CASE NO.:
Appeal (crl.) 974 of 2006

PETITIONER:
Laxman

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 18/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Crl.) No. 1471 of 2006)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Madhya Pradesh High Court, Indore Bench. The accused are described as per their number during trial. Appellant Laxman (A1) was found guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). Three others i.e. Chhattariya (A3), Richhu (A5) and Nawal Singh (A8) were convicted under Section 324 IPC. The High Court allowed the appeal so far as it relates to Bhoomaliya (A2), Kishan (A4), Bathilaya (A6), Banshiya (A7) and Rai Singh (A9) and acquitted them of all charges. Appellant Laxman was acquitted of the charge under Section 148 and 324 read with Section 149 IPC. Three accused who were convicted under Section 324 IPC, were acquitted of the charges under Sections 148, 302 read with Section 149 IPC.

Initially 9 persons had faced trial for alleged commission of offences punishable under Sections 148, 302 and 324 read with Section 149 IPC. One of the accused who faced trial along with 9 others had died during the trial.

Prosecution version in a nutshell is as follows:

On 12.3.1993 there was the festival of Rangpanchami. Chastar (hereinafter referred to as 'deceased') and Gulab Singh (PW9) had gone Gadaghat to take the food grain, and were coming back to the house after taking the food grains from the bullock cart. On the way the accused Laxman (A1), Chatarsingh (A3), Bashiy (A7), Raisingh (A9), Navalsingh (A8), Reechoo (A5), Nakoo, Bathalya (A6) Bhomalya (A2) and Kishan (A4) stopped Chastar and Gulab in the field of Remsingh situated on the backside of the house of Navadiya at about 11 A.M. Gulab ran away from the spot and told the villagers that the accused persons have stopped the deceased and were assaulting him. On hearing this the complainant Anar Singh (PW-1), Kal Singh (PW-10), Resala (PW-12) and other persons of the village went running to the place of incident. The accused persons started shooting arrows and pelting stones. The accused Chatariya (A-3) shot an arrow which hit on the

right shoulder of the complainant. The accused Laxman (A-1) shot an arrow which hit the deceased and on sustaining the injuries the deceased fell down and died immediately. The accused Reechoo (A-5) shot an arrow which hit Kal Singh (P-10) in his back and the accused Naval Singh (A-8) also shot an arrow which hit Resala (PW-12). When deceased fell down, the accused run away. The complainant was having old enmity with the accused persons, due to this reason the accused persons committed murder of the deceased who was nephew of the complainant, and he also sustained injuries. The complainant Anar Singh reported the incident on the same day in writing at the police station, which is Ext.P-1. Medical examination of the injured persons was done. After investigation the charge sheet was filed in the court of the Judicial Magistrate, First Class, Khargon under Sections 147, 148, 149, 302 and 324 I.P.C., which was registered as Criminal Case No.380/93. Case was transferred to the Sessions Court. After transfer of the case, the case was taken for trial.

In order to establish its accusations prosecution mainly rested on the evidence of PWs 1, 9, 10 and 12 who were stated to be eye witnesses. Placing reliance on the evidence of eye witnesses, the Trial Court found the accused persons guilty and convicted and sentenced as noted supra. The appeal filed by the nine accused persons was disposed of in the manner noted supra. The judgment is challenged by Laxman (A-1) only.

In support of the appeal, learned counsel for the appellant submitted that the occurrence took place in the course of sudden quarrel, and therefore conviction as done is not correct and in any event Section 302 IPC has no application to the facts of the present case.

Learned counsel for the State submitted that the Trial Court and the High Court have analysed the evidence in great detail and have rightly held that Section 302 IPC has application.

The crucial question is as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' is its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the 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 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 punishment for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation

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

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done \026	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done -
INTENTION	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
	(b) with the intention of causing such bodily injury as is likely to cause death; or
	(2) with the intention of causing such bodily injuries as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	
	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of Section 299 IPC corresponds with Clauses (2) and (3) of Section 300 IPC. 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 of Clause (2) is borne out by illustration (b) appended to Section 300 IPC.

Clause (b) of Section 299 IPC does not postulate any such knowledge on the part of the offender. Instances of cases of falling under Clause (2) of Section 300 IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result: of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300 IPC, instead of the words 'likely to cause death' occurring in the corresponding Clause (b) of Section 299 IPC, 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 IPC and Clause (3) of Section 300 IPC 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 of the lowest degree. The word 'likely' in Clause (b) of Section 299 IPC 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.

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

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 acts before it can bring a case under Section 300 IPC, "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeded further, and fourthly it must be proved that the injury of the type just described made up 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 ingredient of clause "Thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as

follows:

"12. 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 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 warrant an opposite conclusion."

These observations of Vivian Bose, J. have come 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 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, which in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present the injury that was intended to be inflicted.

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 IPC clearly brings out this point.

Clause (c) and Clause (4) of Section 300 IPC 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 IPC would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

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

The position was highlighted by this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. (1976 (4) SCC 382) and recently in Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh (2002 (7) SCC 175) and in Thangaiya v State of Tamil Nadu (2005 (9) SCC 650).

The fact situation shows that arrows were being shot from a distance, not with any accuracy. One of such arrows hit the deceased. As established by the evidence of eye-witnesses the appellant had shot that arrow. There was no sudden quarrel as stated by the appellant. The evidence shows otherwise.

Considering the background facts as noted above, appellant has to be convicted in terms of Section 304 Part I IPC and not in Section 302 IPC. The conviction is accordingly altered. Custodial sentence of 10 years would meet the ends of justice.

The appeal is allowed to the aforesaid extent.