ABDUL WAHEED KHAN @ WAHEED AND ORS. A

v.

STATE OF ANDHRA PRADESH

AUGUST 27, 2002.

[RUMA PAL AND ARIJIT PASAYAT, JJ.] B

Penal Code, 1860—Sections 302, 300 and 229—Conviction under Section 302—Correctness of—With an object to rob, accused persons indiscriminately stabbing a person resulting in his death—Trial Court convicting accused for culpable homicide not amounting to murder—High Court converting conviction to murder—On appeal held, the intention prevailing at the time of assault determines applicability of relevant provisions—In the instant case, death ensued from bodily injury or injuries sufficient to cause death in the ordinary course of nature—Hence High Court justified in converting conviction of accused to murder. C D

Murder and culpable homicide not amounting to murder—Distinction between—Discussed.

Test identification parade—To be conducted immediately after arrest of accused person—However, some delay in holding the test which is beyond control does not corrode the prosecution case. E

Appellants-accused entered into conspiracy to rob one H. Three of the accused indiscriminately stabbed H with knives which resulted in his death. Trial Court on the basis of evidence of eye-witnesses convicted the three accused under Section 304 Part I read with Section 34 IPC and acquitted others. High Court altered the conviction and sentence to one under Section 302 IPC and upheld the acquittal of other accused. Hence the present appeals. F

Appellants contended that delay in conducting the test identification parade corroded the prosecution version; that High Court should not have altered the conviction and as per the doctor who conducted post-mortem injury was on account of fall on the rough surface thus it was not possible to draw inference about the intention of the accused to kill deceased for robbing the cash. G

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A Respondent contended that due formalities were observed before conducting test identification parades and the reason for some delay in conducting the test had been duly explained and that to achieve the intended object of robbing deceased, accused persons indiscriminately stabbed him till he succumbed to death and the cash and the drafts were snatched away from him; thus High Court was justified in applying Section B 302 IPC.

Dismissing the appeals, the Court

HELD: 1.1. The academic distinction between 'murder' and C '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. [712-C, D]

1.2. Clause (b) of Section 299 IPC corresponds with clauses (2) and D (3) of Section 300 IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. The 'intention E 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. [713-F, G]

F 1.3. 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 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 G death of that particular person as a result of rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section H 300, instead of the words 'likely to cause death' occurring in the

corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degrees of probability of death resulting from the intended bodily injury. 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. 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. [713-H; 714-A-E]

1.4. 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. [714-F]

1.5. 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. These are only broad guidelines and not cast iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages. [716-E-H]

1.6. In the instant case, evidence of witnesses was that the three appellants had indiscriminately stabbed the deceased, though their object was to rob him. As established by evidence of eye-witnesses accused

A persons expected resistance and all the three were armed with knives. It cannot be said that they expected no resistance even if they intended to rob a huge sum of money. The intended object was to get money. When there was expected resistance by the deceased, they went on giving stabs with the knives till deceased lost his life and thereafter cash and demand drafts were snatched. It is the intention prevailing at the time of assault, B which determines the applicability of the relevant provisions. One of the factors which appears to have weighed with trial court, and on which reliance was placed to alter conviction to Section 304 Part I was the finding that the two injuries which were stated by the doctor-prosecution witness to be sufficient to cause the death were possible by fall. A reading of the C post-mortem report indicates that several injuries were stated by the doctor to be the cause of death and the two injuries noticed by trial court were not the only ones. In fact, stab injury was one of them. There were six stab wounds. The doctor stated stab injury, other injuries and internal injuries were sufficient to cause death in the normal course of nature. Much was made by trial court of the statement of doctor to the effect that D cause of death could be stab wounds associated with head injury. It was, however, not noticed that the doctor clarified that the stab wounds as well as the head injury are individually sufficient to cause death. The stab wounds came first and then the possible fall. Thus taking into account the totality of the circumstances the conviction under Section 302 IPC by High E Court cannot be faulted. [717-B-F]

Rajwant and Ors. v. *State of Kerala,* AIR [1966] SC 1874; *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465 and *State of Andhra Pradesh* v. *Rayavarapu Punnayya,* [1976] 4 SCC 382, relied on.

