A MOHD. ASIF
V.
STATE OF UTTARANCHAL
CRIMINAL APPEAL NO. 78 OF 2007

MARCH 6, 2009

B **(S.B. SINHA AND ASOK KUMAR GANGULY, JJ.)**

Penal Code, 1860 :

Sections 300, 302, 304 Part II, 326 – Conviction u/s 302/
C *34 – Affirmed by High Court – On appeal,* ***Held:*** *It cannot be said that the death did not take place due to the injury inflicted – Not a case which attracts provisions of s.304 Part II or s.326 – Rightly convicted u/s 302 – Evidence – Dying declaration.*

D **In this appeal against High Court's judgment convicting the appellant for an offence punishable under s.302/34 confirming the order of the trial court, reliability of the dying declaration, whether the death was caused due to the injury caused and for converting the sentence from s.300 IPC to s.304 IPC were involved.**

E **Dismissing the appeal, the Court**

HELD: 1.1 Pulmonary embolism is caused by reason of the blockage in the lungs, a clot may form on any part
F **of the body and then travel upto the lungs. Pulmonary embolism is an extremely common and highly lethal condition that is a leading cause of death in all age groups. It may arise from anywhere in the body. It may be caused even during long air travels as commonly it arises from**
G **the calf veins. It is not a disease by itself. It has been argued on behalf of the appellant that the death of the deceased occurred due to pulmonary embolism as a result of the operation that he had to undergo after the incident and not due to the injury caused to him at the time of the**

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scuffle. This argument as rightly pointed out by the lower court is misconceived. [Para 8] [20-D-F] A

1.2 The operation of the deceased was necessitated because of the injury inflicted upon him at the time of the incident and there would have been no question of subjecting him to such an operation had he not been so seriously injured in the incident. The operation of the deceased became necessary on account of the injury. It can hardly be argued that his death did not take place due to the aforesaid injury. [Para 10] [24-G] B

Medical Dictionary, 2nd Edition, by P.H. Collin and Taylor's Principles and Practice of Medical Jurisprudence – referred to. C

2. Dying declaration in this case has been held to be reliable. The level of reliance to be placed on a dying declaration by a court has now come to be well settled. If it is trustworthy, a judgment of conviction can be based thereupon. [Para 8] [20-F-G] D

Ranjit Singh & ors. Vs. State of Punjab (2006) 13 SCC 130; Shakuntala (Smt.) vs. State of Haryana (2007) 10 SCC 168; State of Rajasthan vs. Parthu (2007) 12 SCC 754 and Samadhan Dhudaka Koli vs. State of Maharashtra (2008) 16 SCALE 66 – relied on. E

3.1 The Explanation appended to s.300 IPC states that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. It is not a case of exercise of right of private defence. The provocation was not given by a thing done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. The provocation, if any, was sought for by the offenders. In this case, appellant and the co-accused must be held to have known that it was so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death.[Para 14] [26-G-H; 27-A-B] F G H

A **3.2 Applying the settled legal principles, there is no doubt in that it is not a case which attracts the provisions of Section 304 Part II of the IPC or Section 326 thereof . [Para 14] [29-B]**

Virsa Singh vs. State of Punjab AIR 1958 SC 465 and B *Kesar Singh & Anr. Vs. State of Haryana* 2008 (6) SCALE 433 – relied on.

4. The present case is not a case where the intervening ailment was wholly unconnected with the C **injury. The appellant has rightly been found guilty of commission of an offence under Section 302 of the IPC. [Para 16] [31-A-C]**

Manubhai Atabhai vs. State of Gujarat (2007) 10 SCC 358 – relied on.

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Dashrath Singh vs. State of U.P. (2004) 7 SCC 408 – held inapplicable.

Chowa Mandal & anr. Vs. State of Bihar (Now Jharkhand) (2004) 13 SCC 231; State of Rajasthan vs. Jora Ram (2005) E *10 SCC 591 and Gokul Parashram Patil vs. State of Maharashtra* (1981) 3 SCC 331 – distinguished.

