the requisite intention to cause death. Mr. Rituraj Biswas, learned counsel for the State, on the other hand, has sought to support the finding and reasoning recorded in the judgment.

We have given our thoughtful and anxious consideration to the rival contentions of the learned counsel. The next question is what is the offence which is brought home to Bunnilal Chaudhary (A-1)? It is not in dispute that the injury inflicted on the left side of the chest of the deceased is single one. On examination, Dr. Vijay Kumar found the injury situated above nipple on the left side of the chest extending 1" X ½" penetrating wound. On dissection, left lung was found penetrated. Dr. Vijay Kumar has not opined that the injury was sufficient in the ordinary course of nature to cause death. That was not even stated to be likely to cause death. No attempt was made by Bunnilal Chaudhary to cause serious injury on any vital part of the body of the deceased. There was no motive or intention of Bunnilal Chaudhary to have murdered Shambhu Raut. Therefore, the question is whether the offence can be said to be covered by Clause (iii) of Section 300 of the IPC.

That Section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts:- the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found on the person of Shambhu Raut. But the second part, in our opinion, is not fulfilled because but for the fact that the injury caused had penetrated the lung, death might not have ensued. In other words, looking at the matter objectively, the injury, which Bunnilal Chaudhary intended to cause, did not include specifically the cutting of the left lungs but to wound Shambhu Raut in the neighbourhood of the nipple on left side of chest. Therefore, we are of the opinion that Clause (iii) of Section 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act

A with the intention of causing death. As we have shown above, Bunnilal Chaudhary did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Bunnilal Chaudhary. The matter, therefore, B comes within the third part. The Act which was done was done with the knowledge that Bunnilal Chaudhary was likely by such act to cause the death of Shambhu Raut. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 IPC as culpable homicide not amounting to murder.

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We, accordingly, alter the conviction of Bunnilal Chaudhary from Section 302 to Section 304 Part-II, IPC and in lieu of the sentence of imprisonment for life imposed on him, we impose a sentence of rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- with default stipulation of two months simple imprisonment. Criminal Appeal No. 605/ D 2005 preferred by Bunnilal Chaudhary (A-1) is partly allowed to the extent indicated above.

Criminal Appeal No. 606/2005 :-

As far as the conviction of other accused persons namely, Magister E Chaudhary, Birendra Chaudhary, Maniraj Chaudhary, Dashrath Chaudhary, Amarjit Chaudhary, Naresh Chaudhary and Rajdhari Chaudhary is concerned, there is not an iota of evidence led by the prosecution to sustain the charge of Section 302/149 IPC against them and the only evidence, which has come on record, is the testimony of P.W.-10 informant who stated that Magister F Chaudhary came and surrounded him on the spot. No witness has proved that the accused persons had come on the scene of occurrence with an intention to commit the murder of Shambhu Raut. None of them had given any blow to the deceased with the weapons they allegedly were carrying with them. We may say here that it is now the settled law that under Section 149 IPC, the liability of other members for the offence committed during the continuance G of the occurrence rests upon the fact whether the other persons knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms or behaviour on or before the scene of occurrence. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed H

during occurrence does not arise. On scrutiny of the entire evidence on record, we are of the confirmed opinion that the conviction of the other accused persons is not sustainable and their appeal deserves to be allowed. We order, accordingly. Magister Chaudhary, Birendra Chaudhary, Maniraj Chaudhary, Dashrath Chaudhary, Amarjit Chaudhary, Naresh Chaudhary and Rajdhari Chaudhary are acquitted of the offence under Section 302/149 IPC. They are on bail. Their bail bonds are discharged.

R.P. Crl. Appeal No. 605 of 2005 partly allowed. and Crl. Appeal No. 606 of 2005 allowed.