Jai Prakash

Vs

State (Delhi Administration)

Criminal Appeal No. 50 of 1979

(K. Jayachandra Reddy, J.)

(S. R. Pandian, K. Jayachandra Reddy, Smt. M. S. Fathima Beevi JJ)

05.02.1991

JUDGMENT

K. JAYACHANDRA REDDY, J. –

1. The appellant, the sole accused in this case, has been convicted under Section 302 IPC and sentenced to imprisonment for life by the High Court of Delhi for causing the murder of one Champat Rai, the deceased in the case.

2. The prosecution case mainly rests on the evidence of PW 2, the sole eye-witness. Learned counsel for the appellant contended that the uncorroborated testimony of PW 2 is not wholly reliable and therefore the conviction cannot be sustained. However, we may at this stage point out that the main submission has been that even if the prosecution case is to be accepted, an offence of murder is not made out as the accused was entitled to the right of private defence. Even otherwise, according to the learned counsel, having regard to the fact that as the appellant is alleged to have inflicted only a single injury which proved fatal, the offence committed would be one amounting to culpable homicide. To appreciate these submissions in a proper perspective, we think it necessary to state the facts of the case.

3. The deceased was married to Agya Devi examined as PW 3. He lived with his wife in a house in East Azad Nagar, Shahdra, Delhi. In the adjoining house were living his mother, PW 1 and his two brothers PWs 2 and 5. The appellant was married to a cousin of Agya Devi, PW 3 and he used to visit the house of the deceased ostensibly as a relative. The deceased, PWs 1, 2 and 5 objected to the appellant's visits as they suspected illicit relations between the appellant and Agya Devi, PW 3, wife of the deceased. On August 18, 1973 at about 11 p.m. when the deceased was not in the house, the appellant came to visit Agya Devi. A few minutes later the deceased also came home and he objected to the presence of the appellant. On this there was an altercation and exchange of hot words. Then the appellant took out a kirpan (churra) from his waist and stabbed the deceased in the chest. The deceased fell down crying that the appellant has killed him. The appellant with the weapon ran out of the house. The incident was witnessed by PW 2 from the roof where he had retired for sleeping during the night. PW 2 and his another brother PW 5 chased the appellant but the appellant who was armed with a lethal weapon threatened them and made good his escape. On return they found the deceased dead. PW 3 was sitting next to the body and was crying. The information was sent to the police and PW 18, the Sub-Inspector, Kotwali Police Station came to the scene of occurrence and recorded the statement of PW 2 on the basis of which the case was registered against the appellant. He seized certain incriminating articles, held the inquest and sent

the dead body for post-mortem. He also recorded the statements of the material witnesses. One of the recoveries made by him consisted of a sheath of the kirpan. The doctor, PW 17, examined the dead body and conducted the post-mortem. He found one incised stab wound on the left side of the chest which proved fatal. The particulars of the injury are :

> (1) One incised stab wound, horizontally placed on the (L) side of the chest 1" lateral to the left side and 2" below and medial to the (L) nipple size 1" x 1/2" x with spindle shaped appearance and with either margins pointed. The margins of the wound were smooth and the collection of blood in the soft tissues.
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> (2) One incised wound over right little finger at the base of second phalynx on dorsal surface size 3/4" x 4/10" x bone deep. There is collection of blood in the soft tissues and there was cut mark on the base of second phalynx right little finger. The wound was bandaged with a piece of bandage and cotton soiled in blood. The wound is not spindle shaped in appearance. The margins were smooth. This injury was a simple one and not due to a separate blow.

4. The doctor opined that Injury No. 1 was sufficient to cause death in the ordinary course of nature. The cause of death was haemorrhage and shock due to injuries. The accused was arrested on August 28, 1973 and at his instance the kirpan was recovered. After completion of the investigation, the charge-sheet was laid. The accused pleaded not guilty and denied the recoveries.

5. The prosecution examined PW 2, the brother of the deceased and PW 3 Agya Devi, wife of the deceased. But PW 3 turned hostile. Consequently the prosecution was left with the testimony of PW 2, the remaining eye-witness. Both the courts below relied on the evidence of PW 2 and they also held that his evidence was corroborated by that of PWs 1 and 5.

