

Original Article

Evaluating the Law of Murder in Light of Soumya Judgment: A Medico- Legal Perspective

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ABSTRACT

The decision of the Supreme Court in Govindaswamy murder case has sent shockwaves across the nation. Although some have lauded the judgment, other scholars have condemned it on account of misinterpretation of the law on the subject. This paper analyses the judgment on the basis of legal principles and forensic evidence. Murder, as laid down in the Penal Code 1860, is not restricted to an intention to cause death on the part of the accused; it also extends to cases where the intention is to cause injury sufficient to cause death. The degrees of intent conceived in the notion of murder vary as laid down in law and it is for the court to comprehend the same on the basis of evidences. Forensic science forms a significant part of the evidence needed to establish the nature of the injuries perpetrated and their probable impact on the victim. Such evidence, in turn, is reflective of the intent on the part of the accused. Unfortunately, the court overlooked the medical evidence in the instant case, thereby making way for the accused to escape liability for murder, in a gory incident that snuffed the life of a young energetic woman.

Keywords: Murder, Medical evidence, Intention, Injuries, Rape, Forensic science

INTRODUCTION

The decision of the Supreme Court in Govindaswamy case ^[1], popularly referred to as the Soumya case after the name of the victim, generated a lot of discussion and debate. Although convicting the accused of the offences of rape and robbery, the Indian Supreme Court set aside his conviction for the offence of murder and altered it to one under Section 325 Indian Penal Code (IPC) 1860, voluntarily causing grievous hurt. A review petition filed later was dismissed settling down the law that the case was not one of murder but of grievous hurt which led to the death of the young woman travelling on that fateful

day by train. This paper attempts to revisit the law of murder as has been well-settled through judicial decisions and analyse the issues from the perspective of forensic evidence.

Facts of the Case

The instant case arose out of a tragic and gory incident which occurred on 1 February 2011. The victim, a working lady of 23 years, was returning to her home town to attend her betrothal ceremony to be celebrated the next day. On the way back by a passenger train, the woman entered a ladies coach which was empty. The accused,

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a habitual offender, who had boarded the train previously, was eyeing the lady for quite some time and finding her alone, pounced on her. The cries of the woman were heard in the adjoining compartment and even the houses located near the tracks. Unfortunately, no help came. The head of the woman was forcefully and repeatedly hit against some hard flat surface rendering her incapable to respond. At this juncture, a middle-aged man, untraced in course of investigation, saw the body of the lady fall from the train and hit the tracks. He signalled his fellow companions in a casual manner that the woman has made good her escape, though it was not a point that she had escaped, indicating that she jumped and started running to save herself. The impact of the head injuries refrained the woman of the use of natural human reflexes and as a result she sustained serious injuries from beneath the left eye upto the chin. The accused did not stop at this. He jumped out of the train, made his way to where the woman lay all covered in blood, carried her for some distance and forcefully raped her, acting like a 'necrophilia'. After satisfying his lust, the accused ransacked her belongings, searched for the valuables in her bag and robbed her mobile phone and left the victim, in nudity, in supine position.

The woman was rushed to the hospital. Surgical operations were done on her and all sort of medical assistance was provided. She was put on a ventilator in a very critical condition and finally breathed her last on 6 February 2011. In the trial that proceeded, as also in the High Court, the accused was convicted of the charges of murder, rape and robbery and sentenced to death. On appeal to the Supreme Court, the highest court of the country, while the conviction for the charges of rape and robbery were upheld, the charge of murder was set aside, whereas a lesser offence of grievous hurt was established by the court.

Reasons for the Decision

As per the report of the doctor, the deceased died due to blunt injuries sustained to head as a result of blunt impact and fall and their complications including aspiration of blood into air passages(during unprotected unconscious

state following head trauma) resulting in anoxic brain damage.

