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A CASE COMMENT ON NAGABHUSAN V. THE STATE OF KARNATAKA [CRIMINAL APPEAL NO 443 OF 2020 SUPREME COURT]

CORAM - M.R. SHAH, J.

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Nagabhusan v. the State of Karnataka[1] is a recent Supreme Court judgment on reversal of the judgement of acquittal into conviction by the High Court of Karnataka. The apex court reassured the power of the high court in reversing an acquittal and convicting the accused by reappreciating evidence if the grounds of acquittal given by the lower court are perverse.

The cause of action in this case had arisen when the deceased Rekha had suffered burn injuries from a fire caused in her matrimonial home in her husband's presence. Her husband was accused of bride burning and was charged with murder, cruelty under section 498 A read with section 34 as Rekha succumbed to her burn injuries a few days after the incident. There were two dying declarations recorded, one by a police officer and another by the investigating officer in the case. On 25th June, a day after the incident, the first dying declaration was recorded where in the deceased then had stated that it was an accidental fire. She, however, changed her stand and gave a contradictory dying declaration on 27th June, in the presence if her parents and others. The trial court acquitted the accused by rejecting the second dying declaration by placing reliance on the fact that it was recorded in presence of the parents and not immediately after the incident and hence there were chances of influencing and tutoring. The trial court disbelieved the fact that the deceased was threatened that her children would be killed if she portrayed the fire otherwise than an accident, the High Court, on appeal, reappreciated the entire evidence on finding the grounds of acquittal perverse as the trial court had not evaluated the multiple dying declarations justifiably. The High Court also found that the trial court had overlooked the fact that there were no corroborative evidence supporting accused's side of testimony. On conviction, the convict preferred an appeal before the Supreme Court by special leave on the grounds that the High Court had overridden its power by reappreciating the evidence in the case and that the trial court had not erred in making the judgement of acquittal.

The Supreme Court in this case reappreciated the evidence already appreciated by the trial court as well as the High Court and found that the High Court's judgement convicting the accused was not erroneous and was found on properly appreciated evidence. The Supreme Court also clarified that the High Court had the power to reappreciate evidence under section 378 of the Code of Criminal Procedure if it found the stance taken by the trial court to be perverse. While the decision by the Supreme Court upholding the conviction given by the High Court can be agreed upon commendably, there is reiteration of the precedential principle that the withdrawal of the intention by the accused effected by attempt to contain the fire with water is not a ground to bring down murder to culpable homicide. The Supreme Court following the judgement in the case *Santosh v. State of Maharashtra*[2] and supporting the High Court's stand in this case has justified placing a case where the accused has tried saving the victim post attempt to murder under clause fourthly of section 300 in case where the victim still succumbs to injuries and dies. Under clause fourthly of section 300, it is stated:

"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."

[1] Crl Appeal No. 443 of 2020, Supreme Court, Mar. 8 2021.
[2] (2015) 7 SCC 641.

The law on this point has been established and pronounced in several judgements. However, if we read section 300 (fourthly) a withdrawal of intention doesn't come under its literal ambit. The convict taking back his intention and attempting to then save the life of the victim is beyond contemplation under this clause as this clause is only limited to the actus reus and the mens rea in the initial act, which is evaluated as being imminently dangerous to the knowledge of the accused to cause death or such bodily injury as is likely to cause death. It also cannot be placed under the ambit of 'excuse for incurring risk' as that again is in respect of the initial act.

If we go with the interpretation taken in the present case and other similar judgments, then the word 'act' under section 300 (fourthly) has been interpreted as a singular act and not as a series of acts forming a part of the same transaction. The immediacy of the change of intention resulting in an overt act to save the victim can be a matter of consideration if we take the alternate interpretation of taking the entire act to be one and the same. As stated earlier, the phrase 'excuse for incurring risk' is only in relation to the initial act and not the subsequent act where the intention has changed. Nonetheless, an attempt to save the victim can be taken as a gesture to mitigate this risk. Hence, the entire act can be placed not under murder but under culpable homicide not amounting to murder and the accused, even though having already incurred the risk, yet can be excused of having mitigated the risk of causing death in the same transaction.

There is also an issue when we try to draw parallels with the reformative justice approach that our criminal justice system has adopted since more than four decades. Reformation of the convict has been taken to be the goal of punishment in India and especially in respect of imprisonment.[3] Sentencing a person to imprisonment is supposed to institutionalise him to such an extent where he us reformed to being an individual who can exist in a society in a norm-adhering manner. It is also taken so that his criminal behaviour is in check, and he does not indulge in recidivism. While reformation has taken a backseat when it comes to public opinion and victim justice in recent times, reformation with a goal of overall crime reduction, forming the basis of the Indian prison system and more broadly the criminal justice system, cannot be denied. Nevertheless, achieving reformation at a deeper level still requires certain changes in the legal sphere.

As in this given case and other cases of like nature, we can see the intrinsic change in the intention of a criminal whilst he is committing the crime. This gives us hints of an existing conscience and signs that the intention to cause death of the victim, although might have originated in the fit of the moment yet the same intention takes a backward somersault when he tries to undo his actions by attempting to save the victim from the clutches of death.

In Indian criminal jurisprudence and judicial interpretations, mitigating and aggravating factors are concepts limited to bringing down the sentence from death penalty to life imprisonment. However, when it comes to murder and culpable homicide, the interpretation is kept within the ambit of the drafted words of section 300 and section 299. The judicial interpretation of section 302 in the Bachan Singh[4] case, gave birth to the 'rarest of the rare' doctrine with regards to death penalty and made life imprisonment to be the normal in cases of murder. The depth of liberalising section 302's interpretation has not been realised till date in terms of the definition of culpable homicide and murder laid down under sections 299 and 300 respectively.

One may say that the effect of changing the interpretation, that is to make withdrawal of intention, if proved, a criterion for bringing down murder to culpable homicide does not have any real effect as the person may still be given the same or similar punishment and it is not going to be put under absence of intention and rendered as an acquittal. Nevertheless, a change would mean the recognition and incorporation of the tenets and values of reformation into the written letter of substantive law which till now has only been limited to sentence execution.

[3] Mohammed Giasuddin v. State of Andhra Pradesh, AIR 1977 SC 1926.
[4] AIR 1980 SC 898.