SUPREME COURT OF INDIA

Kesar Singh

Vs

State of Haryana

Appeal (crl.) 754 of 2008 (Arising out of SLP (Crl.) No.1241 of 2007)

(S.B. Sinha and V.S. Sirpurkar)

29/04/2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

Fact

2. Hardev Singh was a resident of Derabassi. He was a teacher. He, along with Karam Chand, came to village Budhanpur to meet his father on 24.4.1988. There was a vacant land in front of their house which was in possession of Pala Ram and others. It was a Shamlat land. They were digging foundation. Ujjagar Singh, father of Hardev Singh, asked them to leave some passage for their house whereupon Pala Ram exhorted that the old man should be taught a lesson. Ujjagar Singh shouted for help. Appellant and Karam Chand, on hearing his shouts came out. They saw Kesar Singh giving a Kassi (Spade) blow from the reverse side on the head of Hardev Singh's father. He fell down. He was taken to primary health centre. He was referred to the General Hospital. However, on 30.4.1988, his condition having deteriorated, he was referred to Medical Sciences and Research, Chandigarh for treatment. He succumbed to his injuries on 1.5.1988.Proceedings

3. Appellants were charged for commission of an offence under Section 302/34 of the Indian Penal Code. The learned Sessions Judge accepted the prosecution case. He, however, opined that no case under Section 302 of the Indian Penal Code was made out, stating:

"I, however, find force in the contention of learned defence counsel that the case in hand does not fall within ambit of Section 302 of the Indian Penal Code. It is admitted case of the prosecution that the occurrence was not the result of pre-meditation. The accused were filling foundation on the Shamlat-street which was objected to by the deceased. There was a sudden fight and heat of passion accused Kesar Singh gave Kassi blow on the head of Ujjagar Singh on the exhortation of Pala Ram accused. It was a single blow and that too from the blunt side of the Kassi. The crime committed by the accused is culpable homicide not amounting to murder as envisaged by Section 300 (Exception-4) IPC, punishable under Section 304-I of the Indian Penal Code."

4. On an appeal having been preferred thereagainst, a learned Single Judge of the High Court, while relying on the decision of this Court in Virsa Singh v. State of Punjab [AIR 1958 SC 465] as also in Shankar Narayan Bhadolkar v. State of Maharashtra [(2005) (9) SCC 71], opined:

"Applying the principles of law, as noticed hereinafter, I am not of the considered opinion, that the offence committed by the appellants does not fall within the definition of Section 300 of the IPC, nor does it fall within the definition of offence, punishable under Section 304II of the Indian Penal Code. In my considered opinion, the learned trial Court rightly held that the nature of the offence, falls within the definition of Section 304-I of the IPC Section 304 deals with situations, where culpable homicide does not amount to murder, i.e. does not fall within the definition of murder, as contained in Section 300 of the IPC. Section 304 is sub-divided into two parts. If an injury is inflicted with the knowledge and intention that it is likely to cause death, but with no intention to cause death the offence would fall within the definition of Section 304-I, however, if there is no intention to cause such an injury, but there is knowledge that such an injury can cause death, the offence would fall within the definition of Section 304-II. Thus, is intention? If intention to cause such an injury as is likely to cause death, is established, the offence would fall under Part-I but where no such intention is established and only knowledge that the injury is likely to cause death, it would fall under Part-II."

It was, however, observed:

"However, the nature of the injury, the weapon of offence, the intention and knowledge of the assailants, in my considered opinion, clearly places the offence as one under Section 304-I of the IPC. Appellant No.1 inflicted the injury with knowledge and intention that the injury, if inflicted is likely to cause death, but with no intention to cause death. However, as from the facts and circumstances of the present case, and the fact that it was a sudden fight, a single blow inflicted with the reverse side of a Kassi, it cannot be stated that he had an intention to cause death, as required to make out an offence under Section 300 of the IPC."

Contentions

5. Mr. Dinesh Verma, learned counsel appearing on behalf of the appellant, would submit that the very fact that the fight was a sudden one and single blow has been inflicted with the reverse side of a Kassi, the case would fall under Section 304 Part-II of the Indian Penal Code (for short, 'the Code') and not Part-I thereof.

