

ASHOK SAXENA
VERSUS
THE STATE OF UTTARAKHAND
ETC.
2025 Supreme Court

Case pertains to section 301, 302
of IPC

FIR-

PW-1 Het Ram wrote a complaint (Ext. Ka-1) to SHO police station Kichha, District Nainital on 25.06.1992 enumerating the facts contained therein that the complainant is residing in Hydrel Colony Kichcha; his son Joginder Singh used to go for learning typing and Surendra Singh S/o Yashpal Singh was also learning typing there. There was an altercation between Joginder Singh and Surender Singh at the typing centre; Joginder Singh narrated the incident of altercations at his home and his nephew-Man Singh made complaint to the father of

Surender Singh. Thereafter, Surender Singh did marpeet with Joginder Singh and the complainant made complaint to his superior officers in this regard. On the day of incident, when nephew of complainant, accompanied with Joginder, had gone to typing centre, in the way, accused Ashok Saxena and Yashpal Singh met them and they threatened them with dire consequences. The son and nephew of the complainant reached home and narrated the entire story to the deceased. Accused persons Ashok Saxena and Yashpal also reached there and started hurling abuses at them. When the complainant

came back from his duty, the entire story was narrated to him. On this, the complainant came outside his house and asked the accused persons not to hurl abusive languages, to which both the accused got annoyed. At that time, Ashok Saxena was having knife in his hand and Yashpal Singh was armed with hockey stick and they chased the complainant and entered into his house. In the meantime, when wife of the complainant came to his rescue, Ashok Saxena gave a knife blow in the stomach of his wife and Yashpal Singh caught hold of the hands of the victim. There was candlelight in the house. The incident took place at about 7:45

p.m. The complainant tried to catch hold of the accused persons, but they fled away. On receiving knife blow, wife of complainant fell down on the floor and she was taken to hospital in a rickshaw, where doctors declared her 'brought dead'."

The Trial Court upon appreciation of the oral as well as documentary evidence on record came to the conclusion that the prosecution had failed to establish its case beyond reasonable doubt and accordingly acquitted both the accused.

The High Court upon considering the appeals afresh once again reiterated that the Trial Court had committed an error in acquitting the accused persons and accordingly held both the accused persons guilty.

At this stage, it is relevant to note that one of the co accused Yashpal passed away while the appeal was pending before the High Court. It is only the appellant who ultimately stood convicted for the offence of murder.

Contentions-

- 1- He would submit that once the Trial Court upon appreciation**

of the oral as well as documentary evidence acquits the accused of the offence like murder, then unless the High Court finds such judgement to be absolutely perverse or contrary to the evidence on record the same should not be disturbed by the appellate court even if a different view is possible

2- according to him, even if the entire case of the prosecution is believed or accepted to be true the only offence that could be said to have been committed is Section 304 of the IPC.

3- His third argument in the aforesaid context is that the

appellant herein had no intention to cause any harm to the deceased. The appellant had nothing to do with the deceased. Even according to the case of the prosecution, the appellant had some grudge towards Hethram and the intention was to cause harm to Hethram, but unfortunately the deceased all of a sudden came in between and got severely injured who later succumbed. Therefore, his argument is that the case on hand is not even one of culpable homicide not amounting to murder but only knowledge could be attributed.

4- In the last the learned counsel submitted that the incident is of the year 1992. Almost 33 years have passed by. The appellant as on date is 74 years of age. He has undergone about more than five years of sentence (a little under 6 years of sentence).

He submitted that having regard to the oral evidence on record and the peculiar facts and circumstances, the conviction at best could be under Section 304, Part-I giving benefit of exception 4 of Section 300 of the IPC.

Section 301 of the IPC is the answer to the contention of Mr. 11 Hooda.

Section 301 of the IPC, reads thus:

“301. Culpable homicide by causing death of person other than person whose death was intended.— If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death

he intended or knew himself to be likely to cause.

