ARUN NIVALAJI MORE

v.

STATE OF MAHARASHTRA

AUGUST 8, 2006

[G.P. MATHUR AND R.V. RAVEENDRAN, JJ.]

Penal Code, 1860: Sections 299, 300 Thirdly, 302 and 304 Part I.

Murder—Culpable homicide—When culpable homicide is murder—The licence of the accused as a commission vendor in a catering unit was cancelled by the deceased—Thereafter, the accused went to the office of the deceased and assaulted him with a knife—A constable gave a chase to the accused and apprehended him and a blood-stained knife was recovered from his pocket—The deceased gave two separate dying declarations before PW-1 and PW-12 and a formal dying declaration was also recorded by the Deputy Superintendent of Police—In these statements, the deceased clearly stated that the accused had assaulted him with a knife—In the opinion of the doctor the injuries had been caused by a sharp elongated heavy object—It was also stated in the medical opinion that the injury inflicted by the accused was sufficient in the ordinary course of nature to cause death—Trial Court convicted the accused under S. 304 Part I—But the High Court altered the conviction to one under S. 302—Correctness of—Held: The word "knowledge" occurring in clause Secondly of S. 300 IPC imports some kind of certainty and not merely a probability—An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death in the ordinary course of nature—The mere fact that a dangerous or deadly weapon was not used or the injuries were not caused on vital part of the body may not necessarily take out the offence from the clutches of clause Thirdly of S. 300 IPC—Hence, High Court rightly altered the conviction from S. 304 Part I IPC to that under S. 302.

Words & Phrases:

"Knowledge"—Meaning of—In the context of Clause Secondly of Section 300 of the Penal Code, 1860.

A The appellant-accused was working as a licensed commission vendor in the catering unit at a Railway Station. The appellant's licence was cancelled by the Divisional Commercial Superintendent. Thereafter, the appellant went to the office of the Divisional Commercial Superintendent and assaulted him with a knife. PW-2 saw the appellant stabbing him with the knife and gave direct eye-witness account of the assault made by the B appellant upon the Divisional Commercial Superintendent while the latter was sitting in his office. PW-7, a constable of RPF, gave a chase to the appellant and apprehended him and a blood-stained knife was recovered from his pocket. The Divisional Commercial Superintendent succumbed to his injuries. The deceased gave two separate dying declarations before C PW-1 and PW-12 and a formal dying declaration was also recorded by the Deputy Superintendent of Police. In these statements, the deceased clearly stated that the appellant had assaulted him with a knife. In the opinion of the doctor the injuries had been caused by a sharp elongated heavy object. It was also stated in the medical opinion that the injury inflicted by the appellant was sufficient in the ordinary course of nature D to cause death.

The trial court convicted the appellant-accused under Section 304 Part I of the Penal Code, 1860 holding that the case would not fall within the ambit of clause Thirdly of Section 300 IPC. However, the High Court E altered the conviction from Section 304 Part I to Section 302 IPC. Hence the appeal.

The following question arose before the Court:-

Whether the offence committed by the appellant comes within the F ambit of clause Thirdly of Section 300 IPC?

Dismissing the appeals, the Court

HELD: 1. In order to ascertain whether the offence committed by an accused would fall under one of the clauses of Section 304 of the Penal G Code, 1860 or under Section 302 IPC, attention must be focused on the language used by the Legislature in Sections 299 and 300 IPC, as otherwise irrelevant considerations come into play which affect the judgment resulting in failure of justice. [311-B-C]

2.1. First it has to be seen whether the offence falls within the ambit H of Section 299 IPC. If the offence falls under Section 299 IPC, a further

enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly of Section 300 IPC. If the offence falls in anyone of these clauses, it will be murder as defined in Section IPC, anyone of the four clauses of Section 300 IPC yet if it is covered by anyone of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses; in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done -

(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 the act is likely to cause death.

