STATE OF ANDHRA PRADESH

v.

RAYAVARAPU PUNNAYYA & ANOTHER

September 15, 1976

[R. S. SARKARIA AND S. MURTAZA FAZAL ALI, JJ.]

Penal Code—Ss. 299 *and* 300—*Culpable homicide not amounting to murder and Murder—Distinction—Tests to be applied in each case—s.* 300, *Thirdly I.P.C.—Scope of*

In the scheme of the Penal Code, '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 this generic offence, the Code practically recognises three degrees of culpable homicide. The *first* is, what may be called, culpable homicide of the first degree. This is the 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 Ist 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. [606B-D]

Clause (b) of s. 299 corresponds with cll. (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 intentional 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. 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. [607C-D]

Instances of cases falling under clause (2) of s. 300 can be where the assailant causes death by a first 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. Clause (b) of s. 299 does not postulate any such knowledge on the part of the offender. [607E-F]

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. The distinction between a bodily injury *likely* to cause death and a bodily injury *sufficient in the ordinary course* of nature to cause death, is fine but real, and, if overlooked, may result in miscarriage of justice. The difference is one of the degree of probability of death resulting from the intended bodily injury. The word "likely" in s. 299(b) conveys the sense of 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. [607G-H]

A For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. [608B]

Clause (c) of s. 299 and clause (4) of s. 300 both require knowledge of the probability of the act causing death. Clause (4) of s. 300 would be applicable where the knowledge of the offender as to the probability of death B 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 certainity. 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. [608F-G]

C Whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in s. 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the D operation of s. 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' containd in s. 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the *first* or the *second* part of s. 304, depending, respectively, on whether the second or the third clause of s. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in s. 300, the offence would still be 'culpable homicide not E amounting to murder', punishable under the First Part of s. 304, Penal Code. [608H; 609A-C]

Rajwant and anr. v. *State of Kerala* AIR 1966 SC 1874, *Virsa Singh* v. *The State of Punjab* [1958] SCR 1495 and *Anda* v. *State of Rajasthan* AIR 1966 S.C. 148 followed.

F In the instant case the prosecution alleged that in furtherance of political feuds of the village the accused followed the deceased in the bus when he went to a neighbouring place, chased him when he got off the bus, and indiscriminately pounded the legs and arms of the deceased, who was 55 years old, with heavy sticks. The deceased succumbed to his injuries on the following morning.

The trial court held that the case was covered by clause 'thirdly' of s. 300 and convicted them under s. 302 and s. 302 read with s. 34. Indian Penal G Code. In appeal, the High Court altered the conviction to one under s. 304 Part II, on the grounds that (i) there was no premeditation in the attack; (ii) injuries were not on any vital part of the body; (iii) there was no compound fracture resulting in heavy haemorrhage; (iv) death occurred due to shock *and not* due to haemorrhage and (v) though the accused had knowledge while inflicting injuries that they were likely to cause death, they might not have had the knowledge that they were so imminently dangerous that in all probability their acts would result in such injuries as are likely to cause H the death.

In appeal to this Court the appellant-State contended that the case fell under s. 300(3) I.P.C., while the accused sought to support the judgment of the High Court.

Allowing the appeal.

HELD : (1) It is not correct to say that the attack was not premeditated or pre-planned. The High Court itself found that the injuries were caused in furtherance of the common intention of the respondents, and that therefore section 34 was applicable. [611B]

(2) The High Court may be right in its finding that since the injuries were not on vital parts, the accused had no intention to cause death but that finding—assuming it to be correct—does not necessarily take the case out of the definition of 'murder'. The crux of the matter is whether the facts established bring the case within clause 'thirdly' of s. 300. This question further narrows down into a consideration of the two-fold issue; (i) whether the bodily injuries found on the deceased were *intentionally* inflicted by the accused ? and (ii) If so, were they sufficient to cause death in the ordinary course of nature ? If both these elements are satisfactorily established, the offence will be 'murder', irrespective of the fact whether an intention on the part of the accused to cause death, had or had not been proved. [612 C-E]

