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GUSAR DUSARDH: A GLIMPSE INTO THE DILUTION OF THE OBJECTIVE TEST FOR LIABILITY

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Abstract

In the 1972 Supreme Court case of Gusar Dusadh the accused was convicted under Section 300 thirdly of the Indian Penal Code, 1860. This paper contends the conviction was based on an erroneous application of the objective test for liability laid in Virsa Singh and analyses the same by scrutinising B.B. Pande's scholarly article on the same.

Introduction

Homicide, as the name suggests, finds its roots the Latin term '*homo*' meaning human and '*caedere*' meaning killing. Since time immemorial, human beings across civilisations have killed one another to assert dominance and stake a claim on contested lands and properties, among other things. Historically, the annexure of territories and building of empires were, in reality, exercises in mass homicide.

Homicide is a grievous offence against the human body, which needs to be inhibited by imposing stringent sanctions and grave sentences. This finds exposition in sentences like life imprisonment and death penalty being awarded in the case of homicide by the judiciary.

Based on the Indian Penal Code (IPC), 1860, the Indian jurisdiction recognises homicide of two types – Culpable Homicide (Section 299 of the Indian Penal Code) and Culpable Homicide amounting to murder (Section 300 of the Indian Penal Code). While the substance in the two sections may look to the naked eye as having large overlaps, the critical difference between the two is the degree of *mens rea*, i.e., the mental element. To attract Section 300, a higher level of *mens rea* is required as opposed to Section 299. In line with the case of *Nara Singh Challan v. State of Orissa,* Section 299 of the IPC is deemed to be the genus while Section 300 of the IPC is its species.[2]

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[2] *Nara Singh Challan v. State of Orissa*, 1997 I OLR 243

This paper will critically analyse the application of Section 300 thirdly in the case of *Gusar Dusadh v. State of Bihar* against the arguments submitted by Professor B.B. Pande in his essay Limits on Objectivity to evaluate whether the Supreme Court's decision was congruent with the scope of the statute.

Culpable homicide

Section 299 of the IPC states: "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide." [3]

The condensed statute may be unpacked by dissecting it into three independent elements related to the ultimate *actus reus* of causing death and amounting to culpable homicide: (a) Doing an act with the intention of causing death, (b) Causing such bodily injury that would probably result in death, and lastly (c) Possessing the knowledge that the act when committed will cause death.

To illustrate, this paper employs the following examples:

(a) A lays sticks and turf over a pit, with the intention of thereby causing death. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.[4]
(b) A hits B on his head with a rod unaware that B suffers from brain tumour. If B dies as a consequence of the bursting of the tumour, A will be liable under Section 299 (b).
(c) If A drove furiously on a crowded street and accidentally ran over a man, knowing very well that there is a deficiency in the breaks of his car, he will be liable under Section 299 (c)

Murder

[3] Indian Penal Code, 1860 (Act 45 of 1860), s.299.
[4] IBID.

Section 300 of the Indian Code, 1860 states: "Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or —
Secondly.—If it is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—
Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."[5]

Unlike Section 299, Section 300 is naturally broken down into four distinct elements. The section further elaborates on these elements by demonstrating the illustrations listed below:

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.[6]
(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. [7]
(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.[8]
(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.[9]

Distinction between Section 299 and Section 300

[5] Indian Penal Code, 1860 (Act 45 of 1860), s.300.
[6] IBID.
[7] IBID.
[8] IBID.
[9] IBID.

In the landmark case of *Reg v Govinda*, the Bombay High Court laid down the difference between the culpable homicide and murder. In the said case, Judge Melville J particularised that "whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder."[10]

While establishing Section 299 (a) naturally established Section 300 firstly, i.e., there is an intention to kill, the degree of mens rea varies. In the holding, Judge Melville J expanded that the essence of Section 300 secondly lays in the accused's knowledge of the peculiarity of constitution or immature age, or other special circumstance, of the victim which results in death even though the bodily injury would not in the ordinarily course cause death.[11]

While considering the comparison between Section 299 (b) and Section 300, thirdly, Melville J acknowledged that "The distinction is fine, but appreciable."[12] He elucidated the distinction lay in the degree of probability, which would be expounded when due consideration is given to the nature of the weapon used.

Finally, he felt Section 299 (c) and Section 300 (4) "intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury." For the purpose of demonstrating the same, he adopted the examples of furious driving and firing at a mark near a public road as cases of this description. He emphasised that the marker for culpable homicide or murder in this case would be reliant upon the degree of risk to human life by saying "If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder."[13]

Virsa Singh: The Objective Test for Liability under Section 300 Thirdly

Virsa Singh v. State of Punjab proved to be a landmark case as it laid down the objective test to determine liability under Section 300 thirdly of the Indian Penal Code, 1860. The Supreme Court held:

[10] *Reg v Govinda*, ILR 1 Bom 342
[11] IBID.
[12] IBID.
[13] IBID.

