**SUPREME COURT OF INDIA**

Som Raj @ Soma

Vs.

State of H.P.

Crl.A.No.1772 of 2008

(P. Sathasivam and Jagdish Singh Khehar JJ.)

22.02.2013

**JUDGMENT**

**JAGDISH SINGH KHEHAR, J.**

1. Consequent upon an intimation to the police, by Dr. B.M. Gupta (PW5), Senior Medical Officer, Community Health Centre, Indora (hereinafter referred to as the CHC, Indora); the statement of Nek Ram, (PW1) was recorded at the CHC, Indora, on 29.7.2000; leading to the registration of First Information Report bearing no.123 of 2000 under Section 302 of the Indian Penal Code, 1860, at Police Station, Indora. The aforesaid statement was recorded by ASI Shiv Kanya (PW12). In his statement, Nek Ram (PW1) asserted that there was a 'bhandara' (feast for devotees, during a Hindu ceremonial congregation) following a 'yagya' (Hindu ritual ceremony) at the residence of Kishan Singh (PW2) at village Khanda Saniyal on 29.7.2000. Nek Ram (PW1) disclosed, that he along with his brother Sardari Lal (since deceased) had been invited to the 'bhandara' and were present at the residence of Kishan Singh (PW2). The complainant Nek Ram (PW1) affirmed, that he was helping in serving food at the 'bhandara'. Whilst he was in the kitchen at about 9.30 p.m., he (Nek Ram, PW1) was informed by his nephew Sohan (PW3) and Shamsher Singh (PW8) that the accused-appellant Som Raj alias Soma was quarrelling with his brother Sardari Lal. On being so informed, he had immediately reached the place of altercation, and had found the accused-appellant Som Raj assaulting his brother Sardari Lal. He also pointed out, that he had seen Som Raj picking up a 'darat' (a traditional agricultural implement used by agriculturists in northern India, for cutting branches of trees. It is also used by butches for beheading goats and sheep. The implement has a handle and a large cutting blade),

from the house of Kishan Singh (PW2) and giving his brother Sardari Lal a blow with it, on the back portion of his head. After the first blow, the accused-appellant was in the process of giving a second blow when the complainant Nek Ram (PW1) along with others present at the place of occurrence, had caught hold of him. The 'darat' was then snatched from his hands. According to Nek Ram (PW1), blood was oozing from the injury suffered by Sardari Lal. Accordingly, Sardari Lal was immediately taken to the CHC, Indora. Sardari Lal had reached the hospital at about 10.45 p.m. He was declared dead at about 11.15 p.m.

2. Consequence upon the registration of First Information Report no.123 of 2000 at Police Station, Indora, on 29.7.2000, the Police initiated investigation into the matter. On completion of the same, the accused- appellant was sent to face trial for commission of the offence under Section 302 of the Indian Penal Code. During the course of the trial, the prosecution examined as many as 13 witnesses including six witnesses of occurrence (Nek Ram - PW1, Kishan Singh - PW2, Sohan - PW3, Mohinder Singh - PW6, Vakil Singh - PW7 and Shamsher Singh - PW8). The prosecution also examined two doctors who had examined Sardari Lal when he was taken to the CHC, Indora. One of them had treated Sardari Lal when he was brought to the CHC, Indora, whereas the other had conducted the post mortem examination. The other witnesses were formal police witnesses. The prosecution also produced various exhibits to prove the charge levelled against the accused-appellant.

3. The statement of the accused-appellant was recorded under Section 313 of the Code of Criminal Procedure after the prosecution had concluded its evidence. In his statement under Section 313 of the Code of Criminal Procedure, the accused-appellant projected a different version of the incident. According to the accused-appellant, there was an altercation between his brother Hari Singh (DW5) at the entrance of the residence of Kishan Singh (PW2) during which a "gorkha" (a Nepali living in India) named Rana gave a 'darat' blow to his elder brother Hari Singh (DW5) which accidentally hit the deceased Sardari Lal. He further stated, that information about the occurrence (as narrated by him) was given by his brother Hari Singh (DW5) to the Magistrate, Nurpur, on the day following the incident, i.e., on 30.7.2000. The accused-appellant examined five witnesses in his defence including Hari Singh (DW5) and Dr. V.K. Singla (DW2), Medical Officer, Community Health Centre, Choori, who had examined Hari Singh - DW5 and had recorded the injuries found on his person.