6. As hereinbefore mentioned, the learned counsel for the appellant submitted that the evidence of PW 2 on which the case entirely rests, cannot be accepted. We have gone through his evidence carefully as well as that of PWs 1 and 5. The evidence of PW 2 does not suffer from any serious infirmity. At any rate there is other corroborative evidence also. We see absolutely no reason to disagree with the findings of the courts below regarding their evidence.

7. The learned counsel, however, submitted that the accused must have acted in right of self-defence. According to the learned counsel, PW 2 himself has deposed that there was exchange of hot words between the appellant and the deceased which would have resulted in a fight and the appellant having reasonably apprehended danger to his life, inflicted the injury on the deceased in self-defence. We see to basis for this submission. PW 2 has no doubt stated that there was exchange of hot words between the appellant and the deceased but he did not speak about any fight between the two. On the other hand his evidence shows that when the deceased came and questioned the accused then there was exchange of hot words. The accused immediately took out a kirpan (churra) from his waist and stabbed the deceased. Both the courts below also have rightly rejected this plea. Therefore we see absolutely no grounds to come to a different conclusion.

8. The next and rather the main submission is that the offence committed by the appellant would only amount to culpable homicide inasmuch as he has inflicted only one injury. In support of his submission, he relied on some of the decisions of this Court. In Tholan v. State of T.N. ((1984) 2 SCC 133 : 1984 SCC (Cri) 164) the accused who dealt a single knife blow on the chest found to be sufficient to cause death, was convicted under Section 304 Part II IPC, disagreeing with the

contention on behalf of the State that Clause Thirdly of Section 300 IPC would be attracted in such a case. In arriving at such a conclusion, this Court took into consideration various surrounding circumstances namely that the presence of the deceased at the scene of occurrence was wholly accidental and that the accused dealt only one blow. It must also be mentioned that the deceased, who was a stranger in that case, came out of his house and cautioned the accused not to indulge in abusive language as ladies were present in that area. The accused thereupon questioned him and when both were remonstrating, he took out a knife from his waist and stabbed the deceased on the right side of the chest. On these facts, this Court held : (SCC p. 137, para 12)

> "[W]e are satisfied that even if Exception I is not attracted, the requisite intention cannot be attributed to the appellant. But in the circumstances herein discussed he wielded a weapon like a knife and therefore he can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. In such a situation, he would be guilty of committing an offence under Section 304 Part II of the Indian Penal Code."

9. In support of this view, reliance is placed on some earlier decisions of this Court in Jagrup Singh v. State of Haryana ((1981) 3 SCC 616 : 1981 SCC (Cri) 768), Randhir Singh v. State of Punjab ((1981) 4 SCC 484 : 1981 SCC (Cri) 856), Kulwant Rai v. State of Punjab ((1981) 4 SCC 245 : 1981 SCC (Cri) 826), Hari Ram v. State of Haryana ((1983) 1 SCC 193 : 1983 SCC (Cri) 159), Jagtar Singh v. State of Punjab ((1983) 2 SCC 342 : 1983 SCC (Cri) 459) and Ram Sunder v. State of U.P. (Criminal Appeal No. 555 of 1983, decided on October 24, 1983) The learned counsel submitted that the observations made in these cases apply on all fours to the facts of this case. According to him, there was an altercation and during the same the appellant suddenly whipped out a kirpan and inflicted only one injury and it is therefore reasonable to infer that he would not have intended to cause that particular injury and consequently Clause Thirdly of Section 300 is not attracted. The submission though put forward in a simple way leads to an important legal quandary regarding the interpretation of Clause Thirdly of Section 300 IPC which is considered to be a difficult and intricate issue by the courts. However, Virsa Singh v. State of Punjab ((1958) SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) is considered to be an authoritative pronouncement in this regard. But perhaps inspired by some of the decisions rendered thereafter both by the High Courts and the Supreme Court there is a marked change in the trend of the contentions regarding the scope of Clause Thirdly of Section 300 IPC. It has reached a stage of oversimplification and it is very often argued that whenever death is due to a single blow the offence would be culpable homicide and not murder. Somewhat to the same effect is the contention in the instance case.