[311-C-G]

2.2. If the offence is such which is covered by anyone of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of Section 300 IPC, it will not be murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted Under Section 304 Part I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part II IPC because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor. [311-G-H; 312-A-B]

3.1. Having regard to the facts of the case it can legitimately be urged that clauses Firstly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to cause death" occurring

A in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word 'knowledge' is - the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. [312-C-D]

Black's Law Dictionary, Blackstone's Criminal Practice, The Law
B *Commission of United Kingdom:* 11th Report and *Glanville Williams: Text Book of Criminal Law,* p. 125, referred to.

3.2. Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability.
C Consequently, it cannot be held that the appellant caused the injury with the intention of causing such bodily injury as the appellant knew to be likely to cause the death of the deceased. So, clause Secondly of Section 300 IPC will also not apply. [313-C-D]

D 3.3. The argument that the accused had no intention to cause death is wholly fallacious for judging the scope of clause Thirdly of Section 300 IPC as the words "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient
E to cause death in the ordinary course of nature. This is also borne out form illustration (c) to Section 300 IPC. [313-F-G]

4. In order to ascertain that "there was an intention to inflict that particular bodily injury" the enquiry should not be directed to find out whether the offender had intention to cause those very injuries to the
F internal organs of the body which were actually found to be there in medical examination. The intention has to be gathered from a host of circumstances like the seat of injury, viz., the place or portion of the body where the injury has been caused, the nature of the weapon, its size and dimension or other attributes and the force applied in inflicting the injury.
G Being a question of fact it is difficult to lay down exhaustive tests to ascertain as to whether the offender intended to inflict that particular injury which is found on the body of the deceased but the features enumerated above will certainly play a vital role in arriving at a correct conclusion on the said issue. [316-D-E-F]

H *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465 and *Jai Prakash* v.

State (Delhi Administration), **[1991] 2 SCC 32, relied on.** A

5. The mere fact that a dangerous or deadly weapon was not used or the injuries were not caused on vital part of the body may not necessarily take out the offence from the clutches of clause Thirdly of Section 300 IPC. Death may take place on account of large number of blows given by a blunt weapon like lathi on hands and legs causing B **fractures. Though the injuries may not be on a vital part of the body as the said term is generally understood, but if the medical evidence shows that they were sufficient in the ordinary course of nature to cause death, the offence would fall in clause Thirdly of Sectin 300 IPC. [316-G; 317-A]**

C

Anda **v.** *State of Rajasthan,* **AIR (1966) SC 148, relied on.**

6. The injury inflicted by the appellant was clearly intended by him and it was not an accidental or unintentional injury. The medical evidence established that the injury was sufficient in the ordinary course of nature to cause death. In these circumstances there is no escape from the D **conclusion that the offence committed by the appellant is clearly covered by clause Thirdly of Section 300 IPC. [317-G]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1078-1079 of 2005.

E

From the Judgment and Order dated 24/28.9.2004 of the High Court of Judicature at Bombay (Aurangabad Bench) in Criminal Appeal Nos. 194 and 317/1989.

Venkateswar Rao Anomulu, Gautam Godara and Dr. Kailash Chand for the Appellant. F

V.N. Raghupathy and Aniruddha P. Mayee for the Respondent.

The Judgment of the Court was delivered by

G. P. MATHUR, J. These appeals, by special leave, have been preferred G against the judgment and order dated 28.9.2004 of Bombay High Court by which the appeal preferred by the appellant against his conviction under Section 304 Part I IPC and sentence of 7 years R.I. and a fine of Rs.200/- awarded by the learned Additional Sessions Judge, Jalgaon in Sessions Case No.145 of 1987, was dismissed and the appeal preferred by the State of H

A Maharashtra was allowed and his conviction was altered from 304 Part I to Section 302 IPC and he was sentenced to imprisonment for life.