4. Having narrated a birds eye view, of the accusation levelled against the accused-appellant as also his defence, it is considered expedient to summarily narrate the assertions made by witnesses produced by the prosecution, in respect of the occurrence of 29.7.2000 : (i) Nek Ram, the complainant, was examined by the prosecution as PW1. He affirmed that on 29.7.2000, he and his brother Sardari Lal, had gone to the house of Kishan Singh (PW2), for a 'bhandara'. He deposed that he (Nek Ram - PW1) along with Sohan (PW3), Mohinder Singh (PW6) and others were helping in serving food at the 'bhandara'. At about 8.00- 8.30 p.m., Sohan (PW3) and Shamsher Singh (PW8) came to him while he was serving meals to the guests, and told him about exchange of hot words between Sardari Lal (deceased) and Som Raj (the accused- appellant) in the courtyard of Kishan Singh (PW2). Thereupon he asserted, that he had proceeded to the courtyard where he saw the accused-appellant Somraj giving a 'darat' blow to Sardari Lal (the deceased) which landed on the back portion of his head. He pointed out, that when the accused-appellant made a second attempt for giving a second 'darat' blow to Sardari Lal, he (Nek Ram - PW1), Mohinder Singh (PW6), Sohan (PW3), Kishan Singh (PW2) and others overpowered Sardari Lal. He further asserted, that Mohinder Singh (PW6) had snatched the 'darat' from the hands of the accused-appellant Som Raj and had thrown it away. He also testified, that having received the 'darat' blow, Sardari Lal had fallen on the ground, and was bleeding profusely. Sardari Lal was immediately taken to the CHC, Indora, where he succumbed to his injuries. He confirmed, that the Police had reached the hospital and had recorded his statement. He also stated, that the accused-appellant Som Raj alias Soma was his uncle. The statement of Nek Ram (PW1) was in consonance with the prosecution version of the occurrence. During the course of his cross- examination, Nek Ram (PW1) was confronted with the version of the incident depicted by the accused-appellant during the course of his statement recorded under Section 313 of the Code of Criminal Procedure. Nek Ram (PW1), however, denied the correctness thereof. ii) Kishan Singh, at whose residence the 'bhandara/yagna' was held, was examined as PW2. He reiterated the factual position of the occurrence, in identical terms and in consonance with the statement of Nek Ram (PW1). While doing so, he also affirmed that the accused- appellant had tried to inflict a second blow with the 'darat' on Sardari Lal. However, he was held by those at the spot, and the 'darat' was snatched from his hands by Mohinder Singh (PW6). He also reiterated, that on receipt of the injury at the hands of the accused- appellant, Sardari Lal had fallen down and blood was oozing from his head. He also deposed, that he had recovered the 'darat' used by Som Raj and had handed over the same to the Police, during the course of investigation. He also acknowledged, that the 'darat' produced in the court was the same one with which Sardari Lal had been assaulted by the accused-

appellant. As in the case of Nek Ram (PW1), Kishan Singh (PW2) was also confronted with the version of the incident narrated by the accused-appellant during the course of his cross-examination. He, however, denied the same.

iii) Karnail Singh was examined by the prosecution as PW3. The statement of Karnail Singh (PW3) was on the same lines as those of Nek Ram (PW1) and Kishan Singh (PW2). He too was confronted during the course of cross-examination with the version of the accused-appellant, namely, that the injury in question had been caused by a "gorkha" named Rana. The aforesaid suggestion put to the witness, was denied by him. iv) Mohinder Singh appeared before the Trial Court and recorded his statement as PW6. He affirmed the quarrel between the rival parties, namely, the deceased Sardari Lal and the accused-appellant, Som Raj. He also acknowledged, that Kishan Singh (PW2) and Nek Ram (PW1) had caught hold of the accused. He admitted, that he had seen the accused- appellant with the 'darat' in his hand. He also admitted, that he had snatched the 'darat' from the hands of the accused-appellant, and had thrown it away. He admitted having seen the injury on the head of Sardari Lal, who had fallen to the ground, and was in a pool of blood. He however denied in his examination-in-chief, that he had actually seen the incident by asserting, that he did not know how the deceased Sardari Lal had received the injury. Based on the aforesaid statement made by Mohinder Singh (PW6), he was declared hostile, and was permitted to be cross-examined by the Public Prosecutor. During the course of his cross-examination, he again acknowledged having seen the 'darat' in the hands of the accused-appellant Som Raj, and additionally, that the accused-appellant who had inflicted the first blow with the 'darat' on the person of Sardari lal. He further confirmed that the accused-appellant had also tried to inflict another blow on Sardari Lal, but was prevented by him and others from doing so. He testified, that he had caught the hands of the accused- appellant, and had thereby stopped him from inflicting the second blow. He also reiterated, that he had forcibly snatched the 'darat' from the hands of the accused-appellant, and had thrown it away. Mohinder Singh (PW6) was cross-examined on the same lines as the previous three witnesses referred to above, but he reiterated the factual position recorded by him in his examination-in-chief, as also during the course of his cross-examination by the Public Prosecutor. v) The prosecution then produced Vakil Singh as PW7. Vakil Singh affirmed before the Trial Court, that he had seen the deceased Sardari Lal lying in an injured condition, and he was informed that the injuries on Sardari Lal were caused by the accused-appellant Som Raj