10. In our view it is fallacious to contend that when death is caused by a single blow Clause Thirdly is not attracted and therefore it would not amount to murder. The ingredient 'Intention' in that clause is very important and that gives the clue in a given case whether offence involved is murder or not. For the purpose of considering the scope of Clause Thirdly it is not necessary for us to embark upon an examination of the entire scope of Sections 299 and 300 IPC. It is enough if we start with Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818). Clause Thirdly of Section 300 IPC reads thus :

> "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 of cause death, or -"

We may note at this stage that 'intention' is different from 'motive' or 'ignorance' or 'negligence'. It is

the 'knowledge' or 'intention' with which the act is done that makes difference, in arriving at a conclusion whether of offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions. Before doing so we shall first refer to the ratio laid down in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) and the meaning given to the expression 'intention'.

11. The appellant Virsa Singh was sentenced to imprisonment for life under Section 302 IPC. There was only one injury on the deceased and that was attributed to him. It was caused as a result of the spear thrust and the doctor opined that the injury was sufficient in the ordinary course of nature to cause death. The courts also found that the whole affair was sudden and occurred on a change meeting. Peritonitis also supervened which hastened the death of the deceased. It was contended that the prosecution has not proved that there was an intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature and therefore the offence was not one of murder. This contention was rejected. After analysing the Clause Thirdly it is held by the court that the prosecution must prove : (SCR pp. 1500-01)

> "First, it must establish, quite objectively, that a bodily injury is present;
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> Secondly, the nature of the injury must be proved; these are purely objective investigations.
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> 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.
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> Once these three elements are proved to be present, the enquiry proceeds further, and
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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."

The court further added thus : (SCR p. 1501)

> "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 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 deduced that the injury was accidental or otherwise unintentional."

The learned Judges also observed thus : (SCR p. 1502)

> "In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force 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 reasonable possible in this case and in any case it is a question of fact), the rest is matter for objective determination from the medical and other evidence about the nature and seriousness of the injury."

Adverting to the contention that there is only a single blow, it is further held : (SCR p. 1503)

> "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. 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."

At another passage which has to be noted in this context reads thus : (SCR pp. 1503-04)

> "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."

12. Referring to these observations, Division Bench of this Court in Jagrup Singh case ((1981) 3 SCC 616 : 1981 SCC (Cri) 768) observed thus : (SCC p. 620, para 7)

> "These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) for the applicability of Clause Thirdly is now ingrained in our legal system and has become part of the rule of law."

The Division Bench also further held that the decision in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) has throughout been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words 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 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 particulars of the injury. The language of Clause Thirdly of Section 300 speaks 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 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, 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 thing to achieve a particular end.

13. Kenny in Outlines of Criminal Law (17th edition of page 31) has observed :

> "Intention : To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connexion is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. Thus if one man throws another from a high tower or cuts off his head it would seem plain that he both foresees the victim's death and also desires it : the desire and the foresight will also be the same if a person knowingly leaves a helpless invalid or infant without nourishment or other necessary support until death supervenes. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed.
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> Again, a man cannot intend to do a thing unless he desires to do it. It may well be a thing that he dislikes doing, but he dislikes still more the consequences of his not doing it. That is to say he desires the lesser of two evils, and therefore has made up his mind to bring about that one."

Russell on Crime (12th edn. at page 41) has observed :

> "In the present analysis of the mental element in crime the word 'intention' is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims."

It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realisation with the bare state of conscious 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 case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) 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.