2. The case of the prosecution, in brief, is that the appellant Arun Nivalaji More was working as a licensed commission vendor in the catering unit at Bhusawal Railway Station. He absented from duty with effect from B 3.11.1986 and reported back for work after more than two months on 6.1.1987 on which date he gave an application giving reasons for his absence from duty. In this application he stated that he had gone home on account of illness of his wife and subsequently he was arrested by police in connection with some criminal case and after being released on bail he had reported for duty. C PW-1 Pramod Uniyal, Senior Divisional Commercial Superintendent, directed that an enquiry may be made from the concerned Police Station regarding the arrest of the appellant. PW-5 Narayan Dhangar, Head Clerk then sent a letter to Police Station, Faizpur, enquiring about the case in which the appellant had been arrested. The Incharge of Police Station, Faizpur, informed that the appellant had been arrested in case Crime No. 63 of 1986 under Section 302 D IPC and that he had been released on bail. After receiving the information that a case under Section 302 IPC had been registered against the appellant, PW-1 Pramod Uniyal and Chhedilal Baliram Ahirwar, who was working as Divisional Commercial Superintendent and who lost life in the incident in question, took a decision to cancel the licence of the appellant. Accordingly E a letter was prepared on 20.1.1987 under the signature of Chhedilal Baliram Ahirwar (hereinafter referred to as 'Shri Ahirwar') giving intimation to the appellant regarding termination of his licence. The letter was served on the appellant on the same day by PW-5 Narayan Dhangar at about 1.30 P.M. The case of the prosecution further is that the appellant, armed with a knife, entered the office of the Divisional Commercial Superintendent at about 4.15 F P.M. on 20.1.1987. First he went near the table of Shri Tadvi, who was working as Office Superintendent and thereafter stood near the table of Shri Bandu Kulkarni as he was looking for an opportunity when Shri Ahirwar would be left alone in his chamber. Thereafter he entered the chamber of Shri Ahirwar and gave him a blow by the knife on the left side of stomach. Shri G Ahirwar shouted for help saying "Bachao..... bachao" (save ..... save). PW-2 Ashok Pardeshi, who had gone to the D.C.S. Office in connection with a tender which his father had submitted for taking contract of a cycle stand, and was standing in front of the chamber of Shri Ahirwar, saw the appellant stabbing him with a knife. He immediately rushed inside and after picking up a chair threw it at the appellant. Shri Ahirwar also threw a glass containing H

water on the appellant in order to save himself. The appellant thereafter ran away from the door at the rear side of the chamber. Hearing the commotion some persons including PW-3 Mohammed Ilias and PW-4 Eknath reached the scene of occurrence. PW-1 Pramod Uniyal had also come and Shri Ahirwar told him that he was assaulted by a knife by the appellant Arun Nivalaji More. PW-7 Sukhdeo Bavane, a constable of RPF, gave a chase to the appellant and managed to apprehend him at a distance of about 200 meters near Poonam Hotel. He seized a blood stained knife from the pocket of the appellant and thereafter the appellant was taken to the police station. Shri Ahirwar was rushed to the railway hospital in a jeep where an operation was performed but he succumbed to his injuries on 23.1.1987. After usual investigation the police submitted charge-sheet against the appellant under Section 302 IPC.

3. During the course of trial the prosecution examined several witnesses and also filed some documentary evidence. PW-1 Pramod Uniyal, Senior Divisional Commercial Superintendent and PW-5 Narayan Dhangar, Head Clerk deposed regarding the absence of the appellant from duty with effect from 3.11.1986, the enquiry conducted after the appellant had given an application on 6.1.1987 giving explanation for his absence and also the order which had been passed under the signature of the deceased Shri Ahirwar on 20.1.1987 cancelling the licence of the appellant. PW-2 Ashok Pardeshi gave direct eye witness account of the assault made by the appellant upon the deceased by a knife while the latter was sitting in his office. PW-7 Sukhdeo Bavane, constable of RPF, deposed about the chase given by him and also the fact that he apprehended the appellant at a distance of about 200 meters and recovered a blood stained knife from the pocket of the appellant. Apart from the above evidence the prosecution also relied upon the evidence of three separate dying declarations made by the deceased. PW-1 Pramod Uniyal, Senior Divisional Commercial Superintendent had reached the chamber of the deceased after hearing the commotion and immediately after the assault had been made. He stated that the deceased told him that the appellant Arun Nivalaji More had assaulted him with a knife. PW-12 Shantidevi, who is wife of the deceased, deposed that when she visited the hospital after learning about the incident the deceased told her that the appellant had assaulted him with a knife. A formal dying declaration was also recorded by PW-13 Raghunath Shankar Kahire, Dy. Superintendent of Police, after PW-6 Dr. Anand Thakare, Medical Officer had certified that the deceased was in a fit mental condition to give a statement. In this statement also the deceased clearly said that the appellant had assaulted him with a knife. The recovery of blood stained knife from the pocket of the appellant was proved by the