In the instant case, the formidable weapons used by the accused in the beating the savage manner of its execution, the helpless state of the unarmed victim, the intensity of the violence caused, the callous conduct of the accused in persisting in the assault even against the protest of feeling bystanders—all, viewed against the background of previous animosity between the parties, irresistibly lead to the conclusion that the injuries caused by the accused to the deceased were intentionally inflicted, and were not accidental. Thus the presence of the first element of clause 'thirdly' of s. 300 had been cogently and convincingly established. [613 B-C]

(3) The medical evidence shows that there were compound fractures and that there was heavy haemorrhage requiring blood transfusion. Such injuries are ordinarily dangerous. [613D]

(4) The medical evidence clearly establishes that the cause of death was shock *and* haemorrhage due to multiple injuries which were cumulatviely sufficient to cause death in the ordinary course of nature. [612B-C]

(5) The mere fact that the beating was designedly confined by the assailants to the legs and arms or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of clause 'thirdly' of s. 300. The expression 'bodily injury' in clause 'thirdly' includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are *cumulatively* sufficient to cause the death in the ordinary course of nature, even if none of those injuries *individually* measures upto such sufficiency. The sufficiency spoken of in this clause, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fall under clause 'thirdly' of s. 300. All the conditions which are a pre-requisite for the applicability of this clause have been established and the offence committed by accused in the instant case was 'murder'. [614G-H]

There is no escape from the conclusion that the offence committed by the accused was murder notwithstanding the fact that the intention of the accused to cause death has not been shown beyond doubt. [613F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 214 of 1971.

(Appeal by Special Leave from the judgment and Order dated 27-7-1970 of the Andhra Pradesh High Court in Criminal Appeals Nos. 26 and 27/69).

A *P. Parmeswara Rao* and *G. Narayana Rao* for the Appellant.

A. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

SARKARIA, J. This appeal by special leave is directed against a judgment of the High Court of Andhra Pradesh. It arises out of these facts.

B In Rompicherla village, there were factions belonging to three major communities viz., Reddys, Kammas and Bhatrajus. Rayavarapu (Respondent No. 1 herein) was the leader of Kamma faction, while Chopparapu Subbareddi was the leader of the Reddys. In politics, the Reddys were supporting the Congress Party, while Kammas were supporters of Swatantra Party. There was bad blood between the two C factions which were proceeded against under s. 107, Cr. P. C. In the Panchyat elections of 1954, a clash took place between the two parties. A member of the Kamma faction was murdered. Consequently, nine persons belonging to the Reddy faction were prosecuted for that murder. Other incidents also took place in which these warring factions were involved. So much so, a punitive police force was stationed in this village to keep the peace during the period from March 1966 to D September 1967. Sarikonda Kotamraju, the deceased person in the instant case, was the leader of Bhatrajus. In order to devise protective measures against the onslaughts of their opponents, the Bhatrajus held a meeting at the house of the deceased, wherein they resolved to defend themselves against the aggressive actions of the respondents and their party-men. PW 1, a member of Bhatrajus faction has a cattle shed. The passage to this cattle-shed was blocked by the other party. E The deceased took PW 1 to Police Station Nekarikal and got a report lodged there. On July 22, 1968, the Sub-Inspector of Police came to the village and inspected the disputed wall in the presence of the parties. The Sub-Inspector went away directing both the parties to come to the Police Station on the following morning so that a compromise might be effected.

F Another case arising out of a report made to the police by one Kallam Kotireddi against Accused 2 and 3 and another in respect of offences under ss. 324, 323 and 325, Penal Code was pending before a Magistrate at Narasaraopet and the next date for hearing fixed in that case was July 23, 1968.