6. Mr. Rajeev Gaur 'Naseem', learned counsel appearing on behalf of the respondent, on the other hand, would contend that even in a situation of this nature, Part-I of Section 304 would apply. The Statute

7. Chapter XVI of the Code deals with offences affecting the human body. Section 299 defines 'culpable homicide'. Section 300, on the other hand, defines 'murder'. Several exceptions are curved out therefrom. Exceptions specified therein are also subject to certain exceptions as contained in the provisos appended thereto; one of them is when the offender commits the murder whilst deprived of the power of self-control by grave and sudden provocation causing the death of the deceased. The second exception deals with exceeding the power in exercise in good faith or the right of private defence of the person or property on the part of the accused.

Exception 3 applies to a public servant of aiding another public servant with which we are not concerned. Exception 4 reads as under:

"Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken

undue advantage or acted in a cruel or unusual manner. Explanation.--It is immaterial in such cases which party offers the provocation or commits the first assault."

We may now notice Section 304 of the Code. When an offence comes within the four corners of Section 299 of the Code, culpable homicide would not amount to murder. Section 300, however, although defines what would amount to culpable homicide amounting to murder, as indicated hereinbefore, contains several exceptions. Distinction

8. The distinction between the first part and the second part of Section 304 of the Indian Penal Code, therefore, must be considered having regard to the provisions contained in Sections 299 and 300 of the Indian Penal Code. Clause (a) of Section 299 corresponds to clause (1) of Section 300, clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300 and clause (c) of Section 299 corresponds with clause (4) of Section 300 of the Code.

This can best be understood if Sections 299 and 300 of the Code are noticed side by side :

"A person commits culpable homicide, if the act by which the death is caused is doneSubject to certain exceptions culpable homicide is murder, if the act by which the death is caused is done

(a) With the intention of causing death

(1) With the intention of causing death

(b) With the intention of causing such bodily injury as is likely to cause death

(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 is caused.

(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 of cause death.

(c) With the knowledge that. The act is likely to cause death

(4) With the knowledge that the act is so immediately dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and there is no excuse for incurring the risk.

9. The distinguishing feature is the mens rea. What is pre-requisite in terms of clause (2) of Section 300 is the knowledge possessed by theoffender in regard to the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal. Intention to cause death is not an essential ingredient of clause (2). When there is an intention of causing a bodily injury coupled with knowledge of the offender as regards likelihood of such injury being sufficient to cause the death of a particular victim would be sufficient to bring the offence within the ambit of this clause.

10. For determination of the said question, it would be convenient if the exceptions contained in Section 300 are taken into consideration as if the case falls under the said exceptions, there would not be any question of applicability of the main provision of Section 300 of the Indian Penal Code.

11. The distinction between culpable homicide amounting to murder and not amounting to murder is well known. Culpable homicide is genus, murder is its specie. The culpable homicide, excluding

the special characteristics of murder, would amount to culpable homicide not amounting to murder. The Code recognizes three degrees of culpable homicide. When a culpable homicide is of the first degree, it comes within the purview of the definition of Section 300 and it will amount to murder. The second degree which becomes punishable in the first part of Section 304 is culpable homicide of the second degree. Then there is culpable homicide of third degree which is the least side of culpable homicide and the punishment provided for is also the lowest among the punishments for the three grades. It is punishable under the second part of Section 304.

12. The questions which are required to be posed are

(1) Whether the bodily injuries found on the deceased were intentionally inflicted by the accused; and if so,

(2) Whether they were sufficient to cause death in the ordinary course of nature.