A statement of PW-7 Sukhdeo Bavane.

4. The appellant in his statement under Section 313 Cr.P.C., which he gave in writing under his signature, denied to have inflicted any knife blow upon the deceased. He admitted that he had received a letter from PW-5 Narayan Dhangar whereby he was informed that his licence as a commission B vendor had been cancelled. He further admitted that he went to the office of the deceased to have the order of cancellation of his licence recalled. He had no grudge against Shri Ahirwar. He told the deceased that because of him, his children will have to suffer and they will starve. Shri Ahirwar ridiculed him and sarcastically said "why do you procreate offsprings like pig? Do you C procreate by relying upon us?" The appellant has then said that he was enraged by these utterances of Shri Ahirwar and he took out a pen knife with the intention to threaten him and it was not the knife which had been produced in the court. At this juncture the deceased hurled the drinking water glass and a paper weight on him and then there was scuffle between the two in which the deceased caught hold of the hand of the appellant in which he was D holding the pen knife and it was in the scuffle that the pen knife struck the deceased. The appellant also admitted that while he was running away the RPF constable apprehended him and took him to the police station but he had thrown the pen knife. He explained the possession of the pen knife by saying that there are goondas around Bhusawal railway station and he used to come E to the railway station from a long distance.

5. The learned Additional Sessions Judge, after carefully analyzing the evidence on record, accepted the prosecution version of the incident that the appellant assaulted the deceased with a knife which had been recovered from his possession and had been produced in court. He also disbelieved the defence F taken by the appellant that the deceased had used any sarcastic words or that there was any scuffle between the appellant and the deceased. However, for reasons, which we will advert to later on, he convicted the appellant under Section 304 Part I IPC and sentenced him to undergo 7 years R.I. and a fine of Rs.200/- and in default to undergo 2 months R.I. The appellant preferred an appeal against his conviction and sentence before the High Court and the G State of Maharashtra also preferred an appeal challenging the acquittal of the appellant under Section 302 IPC. As stated earlier the High Court dismissed the appeal filed by the appellant and allowed the appeal filed by the State and altered the conviction of the appellant to that under Section 302 IPC and sentenced him to imprisonment for life.

H

6. Learned counsel for the appellant tried to assail the conviction of the appellant and urged that the prosecution had failed to establish the charge against the appellant. In our opinion the contention raised has no substance. The case of the prosecution that the appellant assaulted the deceased with a knife is clearly established by the evidence regarding motive, namely, the cancellation of commission vendor licence of the appellant by the deceased, eye witness account given by PW-2 Ashok Pardeshi, the fact that the appellant was apprehended at a short distance after he was given a chase by PW-7 Sukhdeo Bavane, constable of RPF and the recovery of blood stained knife from his pocket, besides evidence of three dying declarations which were deposed to by PW-1 Pramod Uniyal, Senior Divisional Commercial Superintendent, PW-12 Shantidevi, wife of the deceased and PW-13 Raghunath Shankar Khaire, Dy. Superintendent of Police. There is absolutely no reason why the deceased, who was holding a fairly senior position in the railways, would make a false statement implicating the appellant. The medical evidence clearly shows that the injury had been caused by a sharp cutting weapon like knife. There is absolutely no evidence on record in support of the plea taken by the appellant in his defence that the deceased had used any sarcastic words or had thrown a paper weight and a glass upon the appellant which allegedly enraged him. Except for giving his statement in writing under Section 313 Cr.P.C., the appellant did not choose to examine himself as a witness which he could do in accordance with Section 315 Cr.P.C. or lead any other evidence. Thus, we are clearly of the opinion that the prosecution version of the incident has been fully established and has been rightly believed both by the learned Additional Sessions Judge and also by the High Court.