On the morning of July 23, 1968, at about 6-30 a.m., PWs 1, 2 and the deceased boarded Bus No. AP 22607 at Rompicherla for G going to Nekarikal. Some minutes later, Accused 1 to 5 (hereinafter referred to as A-1, A2, A3, A4 and A5) also got into the same bus. The accused had obtained tickets for proceeding to Narasaraopet. When the bus stopped at Nekarikal Cross Roads, at about 7-30 a.m., the deceased and his companions alighted for going to the Police Station. The five accused also got down. The deceased and PW 1 went towards a Choultry run by PW 4, While PW 2 went to the road-H side to ease himself. A-1 and A2 went towards the Coffee Hotel situate near the Choultry. From there, they picked up heavy sticks and went after the deceased into the Choultry. On seeing the accused, PW 1 ran away towards a hut nearby. The deceased stood up.

He was an old man of 55 years. He was not allowed to run. Despite the entreaties made by the deceased with folded hands, A-1 and A-2 indiscriminately pounded the legs and arms of the deceased. One of the by-standers, PW 6, asked the assailants as to why they were mercilessly beating a human being, as if he were a buffalo. The assailants angrily retorted that the witness was nobody to question them and continued the beating till the deceased became unconscious. The accused then threw their sticks at the spot, boarded another vehicle, and went away. The occurrence was witnessed by PWs 1 to 7. The victim was removed by PW 8 to Narasaraopet Hospital in a tempo-rar. There, at about 8.45 a.m., Doctor Konda Reddy examined him and found 19 injuries, out of which, no less than 9 were (internally) found to be grievous. They were :

1. Dislocation of distal end of proximal phalanx of left middle finger.
2. Fracture of right radius in its middle.
3. Dislocation of lower end of right ulna.
4. Fracture of lower end of right femur.
5. Fracture of medial malleolus of right tibia.
6. Fracture of lower 1/3 of right fibula.
7. Dislocation of lower end of left ulna.
8. Fracture of upper end of left tibia.
9. Fracture of right patella.

Finding the condition of the injured serious, the Doctor sent information to the Judicial Magistrate for getting his dying declaration recorded. On Dr. K. Reddy's advice, the deceased was immediately removed to the Guntur Hospital where he was examined and given medical aid by Dr. Sastri. His dying declaration, Ex. P-5, was also recorded there by a Magistrate (PW 10) at about 8.05 p.m. The deceased, however, succumbed to his injuries at about 4.40 a.m. on July 24, 1968, despite medical aid.

The autopsy was conducted by Dr. P. S. Sarojini (PW 12) in whose opinion, the injuries found on the deceased were cummulatively sufficient to cause death in the ordinary course of nature. The cause of death, according to the Doctor, was shock and haemorrhage resulting from multiple injuries.

The trial Judge convicted A-1 and A-2 under s. 302 as well as under s. 302 read with s. 34, Penal Code and sentenced each of them to imprisonment for life.

On appeal by the convicts, the High Court altered their conviction to one under s. 304, Pt. II, Penal Code and reduced their sentence to five years rigorous imprisonment, each.

Aggrieved by the judgment of the High Court, the State has come in appeal to this Court after obtaining special leave.

A-1, Rayavarappu Punnayya (Respondent 1) has, as reported by his Counsel, died during the pendency of this appeal. This information is not contradicted by the Counsel appearing for the State. This

A appeal therefore, in so far as it relates to A-1, abates. The appeal against A-2 (Respondent 2), however, survives for decision.

The principal question that falls to be considered in this appeal is, whether the offence disclosed by the facts and circumstances established by the prosecution against the respondent, is 'murder' or 'culpable homicide not amounting to murder'.

B In the scheme of the Penal Code, '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 this generic offence, the Code practically recognises three degress of cul-
C pable 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 1st 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
D the three grades. Culpable homicide of this degree is punishable under the second Part of s. 304.

The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections,
E allow themselves to be drawn into minutae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of ss. 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

F	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* homicde is murder if the act by which the death caused is done—
		INTENTION
G	(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
H		(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

A

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

B

Clause (b) of s. 299 corresponds with cls. (2) and (3) of s. 300. The distinguishing feature of the *mens rea* requisite under cl. (2) is the knowledge possessed by the offender regarding the *particular* victim being in such a peculiar condition or state of health that the intentional 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 cl. (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 cl. (2) is borne out by illustration (b) appended to s. 300.

