A

DHUPA CHAMAR AND ORS.

v.

STATE OF BIHAR

AUGUST 2, 2002

B

[UMESH C. BANERJEE AND B.N. AGRAWAL, JJ.]

Penal Code, 1860: Sections 323, 302/149, 300 and 148:

Murder by causing solitary injury—Clause thirdly of Section 300—
C *Applicability of—Held, accused intentionally aimed and inflicted the injury with deadly weapons in the chest of deceased with the force sufficient to cause death—Confirmed by the medical report—Absence of evidence or reasonable explanation to rebut the same—Under the circumstances, it can be inferred that such a solitary injury inflicted upon the deceased is sufficient in the*
D *ordinary course of nature to cause death—Clause thirdly, Section 300 attracted.*

Unlawful assembly—Formation of—Held, when three out of seven accused were acquitted of the charge and no other person participated in the crime, there cannot be any unlawful assembly—Hence conviction under Section 302/149 becomes unwarranted.

E

According to the prosecution, an incident of assault took place between the son of an informant and appellant No.2. On the next day, appellants-accused (seven in number) armed with bhalas, lathis, and brickbats gathered near the house of the informant and abused the family members whereupon the informant, her son and and villagers PW6, PW4,
F **PW3, PW2 and her daughter-in-law arrived there and when they made a protest, appellant No.1, gave a bhala blow on the neck of daughter-in-law of PW2. She fell down and died instantaneously; one of the accused assaulted and injured the son of the informant; another accused inflicted bhala blow to PW6, and yet another accused gave bhala injury in the**
G **abdomen of the informant and three other accused hurled brickbats on the other prosecution witnesses present there. Injured persons were hospitalized where the son of the informant was declared as brought dead. His mother lodged an FIR. Police submitted charge-sheet against all the accused persons. Trial Court convicted two of the accused under Sections 302 and 148 IPC, other two accused were convicted under Sections 302/**

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149, 148 and 323 IPC and remaining three accused were acquitted by the trial Court. On appeal, High Court confirmed the conviction and sentences of all the accused with modification in the conviction of appellant No.2 from one under Section 302 to one under Section 302/149. Hence this appeal by the four convicted accused.

It was contended for the appellants that conviction of appellant No. 1, was unwarranted as he had inflicted a single blow to the deceased, Clause thirdly of Section 300 IPC would not be attracted; that out of seven accused, three were acquitted of the charge under Section 302/149, IPC, and therefore, conviction of accused persons under Section 302/149, IPC was not justified since these accused had already served more than the maximum sentence under other Sections of IPC, and that they should be released forthwith.

Partly allowing the appeals of appellants 2 to 4 and dismissing the appeal of appellant No.1, the Court

HELD: 1. On examining facts of the instant case, viz-a-viz settled principles of law, Clause Thirdly of Section 300 IPC is fully attracted. It appears that the accused persons came armed with deadly weapons and there was an altercation and exchange of hot words whereafter appellant No.1 assaulted victim/deceased with a bhala causing injury on the chest rupturing important blood vessels and cutting of aorta and other artery resulting in her instantaneous death. In view of the nature of injury whereby important blood vessels were ruptured inasmuch aorta and artery were cut and when the doctor opined that death was caused as a result of severe heamorrhage and shock due to the rupture of great veins, undoubtedly, it can be reasonably inferred therefrom that such a solitary injury inflicted upon the deceased was sufficient to cause death in the ordinary course of nature. [424-B, F]

Virsa Singh v. *State of Punjab,* AIR 1958 SC 465; *Jagrup Singh* v. *The State of Haryana,* AIR (1981) SC 1552; *Gudar Dusadh* v. *State of Bihar,* AIR 1972 SC 952; *Jai Prakash* v. *State (Delhi Administration),* [1991] 2 SCC 32; *State of Karnataka* v. *Vedanayagam,* (1995) 1 SCC 326 and *Mahesh Balmiki alias Munna* v. *State of M.P.,* [2000] (1) SCC 319, relied on.

2. The circumstance would show that accused *intentionally inflicted* the injury and the same would indicate such a state of mind of the appellant No.1, that he aimed and inflicted the injury with deadly weapon.

