2023 INSC 632

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2043 OF 2023
(Arising out of S.L.P. (Criminal) No. 9289 of 2019)

ANBAZHAGAN **...APPELLANT(S)**

VERSUS

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE **...RESPONDENT(S)**

J U D G M E N T

J.B. PARDIWALA, J. :

1. Leave granted.

2. This appeal is at the instance of a convict accused and is directed against the judgment and order passed by the High Court of Judicature at Madras dated 04.04.2019 in Criminal Appeal No. 193 of 2019 by which the High Court dismissed the appeal filed by the appellant herein thereby affirming the judgment and order of conviction and sentence passed by the

Additional Sessions Judge, Namakkal in Sessions Case No. 41 of 2017.

3. It appears from the materials on record that the appellant herein and his father were put on trial in the Court of the Additional Sessions Judge, Namakkal in Sessions Case No. 41 of 2017 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, 'IPC'). The Trial Court held the appellant herein guilty for the offence of culpable homicide not amounting to murder punishable under Section 304 Part I of the IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years with a fine of Rs. 10,000/- and in default of payment of the amount of fine, further rigorous imprisonment of one year. The co-accused i.e. father of the appellant herein came to be acquitted by the Trial Court.

4. The appellant herein being dissatisfied with the judgment and order of conviction and sentence passed by the Trial Court went in appeal before the High Court. The High Court dismissed the appeal affirming the conviction of the appellant herein for the offence punishable under Section 304 Part I of the IPC.

5. At the outset, Mr. S. Nagamuthu, the learned senior counsel appearing for the appellant herein, submitted that he is not pressing this appeal on merits. He submitted that his only endeavour is to persuade this Court to alter the conviction of the appellant from the offence punishable under Section 304 Part I of the IPC to Section 304 Part II of the IPC and reduce the sentence accordingly.

FACTUAL MATRIX

6. It appears from the evidence on record that the appellant is an agriculturist. He owns agriculture land in a village by name Sirukinathupalayam situated in Tamil Nadu. The deceased namely Balasubramaniam was also an agriculturist and had his own agriculture land adjacent to the agriculture land of the appellant herein. There was a pathway leading to the agriculture land of the appellant over which the deceased had some issues. At the time of the incident, the appellant had cultivated *Cassava* plants (Tapoica) which was ready for harvesting. On 25.10.2015 at around 7 am, the appellant and his father were harvesting the crop and had also arranged for a lorry for transporting the same from their field. At around 11

am, the deceased came at the place of the incident and threatened the driver of the lorry saying he should not drive his lorry through the pathway leading to the agriculture field of the appellant. At that point of time, the appellant and his father were in their field. The appellant is said to have asked the driver of the lorry to move the lorry to his field to load the crop. This was questioned by the deceased which resulted in a quarrel. It is the case of the prosecution that after verbal altercation between the appellant and the deceased for quite some time, the appellant is alleged to have picked up a "Hoe" (*Kalaikottu* – in Tamil, a gardening tool with a small metal blade attached with a wooden handle used mainly for weeding) & inflicted a single blow on the head of the deceased as a result of which the deceased fell unconscious and later died in the hospital.

7. The FIR was lodged on 25.10.2015 at 19.30 Hrs. On completion of the investigation, police filed charge sheet for the offence of murder. The case was committed to the Court of Sessions as the offence was exclusively triable by the Sessions Court. The Additional Sessions Judge, Namakkal vide order dated 06.09.2017 framed the following charge:-

"Whereas the deceased Balasubramaniam has been living with his wife Baby and family members at Sevalkattu Moolai near Government High School in Pandamangalam; that the Al is the son of A2; that both the accused were living in Poosaripalayam; in Sirukinatrypalayan: both the accused and the deceased Balasubramaniarn had their agricultural lands adjacent to each other's lands; that there was a pathway between both these lands and that there has been a prior enmity for a longtime regarding the ownership of that pathway between both parties. On 25.10.2015 at 07.30 hrs Al and A2 were loading tapioca cultivated and harvested in their lands on to a lorry owned by one Mr. Palanival, having the registration number TN 33 AF 3114 by parking that lorry on the disputed pathway. At that time the deceased Balasubramaniam came there and told them that the lorry could not be led in and blocked it. Then A2 yelled at the deceased Balasubramaniam saying "You do not have a pathway here. You may bring anyone you want" and then Al and A2 pushed the deceased Balasubramaniam down and with an intention to murder him Al had hit the head of the deceased Balasubramaniam with a "weed removing axe" (Kalaikothi) while A2 was pelting stones at him whereby the deceased Balasubramaniam sustained grievous injuries on his head. Balasubramaniam was immediately carried to the Government Hospital in Velur, then taken to Government Hospital in Namakkal where he did not respond to treatment and was declared dead at 05.20 pm. Therefore you the accused have committed an offense punishable under 302 IPC and which can be tried by this court.