F 2. The necessity for holding an identification parade can arise only when the accused are not previously known to witnesses. The main object of holding an identification parade, during the investigation stage, is to test the memory of witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source based upon first impression and also G to enable prosecution to decide whether all or any of them could be cited as eye-witness of the crime. The identification proceedings are in the nature of tests done to check upon their veracity. It is desirable that a test identification parade should be conducted soon after the arrest of accused. This becomes necessary to eliminate the possibility of accused being shown H to witnesses prior to the test identification parade. If however,

circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. In the instant case, all possible efforts were made to have test identification parade immediately after the arrest of accused persons. As the prosecution witness was not available on the first test, on request of police second test was held. Merely because the second test identification parade was held, that cannot be a suspicious circumstance. [710-H; 711-A-E] A B

Matru @ Girish Chandra **v.** *The State of U.P.,* **AIR (1971) SC 1050 and** *Santokh Singh* **v.** *Izhar Hussain and Anr.,* **AIR (1973) SC 2190, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 917-920 of 2000. C

From the Judgment and Order dated 22-1-2000 of the Andhra Pradesh High Court in Crl.A.Nos. 717/96, 916/96, 660/96 and 1011/96.

Nrottam Vyas. S.N. Tewari and B.D. Sharma for the Appellants. Ms. T. Anamika and G. Prabhakar for the Respondents. D

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. These four appeals relate to a common judgment passed by a Division Bench of the Andhra Pradesh High Court, E whereby three appeals filed by the accused-appellants and one by the State were disposed of. While the accused-appellants challenged their conviction under Section 304 Part I read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'), State had taken the stand that accused-appellants should have been convicted under Section 302 read with Section 34 IPC and the two accused who had been acquitted by the trial court should have also been F convicted. The appeals filed by the accused-appellants were dismissed and the appeal filed by the State was partially allowed by converting sentence to Section 302 IPC.

Prosecution version sans unnecessary details as unfolded during trial was as follows: G

Accused no. 4 Babu Jani @ Majid Khan @ Majid was an ex-employee of Hazi Mohd. Yakub (hereinafter referred to as 'deceased'), who had five textile wholesale shops, which he was running along with his sons and grandsons. Accused Babu Jani joined hands with city dossier criminals, namely, H

A Abdul Waheed Khan @ Waheed (accused no. 1); Mohd. Haneef @ Haneef (accused no. 2) and Mohd. Khadeer @ Khadeer (accused no. 3), and hatched a plan with the aforesaid three accused persons and a friend of his namely, Aleem (accused no. 5). The object was to rob the deceased, and if necessary by liquidating him. Accused Babu Jani had the knowledge that the deceased used to go his house around 8.00 p.m. with the sale proceeds of the shops B and the collections were more than rupees one lakh. In pursuance of the conspiracy, accused Babu Jani took the first three accused on 19-2-1993 and 20-2-1993 between 7 and 7.30 p.m. to point out the deceased and to acquaint them with his moments of a fixed nature. First attempt was made on 22-2-1993, but finding a lot of people around the spot, the intended objective C could not be achieved. On the next day i.e. 23-2-1993 the fateful date of the incident, at about 7.30 p.m. after obtaining information from accused Babu Jani accused nos. 1 to 3 waited near house of the deceased on a stolen Chetak scooter and were armed with the knives. Accused no. 2 was having a plastic tin containing chilly powder water in his hands. At about 7.45 p.m. the deceased reached near his house in his Ambassador car driven by Mohd. D Taher PW2. He was carrying cash of more than Rs. 2.32 lakhs and demand drafts of Rs. 1,60,000 which were in his cloth bag. When the driver opened the rear right door of the car and went to collect the tiffin-carrier of the deceased from the left front door, accused nos. 1 to 3 kept their scooter in motion and rushed to the deceased Haze Mohd. Yakub and began stabbing E him indiscriminately with their three knives, while accused no. 2 tried to snatch the bag containing the cash and the demand drafts. There was street light and also light inside the car. When PW2 rushed to the rescue of the deceased, accused no. 2 threw chilly powder water on his face and he shouted for help. Further knife blows were given by the three accused persons till the deceased collapsed. Accused no. 2 snatched away the cash bag from the F hands of the deceased and all the three accused persons fled away on their scooter. Though PW2 and one Samad Khan (PW-4) chased the accused persons to some distance, they succeeded in fleeing away. Several other persons including Mohd. Idris Ali Khan, Mohd. Abdul Bari (PW-3) tried to come near the deceased, but they found him dead. The three accused Nos. 1 to 3 G went to the house of accused Aleem at Boda Banda where accused Babu Jani was waiting for them. Aleem harboured accused nos. 1 to 4 in his house and they shared the looted money but destroyed the demand drafts. Police on getting information reached at the spot and the First Information Report was lodged by Mohd. Iqbal (PW-1). Investigation was conducted and on completion thereof charge-sheet was filed.