14. The decision in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) has throughout been followed in a number of cases by the High Courts as well as by the Supreme Court. Such decisions are too numerous and it may not be necessary for us to refer to all those cases. However, it would be useful to refer to a few decisions which have a bearing to the point in issue. In Chahat Khan v. State of Haryana ((1972) 3 SCC 408 : 1972 SCC (Cri) 558) the deceased was waylaid by the accused who were armed with lathis. The accused had both gun and a lathi but he used only the lathi and struck a blow on the head with sufficient force and the solitary blow with the lathi was found to be sufficient in the ordinary course of nature to cause death and it was held that the case fell within Clause Thirdly as there was clear intention to cause such bodily injury which in the ordinary course of nature was sufficient to cause death. In Chamru Budhwa v. State of M.P. (AIR 1954 SC 652 : 1954 Cri LJ 1676), there was exchange of abuses between the two parties armed with lathis and in the course of the fight, the accused struck one lathi blow on the head of the deceased which causes a fracture of the skull resulting in death, and it was held that he had given the blow with the knowledge that it was likely to cause death. In Willie (William) Slaney v. State of M.P. ((1955) 2 SCR 1140 : AIR 1956 SC 116 : 1956 Cri LJ 291) there was a sudden quarrel leading to an exchange of abuses and in the heat of the moment a solitary blow with a hockey stick had been given on the head. It was held that the offence amounted to culpable homicide punishable under Section 304 Part II IPC. In Harjinder Singh (alias Jindal) v. Delhi Admn. ((1968) 2 SCR 246 : AIR 1968 SC 867 : 1968 Cri LJ 1023) the facts are that there was a sudden commotion and when the

deceased intervened in the fight, the accused took out a knife and stabbed the deceased and the deceased was in a crouching position presumably to intervene when he received the blow. Though the injury was found sufficient in the ordinary course of nature to cause death, he was convicted for the offence of culpable homicide. The intention to cause that particular injury was not present. To the same effect is the decision in Laxman Kalu Nikalje v. State of Maharashtra ((1968) 3 SCR 685 : AIR 1968 SC 1390 : 1698 Cri LJ 1647) where the accused lost his temper and took out a knife and gave one blow during a sudden quarrel.

15. 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 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. Now let us examine some of the cases relied upon by the learned counsel for the appellant.

16. In Kulwant Rai case ((1981) 4 SCC 245 : 1981 SCC (Cri) 826), a bench consisting of D.A. Desai and R.B. Misra, JJ. held in a hit and run case that where it cannot be said that the accused intended to inflict the very fatal injury, Clause Thirdly is not attracted. That was a case where only one blow was given with the dagger in the epigastrium area and the facts would go to show that there was no premeditation, no prior enmity and a short quarrel preceded the assault. However, we do not find any discussion about the scope of Clause Thirdly. Randhir Singh case ((1981) 4 SCC 484 : 1981 SCC (Cri) 856) was decided by a bench consisting of D.A. Desai and Baharul Islam, JJ. In that case, a single head injury was inflicted by a college student on the deceased with a weapon supplied by his father and the deceased died after six days and there also an assault was preceded by a quarrel between the father of the accused and the deceased. The bench observed that : (SCC pp. 486-87, para 8)

> "Merely because the blow landed on a particular spot on the body divorced from the circumstances in which the blow was given it would be hazardous to say that the accused intended to cause that particular injury. The weapon was not handy. He did not possess one. Altercation took place between his father and the deceased and he gave blow with a kassi. In our opinion in these circumstances it would be difficult to say that the accused intended to cause that particular injury."

Before the same bench, in Gurmail Singh v. State of Punjab ((1982) 3 SCC 185 : 1982 SCC (Cri) 680) this question again came up for consideration. In that case, an indecent joke cut by the accused with the wife of a PW led to a quarrel and the deceased who was nowhere in the picture tried to intervene, two of the accused gave some blows on him. Then Gurmail Singh, the appellant therein, gave a single blow with spear on the chest which proved fatal. It was contended by the State that Clause Thirdly of Section 300 IPC was attracted. It is observed that : (SCC pp. 189-90, para 7)

> "But it was said that the case would be covered by para 3 of Section 300 in that Gurmail Singh intended to cause an injury and the injury intended to be inflicted was proved to be sufficient in the ordinary course of nature to cause death. This argument is often raised for consideration by this Court and more often reliance is placed on Virsa Singh v. State of Punjab (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ

> 818). We would have gone into the question in detail but in Jagrup Singh v. State of Haryana ((1981) 3 SCC 616 : 1981 SCC (Cri) 768), Sen, J. after examining all the previous decisions on the subject, observed that in order to bring the case within para 3 of Section 300, IPC, 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. This view was further affirmed in a decision rendered in Randhir Singh v. State of Punjab ((1981) 4 SCC 484 : 1981 SCC (Cri) 856). We are of the opinion that in the facts found by the High Court it could not be said that accused 1 Gurmail Singh intended to cause that particular bodily injury which in fact was found to have been caused. May be, the injury inflicted may have been found to be sufficient in the ordinary course of nature to cause death. What ought to be found is that the injury found to be present was the injury that was intended to be inflicted. It is difficult to say that with confidence in the present case keeping in view the facts found by the High Court that accused 1 Gurmail Singh intended to cause that very injury which was found to be fatal."

Therefore this decision also affirms the view taken in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818). Then came the decision in Jagtar Singh case ((1983) 2 SCC 342 : 1983 SCC (Cri) 459) rendered by a bench consisting of D.A. Desai and Amarendra Nath Sen, JJ. In that case a single knife blow was inflicted in the chest and it was found to be sufficient in the ordinary course of nature to cause death. The bench held that Clause Thirdly was not attracted in view of circumstances i.e. there the accused was a young man and inflicted the injury on the spur of the moment and to some extent on deceased's provocation in a sudden chance quarrel and on a trivial issue. The bench observed that : (SCC p. 344, para 7)

> "The cause of quarrel though trivial was just sudden and in this background the appellant, a very young man gave one blow. He could not be imputed with the intention to cause death or the intention to cause that particular injury which has proved fatal."

In this case, there is no reference to Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) but there is a reference to Jagrup Singh case ((1981) 3 SCC 616 : 1981 SCC (Cri) 768) which decision, as noted already, has followed the ratio in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818).

17. The came the decision in Tholan case ((1984) 2 SCC 133 : 1984 SCC (Cri) 164) on which the counsel has heavily relied upon. In that case also the appellant inflicted only a single knife blow on the chest of the deceased sufficient to cause death but it was on the spur of the moment. The Division Bench, consisting of D.A. Desai and R.B. Misra, JJ. took into consideration that the deceased had nothing to do with the chit organised by one K.G. Rajan in respect of which there was a quarrel between the appellant and the organisers of the chit and when the accused was abusing the organisers, the deceased seemed to have told the accused not to misbehave in the presence of the ladies and not to use vulgar and filthy language. The presence of the deceased was wholly accidental and the appellant on the spur of the moment inflicted the fatal injury on the chest. The Division Bench relying on the earlier decisions under similar circumstances convicted the accused under Section 304 Part II. A reference is also made to the decision in Jagrup Singh case ((1981) 3 SCC 616 : 1981 SCC (Cri) 768). Therefore in this case also, the ratio laid down in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818) is presumably followed.

18. 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 on 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 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.

19. Bearing these principles in mind, if we examine the facts in the present case, Clause Thirdly of Section 300 IPC is fully attracted. The appellant was having illicit relations with Agya Devi, wife of the deceased and his visits to her house were resented and objected. On the day of occurrence, the accused visited the house when the deceased was not there and he went there armed with a kirpan. When the deceased came and objected to his presence there was only an altercation and exchange of hot words, and not a fight. Thereupon he took out a knife and stabbed on the chest of the deceased resulting in instantaneous death of the deceased. The above circumstances would show that the accused intentionally inflicted that injury though it may not be premeditated one. All the above circumstances would certainly indicate such a state of mind namely that he aimed and inflicted that injury with a deadly weapon. As observed in Virsa Singh case (1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818), in the absence of evidence or reasonable explanation to show that the appellant did not intend to stab in the chest with a kirpan with that degree of force sufficient to penetrate the heart, 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 is found to be sufficient in the ordinary course of nature to cause death. Therefore an offence of murder is made out. Accordingly the appeal is dismissed.

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