with a 'darat'. He asserted, that when he had seen Sardari Lal in the injured condition during which he could not speak anything. People who had gathered at the place of occurrence, had informed him that the accused-appellant had run away from the spot after inflicting injuries on Sardari Lal. Based on the fact that Vakil Singh (PW7) was denying of having himself witnessed the incident, he was declared hostile. Thereupon, the Public Prosecutor was permitted to cross-examine him. When confronted with the statement made to the Police, he reiterated that his statement had not been recorded correctly. He stated, that he had not seen the accused Som Raj inflicting injuries on the person of the deceased Sardari lal. He however deposed that the people who had gathered at the place of the occurrence had informed him, that the accused-appellant Som Raj had inflicted injuries on the person of the deceased Sardari Lal with a 'darat'. He also denied the version of the accused pertaining to the "gorkha' named Rana.

vi) Shamsher Singh (PW8) was the last of the witnesses of occurrence. He fully supported the prosecution version of the incident. He deposed on the same lines as Nek Ram (PW1), Kishan Singh (PW2), Karnail Singh (PW3) and Mohinder Singh (PW6). He also endorsed the fact, that the accused-appellant Som Raj had tried to inflict a second blow with the 'darat', but had not succeeded in doing so because Nek Ram (PW1), Kishan Singh (PW2) and Mohinder Singh (PW6) had caught hold of him. He also denied the version narrated by the accused-appellant.

5. In so far as the accused-appellant is concerned, after recording his statement under Section 313 of the Code of Criminal Procedure, he examined five witnesses in his defence. The statement of Dr. Deepak Sharma, Block Medical Officer Gangath was recorded as DW1. DW1 affirmed that on 30.7.2007, he had examined Hari Singh (DW5) and had found bruises over his lower jaw and also found three shaky teeth. During the course of his cross- examination, he acknowledged that no application was filed by Hari Singh (DW5) before him, requiring him to conduct his medical examination. He denied as incorrect, the suggestion that he had prepared the medico-legal certificate (Exhibit D3) in connivance with Hari Singh (DW5). He also acknowledged, that the injuries suffered by Hari Singh, could result from falling on a hard surface. Dr. V.K. Singla, Medical officer CHC, Choori, was examined as DW2. DW2 stated that on 31.7.2000 (two days after the occurrence), he had examined Hari Singh in his capacity as Dental Surgeon, Gangath, and had given his opinion as at Exhibit D1. Harnam Singh, Havaldar Head Constable, Police Station Nurpur, appeared as DW3. He confirmed that a

rapat roznamacha (entry in the Daily Diary of the Police Station) was recorded at Police Station Nurpur, in respect of the injuries suffered by Hari Singh. He pointed out, that no action had been taken in the matter, as the incident in question was within the jurisdiction of Police Station, Indora. The statement of Dev Raj, Hawaldar Head Constable, Police Station, Indora, was recorded as DW4. He merely produced the original 'rapat roznamcha' of Police Station, Indora, to affirm the factual position depicted by Harnam Singh, Havaldar Head Constable (DW3). The statement of Hari Singh was recorded as DW5. In his statement, he acknowledged, that the accused-appellant was his younger brother and the deceased Sardari Lal was his nephew. He also acknowledged, that he alongwith his family members, attended the 'yagya' held by Kishan Singh (PW2) at his residence on 29.7.2000. During the course of his deposition, he attempted to provide an alibi to the accused-appellant by asserting, that the accused-appellant Som Raj had gone to Chintpurni on the date of occurrence. He further stated, that Som Raj was visiting their other younger brother who lived at Chintpurni. He also endeavoured to substantiate the factual position asserted by the accused-appellant in his statement under Section 313 of the Code of Criminal Procedure. In this behalf he deposed, that a 'gorkha' named Rana had an altercation with him outside the house of Kishan Singh (PW2). During the aforesaid altercation, Rana had given him a blow on his mouth, which had resulted in one broken tooth. He further stated, that when the aforesaid Rana attempted a second blow with a 'darat' at him, he had ducked, whereupon the blow had landed on the deceased Sardari Lal, which resulted in the death of Sardari Lal. Hari Singh (DW5) further testified, that he had lodged a report with the police. He deposed, that he had also gone to the Civil Hospital, Nurpur for treatment, whereupon he was referred to the Dental Surgeon at Gangath. Hari Singh (DW5) deposed further, that having noted down his complaint, the same was forwarded by Police Station, Nurpur, to the Police Station, Indora.