H

While the first three accused persons were charged for having committed offences punishable under Section 302 IPC read with Section 34 thereof and Section 392 read with Section 34 thereof, and Section 25(1-B) of the Arms Act, 1959 (in short 'Arms Act'). The first four accused persons were charged with commission of offences punishable under Section 302 read with Section 120-B(1)IPC well Section 392 read with Section 120-B(1) IPC. Accused no. 5 was charged with commission of offence punishable under Section 302 read with Section 212 IPC, and Section 411 IPC. The accused persons pleaded innocence.

In order to substantiate its case, the prosecution examined 33 witnesses. The trial court found the evidence of the eye-witnesses to be credible and held accused nos. 1 to 3 to be guilty. However, it was concluded that the offences for the commission of which accused nos. 1 to 3 were to be convicted related to Section 304 Part I and Section 392 read with Section 34 IPC. They were sentenced to suffer rigorous imprisonment for a period of ten years each on the first count, and also to undergo seven years rigorous imprisonment for the second. Both the sentences were directed to run concurrently. While the accused persons filed appeals against their conviction and sentence before the High Court, State challenged the conviction for lesser offences, and also against the acquittal of the other two accused persons. As noted above, the High Court held accused persons to be guilty of offence punishable under Section 302 IPC, and not under Section 304 Part I. Accordingly, the State's appeal to that extent was allowed. But the acquittal of the other accused persons was upheld. Judgment of the High Court, as noted above, is the subject matter of challenge in these appeals.

Learned counsel for the appellants submitted that the evidence on which the trial court has placed reliance does not inspire confidence. The accused persons were put to test identification parade after their arrest. PW2, the driver did not participate in the first test identification parade and only after a month a second test identification parade was conducted when PW2 participated and identified the accused persons. According to the learned counsel delay in conducting the parade corroded prosecution version. Ultimately, it was submitted that looking into the circumstances, Trial Court came to the right conclusion that the accused were to be convicted under Section 304 Part I IPC and not under Section 302 IPC. The High Court should not have altered the conviction. Learned counsel for the appellant has submitted that the doctor PW8, who conduced the post-mortem has found injury no. 10 in Ex. P/5 to be an abrasion on the left temple of the deceased

A and it is possible on account of fall on the rough surface. Similarly, internal injury no.2 corresponded to external injury no. 10. From this the trial court had arrived at the conclusion that it was not possible to drawn inference about accused nos. 1 to 3's intention to kill the deceased for robbing the cash.

B The learned counsel for the State submitted that the trial court has dealt with in detail as to why there was some delay in holding the test identification parades. It is to be noted that the accused persons were arrested after about 2 months of the date of occurrence. They were placed in police custody and thereafter under judicial custody. Immediately after the accused persons were arrested a motion was made to the concerned court for test identification C parade and moment the court fixed the date, the test identification parade was conducted. As PW2 was not available on the first date, a second test identification parade was done. The High Court found no substance in the plea of the accused-appellants that the witnesses identified the accused persons as they were in jail prior to this identification parade. It was noted with referred to the evidence of concerned Metropolitan Magistrate who conducted D the test identification parade that due formalities were observed before conducting test identification parades. It also held that the reason for delay has been duly explained.

Coming to the applicability of Section 302 IPC, it is submitted that E though the intention was to rob the deceased, when the deceased resisted, in order to achieve the intended object, he was indiscriminately stabbled till he succumbed to death and the cash and the drafts were snatched away. The High Court was justified in its conclusion about the applicability of Section 302 IPC.

F The High Court has duly considered the injuries highlighted by Trial Court and found the approach to be wrong. The respective stands need careful consideration.