The fatal injuries were broadly categorised into two parts—Injury 1 including three injuries caused by 'blunt force' and Injury 2 caused by a fall on the rail tracks resulting in grazed contused abrasion. In addition, her body being kept in supine position because of the act of sexual assault resulted in her death. So far as Injury 1 was concerned, the Supreme Court agreed that it would not require a redetermination in view of the evidence of prosecution witnesses. However, so far as the second injury was concerned, the court refused to attribute the act to the accused, that the latter had pushed the victim out of the train. Infact, the hearsay testimony of the middle-aged man who had remarked that the victim had escaped had some bearing in the mind of the court. Thus, the court concluded that

To hold that the accused is liable under Section 302 IPC what is required is an intention to cause death or knowledge that the act of the accused is likely to cause death. The intention of the accused in keeping the deceased in a supine position, according to PW 64, was for the purposes of the sexual assault. The requisite knowledge that in the circumstances such an act may cause death, also, cannot be attributed to the accused, inasmuch as, the evidence of PW 64 itself is to the effect that such knowledge and information is, in fact, parted with in the course of training of medical and para-medical staff. The fact that the deceased survived for a couple of days after the incident and eventually died in hospital would also clearly militate against any intention of the accused to cause death by the act of keeping the deceased in a supine position.

OFFENCE OF MURDER—LEGAL POSITION IN INDIA

In light of the decision of the Supreme Court, the law on the point may be discussed. Section 300 IPC, 1860 elucidates when culpable homicide amounts to murder. The prior section, Section 299 defines culpable homicide, of which murder is a species. Culpable homicide amounts to murder, if it is done with

1. Intention to cause death or
2. Intention to cause bodily injury knowing that the injury caused is likely to cause death of the person to whom it is caused, or
3. Intention to cause bodily injury sufficient in the ordinary course of nature to cause death, or
4. Knowledge of imminently dangerous act that in all probability will cause death or bodily injury

So far as 'intention to cause death' is concerned, it is the highest level of intent and the gravest of the species of murder. It is the action of the accused with a clear intention of killing a person. 'Intention is what intention does'. So, the intention of the person can be gathered from the action of the person ^[2]. In *Reg v. Monkhouse*, Coleridge J. observed,

The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision...A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him ^[4].

Explaining the above principle, the Supreme Court ^[5] enumerated certain circumstances relevant to find out whether there was any intention to cause death on the part of the accused. These include whether the blow was aimed at a vital part of the body, the amount of force employed in causing injury, whether the person inflicting the injury had taken undue advantage or acted in a cruel or unusual manner and whether the accused dealt a single blow or several blows. In a case ^[6], the apex court reiterated that the nature of the weapon used and the part of the body where the blow was struck coupled with the fact that there was due deliberation on the part of the accused establishes beyond reasonable doubt the intention of the accused to cause death, irrespective of the fact that one single blow was given with the knife ^[7]. Any reasonable person with any stretch

of imagination can come to the conclusion that an injury on the vital part of the body by a sharp-edged weapon will cause death. Such an injury not only exhibits the intention of the attacker in causing death of the victim but also the knowledge as to the likely consequence of such attack which can be none other than causing the death of the victim.

The second clause deals with acts done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused. The mental attitude here is two-fold: firstly, an intention and secondly, the subjective knowledge that death will be the likely consequence^[8]. Intention is a conscious state in which the mental faculties are aroused into activity and summoned into action for the purpose of achieving conceived end. Knowledge, on the other, relates to an awareness of the consequences of the act. For the purposes of the clause, an act amounts to murder when the offender intentionally causes a bodily injury and he has knowledge of some physical condition of the person which has rendered him weak and thereby likely to result in death. Here, though his intention is only an injury such as is likely to cause death, he becomes liable for murder.

With regard to clause, thirdly, of Section 300, the observations of Justice Bose ^[9] have become locus classicus and have been unerringly followed by the Supreme Court in all cases ^[10]. To put a case under clause thirdly, the prosecution must prove the following facts:

1. A bodily injury is present
2. The nature of the injury must be proved
3. There was an intention to inflict that particular bodily injury, and it was not accidental or unintentional.
4. That the injury was sufficient in ordinary course of nature to cause death.