Case Law Reference

(2006) 13 SCC 130	**relied on**	**Para 8**
F **(2007) 10 SCC 168**	**relied on**	**Para 8**
(2007) 12 SCC 754	**relied on**	**Para 8**
(2008) 16 SCALE 66	**relied on**	**Para 8**
G **AIR 1958 SC 465**	**relied on**	**Para 14**
2008 (6) SCALE 433	**relied on**	**Para 14**
(2004) 7 SCC 408	**held inapplicable**	**Para 15**
(2004) 13 SCC 231	**distinguished**	**Para 15**

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(2005) 10 SCC 591	**distinguished**	**Para 15**	
(1981) 3 SCC 331	**distinguished**	**Para 15**	
(2007) 10 SCC 358	**relied on**	**Para 16**	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 78 of 2007 B

From the Judgement and Order dated 08.06.2006 of the Court of Judicature at Nainital, Uttaranchal in Criminal appeal no. 439 of 2001 (old No. 2671 of 1982)

K.V. Vishwanathan, Rashid Saeed, samir Ali Khan, Irshad Ahmad, Amit Rana Anup Kumar, for the Appellants. C

S.S. Shamshery, Anuvrat Sharma, Rachna Srivastava, for the Respondent.

The Judgement of the Court was delivered by D

S.B. SINHA, J.

1. Khatima is a small town in the State of Uttaranchal. In a cinema theatre known as 'Sharda' a movie 'Akhri Insaf' was being exhibited at the relevant time. On or about 15.2.1981, E Mohd. Saeed, the deceased, and his friend Shakeel Ahmad (PW 3) were watching the night show of the said movie in the said theatre. At about 10.30 p.m. Iqbal Ahmad (Iqbal), an associate of the appellant went inside the cinema hall and asked the deceased to come out therefrom. Meanwhile, the appellant F waited outside. The deceased followed Iqbal and came out of the cinema hall. Iqbal and appellant started quarreling with the deceased. There was some heated exchange of words. Both the accused took out knives which they were carrying. Iqbal caught hold the deceased and appellant struck a blow with the G knife on the back of the deceased. PW 1 – Kanhaiya Lal, a betel shopkeeper in the said theatre, PW-2 Hem Raj, gate-keeper of the cinema hall and PW-3 Shakeel Ahmad witnessed the said occurrence. Hearing the shouts and cries for help, PW-4 Constable Bachche Singh with another constable Bhishma H

A Singh also reached the spot. Appellant was apprehended at the spot whereas Iqbal succeeded in running away. The knife used by the appellant was also recovered from him. The deceased was taken to a nearby hospital. He was referred to a hospital at Pilibhit. He died four days after the incident, i.e., on
B 20.2.1981.

2. A First Information Report (FIR) under Section 307 of the Indian Penal Code (IPC) was lodged on or about 16.2.1981. The case was subsequently converted to one under Section 302 of the IPC.
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3. A dying declaration of the deceased was recorded by one Javed Usmani, Sub-Divisional Magistrate, Khatima on or about 15.2.1981, which reads as under :

"About 1 – 1-1/2 hours before, I was watching night show
D of movie at Sharda Cinema, then Iqbal s/o unknown Asif s/o unknown asked me to come out of the cinema hall. Iqbal had come to asked me to come out. I came outside. Iqbal started getting angry upon me, I said do not get angry upon me. There was hand-scuffle between me and
E Iqbal, and Iqbal drew out the knife. Asif was also scuffling with me and I was trying to keep myself away from them. Asif also drew out the knife and then Asif struck the knife blow at my back. Iqbal ran away from the spot after the knife blow was struck. Asif was apprehended by Shakeel
F s/o Farooq. Shakeel had come along with me to watch the movie. Beside Shakeel, there were two-three more persons who apprehended Asif, whom I do not know. There was no past enmity between me and Iqbal and Asif. Asif used to live at Mohalla Gotia near the Chakki in front of the
G house of Farooq Master. Iqbal used to live at Potters locality.

I had no past enmity with Asif but 3 – 4 days before there was some altercation between Asif and me at Gotia Mohalla. It may be possible that because of this, today's
H incident took place."