I hereby issue an order that both of you Al and A2 should be tried by this court for the commission of the above offense."

8. The appellant and the co-accused (father of the appellant) pleaded not guilty to the aforesaid charge and claimed to be tried. It appears that the prosecution examined many witnesses. However, PW 8 – Chidambaram and PW 9 – Jeeva are the main witnesses being the eye witnesses to the occurrence. Both the eye witnesses have deposed that on the date of the incident the appellant herein and the deceased picked up verbal altercation in regard to the pathway and the appellant is said to have inflicted one blow with the weapon of offence as enumerated above on the head of the deceased leading to his death.

ORAL EVIDENCE

9. PW-8 namely Chidambaram in his examination in chief has deposed as under:-

> *"I am now residing in Indira Nagar, Thaathaiyangar Patti. I am working as Lorry Driver. I know the present accused. About 3 years back I took my lorry to Anbazhagan's field in Poosari Palayam for transporting harvest of tapioca. Subramani, Veerasamy, Raja Manikkam and Jeeva accompanied me. While Subramani, Veerasamy, Raja Manikkam and Jeeva were harvesting the tubers of tapioca the person belonging to the adjacent field told us that the lorry should not move any further since he the accused have a dispute regarding the pathway in*

which the lorry was on. I climbed into my lorry. At that time the accused Anbazhagan was plucking tapioca in his field. He then asked me to bring the lorry near his field. I told him about what the neighbor told me. But as I took my lorry ahead a verbal fight broke out between Anbazhagan and the neighbor. Then A2 came to that place. She was yelling too. With the axe M.O.1 in his right hand, A1 Anbazhagan hit the neighbor on his head. The neighbor suffered injuries on his mouth."

10. PW-9 namely Jeeva in his examination in chief has deposed as under:-

"I am now residing in Indira Nagar, Thaathaiyangar Patti. I I am a coolie. I know the accused present here. I went to pluck tapioca tubers in the garden of the accused Anbazhagan along with Chidambaram, Subramani, Veerasamy, Raja Manikkam between 07.30 & 08.00 am on 25.10.2015 at Poosari Palayam. We went inside the field with Anbazhagan to gather the tubers. When we were clearing the plants after gathering the tubers Chidambaram drove the lorry inside the field. Immediately the deceased Balasubramaniam came inside. He was shouting at the driver and asked him as to who gave him the authority to enter inside. He told this to Anbazhagan. The deceased Balasubramaniam was standing on the road. Both the accused present there were gathering tapioca. Incidentally the accused and the deceased started getting into a verbal quarrel. We are securing the plucked tubers. The fight became bigger. Hearing the louder sound we all came over to the road where the verbal fight was going on. At that time the accused hit the deceased at his head with the wedding axe causing injury. He fell down immediately."

11. PW-18 Dr. Anbumalar in her examination in chief has state as under:-

> *"I am currently working as a Senior Doctor in Namakkal Government District Head Hospital. On 26.10.2015, while I was on duty then the body of one Balasubramaniam (57 years old) was brought by one Arunagiri, Head constable for post- mortem examination with permission letter and accordingly on 26.10.2015 at 2.15 PM, the post- mortem was performed. The details of the post- mortem examination are as follows –*
>
> *External injuries respectively,*
>
> *There was bleeding from the ear and nose, above the left eye brow 3×2 cm cut injury. A cut injury measuring 4 × 2 cm was found on the left forehead. The front skull bone was fractured on both sides (Both parietal bone).*
>
> *Internal Inspection Details-*
>
> *The skull bone was broken and the inner lining was torn. Left Side Temporal Bone 7.5 cm. was broken. There was a blood clot at the base of the skull. The inside of the sprout was red. Navicular bone was correct. Left ribs 3 and 4 were fractured."*

12. The Trial Court, upon appreciation of the oral and documentary evidence on record and more particularly having regard to the genesis of the occurrence; the manner of assault and the nature of the weapon, took the view that the case was

not one of murder punishable under Section 302 of the IPC but could be said one of culpable homicide not amounting to murder punishable under Section 304 Part I of the IPC and accordingly sentenced the appellant herein.