If both these elements are satisfied, the same would amount to murder. However, when the court is beset with a question as to whether the offence is murder or culpable homicide not amounting to murder, the fact involved must be examined having regard to : (1) whether the accused has done an act which caused the death of another; (2) if a causal connection is found between the act of the deceased and the death, the relevant question would be whether the act of the accused amounts to culpable homicide as defined in Section 299; and (3) if the answer thereto again is found to be in affirmative, the question would be whether in the facts of this case, Section 300 or any of the exceptions contained therein would be attracted. In this case, it has been found by both the courts that the offence committed by the accused does not amount to culpable homicide amounting to murder. The difficulty, thus, arises herein in applying thirdly of Section 300, vis-`-vis exception 4 thereto. Precedents

13. We must begin with the decision of King v. Aung Nyun [191 IC 306 (FB)] where it was observed "it does not follow that a case of culpable homicide is murder because it does not fall within any of the exceptions of Section 300. To render culpable homicide as murder, the case must come within the provisions of clause (1) or (2) or (3) or (4) of Section 300." Whereas Section 299 defines the offence of culpable homicide, Section 300 defines the circumstances in which the offence of culpable homicide will, in absence of exceptions laid down therein, amount to murder.

14. Culpable homicide may be classified in three categories (1) in which death is caused by the doing of an act with the intention of causing death; (2) when it is committed by causing death with the intention of causing such bodily injury as is likely to cause death; and (3) where the death is caused by an act done with the knowledge that such act is likely to cause death. A note of caution at this juncture must be stated. Knowledge and intention should not be confused. Section 299 in defining first two categories does not deal with the knowledge whereas it does in relation to the third category. It would also be relevant to bear in mind the import of the terms "likely by such act to cause death". Herein again lies a distinction as 'likely' would mean probably and not possibly. When an intended injury is likely to cause death, the same would mean an injury which is sufficient in the ordinary course of nature to cause death which in turn would mean that death will be the most probable result.

A. Virsa Singh Standard

15. The locus classicus operating in the field is Virsa Singh (supra). We may notice the judgment at

some details:

Facts : In Virsa Singh, the appellant therein was sentenced to imprisonment for life under Section 302 I.P.C. 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 chance 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.

We may notice the findings under different heads:

1. What must the prosecution prove? 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 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 purely objective and inferential and has nothing to do with the intention of the offender.

2. The Standard Laid down It was said that the intention that the section requires must be related, not only to the bodily injury inflicted, but also to the clause, "and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

This is a favourite argument in this kind of case but may not be entirely correct. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly" would be unnecessary because the act would fall under the first part of the section, namely -

"If the act by which the death is caused is done with the intention of causing death."

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender:

"If it is done with the intention of causing bodily injury to any person."

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

Once that is found, the enquiry shifts to the next clause - "and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily

injury with the intention to inflict it, that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining - "and the bodily injury intended to be inflicted" is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to be with the question of intention. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous part of the body, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to inquire into every last detail as, for instance, whether the accused intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad based and simple and based on commonsense: the kind of enquiry that "an ordinary man" could readily appreciate and understand. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "3rdly":

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; these are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, indisputably, the burden is on the prosecution throughout) the offence is murder under Section 300, "3rdly". It does not matter that there was no intention to cause death. 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 is actually found to be 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."

B. The Different Views Hence, the question of whether the injury is sufficient in the ordinary course of nature to cause death is an objective enquiry. The accused need not have knowledge as whether

the injury he intended to cause would have been sufficient in the ordinary course of nature to cause death. This is the position the Court took in the Virsa Singh case. Unfortunately, the proportions in Virsa Singh have not been rigidly followed subsequently. For example, in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr, [(1976) 4 SCC 382], the enquiry became one of whether the accused intended to cause the ultimate internal injury that led to death i.e. the Court inferred, from the surrounding facts and circumstances in that case that the accused had intended to cause the hemorrhage etc that ultimately led to death. This position is somewhat contrary to Vivien Bose, J's pronouncements in Virsa Singh.

The following Para in Virsa Singh is illustrative:

"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, it 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."

Another passage which is relevant for our purpose reads, thus:

"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 justifies 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, and 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 guess-work and fanciful conjecture."

The Jayaprakash Case brings the law back to the Virsa Singh position.

I. PRESUMPTION AS REGARDS INTENTIONLet us place on record the different approaches in the two decisions. In Virsa Singh:

"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 reasonably possible in this case and in any case it is a question of fact), the rest is a matter for objective determination from the medical and other evidence about the nature and

seriousness of the injury."