The apex court elaborated that it does not matter that there was no intention to cause death. It does not also matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature. It does not even matter that there is no

knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury is actually found to be proved, the rest of the enquiry is purely objective based on forensic evidence and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. Furthermore, once the existence of the injury is proved, the intention to cause it will be presumed, unless the evidence or the circumstances warrant the opposite conclusion. The question in that situation is one of fact and not of law.

In *Jagrup Singh v. State of Haryana* ^[11], the Court held that to bring a case within the clause, it must be proved that there was an intention to inflict that particular injury, and the same was not accidental. The intention must be gathered from the kind of weapon used, the part of the body on which the blow was dealt, the amount of force applied and the attendant circumstances. Intention includes foresight. A consequence is deemed to be intended when it is foreseen, though it may not be desired^[12].

The last clause of the section speaks only of knowledge without any specific intention to cause bodily injury to any person. It comprehends imminently dangerous acts committed with the knowledge that death might be the most probable result. Generally, it is applicable in cases where no specific intent is made out, but the knowledge of the probability of death of person or persons in general as distinguished from a specific person being caused from his imminently dangerous act approximates to a practical certainty^[13].

ANALYSIS OF THE JUDGEMENT

The above exposition of law on the subject of murder clearly illustrates that apart from the other two clauses (secondly and fourthly) of Section 300 IPC, clauses firstly and thirdly may be attracted in individual cases based on the facts of the case. Each of the clauses are disjunctive and to be read separately. Clause first requires a clear and unequivocal intention on the part of the accused to kill the victim, and that has to be deduced from the act in question, whereas clause thirdly merely requires an

intention on the part of the accused to inflict bodily injury, which injury, on an objective examination, is held to be sufficient in ordinary course of nature to cause death.

In this case, the court held that the accused neither had the intention to cause death nor the knowledge that his act is likely to cause death. The ‘intention to cause death’, as already stated indicates the highest degree of intention on the part of the accused where he desires no consequence other than death. However, intention in Section 300 is not limited to causing death, it may also be where the intention is to merely cause a bodily injury and the bodily injury so inflicted is sufficient to cause death. The court, for reasons best known to it, did not deliberate on the third clause of Section 300 IPC 1860, even though it can be well inferred from the facts of the case that the accused perpetrated the injuries on the victim which ultimately led to her death. In other words, holding of the victim by the hair and moving her vociferously back and forth and hitting her head against a flat surface whereby she was rendered dazed and insensitive had been well established from the evidence. The subsequent injury sustained by her as a result of the fall (or jump) from the train may also be attributed to the accused. According to the doctor (PW 64), the impact of the second injury was as a result of the insensate state of the victim which had been caused by the first injury, thereby depriving her of the reflexes that a normal human being would have displayed. Furthermore, the accused dragged the almost dead body of the victim from the tracks to some distance and forcefully raped her, as is apparent from the injuries sustained in the private parts. In committing the act, he laid the body in the supine position. Now, each of the acts is directly attributable to the accused.

To quote the words of Salmond,

Although nothing can be intended which is not desired, it must be carefully noticed that a thing may be desired, and therefore intended, not in itself or for its own sake, but for the sake of something else with which it is necessarily connected. ...desire and intention of an end extend not merely to the means

by which it is obtained, but to all necessary concomitants without which it cannot be obtained

and a person must be liable for all that which follows. 'A consequence, when it is intentional, may either be directly so or only obliquely' states Bentham. When the consequence was in contemplation (or should have been in contemplation given the standards of a reasonable man), 'though the prospect of producing it did not constitute a link in the chain', the person becomes liable since the act was intentional, though obliquely so. If it is so, then it appears strange that the accused could have escaped liability for murder. Furthermore, the reasoning that he could not have known the consequences, being untrained in the discipline of medicine, appears flawed. Long back, the court had reiterated that it is immaterial whether the accused knows every detail of the injury and the likely consequences arising from the act in question. Thus, whether he intended to have the bowels out or the heart or kidney is not a matter of inquiry. Otherwise every man would plead the absence of anatomical knowledge and escape punishment. The inquiry is 'broad based and simple and based on common sense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand'.