4. Appellant was put to trial. He was found guilty of commission of an offence punishable under Section 302/34 of the IPC and was sentenced to undergo R.I. for life. An appeal was preferred thereagainst, which has been dismissed by reason of the impugned judgment. However, as during the pendency of the said appeal Iqbal expired, the appeal filed by him stood abated.

5. Mr. K.V. Viswanathan, learned counsel appearing on behalf of the appellant would contend that the deceased having been given only a single blow and that too on a non vital part of the body, no offence can be said to have been committed by him under Section 302 of the Code. Drawing our attention to the post-mortem report, the learned counsel would urge that the deceased having died of pulmonary embolism and furthermore having regard to the fact that before the purported attack a scuffle had taken place and thus there being a sudden provocation, the High Court committed a serious error in holding that the appellant had the intention to cause murder of the deceased. In a case of this nature, Mr. Viswanathan would contend, the principle of causa causan should be applied.

6. Mr. S.S. Shamshery, learned counsel appearing on behalf of the respondent, on the other hand, would support the impugned judgment.

7. Indisputably, the deceased was watching a movie on that fatal night with his friend Shakeel (PW-3). Appellant and Iqbal knew thereabout. The fact that there existed a dispute between the appellant and the deceased is neither denied nor disputed. Iqbal was sent by the appellant to ask the deceased to come out of the cinema hall. As soon as he came out, appellant along with Iqbal started quarreling with him. There was no cause therefor. It was not a case of sudden provocation. Both the accused were armed with knives. During the said quarrel, both of them took out their weapons. Iqbal caught hold of the deceased whereas appellant inflicted the injury. The injury might have been inflicted on the back side of the lowermost part. The

depth of the wound could not be ascertained immediately. As per the injury report prepared by Dr. L.D. Khatri (P.W.9), the stab wound was of the size of about 2 cm x 1 cm x depth. . Edges of wound were found clean cut. Both ends were pointed. Profused bleeding from the wound was noticed. Even the sub coetaneous tissue was visible. As per the said doctor, the injury was caused by a sharp edged weapon like a knife. The deceased had to be operated upon. He, however, could not survive.

The post-mortem examination on the person of the deceased was held on 21.2.1981 by Dr. A.K. Mehrotra. He, in his report, stated that the deceased suffered the following ante-mortem injuries:

"i) Stitched wound 15 cm long, oblique 26 cm below the auxiliary pit left side, drainage put in.

ii) Stitched wound 2 cm long in lumbar region back of the left side of abdomen 5 cm from injury no. 1.

iii) Cut open wounds on both legs on medical mellows 1 cm x 0.5 cm x muscle deep."

Whereas the first and third injuries were operational ones, injury No.2 was caused during the incident.

Dr. A.K. Mehrotra, in his deposition before the court, inter alia, stated :

"Left lung was infract and collapsed. There was a big blood clot in the left pulmonary artery. Peritoneum was stitched below the wound caused by operation. The stomach was empty. Left kidney was stitched at cortex.

In my opinion the cause of death was pulmonary embolism."

It was furthermore stated:

"It ispossible that the kidney of the deceased was ruptured

because of the injury no. 2. And it is also possible that the pulmonary embolism was due to injury no. 2. The abovementioned injury no.2 was sufficient to cause death in ordinary course of nature. The above mentioned injuries no. 1 and 3 are likely to be related with the operation." A

To a question as to whether the stab wound of the size of about 2 cm x 1 cm x depth would correspond to injury no.2 mentioned in the post-mortem examination report, he answered in the affirmative. In his cross-examination, he stated: B

"Pulmonary embolism occurred due to the blockage in the pulmonary artery. The pulmonary embolism in the body was caused due to blood clot. The said blood clot happens some times after the operation. I cannot say definitely that the said blood clot was caused because of injury no. 2" C

8. The term 'Pulmonary', it must be noted, refers to the lungs. 'Pulmonary Embolism' is described in Medical Dictionary, 2nd Edition, by P.H. Collin as under: D

"blockage of a pulmonary artery by a blood clot"

Further, it must be noted that pulmonary arteries take deoxygenated blood from the heart to the lungs for oxygenation. E

In Taylor's Principles and Practice of Medical Jurisprudence, it is stated:

