A SELLAPPAN

v.

STATE OF TAMIL NADU

JANUARY 31, 2007

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

Penal Code, 1860:

Section 302—'Murder' and 'culpable homicide not amounting to
C *murder'—Distinction between—The deceased married the daughter of the accused without his knowledge on account of which he was angry towards the deceased—When the deceased was on his way to bring agricultural labourers, the accused beat the deceased on his head twice with a stick—The deceased fell down and died later in the hospital—Trial court convicted*
D *the accused under S. 302—High Court affirmed the decision—Correctness of—Held: It is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree—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—In the instant*
E *case, the accused is responsible for causing the death of the deceased—However, S. 304 Part II IPC would be applicable and not S. 302 IPC—Conviction accordingly altered.*

Words & Phrases:

F *"Likely to cause death"—Meaning of—In the context of Clause (b) of Section 299 of the Penal Code, 1860.*

According to the prosecution, on the fateful day the deceased left his house to bring agricultural labourers and, while he was on his way, the
G **appellant armed with a stick and, his son armed with an aruval, appeared before him. On seeing them, the deceased became panicky and shouted saying that they were about to beat him. The appellant with the stick, which he had in his hand, beat the deceased on the head twice. The deceased fell down. The appellant, leaving the stick, ran away from the place followed by his son, who took away the aruval with him. The occurrence was witnessed by PWs 1 to 3.**

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The trial court found the appellant and his son guilty under Section 302 of the Penal Code, 1860. However, in appeal, the appellant's son was acquitted but the appellant's appeal was dismissed. Hence this appeal. A

On behalf of the appellant, it was contended that the offence under Section 302 IPC was not made out; and that with proper treatment life of the deceased could have been saved. B

Allowing the appeal in part, the Court

HELD: 1. The argument regarding the absence of proper medical treatment is clearly unsustainable in view of the Explanation to Section 299 of the Penal Code, 1860. The explanation clearly contemplates that where the 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. [Para 25] [54-D] C

2. The crucial question is as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is 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, the 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. [Para 26] [54-E-G] D E F

3. 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. [Para 27] [54-H; 55-A] G H

A 4.1. 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 B 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 C to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature to cause death" 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 D clause (3) of Section 300 is one of the degrees 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 probable as distinguished from a mere possibility. E 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. [Para 29] [56-D-H; 57-A]

4.2. 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 F intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. [Para 30] [57-B]

Rajwant v. *State of Kerala,* AIR (1966) SC 1874, relied on.

4.3. Thus, according to the rule laid down in *Virsa Singh's* case, even if G 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. [Para 35] [59-A]

Virsa Singh v. *State of Punjab,* AIR (1958) SC 465, followed.

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5. 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 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. [Para 36] [59-C-D]

6. 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 other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages. [Para 37]

State of Andhra Pradesh **v.** *Rayavarapu Punnayya,* **[1976] 4 SCC 382;** *Abdul Waheed Khan* **v.** *State of Andhra Pradesh,* **[2002] 7 SCC 175;** *Augustine Saldanha* **v.** *State of Karnataka,* **[2003] 10 SCC 472 and** *Thangiya* **v.** *State of T.N.,* **[2005] 9 SCC 650, referred to.**

7. When the factual scenario in the case is set aside on the touchstone of the principles set out above, it becomes clear that the appellant is responsible for causing the death of the deceased. However, the application of Section 304 Part II IPC would be applicable and not Section 302 IPC. The conviction is accordingly altered. Ten years custodial sentence would meet the ends of justice. [Para 39] [59-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 123 of 2007.

From the Final Judgment and Order dated 21.6.2005 of the High Court of Judicature at Madras in crl. A. No. 494/1998.

R.Nedumaran for the Appellant.

R. Sundaravaradan, S. Vallinayagam and V.G. Pragasam for the Respondent.

A The Judgment of the Court was delivered by

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

2. Appellant calls in question legality of the judgment rendered by a Division Bench of the Madras High Court confirming the conviction of the B appellant for commission of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and affirming the sentence of imprisonment of life as imposed. It is to be noted that the appellant was tried with one another whose conviction and the sentence imposed by the trial Court for offence punishable under Section 324 read with Section 511 IPC was set aside. Similar was the case for the appellant.
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3. Background facts as projected by the prosecution in a nutshell are as follows:

4. Rathinavelu (PW-1) is the son, Saradha (PW-2) is the wife, Kanakraj (PW-3) is the younger brother and Selvi (PW-4) is the second wife of Periasamy D (hereinafter referred to as the 'deceased'). Appellant-Sellappan is the father and acquitted accused Selvaraj is the brother of Selvi (PW-4). All of them were residing at Nallarayanapatti.

5. The deceased without the knowledge of the appellant and Selvaraj E married PW-4 on account of which, they were angry towards the deceased.

6. About $1^{1/2}$ years prior to the incident, appellant abused the grandmother of PW-1 and he was questioned by the grandfather of PW-1. Appellant beat the grandmother of PW-1 and the deceased went to the police station and gave a complaint against him. A panchayat was convened, where the appellant F was advised that he should not abuse the family members of the deceased.