6. Based on the statements of witnesses noticed hereinabove, we shall endeavour to answer the legal issues canvassed at the hands of the learned counsel for the accused-appellant. Suffice it to state, that almost all the witnesses, whose statements have been noticed hereinabove including the deceased, as well as, the accused-appellant, are cousins, nephews or uncles. Consequently, it is apparent, that a large number of relations have collectively deposed against the accused-appellant, whereas, only the brother of the accused-appellant Hari Singh (DW5) has deposed in his favour. On merits, there can hardly be any doubt about the fact, that the accused-appellant inflicted the fatal blow with a 'darat' on the back of the head of the deceased Sardari Lal. The said singular blow proved to be fatal. The

affirmation, that the aforesaid blow had been inflicted by the accused-appellant emerges from the statements of Nek Ram (PW1), Kishan Singh (PW2), Sohan (PW3), Mohinder Singh (PW6) and Shamsher Singh (PW8). All the aforesaid witnesses were present at the place of occurrence. All the aforesaid witnesses were related to the deceased Sardari Lal, as also the accused-appellant Som Raj. There is no reason for us to doubt the veracity of their statements. In order to set up an alternative version, the accused-appellant has narrated his own version of the incident, wherein he acknowledges his presence at the 'bhandara/yagna' held at the residence of Kishan Singh (PW2) on 29.7.2000, when the occurrence in question took place. The statement of Hari Singh (DW5), in our considered view, is insufficient to overturn the statements of the prosecution witnesses. The statement of Hari Singh (DW5), to our mind, does not inspire any confidence. The statement of Hari Singh (DW5), in our considered view, was recorded at the behest of the accused-appellant, who is his real brother. We would describe it as untrustworthy. In view of the overwhelming evidence produced by the prosecution, we have no doubt in our mind, that the fatal 'darat' blow was inflicted by the accused-appellant Som Raj on the back of the head of the deceased Sardari Lal. We, therefore, affirm the aforesaid conclusion drawn by the Trial Court, as well as, by the High Court.

7. It would be relevant to mention, that learned counsel for the accused- appellant vehemently contended that even if the singular fatal blow is taken to have been inflicted by the accused-appellant Som Raj, he could only be punished for the offence under Section 304 Part-II of the Indian Penal Code, and not for the offence of murder under Section 302. In this behalf, it was the submission of the learned counsel, that there was no premeditation to commit the offence on the date of occurrence. It was also pointed out, that the evidence produced by the prosecution, does not reveal any prior enmity between the accused-appellant and the deceased. Therefore, according to learned counsel, the action should be treated as 'culpable homicide not amounting to murder'. It was sought to be explained, that the action attributed to the accused-appellant, did not include any ingredient of intention of causing such bodily injury as is likely to cause death. To support his aforesaid submission, it was vehemently contended, that all the prosecution witnesses had stated in unison, that the accused-appellant had inflicted a singular blow on the deceased Sardari Lal.

8. In order to support his aforesaid contention, learned counsel for the appellant, in the first instance, placed reliance on the judgment of this Court in Jagrup Singh Vs. State of Haryana, (1981) 3 SCC 616, wherein this Court held as under:-

"5. In assailing the conviction, learned Counsel for the appellant contends that the appellant having struck a solitary blow on the head of the deceased with the blunt side of the gandhala, can be attributed with the knowledge that it would cause an injury which was likely to cause death and not with any intention to cause the death of the deceased. The offence committed by the appellant, therefore, amounted to culpable homicide not amounting to murder, punishable under Section 304, Part II of the Code. He further contends, in the alternative, that there could be no doubt that the appellant acted in the heat of the moment when he hit the deceased and is, therefore, entitled to the benefit of Exception 4 of Section 300 of the Code. On the other hand, learned Counsel for the State contends that the matter squarely falls within clause Thirdly of Section 300 of the Code. He submits that merely because the appellant rendered a solitary blow with the blunt side of the gandhala on the head would not necessarily imply that the offence amounted to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code.