As was observed by this Court in *Matru @ Girish Chandra* v. *The State of U.P.*, AIR (1971) SC 1050, identification tests do not constitute substantive G evidence. They are primarily meant for purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. [*See Santokh Singh* v. *Izhar Hussain and Anr.*, AIR (1973) SC 2190. The necessity for holding an identification H parade can arise only when the accused are not previously known to the

witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye-witness of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code of Criminal Procedure, 1973 (in short 'Code') and the Indian Evidence Act, 1872 (in short the 'Evidence Act,'). It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond the control and there is some delay, it cannot be said to be fatal to the prosecution. In the instant case, the factual scenario noted by the trial court reveals that all possible efforts were made to have test identification parade immediately after the arrest of the accused persons. The accused persons were arrested on 25-5-1993, were in police custody from 9-6-1993. On 16-6-1993, requisition was given to the Magistrate to hold the identification and first test was held on 26-6-1993 by the Magistrate. As PW-2 was not available, on request of police second test was held. Merely because the second test identification parade was held that cannot be a suspicious circumstance as prosecution has explained as to why that was necessitated.

In view of the credible and cogent evidence of the eye-witnesses we do not find any substance in the plea that the testimony of the witnesses suffered from any infirmity. The appellants have already been held to be the authors of the crime. The Trial Court analysed evidence of the eye-witnesses in great detail. They have graphically described the incident. Incisive cross-examination has not brought any doubt on the truthfulness of their statements. High Court in appeal has also dealt with the acceptability of the evidence and found it to be flawless.

This brings us to the crucial question 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

A 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 greatest 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
B 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.

C

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
D 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 point of distinction between the two offences.

Section 299	Section 300
E 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 bywhich the death is caused is done-
	INTENTION
F (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 G to cause death, or	(2) with the intention of causing such bodilyinjury as the offender downs 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
H	

			the bodily injury intended to be infected is sufficient in the ordinary course of nature to cause death; or

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(c)	with the knowledge that the act is likely to	(4)	with the knowledge that the act is so cause death 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.

Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

Clause (b) of Section 299 does not postulate any such knowledge on

A the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the B disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death was intentionally given. In clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the C words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily D 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. The words "bodily injury .....sufficient in the ordinary course of nature cause death" mean that E death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

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 F nature. *Rajwant and Ors.* v. *State of Kerala,* AIR (1966) SC 1874 is an apt illustration of this point.

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 G 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 H 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.

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.
>
> 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."

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

> "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, 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

A seriousness but whether he intended to inflict the injury in question and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

There observations of Vivian Bose, J. have become locus classicus. B The test laid down by *Virsa Singh's* case (supra) for the applicability of clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done C 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 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.

D

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.

E

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 F 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 G death or such injury as aforesaid.

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 interwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate treatment to the H matters involved in the second and third stages.

The position was illuminatingly highlighted by the this Court in *State of Andhra Pradesh* v. *Rayvarapu Punnayya,* [1976] 4 SCC 382. A

In the case at hand, the evidence of the witnesses was that the three appellants had indiscriminately stabbed the deceased, though their object was to rob deceased. As established by evidence of eye-witness the accused persons expected resistance and all the three were armed with knives. It cannot be B said that they expected no resistance even if they intended to rob a huge sum of money. The intended object was to get the money. When there was expected resistance by the deceased, they went on giving stabs with the knives till the deceased lost his life and thereafter the cash and the demand drafts were snatched. It is the intention prevailing at the time of assaults, which determines C the applicability of the relevant provisions. One of the factors which appears to have weighed with the trial court, and on which the reliance was placed to alter conviction to Section 304 Part I was the finding that the two injuries which were stated by the doctor PW8 to be sufficient to cause death were possible by fall. A reading of the post-mortem report indicates that several injures were stated by the doctor to be the cause of death and the two injuries D noticed by the trial court were not the only ones. In fact, injury no, 5 i.e. stab injury was one of them. There were six stab wounds. The doctor stated injury Nos. 5,7 and 11 and internal injuries 1 and 2 were sufficient to cause death in the normal course of nature. Much was made by the trial Court of the statement of PW-8 to the effect that cause of death could be stab wounds E associated with head injury. It was, however, not noticed that the doctor clarified to the following effect: . "The Stab wounds as well as the head injury are individually sufficient to cause death". The stab wounds came first and then the possible fall. Taking into account the totality of the circumstances the conviction recorded by the High court under Section 302 IPC cannot be faulted. F

The appeals deserve dismissal, which we direct.

N.J. Appeals dismissed.