In Jayaprakash:

"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."

II. EVIDENCE TO BE CONSIDERED

In Jayaprakash:

"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 anabstract rule and they will (sic) vary from case to case. However, as pointed (sic) in Virsa Singh's case 1958 SCR 1495 the weapon used, (sic)ree of force released in wielding it, (sic)edent relations of the parties, the (sic)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

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."

16. Shifting the inquiry to the next clause 'and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death', it was held :

"In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convict, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense; the kind of enquiry that 'twelve good men and true' could readily appreciate and understand."

17. In determining the question even the manner in which the injury was inflicted and his knowledge as to whether it would be a severe one or a serious one would also be a relevant factor. (See also State of Andhra Pradesh v. Rayavarapu Punnayya & Anr. [(1976) 4 SCC 382].

18. In a case where the death occurred after nine days, this Court opined that the prosecution failed to objectively prove the injury sufficient to cause death in the ordinary course of nature. [See Jayraj v. State of Tamil Nadu [(1976) 2 SCC 788].

19. For the said purpose, the circumstances surrounding the incident would also be relevant. In Patel Rasiklal Becharbhai & Ors. v. State of Gujarat [1993 Supp.(1) SCC 217] and Gurdeep Singh v. Jaswant Singh & Ors. [1992 Supp.(3) SCC 103], in a situation of this nature, this Court held Part-II of Section 304 to be applicable. Knowledge v. Intention

20. We must keep in mind the distinction between knowledge and intention. Knowledge in the context of Section 299 would, inter alia, mean consciousness or realization or understanding. The distinction between the terms 'knowledge' and 'intention' again is a difference of degrees. An inference of knowledge that it is likely to cause death must be arrived at keeping in view the fact situation obtaining in each case. The accused must be aware of the consequences of his act.

21. Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself. This was discussed extensively in Jai Prakash v. State (Delhi Administration) [(1991) 2 SCC 32], stating:

"We may note at this state 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 the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions...

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."

Kenny in "Outlines of Criminal Law" (17th Edition at 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 connection 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.

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 Edition 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' signifies 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.Law Applicable in this case

22. Keeping in view the aforementioned legal principles in mind, we may notice the facts of the present case. In the instant case, the reverse side of a kassi was used by the accused to hit the deceased on his head, a vital part of the body. The force with which these injuries were inflicted cannot be disputed either given the internal injuries these led to death as would appear from the injury report as also post mortem report which read as under :

"1. Lacerated wound 3cm x = cm x 1 cm present on the left frontal region of the skull. Margin of the injury was irregular and injury was about 3 inches above the medical end of left eye brow. This injury was present over a contusion about 2 inches x 2 inches reddish blue in condition. Patient was referred to General Hospital, Sector 16, Chandigarh for X-ray skull and observation.

2. Contusion 2" x 1" present over the upper right eye bluish in colouration.

3. Complaints of pain over right shoulder. Tenderness positive

XXX XXX XXX

1) Black eye right with contusion all around.

2) Stitched wound scalp right side 1 inch in size.

3) Fracture of the frontal bone right side. With extra dual and subdural hemorrhage. But hole on the right temper of parietal area. Stomach was empty.Rest of the organs were normal. In my opinion cause of death was shock and hemorrhage due to head injury. Injury was anti mortem in nature and was sufficient to cause death in the ordinary course of nature."

Further, the exhortation by the accused, just before he struck the deceased, that he needed to teach the deceased a lesson, also shows that he intended to hit him on the head. Hence, looking at all these facts and circumstances, intention to cause the bodily injury in question is proved. Further, due to the inapplicability of Explanation 4, there is nothing on facts to rebut this presumption of intention. Hence, the first part of S.300 "Thirdly" is proved. The land belongs to the accused. The title is not in dispute. They had a right over the land. They could excavate the same. The quarrel started because the deceased wanted them to leave some passage. Both the courts have held that it was a sudden fight which does not appear to be wholly correct.