13. The High Court also came to the conclusion that the Trial Court was right in holding the appellant herein guilty of the offence punishable under Section 304 Part I of the IPC.

14. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

15. Mr. S. Nagamuthu, the learned senior counsel appearing for the appellant herein submitted that considering the manner in which the incident had occurred and the role attributed to the appellant, the conviction deserves to be altered from Section 304 Part I of the IPC to one under Section 304 Part II of the IPC. According to the learned senior counsel, the case does not fall within clause *thirdly* of Section 300 of the IPC. All that can be attributed to the appellant is 'knowledge' and 'not intention'.

SUBMISSIONS ON BEHALF OF THE RESPONDENT STATE

16. Dr. Joseph Aristotle S., the learned counsel appearing for the respondent State on the other hand, submitted that the Trial Court as well as the High Court rightly held the appellant herein guilty of the offence punishable under Section 304 Part I of the IPC. According to the learned counsel, the case is not one falling within the ambit of Section 304 Part II of the IPC. He would submit that the case falls within clause *thirdly* of Section 300 of the IPC. He submitted that exception 4 to Section 300 of the IPC is attracted and therefore, the courts rightly convicted the appellant for the offence punishable under Section 304 Part I of the IPC.

ANALYSIS

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the conviction of the appellant herein for the offence punishable under Section 304 Part I of the IPC should be further altered to Section 304 Part II of the IPC.

18. We have given more than a fair idea as regards the genesis of the occurrence and the role attributed to the appellant herein. Dr. Karthikeyan (PW-15) was examined by the prosecution in his capacity as the Medical Officer who performed the post mortem of the deceased. In the post mortem report, the doctor has noted three injuries, (i) cut injury over 4 x 2 cm on the left eye, (ii) cut injury 4 x 3 cm on the left forehead, and (iii) 4 x 2 cm contusion around the left eye. The cause of death assigned in the post mortem report appears to be shock and haemorrhage due to head injury.

19. As the only argument canvassed before us is that the case does not travel beyond culpable homicide as the same falls within the third part of Section 299 of the IPC, the accused could only be said to have knowledge that he is likely by his act to cause death and not the intention to kill the deceased, we must explain the fine distinction between the terms 'intent' and 'knowledge'.

INTENT AND KNOWLEDGE :-

20. The word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man.

21. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:-

1. The nature of the weapon used.
2. The place where the injuries were inflicted.
3. The nature of the injuries caused.
4. The opportunity available which the accused gets.

22. In the case of ***Smt. Mathri v. State of Punjab***, AIR 1964 SC 986, at page 990, Das Gupta J. has explained the concept of the word 'intent'. The relevant observations are made by referring to the observations made by Batty J. in the

decision ***Bhagwant v. Kedari***, I.L.R. 25 Bombay 202. They are as under:-

> *"The word "intent" by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired-but rather connotes the one object for which the effort is made-and thus has reference to what has been called the dominant motive, without which, the action would not have been taken."*
>
> (Emphasis supplied)

23. In the case of ***Basdev v. State of Pepsu***, AIR 1956 SC 488, at page 490, the following observations have been made by Chadrasekhara Aiyar J.:-

> "*6. ... Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this had led to a certain amount of confusion."*
>
> (Emphasis supplied)

24. In para 9 of the judgment, at page 490, the observations made by Coleridge J. in ***Reg. v. Monkhouse***, (1849) 4 COX CC 55(C), have been referred to. They can be referred to, with advantage at this stage, as they are very illuminating:-

> *"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. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. 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; but even there the state of mind of the party is most material to be considered. For instance, if such an act were done by a born idiot, the intent to kill could not be inferred from the act. So if the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely; was he rendered by intoxication entirely incapable of forming the intent charged?"* (Emphasis supplied)

25. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind that our legislature has used two different terminologies 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent

to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be proper to hold that 'intent' and 'knowledge' cannot be equated with each other. They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that 'intent' and 'knowledge' are the same. 'Knowledge' will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

26. In the case ***In re Kudumula Mahanandi Reddi***, AIR 1960 AP 141, also the distinction between 'knowledge' and 'intention' is aptly explained. It is as under:-

> *"Knowledge and intention must not be confused.*
>
> *17. ... Every person is presumed to intend the natural and probable consequences of his act until the contrary is proved. It is therefore necessary in order to arrive at a decision, as to an offender's intention to inquire what the - natural and probable consequences of his acts would be. Once there is evidence that a deceased person, sustained injuries which were sufficient in the ordinary course of nature to cause death, the person who inflicted them could be presumed to have intended those natural and*

probable consequences. His offence would fall under the third head of sec. 300, I.P.C.

