KALEGURA PADMA RAO AND ANR. A

v.

THE STATE OF A.P. REP. BY THE PUBLIC PROSECUTOR

FEBRUARY 19, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.] B

Penal Code, 1860 :

ss.299, 300, 302 and 304-I—Deceased beaten up indiscriminately, resulting in his death—Conviction of accused under s.302/149—In the light C *of evidence and principles laid down in ss.299 and 300, conviction of accused altered to s.304-I.*

Evidence:

Related witness—Evidence—Reliability of—Held, relationship not a D *factor to affect credibility of witness*

Major portion of evidence found deficient—Conviction still maintainable, if residual evidence sufficient to prove guilt of accused—Doctrine of 'Falsus in uno falsus in omnibus' has no applicability in India— E *Doctrines.*

Prosecution case was that when the deceased had requested A-1, A-2 to travel in his Auto as per the serial number, they refused and started beating him. The next day, deceased and his wife PW-1 informed Sarpanch about the incident. A-1 admitted his guilt in the presence of PWs 9 and 10. In the F **evening, A-1 to A-16 armed with sticks, iron rods and axes, went to the house of deceased and attacked him. Deceased was beaten up indiscriminately. When his father PW-2 came to rescue him, he was also beaten up. Deceased and PW-2 were taken to hospital where deceased succumbed to the injuries.**

Trial Court convicted the accused persons for offences punishable under G **ss.148, 448 r.w. s.149, 302/149, 324/149 IPC. On appeal, the High Court confirmed the conviction of appellants and A-7 to 9, 12 and 13.**

In appeal to this Court, appellant contended that the conviction is based

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A primarily on the evidence of witnesses who were related to the deceased and further the accusations do not make out the case relatable to s.302 IPC.

Partly allowing the appeal, the Court

HELD: 1.1. Relationship is not a factor to affect the credibility of a B witness. A relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. [Para 8] [787-A]

C *Dalip Singh and Ors.* v. *The State of Punjab,* AIR (1953) SC 364; *Guli Chand and Ors.* v. *State of Rajasthan,* [1974] 3 SCC 698 and *Vadivelu Thevar* v. *State of Madras,* AIR (1957) SC 614, referred to.

1.2. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. D [Para 11] [787-F]

Masalti and Ors. v. *State of U.P.,* AIR (1965) SC 202; *State of Punjab* v. *Jagir Singh,* AIR (1973) SC 2407 and *Lehna* v. *State of Haryana,* [2002] 3 SCC 76, referred to.

E 2.1. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. [Para 13] [788-E]

F 2.2. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other G accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim *"falsus in uno falsus in omnibus"* has no application in India and the witnesses cannot be branded as liar. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. It is merely a rule of caution. [Para 13] H [788-F, G; 789-A]

Nisar Ali v. *The State of Uttar Pradesh,* AIR (1957) SC 366; *Sucha Singh and Anr.* v. *State of Punjab,* (2003) 6 JT SC 348 and *Israr* v. *State of U.P.,* [2005] 9 SCC 616, relied on.

3.1. In the scheme of IPC, culpable homicide is the genus and "murder", its specie. All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in s.300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of s.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 s.304. [Para 16] [789-D, E, F]

3.2. Clause (b) of s.299 corresponds with clauses (2) and (3) of s.300. 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 aspect of clause (2) is borne out by Illustration (b) appended to s.300. Clause (b) of s.299 does not postulate any such knowledge on the part of the offender. If the assailant had no 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 s.300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of s.299, 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

A fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of s.299 and clause (3) of s.300 is one of degree of probability of death resulting from the intended bodily injury. The word "likely" in clause (b) of s.299 conveys the sense of probability 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" B result of the injury, having regard to the ordinary course of nature. [Paras 18, 19] [790-G, H; 791-A, B, C, D, E, F, G]

3.3. 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 C course of nature. [Para 20] [799-H]

Rajwant Singh v. *State of Kerala,* AIR (1966) SC 1874 and *Virsa Singh* v. *State of Punjab** AIR (1958) SC 465, relied on.