6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

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9. Looking at the totality of the evidence, it would not be possible to come to the conclusion that when the appellant struck the deceased with the blunt side of the gandhala, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. A gandhala is a common agricultural implement consisting of a flat, rectangular iron strip, three sides of which are blunt, embedded in a wooden handle. The length of the iron strip is in continuation of the wooden handle and the end portion is sharp, which is used to dig holes in the earth to set up

fencing on embankments in the field. If a man is hit with the blunt side on the head with sufficient force, it is bound to cause, as here, death. There can be no doubt that it was used with certain amount of force because there was cerebral compression. But that by itself is not sufficient to raise an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. He could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. The matter, therefore, does not fall within clause Thirdly of Section 300 of the Code."

Reliance was also placed on the decision rendered by this Court in Jagtar Singh Vs. State of Punjab, (1983) 2 SCC 342, wherein it has been held as under:-

"5. The only question that we are called upon to examine in the facts and circumstances of this case is whether the appellant could be said to have committed murder of deceased Narinder Singh punishable under Section 302 of the Indian Penal Code.

6. A quarrel took place on the spur of the moment. The appellant never expected to meet the deceased. When the deceased was just passing by the road in front of the house of the appellant, his forehead dashed with the parnala of the house of the appellant which provoked the deceased to remonstrate the appellant. It is in evidence that there was exchange of abuses and at that time appellant gave a blow with a knife which landed on the chest of the deceased.

7. Undoubtedly, PW 2 Dr H.S. Gill opined that the blow on the chest pierced deep inside the chest cavity resulting in the injury to the heart and this injury was sufficient in the ordinary course of nature to cause death. The question is whether in the circumstances in which the appellant gave a blow with a knife on the chest, he could be said to have intended to cause death or he could be imputed the intention to cause that particular injury which has proved fatal? The circumstances in which the incident occurred would clearly negative any suggestion of premeditation. It was in a sudden quarrel to some extent provoked by the deceased, that the appellant gave one blow with a knife. Could it be said that para 3 of Section 300 is attracted. We have considerable doubt about the conclusion reached by the High Court. We cannot confidently say that the appellant intended to cause that particular injury which is shown to have caused death. There was no premeditation.

There was no malice. The meeting was a chance meeting. 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. Neither para 1 nor para 3 of Section 300 would be attracted. We are fortified in this view by the decision of this Court in Jagrup Singh v. State of Haryana, (1981) 3 SCC 616. It was subsequently followed in Randhir Singh v. State of Punjab, (1981) 4 SCC 484, and Kulwant Rai v. State of Punjab, (1981) 4 SCC 245. Following the ratio of the aforementioned decisions, we are of the opinion that the appellant could not be convicted for having committed murder of the deceased Narinder Singh. His conviction for an offence under Section 302, IPC and sentence of imprisonment for life are liable to be set aside.

8. The next question is what offence the appellant is shown to have committed? In a trivial quarrel the appellant wielded a weapon like a knife. The incident occurred around 1.45 noon. The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. Therefore, the appellant is shown to have committed an offence under Section 304 Part II of the IPC and a sentence of imprisonment for five years will meet the ends of justice.

9. Accordingly this appeal is partly allowed. The conviction of the appellant for an offence under Section 302, IPC and sentence of imprisonment for life are set aside. Appellant is convicted for having committed an offence under Section 304 Part II of the Indian Penal Code and he is sentenced to suffer RI for five years. Conviction of the appellant for an offence under Section 304 and the sentence imposed for the same are confirmed. Both the substantive sentences are directed to run concurrently."

9. In order to controvert the aforenoticed submission advanced at the hands of the learned counsel for the accused-appellant, it was the vehement assertion of the learned counsel for the respondent State, that the weapon of offence would constitute a material basis for determining the purely legal contention advanced at the hands of the learned counsel for the appellant. It was pointed out, that a 'darat' had been used by the accused- appellant for inflicting the blow on the deceased