7. Learned counsel for the appellant has next contended that the learned Additional Sessions Judge had rightly convicted the appellant under Section 304 Part I IPC and the High Court has erred in altering his conviction to that under Section 302 IPC. In fact the contention is that the appellant should have been convicted under Section 304 Part II IPC as the appellant had no intention to cause death or to cause such bodily injury as is likely to cause death. It has been urged that there was no premeditation and the appellant gave a single blow and the blow was not repeated although the appellant could have done so as the deceased was unarmed and was not in a position to offer any kind of resistance. In this connection learned counsel has laid emphasis on the following reasons assigned by the learned Additional Sessions Judge in his judgment for holding that the case would not fall within the ambit of clause Thirdly of Section 300 IPC: -"

A (i) the accused has given only one blow and that too on the stomach of Shri Ahirwar;

(ii) Shri Ahirwar after receiving the blow could walk to a certain distance and came and sat on the nearby chair of his employee;

(iii) Shri Ahirwar died after two days of the stabbing;

B

(iv) the accused had an ample opportunity to inflict more blows on Shri Ahirwar when he found him alone in the chamber, but he only gave one blow, that too on his stomach."

8. In view of the submission made the main question which requires C consideration is whether the offence committed by the appellant comes within the ambit of clause Thirdly of Section 300 IPC.

9. The medical evidence on record may be considered first. PW-6 Dr. Anand Thakare, who was doctor in the railway hospital, examined and performed surgery on the deceased Shri Ahirwar on 20.1.1987 and found D following injuries on his body: -

"1½" x 1½" lacerated wound, left hypochondrium transversely placed, fresh bleeding, depth could not be ascertained at that time, but signs were suggestive of intra abdominal injuries, big haematoma around the wound, blood clots arcund the wound."

E

On internal examination he found following injuries: -

(1) Two tears in omentum 3" x 3" each.

(2) 2½" long rupture in anterior wall of body of stomach, midway between two curvatures, edges clean cut.

F

(3) 1" long tear in posterior wall of stomach in middle part of body of stomach, involving mucosa and musculature serosh intact.

(4) 3" long rupture in left lobe of liver, interiorly 1" deep edges clean out.

G

(5) One small perforation about half centimeter in diameter in middle of transverse colon, anteriorly.

Bleeding about 4 to 5 pints in peritoneal cavity present."

In the opinion of the doctor the injuries had been caused by a sharp elongated H heavy object. When the knife recovered from the pocket of the appellant was

shown to him during the course of his statement in the Court, he opined that the injuries could have been caused by the said weapon. The post mortem examination on the body of the deceased was performed by Dr. Sonawane but he expired before his statement could be recorded in Court. The post mortem report prepared by him was proved by PW-11 Dr. Vishnu Zope. The prosecution also examined PW-14 Dr. Arjun Ganpat Bhangale, Honorary Surgeon in the Civil Hospital, Jalgaon. Both PW-6 Dr. Anand Thakare and PW-14 Dr. Arjun Ganpath Bhangale have deposed that the injury was sufficient in the ordinary course of nature to cause death.

10. In order to ascertain whether the offence committed by an accused would fall under one of the clauses of Section 304 IPC or under Section 302 IPC, attention must be focused on the language used by the Legislature in Sections 299 and 300 IPC, as otherwise irrelevant considerations come into play which affect the judgment resulting in failure of justice.