18. ... A man's intention has to be inferred from what he does. But there are cases in which death is caused and the intention which can safely be imputed to the offender is less grave. The degree of guilt depends upon intention and the intention to be inferred must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the ordinary course of nature to cause death, but which the - offender knows is likely to cause the death. Proof of such knowledge throws light upon his intention.

19. ...Under sec. 299 there need be no proof of knowledge, that the bodily injury intended was likely to cause death. Before deciding that a case of culpable homicide amounts to murder, there must be proof of intention sufficient to bring it under Sec.300. Where the injury deliberately inflicted is more than merely 'likely to cause death' but sufficient in the ordinary course of nature to cause death, the higher degree of guilt is presumed." (Emphasis supplied)

It has been further observed therein as under:-

"26. ...*Where the evidence does not disclose that there was any intention, to cause death of the deceased but it was clear that the accused had the knowledge that their acts were likely to cause death the accused can be held guilty under the second part of sec. 304, I.P.C. The contention that in order to bring the case under the second part of sec. 304, I.P.C. it must be brought within one of the exceptions to sec 300, I.P.C. is not acceptable."*
(Emphasis supplied)

27. Thus, while defining the offence of culpable homicide and murder, the framers of the IPC laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be. The framers of the IPC designedly used the two words 'intention' and 'knowledge', and it must be taken that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where *mens rea* is not required in order to prove that a person had certain knowledge, he "must have been aware that certain specified harmful consequences would or could follow." (***Russell on Crime,*** *Twelfth Edition, Volume 1 at page 40*).

28. This awareness is termed as knowledge. But the knowledge that specified consequences would result or could result by doing an act is not the same thing as the intention that such consequences should ensue. If an act is done by a man with the knowledge that certain consequences may follow

or will follow, it does not necessarily mean that he intended such consequences and acted with such intention. Intention requires something more than a mere foresight of the consequences. It requires a purposeful doing of a thing to achieve a particular end. This we may make it clear by referring to two passages from leading text-books on the subject. Kenny in his ***Outlines of Criminal Law***, *Seventeenth Edition at page 31* has observed:-

> *"To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connexion is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct..... It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed..... Again, a man cannot intend to do a thing unless he desires to do it."*
>
> (Emphasis supplied)

29. ***Russell on Crime***, *Twelfth Edition, 1st Volume at page 41* has observed:-

> *"In the present analysis of the mental element in crime the word "intention" is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims..... Differing from intention, yet closely resembling it, there are two*

> *other attitudes of mind, either of which is sufficient to attract legal sanctions for harm resulting from action taken in obedience to its stimulus, but both of which can be denoted by the word "recklessness". In each of these the man adopts a line of conduct with the intention of thereby attaining an end which he does desire, but at the same time realises that this conduct may also produce another result which he does not desire. In this case he acts with full knowledge that he is taking the chance that this secondary result will follow. Here, again, if this secondary result is one forbidden by law, then he will be criminally responsible for it if it occurs. His precise mental attitude will be one of two kinds-(a) he would prefer that the harmful result should not occur, or (b) he is indifferent as to whether it does or does not occur."*
>
> (Emphasis supplied)

30. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that "whoever causes death by

doing an act with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

31. Thus, in order that the requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide proved, it is necessary that any of the two specific intentions must be proved. But, even when such intention is not proved, the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his such act to cause death, that is, with the knowledge that the result of his doing his act may be such as may result in death.

32. The important question which has engaged our careful attention in this case is, whether on the facts and in the circumstances of the case we should maintain the conviction of the appellant herein for the offence under Section 304 Part I or we should further alter it to Section 304 Part II of the IPC?