A In the absence of evidence or reasonable explanation to show that this appellant did not intend to inflict injury by bhala in the chest with that degree of force sufficient to rupture important blood vessel and cutting of aorta and other artery, it would be perverse to conclude that he did not intend to inflict that injury that he did. Once the ingredient 'intention' is established then the offence would be murder as the intended injury B was sufficient in the ordinary course of nature to cause death. Therefore, inevitable conclusion would be that appellant No.1 has committed the offence of murder and not culpable homicide not amounting to murder. This being the position, the High Court has not committed any error in upholding conviction of appellant No.1 under Section 302 of the Penal C Code. [424-G, H; 425-A, B]

3. Since three accused persons out of the seven accused were acquitted by the trial Court itself of the charge under Section 302/149 IPC and no other person is said to have participated in the crime as mentioned in the prosecution case and evidence, and as the number of accused persons D becomes less than five, there cannot be said to be any unlawful assembly, as such conviction of appellant Nos. 2 to 4 under Section 302/149 in respect of unlawful assembly leading to the death of the informant's son, becomes unwarranted. Conviction and sentenced of accused-appellant Nos. 2, 3 and 4 under Section 302/149 of the Penal Code are set aside and they are E acquitted of this charge. However, their convictions and sentences under other Sections are confirmed. [425-E, F; 426-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1087 of 200.

F From the Judgment and Order dated 28.4.2000 of the Patna High Court in Crl. A. No. 480 of 1987.

Aman Lekhi, Rajesh Pathak, Pramod Jalan and S.R. Setia, for the Appellants.

G Saket Singh and B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

B.N. AGRAWAL, J. Dhupa Chamar-appellant No. 1 and Tokha Chamar-appellant No. 2 were convicted by the trial court under Section 302 H of the Penal Code and sentenced to undergo imprisonment for life. Each of

them was further convicted under Section 148 of the Penal Code and sentenced to undergo rigorous imprisonment for one year. Doma Chamar-appellant No. 3 and Adalat Chamar-appellant No. 4 were convicted under Sections 302/149 of the Penal Code and sentenced to undergo imprisonment for life. They were further convicted under Sections 148 and 323 of the Penal Code and sentenced to undergo rigorous imprisonment for one year and six months respectively. However, the sentences were ordered to run concurrently. Accused Swaminath Chamar, Rajbali Chamar and Ram Hoshiar Chamar, who were charged under Sections 302/149 of the Penal Code, were acquitted of the said charges by the trial court. The High Court on appeal by the appellants confirmed their convictions and sentences with this modification only that conviction of Tokha Chamar-appellant No.2 under Section 302 was converted into one under Section 302/149 of the Penal Code.

Prosecution case, in short, is that on 13th June, 1983 at 8.00 p.m., there was an incident of assault by fists and slaps between Ramu Chamar, son of Sankeshiya Devi (informant) and appellant No. 2-Tokha Chamar and due to this reason on 14th June, 1983 at 8.00 a.m., appellants armed with bhalas, accused Ram Hoshiar Chamar with lathi and accused Swaminath Chamar and Rajbali Chamar with brickbats came near the house of Ramu Chamar and started abusing his family members whereupon, villagers Khedaru Chamar (PW 4), Jhagaru Chamar (PW 3), informant's son Dharam Chamar (deceased), Karam Chamar (PW 2) and her daughter-in-law, Ram Patia Devi, besides Sharda Devi (PW 6) arrived there. Ram Patia Devi made a protest whereupon appellant No. 1-Dhupa Chamar gave a bhala blow on the left side of her neck and the same was pulled out forcibly from the neck as a result of which she fell down and died instantaneously. Appellant No.2-Tokha Chamar assaulted Dharam Chamar in the abdomen with bhala. Appellant No. 4-Adalat Chamar inflicted bhala injury to Sharda Devi (PW 6). Accused Rajbali Chamar and Swaminath Chamar hurled brickbats upon Karam Chamar (PW 2). Accused Ram Hoshiar Chamar gave lathi blow to Ramu. Appellant No. 3-Doma Chamar gave bhala blow in the abdomen of the informant when she protested against the action of the accused persons as a result of which she fell down and thereupon injured Dharam Chamar and Sharda Devi (PW 6) were taken to the hospital where Dharam Chamar was declared as brought dead. Stating the aforesaid facts, fard beyan of Sankeshiya Devi was recorded by the police at the place of occurrence itself on the very same day at 11.00 a.m. on the basis of which formal first information report was drawn up.

The police took up investigation and on completion thereof submitted

A charge sheet, on receipt whereof cognizance was taken and all the seven accused persons including the appellants were committed to the court of Sessions to face trial. The accused persons pleaded that they were innocent and no occurrence much less the occurrence alleged had taken place.