C

D

Clause (b) of s. 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under cl. (2) of s. 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.

E

F

In clause (3) of s. 300, instead of the words 'likely to cause death' occurring in the corresponding cl. (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 fine but real, and, if overlooked, may result in miscarriage of justice. The difference between cl. (b) of s. 299 and cl. (3) of s. 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 a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in cl. (b) of s. 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

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A death will be the "most probable" result of the injury having regard to the ordinary course of nature.

For cases to fall within cl. (3), it is not necessary that the offender intended to cause death, so long as 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*(1) is an apt illustra-
B tion of this point.

In *Virsa Singh* v. *The State of Punjab,* (2) Vivian Bose J. speaking for this Court, explained the meaning and scope of Clause (3), thus (at p. 1500) :

> "The prosecution must prove the following facts before
> C it can bring a case under s. 300, 3rdly'. 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. 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
> D 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."

E

Thus according to the rule laid down in *Virsa Singh's* case (supra) 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 s. 300 clearly brings out this point.

F Clause (c) of s. 299 and cl. (4) of s. 300 both require knowledge of the probability of the 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 cl. (4) of s. 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
G 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.

H From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will

(1) A.I.R. 1966 S.C. 1874. (2) [1958] S.C.R. 1495.

be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in s. 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of s. 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in s. 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the *first* or the *second* part of s. 304, depending, respectively, on whether the second or the third Clause of s. 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in s. 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of s. 304, Penal Code.

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 inter-twined 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.

Now let us consider the problem before us in the light of the above enunciation.

It is not disputed that the death of the deceased was caused by the accused, there being a direct causal connection between the beating administered by A-1 and A-2 to the deceased and his death. The accused confined the beating to the legs and arms of the deceased, and therefore, it can be said that they perhaps had no "intention to cause death" within the contemplation clause (a) of s. 299 or cl. (1) of s. 300. It is nobody's case that the instant case falls within cl. (4) of s. 300. This clause, as already noticed, is designed for that class of cases where the act of the offender is not directed against any particular individual but there is in his act that recklessness and risk of imminent danger, knowingly and unjustifiably incurred, which is directed against the man in general, and places the lives of many in jeopardy. Indeed, in all fairness, Counsel for the appellant has not contended that the case would fall under cl. (4) of s. 300. His sole contention is that even if the accused had no intention to cause death, the facts established fully bring the case within the purview of cl. (3) of s. 300 and as such the offence committed is murder and nothing less. In support of this contention reference has been made to *Anda* v. *State of Rajasthan*(1) *and Rajwant Singh* v. *State of Kerala* (supra).

As against this, Counsel for the respondent submits that since the accused selected only non-vital parts of the body of the deceased, for

(1) A.I.R. 1966 S.C. 148.

A inflicting the injuries, they could not be attributed the *mens rea* requisite for bringing the case under clause (3) of s. 300; at the most, it could be said that they had *knowledge* that the injuries inflicted by them were *likely* to cause death and as such the case falls within the third clause of s. 299, and the offence committed was only "culpable homicide not amounting to murder", punishable under s. 304, Part II. Counsel has thus tried to support the reasoning of the High Court.

B

The trial Court, as already noticed, had convicted the respondent of the offence of murder. It applied the rule in *Virsa Singh's* case (supra), and the ratio of *Anda* v. *State* and held that the case was clearly covered by clause Thirdly of s. 300. The High Court has disagreed with the trail Court and held that the offence was not murder but one under s. 304, Pt. II.

C

The High Court reached this conclusion on the following reasoning :

(a) "There was no premeditation in the attack. It was almost an impulsive act".

(b) "Though there were 21 injuries, they were all on the
D arms and legs and not on the head or other vital parts of the body."