7. About a year prior to the date of incident, the appellant went to the house of the deceased and wanted his daughter PW-4 to return the jewels which was given to her. She refused to part with the jewels on account of which also the appellant was nurturing a grievance against the deceased.
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8. At about 5.45 p.m. on 3.4.1994, Saradha (PW-2), the mother of Rathinavelu (PW-1), who is the wife of the deceased Periasamy, was collecting leaves for silk worms for the purpose of feeding them. Kanakaraj (PW-3) was inside the house. The deceased left the house to bring agricultural labourers and, while he was on his way, the appellant armed with a stick, Selvaraj armed
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with an aruval, appeared before him. On seeing them the deceased became panicky and shouted saying that they are about to beat him. Selvaraj threw the aruval, which he had in his hand at the deceased and the deceased side stepped. At that time, the appellant with the stick, which he had in his hand, beat the deceased on the head twice. The deceased fell down. The appellant leaving the stick, ran away from the place followed by Selvaraj, who took away the aruval with him. The occurrence was witnessed by PWs. 1 to 3.

9. Kanakaraj (PW-3) went and brought a taxi at about 7.45 p.m. The injured Periasamy was placed in the vehicle and taken to the Government Mohan Kumaramangalam Hospital, where he was produced before Dr. Chellammalpuri (PW-9), the Casualty Medical Officer at 9.00 p.m. PW-9 on examination of the injured Periasamy found the following injuries.

"1. A contusion about 4" in diameter at the occipital region.

2. A contusion about 1" diameter at the back of right scapular".

10. PW-9 issued Ex.P5, a copy of the accident register and Ex.P6, the wound certificate. PW-9 also sent Ex.P4 intimation to the Outpost Police Station, which was received by Head Constable (PW-11) attached to the Outpost Police Station, Dr. Singaram (PW-10) treated the deceased and issued Ex.P7 wound certificate.

11. On receipt of Ex.P4 sent by PW-9, Head Constable (PW-11) attached to the Outpost Police Station went to the ward, where the injured was admitted and finding him unconscious, questioned PW-1, who gave a statement. The said statement was reduced into writing and the same stands marked as Ex.P1. PW-11 then returned to the Outpost Police Station and by wireless informed Attayampati Police Station, within whose jurisdiction the occurrence took place.

12. The Head Constable (PW-15) attached to Attayampatti Police Station, on getting information over wireless, proceeded to the Outpost Police Station and received Ex.P1 from PW-11. He then returned to the Police Station at Attayampatti with Ex.P1 and registered a case in Crime No.304 of 1994 against the appellant and Selvaraj under Sections 341 and 326 IPC by preparing printed FIR. Ex.P14 is the copy of the printed FIR. PW-15 then took up investigation in the crime.

13. PW-15 on taking up investigation, reached the scene of occurrence

A at 4.00 p.m. on 4.4.1994 and prepared Ex.P2, Observation Mahazar and Ex.P-15, rough sketch. At about 6.15 p.m., he seized MO 1, which was lying at the scene under the mahazar Ex.P-3, attested by witnesses. He examined PW-2, PW-3, PW-4 and others and recorded their statements.

14. In the meantime, the injured Periasamy was removed from the B Government Mohan Kumaramangalam Hospital and was admitted as a patient in a private Nursing Home run by Dr. Chandrasekaran (PW-14) on 4.4.1994. An operation was performed in the hospital and in spite of the treatment given, Periasamy breathed his last at about 7.45 p.m. on 9.4.1994. The doctor sent Ex.P11 intimation to Kondalampatty Police Station, which in turn was C forwarded to Attayampatty Police Station. Ex.P12 is the copy of the accident register issued by PW-14 and Ex.P13 is the case sheet maintained in the hospital.

15. On receipt of the death intimation, Ex.P-11, the crime was altered to one under Section 302 IPC and Ex.P-16 is the express report in the altered D crime. Thereafter, investigation was taken up by PW-16, Inspector of Police of Kondalampatty circle.

16. PW-16 on taking up investigation on 9.4.1994 reached SKS Hospital at 11 p.m. and conducted inquest between 6.00 a.m. and 10.00 a.m. on 10.4.1994 over the dead body of Periasamy in the presence of panchayatdars by preparing E inquest report, Ex.P-17. At the time of inquest, PWs 2 to 4 and others were questioned and their statements were recorded. After inquest, PW-16 gave a requisition to the Doctor for conducting autopsy.

17. On receipt of the requisition, Ex.P-8, PW-13 Assistant Surgeon attached to the Government Mohan Kumaramangalam Hospital conducted F autopsy over the body of Periasamy and found the following injuries:-

"1. Abrasions are present o the following areas:

(a) On the back of upper third of right forearm 1 cm x 0.5 cm.

(b) On the posterior aspect of right side parietal area 3 cm x 2 cm.

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(c) On the left side occipital area 4 cm x 2 cm.

(d) On the anterior aspect right parietal area 1 cm x 0.5 cm.

(e) A linear abrasion on the left side cheek 1 cm x 0.2 cm.

H All are dark brown in colour."