4. The test laid down by *Virsa Singh* case* for the applicability of clause D "thirdly" is ingrained in Indian legal system and has become part of the rule of law. Under clause thirdly of s.300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death, is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is E sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted. [Para 24] [793-D, E]

F *State of A.P.* v. *Rayavarapu Punnayya,* [1976] 4 SCC 382 and *Abdul Waheed Khan alias Waheed and Ors.* v. *State of A.P.,* [2002] 7 SCC 175, referred to.

5. If the evidence on record is considered on the touchstone principles set out above, the inevitable conclusion is that the proper conviction would be s.304 Part I IPC instead of s.302 IPC. The conviction of the appellants is G accordingly altered from s.302 read with s.149 to s.304 Part I read with s.149 IPC. Custodial sentence of 10 years would meet the ends of justice. The findings of the guilt in respect of other offences and the sentences imposed do not warrant interference. The sentence shall run concurrently. [Para 29] [794-D, E]

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 222 of

2007.

From the Judgment and Order dated 27.7.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 1114/2005.

S.S. Reddy and S. Usha Reddy for the Appellants.

D. Bharathi Reddy, P. Vinay Kumar and Sneha Bhaskaran for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Appellant along with 14 others was convicted for offences punishable under Sections 148, 448 read with Section 149, Section 302 read with Section 149 and Section 324 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). The III Additional Sessions Judge, Karimnagar found all the accused persons guilty of the charged offences. For the offence under Section 302 read with Section 149 IPC each of the accused persons was sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- each with default stipulation. Similarly, for the offences relatable to Sections 148, 448, 149 and 324 IPC different sentences were imposed. In appeal, the High Court confirmed the conviction and sentence as imposed by the Trial Court on the present appellants and accused nos. 7 to 9, 12 and 13. The High Court directed acquittal of rest of the accused persons of all charges.

3. The factual position in a nutshell is as follows :

PW-1 is the wife, PW-2 is the father, PW-3 is the mother, PW-4 is the brother and PW-5 is the sister-in-law of Pogula Jasan (hereinafter referred to as the 'deceased'). The accused, deceased and the material witnesses are residents of Neerukulla village. The deceased purchased an Auto and was plying the same between Sulthanabad and Neerukulla. On 02.07.2003 at about 9.00 P.M., the deceased returned to his house from Sulthanabad and informed PWs.1 to 3 that when he requested A-1 and A-2 to travel in his Auto as per the serial number, they refused to travel in his Auto and beat him.

4. On 03.07.2003 morning, PW-1 and the deceased went to the house of the Sarpanch and told him about the incident. The Sarpanch called A-1 and enquired from him as to why he had assaulted the deceased. A-1 admitted his guilt in the presence of PWs. 9 and 10. On the same day at about 6.00

A P.M., A-1 to A-16 came to the house of the deceased and attacked him. A-1 beat the deceased with a stick. The deceased ran into the house and bolted the door. In the meantime, when PW-2 intervened to rescue the deceased, A-1 beat him with a stick. A-3 broke the doors and all the accused entered the house and beat the deceased. Some of the accused were armed with iron rods and axes. They beat the deceased indiscriminately. Then the deceased ran out B from the house. The accused chased and beat him indiscriminately. Finally, the deceased fell down near the Gram Panchayat office on receipt of the injuries. Later, the deceased was taken in an Auto to the Government Hospital, Sulthanabad. On the advice of the Doctor, the persons who carried the deceased to the hospital went to the Police Station and gave Ex.P-1 report. C On the basis of Ex.P-1, the police registered a crime for the offences punishable under Sections 147, 148, 448, 307, 327 read with 149 of I.P.C. Thereafter, the deceased and PW-2, who received injuries, were referred to the Government Hospital, Karimnagar. The deceased, while undergoing treatment, succumbed to the injuries. The Inspector of Police took up investigation, prepared the rough sketch, observed the scene of offence, held inquest over the dead D body of the deceased, seized M.Os.1 and 2 and later sent the dead body for postmortem examination. The accused were arrested and weapons were recovered. After completion of the investigation, the police laid the charge sheet. The accused denied the charges and claimed for trial.

E 5. In order to further the prosecution version the prosecution examined 22 witnesses. On behalf of the accused persons no oral evidence was adduced, but part of the statement of PW-3 recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short the 'Code') was marked as Ext.D-1. On consideration of the material on record the Trial Court as noted above recorded conviction. The convicted accused persons preferred appeals before the High F Court and by common judgment in four appeals the impugned judgment was passed.