During trial the prosecution examined twelve witnesses. PWs 1 to 7 B besides the informant (PW 11) claimed to be the eye witnesses to the occurrence, PWs 8 and 10 are formal witnesses, PW 9 was tendered and PW-12 has proved the medical evidence as the doctor, who held postmortem examination, was reported to have died. The investigating officer was examined as court witness No. 1. The defence, however, examined three witnesses. C Upon conclusion of trial, the learned Sessions Judge, while acquitting the three accused persons referred to above of the charge under Section 302/149 of the Penal Code, convicted the appellants as stated above. On appeal being preferred, the convictions and sentences have been upheld by the High Court with this modification only that conviction of appellant No. 2-Tokha Chamar under section 302 has been converted into one under Sections 302/149 of the D Penal Code. Hence, this appeal by special leave.

Shri Aman Lekhi, learned counsel appearing on behalf of the appellants in support of the appeal, could not successfully assail the concurrent findings of fact recorded by the two courts below as the same were arrived at after appreciation of evidence adduced on behalf of the parties. He, however, E submitted that conviction of appellant No.1-Dhupa Chamar under Section 302 of the Penal Code was unwarranted and as he is said to have inflicted a single blow to deceased Ram Patia Devi, Clause Thirdly of Section 300 of the Penal Code would not be attracted and, accordingly, the act of appellant-Dhupa Chamar would not amount to murder. Thus, a question arises as to F when death is caused by a single blow, whether Clause Thirdly of Section 300 of the Penal Code is attracted. The ingredient 'intention' in that Clause is very important and that gives a clue in a given case whether offence involved is murder or not. Clause Thirdly of Section 300 of the Penal Code reads thus:-

G "3rdly.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"

Intention is different from motive. It is the intention with which the act is done that makes difference, in arriving at a conclusion whether the offence H is culpable homicide or murder. Therefore, it is necessary to know the meaning

of expression 'intention' as used in these provisions. In this connection, we may usefully refer to the high authority of Vivian Bose, J., with whom Jafer Imam and P.B. Gajendragadkar, JJ. agreed in the case of *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465. In that case, appellant Virsa Singh was convicted under Section 302 of the Penal Code which was upheld by this Court although there was only one injury which was attributed to him which was caused as a result of spear thrust. It was contended in that case that as it was a case of solitary injury, it could not be inferred that there was intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature as such act of the offender did not amount to murder. After analysing the Clause Thirdly, it was laid down in that case where Vivian Bose, J. speaking for the Court, observed thus, at page 467:-

> "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.

Once these three elements are proved to be present, the enquiry proceeds further, and

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300, thirdly .. 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 actually found to be present is proved, the rest of the enquiry is purely

A 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. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. *If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably* B *deduced that the injury was accidental or otherwise unintentional.*"

It was observed thus at page 468:-

"In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force C sufficient to penetrate that far into the body, or to indicate that his act was a 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 intent is established (and no other conclusion is reasonably possible in this case and in any case it is a question of D fact), the rest is a matter for objective determination from the medical and other evidence about the nature and seriousness of the injury.

It was thus held at the same page:-

"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 E 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, the only possible inference is that he intended to inflict it. Whether he knew F of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances G warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

H xxx xxx xxx

It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact; and whether the conclusion should be one way or the other is a matter of proof, where necessary, by calling in aid all reasonable inferences of fact in the absence of direct testimony. It is not one for guesswork and fanciful conjecture."

Referring to these observations, a Bench of this Court in the case of *Jagrup Singh* v. *The State of Haryana,* AIR [1981] SC 1552, observed thus at page 1552:-

"These observations of Vivian Bose, J. have become locus classicus. The test laid down in *Virsa Singh's* case for the applicability of Clause Thirdly is now ingrained in our legal system and has become part of the rule of law.............The decision in *Virsa Singh's* case has throughout been followed as laying down the guiding principles."

In the case of *Gudar Dusadh* v. *State of Bihar,* AIR (1972) SC 952, one lathi blow was inflicted on the head which proved to be fatal. While upholding the conviction under Section 302 of the Penal Code, a three Judge Bench of this Court laid down the law and speaking for the Court, H.R. Khanna, J., observed thus at page 954:

"The fact that the appellant gave only one blow on the head would not mitigate the offence of the appellant and make him guilty of the offence of culpable homicide not amounting to murder. The blow on the head of Ramlal with lathi was plainly given with some force and resulted in a 3" long fracture of the left parietal bone. Ramlal deceased died instantaneously and as such, there arose no occasion for giving a second blow to him. As the injury on the head was deliberate and not accidental and as the injury was sufficient in the ordinary course of nature to cause death, the case against the appellant would fall squarely within the ambit of clause "3rdly" of Section 300, Indian

A Penal Code."