(c) "There was no compound fracture to result in heavy haemorrhage; there must have been some bleeding". (which) "according to PWI might have stopped with in about half an hour to one hour."

E (d) "Death that had occurred 21 hours later, could have been only due to shock and not due to haemorrhage also, as stated by PW 12... who conducted the autopsy. This reference is strengthened by the evidence of PW 26 who says that the patient was under shock and he was treating him for shock by sending
F fluids through his vein. From the injuries inflicted the accused therefore could not have intended to cause death."

(e) "A1 and A2 had beaten the deceased with heavy sticks. These beatings had resulted in fracture of the right radius, right femur, right tibia, right fibula, right
G patalla and left tibia and dislocation of...., therefore considerable force must have been used while inflicting the blows. Accused 1 and 2 should have therefore inflicted these injuries with the knowledge that they are likely, by so beating, to cause the death of the deceased, though they might not have had the knowledge that they were so imminently dangerous that in all probability their acts would result in such
H injuries as are likely to cause the death. The offence ...is therefore culpable homicide falling under.... s. 299, I.P.C. punishable under s. 304 Part II and not murder."

With respect, we are unable to appreciate and accept this reasoning. It appears to us to be inconsistent, erroneous and largely speculative. A

To say that the attack was not premeditated or preplanned is not only factually incorrect but also at war with High Court's own finding that the injuries were caused to the deceased in furtherance of the common intention of A-1 and A-2 and therefore, s. 34, I.P.C. was applicable. Further, the finding that there was no compound fracture, no heavy haemorrhage and the cause of the death was shock, only, is not in accord with the evidence on the record. The best person to speak about haemorrhage and the cause of the death was Dr. P. S. Sarojini (PW 12) who had conducted the autopsy. She testified that the cause of death of the deceased was "shock and haemorrhage due to multiple injuries". This categorical opinion of the Doctor was not assailed in cross-examination. In the *post-mortem* examination report Ex. P-8, the Doctor noted that the heart of the deceased was found full of clotted blood. Again in injury No. 6, which also was an internal fracture, the bone was visible through the wound. Dr. D. A. Sastri, PW 26, had testified that he was treating Kotamraju injured of shock, not only by sending fluids through his vein, *but also blood.* This part of his statement wherein he spoke about the giving of blood transfusion to the deceased, appears to have been overlooked by the High Court. Dr. Kondareddy, PW 11, who was the first Medical Officer to examine the injuries of the deceased, had noted that there was *bleeding* and swelling around injury No. 6 which was located on the left leg 3 inches above the ankle. Dr. Sarojini, PW 12, found fracture of the left tibia underneath this injury. There could therefore, be no doubt that this was a compound fracture. P.W. 11 found bleeding from the other abraded injuries, also. He however found the condition of the injured grave and immediately sent an information to the Magistrate for recording his dying declaration. PW 11 also advised immediate removal of the deceased to the bigger Hospital at Guntur. There, also, Dr. Sastri finding that life in the patient was ebbing fast, took immediate two-fold action. First, he put the patient on blood transfusion. Second, he sent an intimation for recording his dying declaration. A Magistrate (PW 10) came there and recorded the statement. These are all tell-tale circumstances which unerring by show that there was substantial haemorrhage from some of the injuries involving compound fractures. This being the case, there was absolutely no reason to doubt the sworn word of the Doctor, (PW 12) that the cause of the death was shock *and* haemorrhage. B C D E F

Although the learned Judges of the High Court have not specifically referred to the quotation from page 289, of Modi's book on Medical Jurisprudence and Toxicology (1961 Edn.) which was put to Dr. Sarojini in cross-examination, they appear to have derived support from the same for the argument that fractures of such bones "are not ordinarily dangerous"; therefore, the accused could not have intended to cause death but had only knowledge that they were likely by such beating to cause the death of the deceased. G

It will be worthwhile to extract that quotation from Mody, as a reference to the same was made by Mr. Subba Rao before us, also. H

A According to Mody : "Fractures are not ordinarily dangerous unless they are compound, when death may occur from loss of blood, if a big vessel is wounded by the split end of a fractured bone."