6. In support of the appeal, learned counsel for the accused persons submitted that the conviction is based primarily on the evidence of witnesses who were related to the deceased. Further the accusations even if accepted G in toto do not make out the case relatable to Section 302 IPC.

7. Learned counsel for the respondent-State on the other hand supported the impugned judgment submitting that on analysis of evidence on record the Courts below have come to the right conclusion.

H 8. In regard to the interestedness of the witnesses for furthering the

prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

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9. In *Dalip Singh and Ors.* v. *The State of Punjab,* AIR (1953) SC 364 it has been laid down as under:-

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

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10. The above decision has since been followed in *Guli Chand and Ors.* v. *State of Rajasthan,* [1974] 3 SCC 698 in which *Vadivelu Thevar* v. *State of Madras,* AIR (1957) SC 614 was also relied upon.

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11. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh's* case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

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> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that

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A the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *'Rameshwar* v. *State of Rajasthan'* AIR (1952) SC 54 at p.59. We find, B however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

12. Again in *Masalti and Ors.* v. *State of U.P.,* AIR (1965) SC 202 this Court observed: (p. 209-210 para 14):

C "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid D down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

13. To the same effect is the decision in *State of Punjab* v. *Jagir Singh,* E AIR (1973) SC 2407 and *Lehna* v. *State of Haryana,* [2002] 3 SCC 76. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of *"falsus in uno falsus in omnibus"* (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is F sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other G accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim *"falsus in uno falsus in omnibus"* has no application in India and the witnesses cannot be branded as liar. The maxim *"falsus in uno falsus in omnibus"* has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases H testimony may be disregarded, and not that it must be disregarded. The

doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See *Nisar Ali* v. *The State of Uttar Pradesh,* AIR (1957) SC 366). A

14. The above position was elaborately discussed in *Sucha Singh and Anr.* v. *State of Punjab,* (2003) 6 JT SC 348, and *Israr* v. *State of U.P.,* [2005] 9 SCC 616. B

15. In *S. Sudershan Reddy* v. *State of A.P.,* AIR (2006) SC 2716, it was observed; Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. C

16. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC culpable homicide is the genus and "murder", its specie. All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest 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. D E F

17. 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. The following comparative table will be helpful in appreciating the points of distinction between the two offences: G H

Section 299	Section 300
A person commits culpable homicide if the act by 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.

18. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. 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 aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

19. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 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, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, 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 and clause (3) of Section 300 is one of 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 conveys the sense of probability 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.

20. 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. *Rajwant Singh* v. *State of Kerala,* AIR (1966) SC 1874 is an

A apt illustration of this point.

21. In *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465 Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly". First, it must establish quite B 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 injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the C 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 was 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.

D 22. The ingredients of clause "thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows :

> "12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';
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> E First, it must establish, quite 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 F unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and,
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> Fourthly, it must be proved that the injury of the type just described G 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."

23. The learned Judge explained the third ingredient in the following H

words (at page 468): A

> "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 B 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 C 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."

24. These observations of Vivian Bose, J. have become *locus classicus.* D The test laid down by *Virsa Singh* case (supra) for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is E sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

25. Thus, according to the rule laid down in *Virsa Singh* case (supra) F even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

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26. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the

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A probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

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27. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages.

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28. The position was illuminatingly highlighted by this Court in *State of A.P.* v. *Rayavarapu Punnayya,* [1976] 4 SCC 382 and *Abdul Waheed Khan alias Waheed and Ors.* v. *State of A.P.,* [2002] 7 SCC 175.

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29. If the evidence on record is considered on the touchstone principles set out above the inevitable conclusion is that the proper conviction would be Section 304 Part I IPC instead of Section 302 IPC. The conviction of the appellants is accordingly altered from Section 302 read with Section 149 to Section 304 Part I read with Section 149 IPC. Custodial sentence of 10 years would meet the ends of justice. The findings of the guilt in respect of other

E offences and the sentences imposed do not warrant interference. The sentence shall run concurrently.

30. The appeal is allowed to the aforesaid extent.

D.G. Appeal party allowed.

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