The word "fight" is used to convey something more than a verbal quarrel. It postulates a bilateral transaction in which blows are exchanged. In order to constitute a fight, it is necessary that blows

should be exchanged even if they all do not find their target. [Ratanlal and Dhirajlal, Vol 2, page 1364, Footnote 4] No material in this regard has been brought on record. In Para 14 of the Learned Sessions Judge's judgment, it is explicitly stated that the contention of the accused (that the deceased had an altercation with the accuser's laborers) was baseless. The High Court says that the accused have not produced any evidence in support of their contention that there was an altercation between the two groups. Further, the contention of the prosecution (that when the deceased merely asked the accused to leave free some passageway, and the accused exhorted that the deceased must be taught a lesson and proceeded to hit him on the head with the reverse-side of the kassi) has been accepted by the courts below. There was, thus, no fight far less any sudden fight. Provocation per se is not fight. Asking somebody to do something again may not be a provocation. Expressing a desire that some passage may be left may not be considered to be a demand. Hence, in this case, there is nothing on facts to show that a "sudden fight" and "heat of passion", as envisaged under Exception 4 to S.300, had developed. In Tholan v. State of Tamil Nadu [(1984) 2 SCC 133], 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 I.P.C., the Court disagreeing with the contention on behalf of the State that Clause III of Section 300 I.P.C would be attracted in such a case. In arriving at such a conclusion, this Court took into consideration various surrounding circumstances, including the fact that the accused dealt only one blow. The case cited by the accused in Jai Prakash v. State (Delhi Administration), [(1991) 2 SCC 32], where there was an altercation and exchange of hot words between the accused and the deceased. Then, the appellant took out a Kirpan (Churra) from his waist and stabbed the deceased in the chest. The accused contended that since there was an altercation and during the same, he suddenly whipped out a kirpan and inflicted only one injury, it was reasonable to infer that he would not have intended to cause that particular injury, and consequently, Clause Thirdly of Section 300 is not attracted. This contention was overruled by the Court. In Bhagwan Bahadure v. State of Maharashtra, [2007 (11) SCALE

519], this Court opined:

"It cannot be said as a rule of universal application that whenever one blow is given Section 302 IPC is ruled out. It would depend upon the facts of each case. The weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given are some of the factors to be considered."

Hence, the mere fact that single blow was administered doesn't preclude the existence of intention.

23. Reliance has been placed by learned counsel for the State, to a decision of this Court in State of Punjab v. Tejinder Singh & Anr. [AIR 1995 SC 2466]. There two persons inflicted Gandasa blows on the deceased. The altercation had already taken place four days prior to the incident over the boundary line of the plots of the parties. The accused persons came heavily armed shouting that the deceased should not be spared at a point of time when his wife had brought breakfast for him and he had gone to hand pump to bring water in a pitcher. It was even in the aforementioned situation, this Court held:

"In view of our above findings we have now to ascertain whether for their such acts A-1 and A-2 are liable to be convicted under Section 302 read with Section 34, IPC. It appears from the evidence of PW-4 and PW-5 that the deceased was assaulted both with the sharp edge and blunt edge of the gandasas and the nature of injuries also so indicates. If really the appellants had intended to commit murder, they would not have certainly used the blunt edge when the task could have been expedited and assured with the sharp edge. Then again we find that except one injury on the head, all other

injuries were on non-vital parts of the body. Post-mortem report further shows that even the injury on the head was only muscle deep. Taking these facts into consideration we are of the opinion that the offence committed by the appellant is one under Section 304 (Part I), IPC and not under Section 302, IPC."

24. It is, therefore, a case where Virsa Singh would be applicable. The injury inflicted was a serious one, it by itself may not be decisive but is one of the relevant factors in regard to the application of fourthly of section 300. Application of the said provisions must be made keeping in mind the fact situation obtaining and the legal principles noticed hereinbefore.

25. For the reasons aforementioned, we are of the opinion that the appellant are guilty of commission of the offence under Section 304 Part-I and not Section 304 Part-II thereof. The learned Sessions has imposed a sentence of eight years on the appellant and five years Rigorous Imprisonment on appellant No.2. We, however, reduce the same, keeping in view the peculiar facts and circumstances of this case, to five years and three years respectively.

26. Appeal is allowed to the above extent.