SECTIONS 299 AND 300 OF THE IPC:-

33. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299, 'culpable homicide' is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted-above, it would be 'culpable homicide'. Section 300 of the IPC, however, deals with 'murder', although there is no clear definition of 'murder' in Section 300 of the IPC. As has been repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'. (see ***Rampal Singh v. State of U.P.***, (2012) 8 SCC 289)

34. In the case of ***State of Andhra Pradesh v. Rayavarapu Punnayya***, (1976) 4 SCC 382, this Court, while clarifying the distinction between these two terms and their consequences, held as under:-

> *"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' is species. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is what may be called 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."*
>
> (Emphasis supplied)

35. Section 300 of the IPC proceeds with reference to Section 299 of the IPC. 'Culpable homicide' may or may not amount to 'murder', in terms of Section 300 of the IPC. When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of the IPC, while in other cases, that is,

where an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC. Various judgments of this Court have dealt with the cases which fall in various classes of firstly, secondly, thirdly and fourthly, respectively, stated under Section 300 of the IPC. It would not be necessary for us to deal with that aspect of the case in any further detail.

36. The principles stated in the case of ***Virsa Singh v. State of Punjab***, AIR 1958 SC 465, are the broad guidelines for the courts to exercise their judicial discretion while considering the cases to determine as to which particular clause of Section 300 of the IPC they fall in. This Court has time and again deliberated upon the crucial question of distinction between Sections 299 and 300 of the IPC, i.e. 'culpable homicide' and 'murder' respectively. In ***Phulia Tudu v. State of Bihar***, (2007) 14 SCC 588, this Court noticed that confusion may arise if the courts would lose sight of the true scope and meaning of the terms used by the legislature in these sections. This Court observed that the safest way of approach to the interpretation and

application of these provisions seems to be to keep in focus the keywords used in the various clauses of these sections.

37. This Court in ***Phulia Tudu*** (supra) has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

Section 299	***Section 300***
A person commits culpable homicide if the act by which the death is caused is done-	***Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-***
INTENTION	

(a) with the intention of causing death; or	***(1) with the intention of causing death; or***
(b) with the intention of causing such bodily injury as is likely to cause death; or	***(2) with the 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*** ***(3) 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***
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death	***(4) with the knowledge that the act 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 is mentioned above.***

38. Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the *mens rea* requisite under clause (2) is the

knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

39. Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture

of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299 of the IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 of the IPC conveys the

sense of probable as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

40. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. The decision in the case of ***Rajwant Singh v. State of Kerala***, AIR 1966 SC 1874, is an apt illustration of this point.

41. The scope of clause *thirdly* of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in ***Virsa Singh*** (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause *thirdly* of Section 300 of

the IPC is attracted. Analysing clause *thirdly* and as to what the prosecution must prove, it was held in ***Virsa Singh*** (supra) as under:-

> *"15. First, it must establish, quite objectively, that a bodily injury is present;*
>
> *16. Secondly, the nature of the injury must be proved; These are purely objective investigations.*
>
> *17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended...*
>
> *18. Once these three elements are proved to be present, the enquiry proceeds further and,*
>
> *19. Fourthly, it must be proved 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."*
>
> (Emphasis supplied)

It was further observed as under:-

> *"20. ...* 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."*
>
> (Emphasis supplied)

42. Thus, it is clear that the ingredient of clause *thirdly* is not the intention to cause death but on the other hand the

ingredient to be proved is the intention to cause the particular injury that was present. It is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances. In ***Emperor v. Sardarkhan Jaridkhan***, AIR 1916 Bom 191, it was observed as under:-

> *"Where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended."*
>
> (Emphasis supplied)

43. Commenting upon the aforesaid observation of the Bombay High Court, Justice Bose, in ***Virsa Singh*** (supra), held thus:-

> *"23. ... With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."*

44. As to how the intention is to be inferred even in a case of single injury, Justice Bose further held as under:-

> *"23. ... The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to*

be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But 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 knew 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 an injury of a particular degree of seriousness, but whether he intended to inflict the injury in 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. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

24. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact. …"

(Emphasis supplied)

45. This question was again considered in ***Jagrup Singh v. State of Haryana***, (1981) 3 SCC 616, by a Bench of this Court consisting of Justice D.A. Desai and Justice A.P. Sen and following the ratio laid down in ***Virsa Singh*** (supra) it was held as under:-

> *"6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Istly or clause 3rdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."*

The aforesaid decision of this Court in ***Jagrup Singh*** (supra) has been strongly relied upon by the learned senior counsel appearing for the appellant.