11. First it has to be seen whether the offence falls within the ambit of Section 299 IPC. If the offence falls under Section 299 IPC, a further enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly' of Section 300 IPC. If the offence falls in any one of these clauses, it will be murder as defined in Section 300 IPC, which will be punishable under Section 302 IPC. The offence may fall in any one of the four clauses of Section 300 IPC yet if it is covered by any one of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done —

(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 the act is likely to cause death."

If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of Section 300 IPC, it will not be murder and the offender would

A not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted under Section 304 Part I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death" where intention is the dominant factor. However, if the offence B is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part II IPC because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor.

C

12. What is required to be considered here is whether the offence committed by the appellant falls within any of the clauses of Section 300 IPC.

13. Having regard to the facts of the case it can legitimately be urged D that clauses Firstly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to cause death" occurring in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word 'knowledge' is - the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in E *Black's Law Dictionary* is as under: -

> "An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact.
>
> F It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being G desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended."

H In *Blackstone's Criminal Practice* the import of the word 'knowledge' has

been described as under: -

> "Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

The Law Commission of United Kingdom in its 11th Report proposed the following test :

> "The standard test of knowledge is—Did the person whose conduct is in issue either knows of the relevant circumstances or has no substantial doubt of their existence?"
>
> [See *Text Book of Criminal Law by Glanville Wiliams* (p.125)]

Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability. Consequently, it cannot be held that the appellant caused the injury with the intention of causing such bodily injury *as the appellant knew* to be likely to cause the death of Shri Ahirwar. So, clause Secondly of Section 300 IPC will also not apply.

14. The enquiry is then limited to the question whether the offence is covered by clause Thirdly of Section 300 IPC. This clause, namely, clause Thirdly of Section 300 IPC reads as under: -

> "Culpable homicide is murder, if the act by which the death is caused 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."

The argument that the accused had no intention to cause death is wholly fallacious for judging the scope of clause Thirdly of Section 300 IPC as the words "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death in the ordinary course of nature. This is also borne out from illustration (c) to

A Section 300 IPC which is being reproduced below: -"

> (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."

B

Therefore, the contention advanced in the present case and which is frequently advanced that the accused had no intention of causing death is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

15. The scope and ambit of clause Thirdly of Section 300 IPC was
C considered by this Court in the oft quoted decision in *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465 and the principle enunciated therein explains the legal position succinctly. The accused Virsa Singh was alleged to have given a single spear blow and the injury sustained by the deceased was "a punctured wound 2" x ½" transverse in direction on the left side of the abdominal wall
D in the lower part of the iliac region just above the inguinal canal. Three coils of intestines were coming out of the wound." After analysis of the clause Thirdly, it was held: -

> "The prosecution must prove the following facts before it can bring a case under S. 300 "Thirdly"; First, it must establish, quite
E objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. 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.
>
F Once these three elements are proved to be present, the enquiry proceeds further and, 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.
>
G Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under S. 300 "Thirdly". It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is sufficient to cause death in the
H

ordinary course of nature (there is no real distinction between the two), or even 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 present is 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."

The same question was examined in great detail in *Jai Prakash* v. *State (Delhi Administration)*, [1991] 2 SCC 32. The accused in this case was married to a cousin of Agya Devi, whose husband received injuries and lost his life. The accused used to visit the house of the deceased ostensibly as a relative, but this was objected to by his mother and two brothers as they suspected that the accused had illicit relations with Agya Devi. The accused visited the house of Agya Devi at about 11 p.m. when the deceased was not in the house but he came within few minutes and objected to the presence of the accused. On this there was an altercation and exchange of hot words and thereafter the accused took out a kirpan from his waist and stabbed the deceased in the chest and ran away. The deceased sustained one incised stab wound horizontally placed on the left side of the chest 1" lateral to the left side and 2" below the medial to the left nipple size 1" x ½" with spindle shaped appearance and with either margins pointed. There was another small incised wound over right little finger. In the opinion of doctor the injury no. 1 was sufficient to cause death in the ordinary course of nature. A similar contention was raised that there was no intention to cause death and only one blow was given. The Court held that it is fallacious to contend that when death is caused by a single blow clause Thirdly is not attracted and, therefore, it would not amount to murder. The contention which is usually advanced that there was no premeditation, that the incident took place all of a sudden, that there was no intention to cause death or that a single blow was given and has also been advanced in the present case was considered in para 13 of the reports and the relevant part thereof is being reproduced below : -