In the case of *Jai Prakash* v. *State (Delhi Administration),* [1991] 2 SCC 32, which is also a three Judge Bench decision of this Court, a single blow was inflicted on the chest with knife and the same proved to be fatal, as such conviction under Section 302 of the Penal Code was upheld by this B Court. The Court while considering Clause Thirdly of Section 300 observed thus at pages 41-42:-

"Clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the C ordinary course of nature. *Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the* D *particulars of the injury.* The language of Clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. *The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of* E *attack, multiplicity of injuries and all other surrounding circumstances.* The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, F when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a G thing to achieve a particular end." [Emphasis added]

The Court further observed thus at pages 42-43:-

"It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realisation with the bare state of conscious H awareness of certain facts in which human mind remains supine or

inactive. On the other hand, 'intention' is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore, in the case of 'intention' mental faculties are projected in a set direction. *Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact.* In Clause Thirdly the words "intended to be inflicted" are significant. As noted already, when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. *However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case.* However, as pointed out in *Virsa Singh's* case (supra), *the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors.* These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused. In some cases, an explanation may be there by the accused like exercise of right of private defence or the circumstances also may indicate the same. Likewise there may be circumstances in some cases which attract the first exception. In such cases different considerations arise and the court has to decide whether the accused is entitled to the benefit of the exception, though the prosecution established that one or the other clauses of Section 300 IPC is attracted. In the present enquiry we need not advert to that aspect since we are concerned only with scope of Clause Thirdly of Section 300 IPC." [Emphasis added]

In the case of *Jai Prakash* (supra), after referring to the decisions of this Court in the cases of *Chahat Khan* v. *State of Haryana,* [1972] 3 SCC 408, *Chamru Budhwa* v. *State of M.P.,* AIR (1954) SC 652, *Willie (William)*

A *Slaney* v. *State of M.P.*, [1955] 2 SCR 1140 and *Harjinder Singh (alias Jinda)* v. *Delhi Administration*, [1968] 2 SCR 246, the Court observed thus at page 44:

> "In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not and it is held that circumstances like sudden quarrel in a fight or when the deceased intervenes in such a fight, would create a doubt about the ingredient of intention as it cannot definitely be said in such circumstances that the accused aimed the blow at a particular part of the body. When an accused inflicts a blow with a deadly weapon the presumption is that he intended to inflict that injury but there may be circumstances like those, as mentioned above, which rebut such presumption and throw a doubt about the application of Clause Thirdly. Of course much depends on the facts and circumstances of each case."

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D Again in the case of *Jai Prakash* (supra), the Court referred to the decisions of this Court in the cases of *Kulwant Rai* v. *State of Punjab*, (1981) 4 SCC 245, *Randhir Singh* v. *State of Punjab*, [1981] 4 SCC 484, *Gurmail Singh* v. *State of Punjab*, [1982] 3 SCC 185, *Jagtar Singh* v. *State of Punjab*, [1983] 2 SCC 342, *Tholan* v. *State of Tamil Nadu*, [1984] 2 SCC 133 and *Jagrup Singh* (supra) and observed thus at pages 46-47:-

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> "In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only to assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result. It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result. We may point out that we are not concerned with the intention to cause death in which case it will be a murder simpliciter unless exception is attracted. We are concerned under Clause Thirdly with the intention to cause that particular injury which is a subjective inquiry and when once

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such intention is established and if the intended injury is found objectively to be sufficient in the ordinary course of nature to cause death, Clause Thirdly is attracted and it would be murder unless one of the exceptions to Section 300 is attracted. If on the other hand this ingredient of 'intention' is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that Clause Thirdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC."

In the case of *State of Karnataka* v. *Vedanayagam,* [1995] 1 SCC 326, accused inflicted a single knife blow on the chest resulting in instant death and the trial court convicted him under Section 302 but on appeal being preferred, the High Court of Karnataka altered the same to one under Section 304 Part II. When the matter was brought to this Court, judgment of the trial court convicting the accused under Section 302 was restored observing "there is no doubt whatsoever that the accused intended to cause that particular injury on the chest which necessarily proved fatal. Therefore, Clause Thirdly of Section 300 IPC is clearly attracted."

In the case of *Mahesh Balmiki alias Munna* v. *State of M.P.*, [2000] 1 SCC 319, accused gave a single fatal blow with knife on the chest on the left side of the sternum between the costal joint of the 6th and 7th ribs, fracturing both the ribs and track of the wound going through the sternum, pericardium, anterior and posterior after passing the ribs and thereafter entering the liver and perforating a portion of stomach. There, conviction under Section 302 of the Penal Code was upheld by the High Court and when appeal was brought to this Court by Special Leave, while confirming the conviction under Section 302, this Court observed thus at pages 322-323:-

"Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine

A the required intention or knowledge of the offender and the offence committed by him."