It may be noted, in the first place, that this opinion of the learned author is couched in too general and wide language. Fractures of some vital bones, such as those of the skull and the vertebral column are B generally known to be dangerous to life. Secondly, even this general statement has been qualified by the learned author, by saying that compound fractures involving haemorrhage, are ordinarily dangerous. We have seen, that some of the fractures underneath the injuries of the deceased, were compound fractures accompanied by substantial haemorrhage. In the face of this finding, Mody's opinion, far from advancing the contention of the defence, discounts it.

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The High Court has held that the accused had no intention to cause death because they deliberately avoided to hit any vital part of the body, and confined the beating to the legs and arms of the deceased. There is much that can be said in support of this particular finding. But that finding—assuming it to be correct—does not necessarily take the case out of the definition of 'murder'. The crux of the matter D is, whether the facts established bring the case within Clause Thirdly of s. 300. This question further narrows down into a consideration of the two-fold issue :

(i) Whether the bodily injuries found on the deceased were intentionally inflicted by the accused ?

(ii) If so, were they sufficient to cause death in the ordinary E course of nature ? If both these elements are satisfactorily established, the offence will be 'murder', irrespective of the fact whether an intention on the part of the accused to cause death, had or had not been proved.

In the instant case, the existence of both these elements was clearly established by the prosecution. There was bitter hostility between the F warring factions to which the accused and the deceased belonged. Criminal litigation was going on between these factions since long. Both the factions had been proceeded against under s. 107, Cr. P.C. The accused had therefore a motive to beat the deceased. The attack was premeditated and pre-planned, although the interval between the conception and execution of the plan was not very long. The accused had purchased tickets for going further to Narasaraopet, but on seeing G the deceased, their *bete noir*, alighting at Nekarikal, they designedly got down there and trailed him. They selected heavy sticks about 3 inches in diameter, each, and with those lethal weapons, despite the entreaties of the deceased, mercilessly pounded his legs and arms causing no less than 19 or 20 injuries, smashing at least seven bones, mostly major bones, and dislocating two more. The beating was administered in a brutal and reckless manner. It was pressed home H with an unusually fierce, cruel and sadistic determination. When the human conscience of one of the shocked bystanders spontaneously cried out in protest as to why the accused were beating a human being as if he were a buffalo, the only echo it could draw from the assailants,

was a minacious retort, who callously continued their malevolent action, and did not stop the beating till the deceased became unconscious. May be, the intention of the accused was to cause death and they stopped the beating under the impression that the deceased was dead. But this lone circumstance cannot take this possible inference to the plane of positive proof. Nevertheless, the formidable weapons used by the accused in the beating, the savage manner of its execution, the helpless state of the unarmed victim, the intensity of the violence caused, the callous conduct of the accused in persisting in the assault even against the protest of feeling bystanders—all, viewed against the background of previous animosity between the parties, irresistibly lead to the conclusion that the injuries caused by the accused to the deceased were intentionally inflicted, and were not accidental. Thus the presence of the first element of Clause Thirdly of s. 300 had been cogently and convincingly established.

This takes us to the second element of Clause (3). Dr. Sarojini, PW 12, testified that the injuries of the deceased were cumulatively sufficient in the ordinary course of nature to cause death. In her opinion—which we have found to be entirely trustworthy—the cause of the death was shock and haemorrhage due to the multiple injuries. Dr. Sarojini had conducted the *post-mortem* examination of the dead-body of the deceased. She had dissected the body and examined the injuries to the internal organs. She was therefore the best informed expert who could opine with authority as to the cause of the death and as to the sufficiency or otherwise of the injuries from which the death ensued. Dr. Sarojini's evidence on this point stood on a better footing than that of the Doctors (PWs. 11 and 26) who had externally examined the deceased in his life-time. Despite this position, the High Court has not specifically considered the evidence of Dr. Sarojini with regard to the sufficiency of the injuries to cause death in the ordinary course of nature. There is no reason why Dr. Sarojini's evidence with regard to the second element of Clause (3) of s. 300 be not accepted. Dr. Sarojini's evidence satisfactorily establishes the presence of the second element of this clause.