46. However, the learned senior counsel did not seek to rely on the observations made in para 6 referred to above in the case of ***Jagrup Singh*** (supra). The learned senior counsel

relied on the observations which we shall refer to hereinafter, but after giving some factual background in the case of ***Jagrup Singh*** (supra). On the fateful evening, the marriage of one Tej Kaur was performed. Shortly thereafter, the appellant Jagrup Singh armed with a *gandhala*, his brothers Billaur Singh armed with a *gandasa* and Jarmail Singh and Waryam Singh armed with *lathies* emerged suddenly and made a joint assault on the deceased Chanan Singh and the three eyewitnesses, Gurdev Singh, PW 10, Sukhdev Singh, PW 11 and Makhan Singh, PW 12. The deceased along with the three eyewitnesses was rushed to the Rural Dispensary, Rori where they were examined at 6 pm by Dr. Bishnoi, PW 3, who found that the deceased had a lacerated wound 9 cm × 11/2 cm bone deep on the right parietal region, 9 cm away from the tip of right pinna; margins of wound were red, irregular and were bleeding on touch; direction of wound was anterior-posterior. The deceased succumbed to the injuries. The Doctor who performed an autopsy on the dead body of the deceased deposed before the Trial Court that the death of the deceased was due to cerebral compression as a result of

the head injury which was sufficient in the ordinary course of nature to cause death. In the background of this case, this Court held:-

> *"14. ... In our judgment, the High Court having held that it was more probable that the appellant Jagrup Singh had also attended the marriage as the collateral, but something happened on the spur of the moment which resulted in the infliction of the injury by Jagrup Singh on the person of the deceased Chanan Singh which resulted in his death, manifestly erred in applying Clause Thirdly of Section 300 of the Code. On the finding that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without pre-meditation and in a sudden fight, the case was covered by Exception 4 to Section 300. It is not suggested that the appellant had taken undue advantage of the situation or had acted in a cruel or unusual manner. Thus, all the requirements of Exception 4 are clearly met. That being so, the conviction of the appellant Jagrup Singh, under Section 302 of the Code cannot be sustained.*
>
> *15. The result, therefore, is that the conviction of the appellant under Section 302 is altered to one under Section 304, Part II of the Indian Penal Code. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years."*
>
> (Emphasis supplied)

We have noticed something in the aforesaid observations made by this Court which, in our opinion, creates some confusion. We have come across such observations in many other decisions of this Court over and above the case of ***Jagrup***

Singh (supra). What we are trying to highlight is that in ***Jagrup Singh*** (supra), although this Court altered the conviction from Section 302 to Section 304 Part II, it took shelter of Exception 4 to Section 300 of the IPC. The question is, was there any need for the Court to take recourse to Exception 4 to Section 300 of the IPC for the purpose of altering the conviction from Section 302 to Section 304 Part II of the IPC. We say so because there is fine difference between the two parts of Section 304 of the IPC. Under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

47. In ***Jawahar Lal v. State of Punjab***, (1983) 4 SCC 159, also the accused hit the deceased with a knife blow in front of left side of his chest and as per the autopsy report the injuries were found sufficient in an ordinary course of nature to cause

death. This Court took a view that the accused could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. The relevant paras of the said judgment is reproduced as under:

> *"17.....we should also not further dilate on this point in view of the decision of this Court in Jagrup Singh v. State of Haryana : 1981 Cri LJ 1136. In that case after referring to the evidence, this Court held that the appellant gave one blow on the head of the deceased with the blunt side of the gandhala and this injury proved fatal. The Court then proceeded to examine as to the nature of the offence because the appellant in the case was convicted for an offence under Section 302. Undoubtedly, this Court said that there is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. The Court then proceeded to lay down the criteria for judging the nature of the offence. It may be extracted;*
>
> *The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstance attendant upon the death.*
>
> *18. We may point out that decision in Jagrup Singh's Case 1981 Cri LJ 1136 was subsequently followed in Randhir Singh @ Dhire v. State of Punjab Decided on September 18, 1981 and in Kulwant Rai v. State of Punjab Decided on August 7, 1981 (Criminal Appeal No. 630 of 1981).*