"It does not matter that there was no intention to cause death. It does not 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 (not that there is any real distinction between the two). 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 actually found to be proved, the rest of the enquiry is purely objective 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." Further the court while deliberating on intention held that "…if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he know of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict and injury of particular degree of seriousness, but where he intended or inflict the injury in the question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."[14]

The objective test for liability under Section 300 thirdly comprises four parts. The first and foremost is that the presence of a bodily injury must be established. Secondly, through an entirely objective investigation, the nature of the said injury must be proven. Thirdly, it must be established that it was neither accidental nor unintentional, i.e., there was an intention to inflict that particular bodily injury. Finally, it must be established that "the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."[15]

Gusar Dusadh

In the case of Gusar Dusadh, a 65-year-old man died as a result of an assault by six persons, who had an enmity with him due to a previous dispute. The appellant dealt a single blow on the head of the deceased with a wooden lathi, as a result of which he died on the spot. The doctor found a fracture on the skull of the deceased, which caused internal bleeding in the brain.

[14] *Virsa Singh v. State of Punjab*, AIR 1958SC 465.
[15] IBID.

"Death, in the opinion of the doctor, was due to compression on the left side of the brain. The doctor further stated that the above injury was sufficient in the ordinary course of nature to cause death." The court held the appellant guilty under the third clause of Section 300, i.e., murder based on the post-mortem examination by Dr R.S. Singh.[16]

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B.B. Pande and the Limits on Test of Objectivity

Professor B.B. Pande dissented with the court's ruling on the grounds that "…arriving at assessment of the nature of injury solely on the basis of an expert opinion instead of the opinion of a reasonable man can hardly be justified under the third clause, which envisages an assessment of the injury only on the basis of the ordinary objective standard..."[17]

The author criticised the Supreme Court judgment and highlighted its failure to draw a fine distinction between murder and culpable homicide not amounting to murder based on Section 299 (b) and Section 300 thirdly. The author rightly emphasises how the apex court, instead of focusing on objective liability based on Virsa Singh's judgement, adjudicated the matter by depending on evidence from the medical examination. This is a blatant example of the Court acting negligently by turning a blind towards personal liberty and the sanctity of the judicial system.

It is apparent and in plain sight that Clause 3 of Section 300 has two facets to it – the first facet pertaining to *mens rea* of the accused while the second facet pertains to the assessment of the nature of injury. Further, in the case of Virsa Singh v. State Of Punjab, the concept of a reasonable man was elaborated on. The latter case emphasised that a case will fall under the court's purview with regard to Section 300 thirdly only when the adequacy of injury is reliant on the foreseeability of a reasonable man and, if that intended bodily injury was sufficient to cause death.

B.B. Pande further reiterated that the sufficiency of the injury with regard to "the second part which determines the sufficiency of the injury for causing death in the ordinary course of

[16]Gusar Dusardh v State of Bihar AIR 1972 SC 952.
[17] Pande, Bhuvaneshwar B., Limits On Objective Liability For Murder, 16 Journal of the Indian Law Institute, 469–482 (1974).

nature, is not reliant on what was foreseen by the accused but instead on foreseeability of a reasonable man in the accused's position. " [18]

He put forth the assertion that in this case, the accused cannot be shown to possess such a foresight. In furtherance of this argument, he said the net outcome of such dilution of the rules of proof is that in such cases the "judiciary is given a discretion to deduce foreseeability on the part of the accused in view of the extremely grave nature of the injury only. However, such a resort to presumptive technique theoretically amounts to according to statutory recognition to the principle of objective liability in regard to the offence of murder under the Indian law."

In this case, the court extended no consideration to nature of weapon, the position of injury and the force with which the injury was inflicted or the parameters for the test of objective liability that were explicitly illustrated in Virsa Singh.

Conclusion

Incongruent to the aforementioned precedents and based on a wrongful interpretation of statutes, the objective test for liability was not satisfied even remotely in the case of Gusar Dusadh. The Court bestowed an unordinary and erroneous degree of paramountcy to the medical opinion and post-mortem report, thereby, concurring with the view that the single blow was enough to kill the victim.

The holding did not correspond with the Court's stance in *Rajmangal Singh v. Ramnath Singh* and the accused's culpability under Section 300 thirdly in Gusar Dusadh made the Court's judgement in the former case, which demonstrated colossal foresight, futile. It had held in the former that "medical evidence are not conclusive or binding upon the Court and that the courts can form its own independent judgment to form the rationale of the case and hence medical evidence cannot act as a substitute to the other factors which also have a bearing on the assessment issue."[19]

[18] IBID.
[19] *Rajmangal Singh v. Ramnath Singh* ,AIR 1966 SC 1874.

In addition, the holding in Gusar Dusadh exhibited immense contradiction as in the case of *William Slaney v. The State*, the Court had held that the accused was culpable for culpable homicide not amounting to murder despite accused having inflicted six repeated blows from a lathi on the victim.[20]

Hence, Gudar Dusadh v. State of Bihar exemplifies the Supreme Court's failure to carve out a distinction between murder and culpable homicide, in accordance with its earlier precedents, resulting in dilution of both the statute and the foresighted precedent of Virsa Singh and a complete disregard for the test for objective liability.

[20] *William Slaney v. The State* ,AIR 1956 SC 116 AT 133.