A ABBAS ALI

v.

STATE OF RAJASTHAN

FEBRUARY 15, 2007

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

Penal Code, 1860:

ss.299, 300, 302 and 304-I—Accused stabbed the deceased when he C *was sleeping, resulting in his death—Conviction of accused under s.302—On facts and in the light of principles laid down in ss.299 and 300, conviction altered to s.304-I.*

The prosecution case was that the body of deceased was found on a D **Railway Overbridge. Recovery of knife was made on disclosure made by accused. Trial Court framed the charges against accused for offence punishable under s.302 IPC. Evidence of PW-9 was to the effect that in the night she and the deceased were sleeping under a neem tree by the side of the railway track. Suddenly the accused came there, stabbed the deceased and forcibly took her to his jhuggi. She accepted that the distance was** E **considerable. She had lost her senses after seeing the accused stab the deceased. She accepted that the accused was physically disabled and normally moved in a tricycle. She clarified that since deceased was sleeping he could not escape from the stab blow. Placing reliance on evidence of wife of deceased (PW-9), trial Court found accused guilty and convicted him. On appeal, High Court upheld the conviction.**

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The question for consideration before this Court is which is the appropriate provision to be applied.

Partly allowing the appeal, the Court

G **HELD: 1.1. Clause (b) of s.299 IPC corresponds with clauses (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 internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm**

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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 s.300. [Para 11] [719-E, F]

1.2. Clause (b) of s.299 does not postulate any such knowledge on the part of the offender. If the assailant had no 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 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 to cause death" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of s.299 and clause (3) of s.300 is one of the degree of probability of death resulting from the intended bodily injury. 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. 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. [Para 12, 13] [719-G; 720-A, B, C, D]

Rajwant and Anr. v. *State of Kerala,* AIR (1966) SC 1874 and *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465, relied on.

1.3. 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 of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as

A **aforesaid. [Para 19] [722-E, F]**

State of Andhra Pradesh **v.** *Rayavarapu Punnayya and Anr.,* **[1976] 4 SCC 382;** *Abdul Waheed Khan @ Waheed and Ors.* **v.** *State of Andhra Pradesh,* **[2002] 7 SCC 175;** *Augustine Saldanha* **v.** *State of Karnataka,* **[2003] 10 SCC 472;** *Shanker Narayan Bhadolkar* **v.** *State of Maharashtra,* **[2005] 9 SCC**
B **71;** *Thangiya* **v.** *State of T.N.,* **[2005] 9 SCC 650;** *Rajinder* **v.** *State of Haryana,* **[2006] 5 SCC 425 and** *Raj Pal* **v.** *State of Haryana,* **[2006] 9 SCC 678, referred to.**

2. In view of the factual position as noted in the background of the
C **principles set up above it is clear that the appropriate conviction is under s.304 Part I, IPC which is accordingly altered. Custodial sentence of 10 years would meet the ends of justice. [Para 22] [723-B]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 214 of 2007.

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From the Judgment and Order dated 16.8.2005 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 510/2003.

Kiran Bhardwaj for the Appellant.

E Aruneshwar Gupta, Naveen Kumar Singh, Mukul Sood and Shaswat Gupta for the Respondent.

The Judgment of the Court was delivered by

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

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2. Challenge in this appeal is to the judgment of the Rajasthan High Court at Jodhpur. By the impugned judgment the High Court upheld the judgment of Learned Additional Sessions Judge, Bhilwara holding the appellant guilty of offence punishable under Section 302 of the Indian Penal Code, 1860
G (in short the 'IPC') and sentencing him to undergo imprisonment for life.

3. Prosecution version as unfolded during trial is essentially as follows:

4. First information report (in short the 'FIR') was lodged by Duda Ram (PW-5) on 15.11.2001. According to the FIR, the informant was a Chowkidar
H for Chirag Travel Agency. At about 12 midnight, he saw a body on the railway

overbridge. A bearded man was pelting stones, he closed the doors of the office and went inside. After sometime, when he opened the door, he saw that there was a dead body lying. Seeing this, a report was lodged with Police Station Pratap Nagar, Bhilwara where a Case No. 501/2001 was registered. Recovery was made of the knife on the basis of disclosure made by the accused. After registration of the case, investigation was conducted and after investigation, charge sheet was filed against the accused. The case was committed to the trial court. The trial court framed the charges against the accused persons for offence punishable under Section 302 IPC. The accused denied the charge and claimed trial.