Keeping in mind the aforesaid principles, if we examine facts of the present case, Clause Thirdly of Section 300 is fully attracted. It appears that the accused persons came armed with deadly weapons and there was an B altercation and exchange of hot words whereafter appellant No. 1 assaulted victim Ram Patia Devi with a bhala causing injury on the chest rupturing important blood vessels and cutting of aorta and other artery resulting in her instantaneous death. At this stage, it would be useful to refer to injury on Ram Patia Devi as found by the doctor, who held post mortem examination C on her dead body, which runs thus:

> "One penetrating wound 2" x 1" x 4" deep on the apex of [L] chest just below the [L] clavicle, cutting, skin, muscle and important blood vessels, e.g. area of aorta.
>
> D On body the chest, the injury was found behind the stain with cutting of arch of aorta and the subclavian artery resulting in profuse haemorrhage.
>
> Grievous in nature
>
> E Caused by sharp cutting pointed weapon.
>
> Within 12 hours. In my opinion, the death was due to cardiac Respiratory failure as a result of severe haemorrhage and shock due to the rupture of great veins as mentioned above."

In view of the nature of injury whereby important blood vessels were F ruptured inasmuch aorta and artery were cut and when the doctor opined that death was caused as a result of severe haemorrhage and shock due to the rupture of great veins, undoubtedly, it can be reasonably inferred therefrom that such a solitary injury inflicted upon the deceased was sufficient to cause death in the ordinary course of nature.

G The above circumstance would show that accused intentionally inflicted the injury and the same would indicate such a state of mind of the appellant-Dhupa Chamar that he aimed and inflicted the injury with deadly weapon. In the absence of evidence or reasonable explanation to show that this appellant did not intend to inflict injury by bhala in the chest with that degree of force H sufficient to rupture important blood vessel and cutting of aorta and other

artery, it would be perverse to conclude that he did not intend to inflict that injury that he did. When once the ingredient 'intention' is established then the offence would be murder as the intended injury was sufficient in the ordinary course of nature to cause death. Therefore, inevitable conclusion would be that appellant No. 1-Dhupa Chamar has committed the offence of murder and not culpable homicide not amounting to murder. This being the position, we do not find that the High Court has committed any error in upholding conviction of appellant No.1-Dhupa Chamar under Section 302 of the Penal Code.

Learned counsel appearing on behalf of the appellants next submitted that in view of the fact that out of seven accused persons, trial court itself acquitted three accused, namely, Swaminath Chamar, Rajbali Chamar and Ram Hoshiar Chamar of the charge under Section 302/149 of the Penal Code, it was not justified in convicting appellant No.3-Doma Chamar and appellant No.4-Adalat Chamar under Section 302/149 of the Penal Code and the High Court was not justified in upholding the same. It has been also submitted that so far as appellant No.2-Tokha Chamar is concerned, the High Court was quite unjustified in converting his conviction under Section 302 into one under Section 302/149 of the Penal Code after recording a finding that his conviction under Section 302 simpliciter was unwarranted as according to medical evidence injuries found on victim Dharam Chamar were neither sufficient to cause death nor likely to cause death, the same being simple and he died as a result of toxaemia. We are of the opinion that in view of the fact that three accused persons referred to above were acquitted by the trial court itself of the charge under Section 302/149 out of the seven accused persons and no other person is said to have participated in the occurrence as mentioned in the prosecution case and evidence, and as the number of accused persons becomes less than five, there cannot be said to be any unlawful assembly, as such conviction of appellant Nos. 2 to 4 under Section 302/149 becomes unwarranted.

In relation to conviction of these appellants under other sections, learned counsel appearing on their behalf could not point out any infirmity. He, however, submitted that under these sections, the maximum sentence that has been awarded is one year and as they have served out more than that, they should be directed to be released forthwith. We find force in this submission as it has been pointed out that Tokha Chamar-appellant No.2 has remained in jail for a period of seven years and each of the appellant No.3-Doma Chamar and appellant No. 4-Adalat Chamar two years three months.

In the result, appeal of appellant No.1-Dhupa Chamar fails and the same

A is accordingly dismissed. Appeal of appellant No. 2-Tokha Chamar, appellant No. 3-Doma Chamar and appellant No. 4-Adalat Chamar is allowed in part, their conviction and sentence under Section 302/149 of the Penal Code are set aside and they are acquitted of this charge. Their convictions and sentences under other sections are confirmed, but as they have already served out the sentences awarded thereunder, they are directed to be released forthwith if B not required in any other case.

S.K.S. Appeal dismissed/Partly allowed.