> *19. Having kept this criteria under view, we are of the opinion that the offence committed by the 1st appellant would not be covered by clause Thirdly of Para 3 of Section 300 and therefore, the conviction under Section 302, I.P.C. cannot be sustained.*
>
> *20. What then is the offence committed by the 1st appellant? Looking to the age of the 1st appellant at the time of the occurrence, the nature of the weapon used, the circumstances in which one blow was inflicted, the time of the day when the occurrence took place and the totality of other circumstances, namely, the previous trivial disputes between the parties, we are of the opinion that the 1st appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, the 1st appellant is shown to have committed an offence under Section 304, Part II of the Indian Penal Code and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years maintaining the sentence of fine."*

48. In ***Camilo Vaz v. State of Goa*** [(2000) 9 SCC 1 : 2000 SCC (Cri) 1128] the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the trial court and the Bombay High Court convicted the appellant under Section 302 IPC. This Court, however, converted the conviction to one under Section 304 Part II IPC and observed:- (SCC p. 9, para 14)

> *"14. … When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be*

imputed to the accused. In that situation case will fall in Part II of Section 304 IPC as in the present case."

(Emphasis supplied)

49. In ***Jai Prakash v. State (Delhi Admin.)***, (1991) 2 SCC 32, this Court, after an exhaustive review of various decisions, more particularly, the principles laid down in ***Virsa Singh's*** case (supra), concluded as under:-

"18. In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only to assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result. It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result. We may point out that we are not concerned with the intention to cause death in which case it will be a murder simplicitor unless exception is attracted. We are concerned under clause 3rdly with the intention to cause that particular injury which is a subjective inquiry and when once such intention is established and if the intended injury is found objectively to be sufficient in the ordinary course of nature to cause death, clause 3rdly is attracted and it would be

> *murder, unless one of the exceptions to Section 300 is attracted. If on the other hand this ingredient of 'intention' is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that clause 3rdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC."*
> (Emphasis supplied)

50. In the case of ***Rajwant Singh*** (supra), after referring to the relevant clauses of Section 300 of the IPC, the following observations have been made:-

> *"10. ... The mental attitude is thus made of two elements (a) causing an intentional injury and (b) which injury the offender has the foresight to know would cause death....*
>
> *11. ... For the application of clause three it must first be established that the injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death, one test is satisfied. Then it must be proved that there was an intention to inflict that very Injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established."* (Emphasis supplied)

51. In the case of ***Anda v. State of Rajasthan***, AIR 1966 SC 148, the two relevant Sections 299 and 300 respectively are

brilliantly analysed and the relevant observations are made at page 151 in para 7. Before we refer to those observations, we would refer to certain observations made earlier. They are as under:-

> *"The offence of culpable homicide involves the doing of an act (which term includes illegal omissions) (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death or (c) with the knowledge that the act is likely to cause death. If the death is caused in any of these three circumstances, the offence of culpable homicide is said to be committed..... Intention and knowledge in the ingredients of the section postulate the existence of a positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the death of the person. Sec. 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Sec. 300 begins by setting out the circumstances when culpable homicide turns out into murder which is punishable under sec. 302 and the exceptions in the same section tell us when offence is not murder but culpable homicide not amounting to murder punishable under sec. 304. Murder is an aggravated form of culpable homicide. The existence of one of four conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder."*
> (Emphasis supplied)

52. We will now refer to the relevant observations made in para 10 at page 151. They are as under:-

> *"The third clause views the matter from a general stand-point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but within culpable homicide not amounting to murder or something less. The illustration appended to the clause 3rdly reads:*
>
> > *'(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.' The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder."* (Emphasis supplied)

53. This Court in ***Vineet Kumar Chauhan v. State of U.P.***, (2007) 14 SCC 660, noticed that the academic

distinction between 'murder' and 'culpable homicide not amounting to murder' had vividly been brought out by this Court in ***State of A.P. v. Rayavarapu Punnayya,*** (1976) 4 SCC 382, where it was observed as under:-

> *"…that the safest way of approach to the interpretation and application of Sections 299 and 300 of the Code is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of sections 299 and 300 of the Code and the drawing support from the decisions of the court in Virsa Singh v. State of Punjab, (AIR 1958 SC 465 : 1958 Cri LJ 818) and Rajwant Singh v. State of Kerala, (AIR 1966 SC 1874 : 1966 Cri LJ 1509) speaking for the court, Justice RS Sarkaria, neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the court said that wherever the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be that the accused has done an act by doing which he has caused the death of another. Two, if such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in section 299. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder, punishable under the First or Second part of Section 304, depending respectively, on whether this second or the third clause of Section 299 is applicable. If this question is found in the positive but the cases come within any of the exceptions enumerated in Section 300, the offence would still be*