"Pulmonary embolism is a condition in which thrombi are formed on the walls of the pelvic and leg veins and such thrombi break away and embolise to the lungs. The veins themselves are usually normal and the condition is referred to as phlebothrombosis in contradistinction to thrombophlebitis where thrombosis occurs in a vein which is already inflamed. In this latter case embolism is much less likely to occur as the inflammation anchors the thrombus to the vessel wall. Although the thrombosis is the primary event the embolus itself usually consists of a tube of thrombus with a central core of clotted blood. When F G H

A it reaches the lung its effects depend on its size. Small ones are carried to the periphery of the lung where they cause pulmonary infarcts but large ones straddle the bifurcation of the pulmonary artery completely blocking the blood circulation. Spasm of the pulmonary arteries B around the thrombus only helps to make matters worse. The cause of the thrombosis is thought to be damage to the vessel wall by slowing of the blood flow and pulmonary embolism frequently causes death in people who are confined to bed, particularly in the postoperative period. C It has even been observed in people confined to an aeroplane seat on long journeys such as the flight to America."

Pulmonary embolism is, thus, caused by reason of the blockage in the lungs, a clot may form on any part of the body D and then travel upto the lungs. Pulmonary embolism is an extremely common and highly lethal condition that is a leading cause of death in all age groups. It may arise from anywhere in the body. It may be caused even during long air travels as commonly it arises from the calf veins. It is not a disease by E itself. It has been argued by the learned counsel for the appellant that the death of the deceased occurred due to pulmonary embolism as a result of the operation that he had to undergo after the incident and not due to the injury caused to him at the time of the scuffle. This argument has been rightly pointed out F by the lower court is misconceived.

Dying declaration in this case has been held to be reliable. The level of reliance to be placed on a dying declaration by a court has now come to be well settled. If it is trustworthy, a judgment of conviction can be based thereupon.

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In *Ranjit Singh & ors. vs. State of Punjab* [(2006) 13 SCC 130], this Court held:

"13. It is now well settled that conviction can be recorded on the basis of a dying declaration alone, if the same is H wholly reliable, but in the event there exists any suspicion

as regards correctness or otherwise of the said dying declaration, the Courts in arriving at the judgment of conviction shall look for some corroborating evidence. It is also well known that in a case where inconsistencies in the dying declarations, in relation to the active role played by one or the other accused persons, exist, the Court shall lean more towards the first dying declaration than the second one." A B

In *Shakuntala (Smt.) vs. State of Haryana* [(2007) 10 SCC 168], this Court held: C

"11. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence. D E

12. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross- examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can F G H

A base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in
B several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Smt. Paniben v. State of Gujarat* [(1992) 2 SCC 474]: (SCC pp.480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying
C declaration cannot be acted upon without corroboration. [See *Munnu Raja and Anr. v. The State of Madhya Pradesh* (1976) 3 SCC 104]

(ii) If the Court is satisfied that the dying declaration is
D true and voluntary it can base conviction on it, without corroboration. [See *State of Uttar Pradesh v. Ram Sagar Yadav and Ors.* (1985) 1 SCC 552, and *Ramavati Devi v. State of Bihar* (1983) 1 SCC 211]

(iii) The Court has to scrutinize the dying declaration
E carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See *K. Ramachandra Reddy and Anr. v. The Public Prosecutor*
F (1976) 3 SCC 618]

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See *Rasheed Beg v. State of Madhya Pradesh (1974) 4 SCC 264*]

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(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See *Kake Singh v. State of M.P.*, 1981 Supp. SCC 25]

H (vi) A dying declaration which suffers from infirmity cannot

form the basis of conviction. [See *Ram Manorath and Ors. v. State of U.P.* (1981) 2 SCC 654]

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See *State of Maharashtra v. Krishnamurthi Laxmipati Naidu,* 1980 Supp. SCC 455]

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See *Surajdeo Ojha and Ors. v. State of Bihar*, 1980 Supp. SCC 769].