18. A curved sutured wound 14 cm in length on the right front to parieto temporal region of the scalp with the convexity facing upwards. The front end of the wound begins 2 cms above the inner end of the right eyebrow. On removal of the sutures, partially healed, 0.5 cm in breadth edges of the wound are clean cut, through which the gel foam is coming out." A

19. PW-13 issued Ex.P-10, Postmortem certificate with his opinion that death was on account of cranio-cerebral injuries. B

20. PW-16, continuing with his investigation, questioned witnesses and recorded their statements. He searched for the appellants, who were absconding. On 11.4.1994, he examined the witnesses including the Doctors. On 13.4.1994, PW-16 was informed that the appellant and Selvaraj have surrendered themselves before the Judicial Magistrate, Omalur. After his transfer, investigation in the crime was taken up by PW-17, who after examining the Doctors and other witnesses filed the final report against the appellant on 19.10.1994. C D

21. The appellant was questioned under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') on the incriminating circumstances appearing against him. He denied all the incriminating circumstances and stated that on account of enmity, this case has been foisted.

22. The trial Court found the two accused persons before it guilty. However, in appeal Selvaraj was acquitted, but as noted above, appellant's appeal was dismissed. E

23. In support of the appeal learned counsel for the appellant submitted that the evidence is not credible and cogent and in any event offence under Section 302 IPC is not made out. It is submitted further that with proper treatment life of the deceased could have been saved. Learned counsel for the State submitted that no case for interference is made out. F

24. PW-1, the son, PW-2, the wife and PW-3, the younger brother of the deceased were examined to establish that the appellant inflicted the fatal injuries. It is the evidence of the witnesses that on account of the deceased marrying PW-4, who is the daughter of the appellant, as second wife, the appellant, the father and Selvaraj, the brother of PW-4 were not happy with the deceased and about 18 months prior to the date of incident, the appellant quarreled with the grand parents of PW-1 and during the quarrel, beat the grandmother of PW-1, for which a complaint was given at Police Station. The G H

A evidence further show that a panchayat was convened and the appellant was advised not to abuse the family members of the deceased, but the appellant did not heed to the advice. The evidence further shows that some time prior to the date of incident, the appellant wanted PW-4, her daughter to return the jewels, which he gave previously and when she refused, a quarrel ensured and, therefore, the appellant was nurturing a grievance against the deceased B and his family members. The witnesses have further deposed that on the date of the incident when the deceased was on his way to engage agricultural labourers, the appellant armed with a stick, MO1 appeared before the deceased and that the appellant beat the deceased on the head two or three times and that on account of the said injuries inflicted by the appellant, the deceased C fell down and later on he was removed to the hospital and treated by various doctors and ultimately in spite of the treatment, he died on 9.4.1994.

25. Coming to the plea regarding absence of proper medical treatment the argument is clearly unsustainable in view of the Explanation to Section 299 IPC. The explanation clearly contemplates that where the death is caused D 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.

26. The crucial question is as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and E '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, the IPC practically recognizes three degrees of culpable homicide. The first is, what F 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 G three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

27. 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 H

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.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done -
INTENTION	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and

A without any excuse for incurring the risk of causing death or such injury as is mentioned above.

28. Clause (b) of Section 299 corresponds with clauses (2) and (3) of B 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 C 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) D is borne out by illustration (b) appended to Section 300.

29. 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 E 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 F 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 to cause death" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary G 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 the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether H 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 probable as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

30. 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 and Anr.* v. *State of Kerala,* AIR (1966) SC 1874 is an apt illustration of this point.

31. 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 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 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.

32. The ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

> "To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly".
>
> 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 unintentional, or that some other kind of injury was intended.

A 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
B purely objective and inferential and has nothing to do with the intention of the offender."

33. The learned Judge explained the third ingredient in the following words (at page 468):

C "The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it,
D the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in
E 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."

34. These observations of Vivian Bose, J. have become locus classicus. The test laid down by *Virsa Singh's* case (supra) for the applicability of clause
F "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 sufficient in the ordinary course of nature to cause death. It must
G 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.

H 35. Thus, according to the rule laid down in *Virsa Singh's* case, even

if the intention of 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.

36. 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 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.

37. 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 other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

38. The position was illuminatingly highlighted by this Court in *State of Andhra Pradesh* v. *Rayavarapu Punnayya and Anr.*, [1976] 4 SCC 382, *Abdul Waheed Khan @ Waheed and Ors.* v. *State of Andhra Pradesh,* [2002] 7 SCC 175, *Augustine Saldanha* v. *State of Karnataka,* [2003] 10 SCC 472 and in *Thangiya* v. *State of T.N.,* [2005] 9 SCC 650.

39. When the factual scenario in the case is set aside on the touchstone of principles set out above, it becomes clear that the appellant is responsible for causing the death of the deceased. However, the application of Section 304 Part II IPC would be applicable and not Section 302 IPC. The conviction is accordingly altered. Ten years custodial sentence would meet the ends of justice.

40. Appeal is allowed to the aforesaid extent.

V.S.S. Appeal Partly allowed.