5. Placing reliance on evidence of Neela Bai (PW-9), the wife of the deceased, the trial court held the accused guilty. The High Court also found the evidence of this eye witness to be reliable and dismissed the appeal by impugned judgment.

6. With reference to certain observations made by the trial court learned counsel for the appellant submitted that the trial court found that it was impossible that the accused who himself is lame and travels on a tricycle could take PW9 to his jhuggi a place far from place of incident and therefore the evidence of PW-9 cannot be believed. She had herself accepted that earlier she was married to the accused and later on stated living with the deceased. The informant (PW-5) resiled from his statement recorded during investigation. Ultimately it was submitted that only one blow was given and therefore Section 302 IPC has no application.

7. Per contra learned counsel for the State supported the impugned judgment.

8. Evidence of PW-9 is to the effect that in the night she and the deceased were sleeping under a neem tree by the side of the railway track. Suddenly the accused came there, stabbed the deceased and forcibly took her to his jhuggi. She accepted that the distance was considerable. She had lost her senses after seeing the accused stab the deceased. She accepted that the accused was physically disabled and normally moved in a tricycle. She clarified that since deceased was sleeping he could not escape from the stab blow.

9. The crucial question is as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is the genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa.

A Speaking generally, 'culpable homicide' sans special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second B may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second C part of Section 304.

10. 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 D abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
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A person commits culpable homicide if the act by which the death is caused is done—	Subject to certain exceptions clpable homicide is murder if the act by which the death is caused is done-
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	INTENTION
(a) with the intention of causing death; or	(1) with the intention of causing death; or
G (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
H	is caused; or

(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

KNOWLEDGE

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(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.

11. 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.

12. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that

A 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. In clause (3) of Section 300, instead of the words 'likely B to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature to cause death" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage C of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether 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 D 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.

13. For cases to fall within clause (3), it is not necessary that the E offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant and Anr.* v. *State of Kerala,* AIR (1966) SC 1874 is an apt illustration of this point.

14. In *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465, Vivian Bose, F J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to G say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is H purely objective and inferential and has nothing to do with the intention of

the offender. A

15. 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". B
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> 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 C particular bodily injury, that is to say that it was not accidental or unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and,
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> D
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> Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."
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16. 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 F 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 G neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances
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A warrant an opposite conclusion."

17. These observations of Vivian Bose, J. have become *locus classicus.* The test laid down by *Virsa Singh's* case (supra) for the applicability of clause "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 B murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury C 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.

18. 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 D 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.

19. 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 E 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 F 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.

20. The above are only broad guidelines and not cast iron imperatives. G In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

21. The position was illuminatingly highlighted by this Court in *State*

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of Andhra Pradesh v. *Rayavarapu Punnayya and Anr.*, [1976] 4 SCC 382, *Abdul Waheed Khan @ Waheed and Ors.* v. *State of Andhra Pradesh,* [2002] 7 SCC 175, *Augustine Saldanha* v. *State of Karnataka,* [2003] 10 SCC 472, *Shanker Narayan Bhadolkar* v. *State of Maharashtra,* [2005] 9 SCC 71, *Thangiya* v. *State of T.N.*, [2005] 9 SCC 650, *Rajinder* v. *State of Haryana,* [2006] 5 SCC 425 and in *Raj Pal* v. *State of Haryana,* [2006] 9 SCC 678.

22. In view of the factual position as noted in the background of the principles set up above it is clear that the appropriate conviction is under Section 304 Part I, IPC which is accordingly altered. Custodial sentence of 10 years would meet the ends of justice.

23. The appeal is allowed to the aforesaid extent.

D.G. Appeal Partly allowed.