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye- witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See *Nanhau Ram and Anr. v. State of Madhya Pradesh,* 1988 Supp SCC 152].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See *State of U.P. v. Madan Mohan and Ors.* (1989) 3 SCC 390].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See *Mohanlal Gangaram Gehani v. State of Maharashtra* (1982) 1 SCC 700]"

In *State of Rajasthan vs. Parthu* [(2007) 12 SCC 754], this Court held:

"13. It is now a well settled principles of law that a judgment of conviction can be recorded on the basis of the dying declaration alone subject of course to the satisfaction of the Court that the same was true and voluntary. For the

A purpose of ascertaining truth or voluntariness of the dying declaration, the Court may look to the other circumstances...."

We do not see any reason to differ with the ratio laid down therein. {See also *Samadhan Dhudaka Koli vs. State of* B *Maharashtra* [(2008) 16 SCALE 66]}

9. It is not a case where the death of the deceased had nothing to do with the injury inflicted. The utterances on the part of the appellant that he would not leave the deceased alive C indicate the state of mind on the part of the appellant. The doctors tried their best to save his life. They could not do it.

10. Section 299 of the IPC reads as under:

"299. **Culpable homicide.-** Whoever causes death by doing an act with the intention of causing death, or with the D intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Explanation-2 appended thereto may also be noticed:

E "Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

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The operation of the deceased was necessitated because of the injury inflicted upon him at the time of the incident and there would have been no question of subjecting him to such an operation had he not been so seriously injured in the incident. G The operation of the deceased became necessary on account of the injury. It can hardly be argued that his death did not take place due to the aforesaid injury.

11. The question which now arises for consideration is as to whether a case for converting the sentence from Section 300 H IPC to Section 304 IPC has been made out.

Section 300 of the IPC reads as under: A

"300. **Murder.-** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.- If it is done with 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— B

Thirdly.- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or— C

Fourthly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid." D

Exception 4 thereof reads as under: E

"Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. F

Exception 4 of Section 300 in this case would not arise.

12. Indisputably, commission of offence has been proved by the witnesses Kanhaiya Lal (PW-1), Hem Raj (PW-2) and Shakeel Ahmad (PW-3). The facts do not disclose any sudden provocation. G

Indisputably, the doctor has noticed that left lung was infract and collapsed. A big blood clot in the left pulmonary artery was also noticed. There was thus no adequate blood supply. H

A 13. There may be a scuffle but it occurred because of the overt acts on the part of the appellant and Iqbal. We have noticed hereinbefore the manner in which the assault had taken place as well as the manner in which the force was applied in inflicting the assault is evident. It ruptured the kidney. The wound was B therefore deep. Profused bleeding was noticed. And that is the reason he had to be operated upon.

14. The question with regard to finding out the intention on the part of the accused to cause death depends upon the facts and circumstances of each case. No hard and fast rule can be C laid down therefor. Section 300 of the Code provides that subject to the exceptions contained therein culpable homicide would be murder if the act by which the death is caused is done with the intention of causing death. Exception 1 thereto providing for a situation when culpable homicide is not murder. In terms of D Exception 1, culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The said provision is, however, subject to the E following :

> "First – That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
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> Secondly.- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
>
> Thirdly.- That the provocation is not given by anything done G in the lawful exercise of the right of private defence."

The Explanation appended thereto states that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. It is not H a case of exercise of right of private defence. The provocation

was not given by a thing done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. The provocation, if any, was sought for by the offenders. In this case, appellant and Iqbal must be held to have known that it was so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death.

What is meant by 'imminently dangerous' which, in all probability, cause death or such bodily injury as is likely to cause death came up for consideration before this Court in *Virsa Singh vs. State of Punjab* [AIR 1958 SC 465], wherein it was held:

> "(15). ....We quote a few sentences earlier from the same learned judgment :
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> "No doubt, if the prosecution prove and act the natural consequences of which would be a certain result and no evidence or explanation is given, then a jury may, on a proper direction, find that the prisoner is guilty of doing the act with intent alleged."
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> That is exactly the position here. No evidence or explanation is given about why the appellant thrust a spear into the abdomen of the deceased with such force that if penetrated the bowels and three coils of the intestines came out of the would and that digested food oozed out from cuts in three places. In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with degree of force sufficient to penetrate that far into the body, or to indicate that his act was regrettable accident and that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did. Once that intend is established (and no other conclusion is reasonably possible in this case, and in any case it is a question of fact), the rest is a matter for objective determination from the medical and

A other evidence about the nature and seriousness of the injury."