From the perusal of the provision of Section 301 of the IPC, it becomes manifest that Section 301 embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under the Section, if A intends to kill B, but kills C whose death he neither intends nor knows himself to be likely to cause, the intention to kill C is by law attributed to him. If A aims his shot at B, but it misses B either because B moves out of the range of the shot or because the shot misses the mark and hits

some other person C, whether within sight or out of sight, under Section 301, A is deemed to have hit C with the intention to kill him. What is to be noticed is that to invoke Section 301 of the IPC, A shall not have any intention to cause the death or the knowledge that he is likely to cause the death of C. This Section lays down that culpable homicide may be committed by causing death of a person whom the offender neither intended nor knew himself to be likely to kill. If the killing takes place in the course of doing an act which a person intends or knows to be likely to cause death, it must be treated as if the real intention

of the killer had been actually carried out.

In Gyanendra Kumar v. State of U.P., reported in AIR 1972 SC 502

the accused was deliberately trying to shoot at a fleeing man who had criticized his father in a School Committee Meeting, but unfortunately, his own maternal uncle came in between him and the intended victim and thus got killed. This Court has held that the act of the accused was nothing but murder under Section 302 read with Section 301 of the IPC.

In Jagpal Singh v. State of Punjab reported in AIR 1991 SC 982: 1991

CrLJ 597, appellant Jagpal had shot at Surjit Kaur even though he aimed at only Kapur Singh. After applying doctrine of transfer of malice as contemplated under Section 301 of the IPC, this Court has held that Jagpal had made himself punishable under Section 302 of the IPC

41. In Abdul Ise Suleman v. State of Gujarat reported in 1995 CrLJ 464, it was the case of the prosecution that the accused had fired freely towards the fleeing complainant party and the first shot had 14 injured one person whereas second shot had resulted into

death of ten year old son of the complainant. It was noticed that firing was resorted to in a commercial locality. The Sessions Court had acquitted the accused, but acquittal appeal was allowed by the High Court and the appellant was convicted under Section 302 read with Section 301 and other provisions of the IPC. It was submitted before this Court that the facts and circumstances of the case and evidence led by the prosecution did not establish that the appellant had any intention to commit murder of an innocent boy aged ten years with whom there was no question of having any enmity or any occasion to take a revenge. According to the learned

Counsel of the appellant, even from the evidence, it was possible to hold that such death of the boy was absolutely unintentional and at best it could be held that such firing was a rash and negligent action on the part of the appellant. It was argued by the learned Counsel of the appellant that act committed by the appellant was not murder under Section 302 read with Section 301 of the IPC as held by the High Court, but was an offence under Section 304A of the IPC. Negating the said contention, this Court has held that gun was not fired in the air just to frighten the complainant and his companions, but the gun was fired by the appellant towards

fleeing person even when by the first shot one of such person was injured. According to this Court, such firing was resorted to in a locality where there were number of shops and provision of Section 301 of the IPC was clearly attracted in the facts and circumstances of the case. Ultimately, the conviction of the appellant under Section 302 read with Section 301 of the IPC was upheld by this Court.

42. In view of the principles laid down by this Court in above quoted decisions, it is evident that even if it is held for the sake of argument that the appellant had no intention to cause death of the

deceased, it will have to be held that doctrine of transfer of malice, as contemplated under Section 301, is applicable to the facts of the present case and that the appellant would be guilty under Section 302 of the IPC.

43. We do not propose to look into the matter any further, more particularly, the evidence of the two eye-witnesses. In other words, whether the oral testimonies of the two eye-witnesses PW1 and PW4 respectively inspire any confidence.

44. We are of the view that having regard to the genesis of the occurrence, the case falls within

Exception 4 to Section 300 of the IPC.

45. In the result, the appeals are partly allowed. The impugned judgement and order of the High Court is modified to the extent that the appellant stands convicted for the offence punishable under Section 304 Part-I of the IPC.

46. Having altered the conviction from Section 302 to section 304 Part-I, we reduce the sentence to the period already undergone keeping two things in mind the year of the incident i.e. 1992 and the age of the appellant as on date, 74 years.