> *culpable homicide not amounting to murder, punishable under the first part of Section 304 of the Code. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.*" (Emphasis supplied)

54. In the case of ***Tholan v. State of Tamil Nadu,*** AIR 1984 SC 759, the accused stood in front of the house of the deceased and used filthy language against some persons who were unconnected with the deceased. The deceased came out of his house and told the accused that he should not use vulgar and filthy language in front of ladies and asked him to go away. The accused questioned the authority of the deceased to ask him to leave the place. In the ensuing altercation, the accused gave one blow with a knife which landed on the (right) chest of the deceased which proved to be fatal. This Court came to the conclusion that the accused could not be convicted under Section 302, but was guilty under Section 304 Part II. The circumstances which weighed with this Court were : (i) there was no connection between the accused and the deceased and the presence of the deceased at the time of the incident, was wholly accidental; (ii) altercation with the deceased was on the spur of the moment and the accused gave a single blow being

enraged by the deceased asking him to leave the place; (iii) the requisite intention could not be attributed to the accused as there was nothing to indicate that the accused intended the blow to land on the right side of the chest which proved to be fatal.

55. In ***Chamru, Son of Budhwa v. State of Madhya Pradesh***, AIR 1954 SC 652, in somewhat similar circumstances, where there was exchange of abuses between the two parties both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of the skull resulting in the death. In view of the fact that the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under Section 304, Part II of the IPC. In ***Willie (William) Slaney v. The State of Madhya Pradesh***, AIR 1956 SC 116, there was, as here, a sudden quarrel leading to an exchange of abuses and in the heat of the moment a solitary blow with a hockey-stick had been given on

the head. The Court held that the offence amounted to culpable homicide not amounting to murder punishable under Section 304, Part II.

56. In ***Kulwant Rai v. State of Punjab***, (1981) 4 SCC 245, the accused, without any prior enmity or premeditation, on a short quarrel gave a single blow with a dagger which later proved to be fatal. This Court observed that since there was no premeditation, Part 3 of Section 300 of the IPC could not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the facts and circumstances of that case, the conviction of the accused was altered from Section 302 to that under Section 304 Part II IPC and the accused was sentenced to suffer rigorous imprisonment for five years.

57. In ***Jagtar Singh v. State of Punjab***, (1983) 2 SCC 342, the accused on the spur of the moment inflicted a knife-blow on the chest of the deceased. The injury proved to be fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. This Court observed that: (SCC p. 344, para 8):-

> *"8. … The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. …"* (Emphasis supplied)

This Court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

58. In ***Hem Raj v. State (Delhi Admn.),*** 1990 Supp SCC 291, the accused inflicted single stab injury landing on the chest of the deceased. The occurrence admittedly had taken place on the spur of the moment and in heat of passion upon a sudden quarrel. According to the doctor the injury was sufficient in the ordinary course of nature to cause death. This Court observed as under: (SCC p. 295, para 14)"-

> *"14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause*

> *death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither clause I nor clause III of Section 300 IPC will be attracted."*
>
> (Emphasis supplied)

This Court while setting aside the conviction under Section 302 convicted the accused under Section 304 Part II and sentenced him to undergo rigorous imprisonment for seven years.

59. We may lastly refer to the decision of this Court in ***Pulicherla Nagaraju v. State of A.P.***, (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500, wherein this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed : (SCC pp. 457-58, para 29)

> *"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of*

the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."
(Emphasis supplied)

60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the

true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would

bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of

the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of

the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the

prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of *mens rea*. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if

death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient

in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

61. We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

62. Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant

struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is – whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause *thirdly* of Section 300 of the IPC.

63. In the aforesaid view of the matter and more particularly bearing the principles of law explained aforesaid, the present appeal is partly allowed. The conviction of the appellant under

Section 304 Part I of the IPC is altered to one under Section 304 Part II of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years.

.....J.
(B.R. GAVAI)

.....J.
(J.B. PARDIWALA)

NEW DELHI;
JULY 20, 2023