A bench of this Court in *Kesar Singh & Anr. vs. State of Haryana* [2008 (6) SCALE 433] applied the standard laid down in *Virsa Singh* (supra) to hold:

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"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "3rdly":

First, it must establish, quite objectively, that a bodily injury is present;

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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. 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 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.

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Once these four elements are established by the prosecution (and, indisputably, the burden is on the prosecution throughout) the offence is murder under Section 300, "3rdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury is actually found to be

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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...." A

Applying the aforementioned principles, we have no doubt in our mind that it is not a case which attracts the provisions of Section 304 Part II of the IPC or Section 326 thereof . B

15. Mr. Viswanathan relied upon a decision of this Court in *Chowa Mandal & anr. vs. State of Bihar (Now Jharkhand)* [(2004) 13 SCC 231]. In that case it was found that there was no motive, intention or knowledge on the part of the offenders as to their act which led to the death of the deceased. It was found that the incident had occurred on the spur of the moment without there being any intention of causing death or of causing such injury as they knew was likely to cause death. C D

In *State of Rajasthan vs. Jora Ram* [(2005) 10 SCC 591] whereupon again Mr. Viswanathan placed reliance, the High Court itself found that medical evidence on record did not make out a case of murder as it disclosed that the injuries found on the person of the deceased were simple injuries and furthermore it was found that they were not sufficient in ordinary course of nature to cause death as merely a bruise was found. Even that injury was not attributed to the respondent therein. E

In Gokul Parashram Patil vs. State of Maharashtra [(1981) 3 SCC 331], relied upon by Mr. Viswanathan, distinguishing *Virsa Singh* (supra), this Court held: F

"...The question thus is whether the particular injury which was found to be sufficient in the ordinary course of nature to cause death, in the present case, was an injury intended by the appellant. Our answer to the question is an emphatic No. The solitary blow given by the appellant to the deceased was on the left clavicle-a non-vital part-and it would be too much to say that the appellant knew that the superior venacava would be cut as a result of that wound. G H

A Even a medical man perhaps may not have been able to judge the location of the superior venacava with any precision of that type. The fact that the venacava was cut must, therefore, be ascribed to a non-intentional or accidental circumstance."

B Such is not the case here.

Reliance has also been placed by Mr. Viswanathan on *Dashrath Singh vs. State of U.P.* [(2004) 7 SCC 408] wherein it was held:

C "29. The medical evidence however does not establish beyond reasonable doubt that the ultimate cause of death was the aforesaid injury. From the date of the surgery, the victim was alive for 23 days and undergoing treatment in the hospital. He survived for 38 days after the injury was D received. Not a word has been said and no report or case-sheet has been filed to indicate the condition of the patient after the surgery. No doubt, there was no crass examination of the Doctor (PW8) on this aspect. Yet, it was the primary duty of the prosecution to adduce evidence E in regard to the post-operative condition of the patient so that the scope for any intervening ailment unconnected with the injury is ruled out. This becomes all the more important because of the long time lag and the omission to hold post-mortem. Apparently, there was a callous F indifference or lack of vigilance on the part of the Investigating Officer in failing to ensure the post-mortem examination in a case of this nature. PW 8 came forward with the explanation that the post-mortem is not absolutely necessary to ascertain the cause of death. But, then, the G prosecution has to establish beyond reasonable doubt that the eventual cause of death was only the injury inflicted by the appellant and nothing else, but it has failed to do so."

The said decision also has no application in the present H case.

16. It is not a case where the intervening ailment was wholly unconnected with the injury. On the other hand, in *Manubhai Atabhai vs. State of Gujarat* [(2007) 10 SCC 358], this court clearly held: A

> "Merely because a single blow was given that does not automatically bring in application of Section 304 Part I IPC." B

We, therefore, are of the opinion that the appellant has rightly been found guilty of commission of an offence under Section 302 of the IPC. C

17. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly.

G.N. Appeal dismissed.