There is therefore, no escape from the conclusion, that the offence committed by the accused was 'murder', notwithstanding the fact that the intention of the accused to cause death has not been shown beyond doubt.

In *Anda* v. *State of Rajasthan* (supra), this Court had to deal with a very similar situation. In that case, several accused beat the victim with sticks after dragging him into a house and caused multiple injuries including 16 lacerated wounds on the arms and legs, a hematoma on the forhead and a bruise on the chest. Under these injuries to the arms and legs lay fractures of the right and left ulnas, second and third metacarpal bones on the right hand and second metacarpal bone of the left hand, compound fractures of the right tibia and right fibula. There was loss of blood from the injuries. The Medical Officer who conducted the autopsy opined that the cause of the death was shock and syncope due to multiple injuries; that all the injuries collectively could be sufficient to cause death in the ordinary course of nature, but individually none of them was so sufficient.

A Question arose whether in such a case when no significant injury had been inflicted on a vital art of the body, and the weapons used were ordinary lathis, and the accused could not be said to have the intention of causing death, the offence would be 'murder' or merely 'culpable homicide not amounting to murder'. This Court speaking through Hidayatullah J. (as he then was), after explaining the comparative scope of and the distinction between ss. 299 and 300, answered the question in these terms :

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> "The injuries were not on a vital part of the body and no weapon was used which can be described as specially dangerous. Only lathis were used. It cannot, therefore, be said safely that there was an intention to cause the death of Bherun within the first clause of s. 300. At the same time, it is obvious that his hands and legs were smashed and numerous bruises and lacerated wounds were caused. The number of injuries shows that every one joined in beating him. It is also clear that the assailants aimed at breaking his arms and legs. Looking at the injuries caused to Bherun in furtherance of the common intention of all it is clear that the injuries intended to be caused were sufficient to cause death in the ordinary course of nature, even if it cannot be said that his death was intended. This is sufficient to bring the case within 3rdly of s. 300."

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The *ratio* of *Anda* v. *State of Rajasthan* (supra) applies in full force to the facts of the present case. Here, a direct causal connection between the act of the accused and the death was established. The injuries were the direct cause of the death. No secondary factor such as gangrene, tetanus etc., supervened. There was no doubt whatever that the beating was premeditated and calculated. Just as in *Anda's* case, here also, the aim of the asailants was to smash the arms and legs of the deceased, and they succeeded in that design, causing no less than 19 injuries, including fractures of most of the bones of the legs and the arms. While in *Anda's* case, the sticks used by the assailants were not specially dangerous, in the instant case they were unusually heavy, lethal weapons. All these acts of the accused were pre-planned and intentional, which, considered objectively in the light of the medical evidence, were sufficient in the ordinary course of nature to cause death. The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of Clause 3rdly of s. 300. The expression "bodily injury" in Clause 3rdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are *cumulatively* sufficient to cause the death in the ordinary course of nature, even if none of those injuries *individually* measures upto such sufficiency. The sufficiency spoken of in this clause, as already noticed, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fall under Clause 3rdly of s. 300. All the conditions which are a pre-requisite for the applicability of this clause have been established and the offence committed by the accused in the instant case was 'murder'.

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For all the foregoing reasons, we are of opinion that the High Court was in error in altering the conviction of the accused-respondent from one under s. 302, 302/34, to that under s. 304, Part II, Penal Code. Accordingly we allow this appeal and restore the order of the trial Court convicting the accused (Respondent 2 herein) for the offence of murder, with a sentence of imprisonment for life. Respondent 2, if he is not already in jail shall be arrested and committed to prison to serve out the sentence inflicted on him.

P.B.R. *Appeal allowed.*