"It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, 'intention' is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore

A in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. In Clause Thirdly the words "intended to be inflicted" are significant. As noted already, when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the B injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case C are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in *Virsa Singh* case the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted D during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the E benefit has to go to the accused. ....."

16. In order to ascertain that "there was an intention to inflict that particular bodily injury" the enquiry should not be directed to find out whether the offender had intention to cause those very injuries to the internal organs of the body which were actually found to be there in medical examination. F The intention has to be gathered from host of circumstances like the seat of injury, *viz.*, the place or portion of the body where the injury has been caused, the nature of the weapon, its size and dimension or other attributes and the force applied in inflicting the injury. Being a question of fact it is difficult to lay down exhaustive tests to ascertain as to whether the offender intended to inflict that particular injury which is found on the body of the G deceased but the features enumerated above will certainly play a vital role in arriving at a correct conclusion on the said issue.

17. The mere fact that a dangerous or deadly weapon was not used or the injuries were not caused on vital part of the body may not necessarily H take out the offence from the clutches of clause Thirdly of Section 300 IPC.

Death may take place on account of large number of blows given by a blunt weapon like lathi on hands and legs causing fractures. Though the injuries may not be on a vital part of the body as the said term is generally understood, but if the medical evidence shows that they were sufficient in the ordinary course of nature to cause death, the offence would fall in clause Thirdly of Section 300 IPC. In *Anda* v. *State of Rajasthan,* AIR 1966 SC 148, where there were large number of injuries which had resulted in fractures of ulna, third metacarpal bone, tibia and fibula, Justice Hidayatullah (as His Lordship then was) speaking for a four Judge Bench held that the offence will be under clause Thirdly of Section 300 IPC having regard to the fact that the doctor had opined that all these injuries collective were sufficient to cause death in the ordinary course of nature though individually no injury was sufficient in the ordinary course of nature to cause death. It was observed: -

> "The third clause of S. 300, I.P.C. 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. Here the emphasis 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. When this sufficiency exists and death follows 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 intentional injury which must be sufficient to cause death in the ordinary course of nature, is the determinant factor."

18. It is not necessary for us to burden this judgment with other decisions of this Court as the law enunciated in *Virsa Singh* case (supra) has neither been doubted nor departed in any case and has uniformly been followed ever since the judgment was rendered half a century back in November, 1956.

19. In the present case the prosecution has established beyond any shadow of doubt that the appellant caused an injury by knife on the left hypochondrium which resulted in 1" long tear in posterior wall of stomach in middle part of body of stomach, 2½" long rupture in anterior wall of body of stomach, there were two tears in omentum 3" x 3" each, there was 3" long rupture in left lobe of liver, and there was one small perforation in the middle of transverse colon. The injury inflicted by the appellant was clearly intended by him and it was not an accidental or unintentional injury. The medical evidence established that the injury was sufficient in the ordinary course of

A nature to cause death. In these circumstances there is no escape from the conclusion that the offence committed by the appellant is clearly covered by clause Thirdly of Section 300 IPC.

20. Having given our careful consideration to the submissions made by the learned counsel by the appellants and the material on record we are B clearly of the opinion that the offence committed by the appellant is one under Section 302 IPC and not under Section 304 Part I IPC as held by the learned Additional Sessions Judge. The High Court was, therefore, perfectly correct in allowing the appeal filed by the State and altering the conviction of the appellant from Section 304 Part I IPC to that under Section 302 IPC.

C

21. In the result the appeals fail and are hereby dismissed.

V.S.S. Appeals dismissed.