The term 'sufficient to cause death' indicates a high degree of probability of death occurring. As stated in Virsa Singh, it is an objective enquiry which will go to prove whether the injury was sufficient to cause death in ordinary course of nature. It is not a matter for judicial determination, but purely a scientific inquiry^[14]. That being so, one may look into the evidence in this case.

Firstly, the injury was caused to a vital part of the body, the head^[15]. It was not a single blow but repeated blows inflicted on the vital part by the accused. The impact of the same has been stated by the medical evidence to have left the victim 'dazed and insensitive'. Now with regard to sufficiency of the injuries, the doctors who testified in the present case, as reiterated by the High Court in its judgment may be noted.

According to PW 64, injury 1 ... is sufficient to render a victim dazed and insensitive. The said injuries are

sufficient to create inertia which would render the victim non-reactive. The said injuries are independently sufficient to result in death.

According to another doctor who attended the victim on the date of the incident, PW 37, she was in a critical stage and fighting for life. She had signs of serious head injury and her Glasgow Coma Scale was only four (Glasgow Coma Scale for a normal human being is 15 while for a dead person is three). He further testified that 'the neurological examination and evaluation showed that she was almost dead. She was nearing death due to the first injury'. According to him, the victim was on life-saving mechanisms; had it not been done, she would have died then and there. The same has been reiterated by PW 1, another doctor,

As she was in serious condition, she was put on ventilator. She could not survive without ventilator and tracheostomy. According to PW 1, the injuries are sufficient to cause the death.

Given the above position, it becomes clear that the accused on that fateful day had boarded the train to sexually assault a young woman finding her alone. However, in the face of her cries and protests to save her, the accused caused serious injuries on the vital parts of the body and followed her even after she had fallen (or jumped) from the train to fulfil his lust. All the injuries sustained by the victim, as many as 24, can safely and surely be attributed to the beastly attack of the accused and the frantic efforts of the victim girl to save her. As stated in Virsa Singh,

No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional^[16].

CONCLUSION

The law of murder has been well settled by the Supreme Court over the years. Where the mens rea is one of

intention, the drafters of the Code made a distinction in the degree of intent on the part of the accused. An accused may have an intention to cause death or he may have an intention to cause bodily injury as is sufficient to cause death. There is a fine line of distinction between the two and the courts are required to comprehend the same from the acts of the accused. The instant decision of the apex court, by reading murder as confined only to the first clause of section 300 IPC and reading intention and knowledge together has destabilised the existing position. Even the disregard of the medical evidence as put forward by experts to bring home the offence of murder has not been relied upon by the courts. In fact, the basic assumption of law that deeds reflect the mind of the doer somewhat comes under challenge. If intentions are not to be gathered from the results perpetrated by the act of the accused, it appears strange as to what other mechanism may be adopted to adjudge the same. Furthermore, intention may be oblique not direct, in the sense that it may not be preordained or calculated; yet if a person does what he does, unless otherwise by mistake or accident, he becomes liable. So a person may have an intention only to rape, but if it is seen that the act perpetrated results in death, his liability should not be confined to the initial intention but extend to the latter act as well. For the purpose, it is immaterial that the person should know which injury is likely to have what effect, or whether the injuries sustained in the process are capable of inflicting death. These are matters of factual enquiry by forensic experts and the court should abide by their findings. The simple fact that the injuries are traceable to the actions of the accused should be enough for the purposes of law and, given the nature of the injuries as established through forensic evidence, he must be held answerable. That being the position, it remains to be seen how the same is interpreted in the coming years.

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