Sardari Lal. It was submitted, that a 'darat' is used by agriculturalists for cutting branches and trees. It was also submitted, that butchers use a 'darat' for beheading goats and sheeps. Based on the aforesaid factual position it was submitted, that the very nature of the weapon of offence is sufficient to infer, that the accused-appellant had the intention of causing such bodily injury as is likely to cause death. It was also the contention of the learned counsel for the respondent State, that it would be wrongful to adjudicate the present controversy under the assumption, that the accused- appellant had caused a singular injury. As a matter of fact, it was the vehement contention of the learned counsel for the respondent State, that the accused-appellant was in the process of inflicting a second 'darat' blow on the deceased Sardari Lal, but was prevented from doing so by those present at the place of occurrence. Insofar as the instant aspect of the matter is concerned, learned counsel for the respondent State placed reliance on the statements of Nek Ram (PW1), Kishan Singh (PW2), Sohan (PW3), Mohinder Singh (PW6) and Shamsher Singh (PW8), who unequivocally stated, that they had caught hold of the accused-appellant when he was in the process of inflicting a second 'darat' blow on the deceased. They all affirmed, that the 'darat' was snatched away from the accused-appellant by Mohinder Singh (PW6). Accordingly, it was contended, that left to himself, the accused-appellant would have inflicted a second blow, and probably still further blows, had he not been restrained by those present at the place of occurrence. Besides the aforesaid, there is a third reason highlighted by the learned counsel for the respondent State, namely, the place on the body of the deceased and the nature of injury caused to the deceased. Insofar as the instant aspect of the matter is concerned, it was submitted, that the injury in question was inflicted on the head of the deceased Sardari Lal. Learned counsel invited our attention to the statements of Dr. Suman Saxena (PW4) and Dr. B.M. Gupta (PW5). Having examined Sardari Lal, they had deposed, that the deceased bore an incised wound 6 cm x 4 cm brain deep, cutting parts of the underlying bone. The injury under reference was caused just lateral to the midline on the left side of the occipital bone. The underlying brain tissue, according to these witnesses, could be seen and felt through a hole at the place of the wound. The size of the hole in the occipital bone was 3 cm x 2 cm. The underlying brain membranes were found to have been torn off, and brain tissues were found lacerated. It was accordingly his submission, that the fact that the accused-appellant had aimed the 'darat' blow on the head of the deceased with such force, that it caused a hole in the occipital bone and exposed the brain, was sufficient to arrive at the conclusion, that the same was inflicted with the intention, that it would cause death of the person hit.

10. In order to support his contention, that the offence committed by the accused-appellant constitutes 'culpable homicide amounting to murder', reliance was placed by the learned State counsel on the decision rendered by this Court in State of Andhra Pradesh Vs. Rayavarapu Punnayya Anr., (1976) 4 SCC 382, wherein it has been held as under:-

> "13. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts for more than a century. 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 minutae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.
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> |Section 299 |Section 300 | |A person commits culpable |Subject to certain | |homicide if the act by |exceptions culpable | |which the death is caused |homicide is murder if | |is done – |the act by which the | | |death is caused is done | | |- | |INTENTION | |(a) with the intention of|(1) with the intention | |causing death; or |of causing death; or | |(b) with the intention of|(2) with the intention | |causing such bodily injury|of causing such bodily | |as is likely to cause |injury as the offender | |death; or |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 |(4) with the knowledge | |that the act is likely to |that the act is so | |cause death |imminently dangerous | | |that it must in all | | |probability cause death | | |or such bodily injury as| | |is likely to cause | | |death, and without any | | |excuse for incurring the| | |risk of causing death or| | |such injury as is | | |mentioned above. |
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> 14. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a

person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

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

16. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of 'probable' as distinguished from a mere possibility. The 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.

17. 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 v. State of Kerala, AIR 1966 SC 1874, is an apt illustration of this point.

18. In Virsa Singh v. State of Punjab, AIR 1958 SC 465, Vivian Bose, J. speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500):-

"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. 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."

19. Thus according to the rule laid down in Virsa Singh case of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be 'murder'. Illustration (c) appended to Section 300 clearly brings out this point.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general — as distinguished from a particular person or persons — being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304, of the Penal Code.

22. 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."

11. We shall now venture to apply the parameters laid down by this Court, to determine whether the accused-appellant herein can be stated to have intentionally caused such bodily injury to the deceased, as he knew was so imminently dangerous, that it would in all probability cause his death. First and foremost, it is apparent from the factual narration of the witnesses produced by the prosecution, that the accused-appellant was not carrying the 'darat' but had picked up the same from the house of Kishan Singh (PW2). A 'darat', as noticed above, is a traditional agricultural implement used for cutting branches of trees. It is also used by butchers for beheading goats and sheep. A 'darat' has a handle and a large cutting blade. Having picked up the 'darat' for committing an assault on the deceased, it is apparent that the accused-appellant was aware of the nature of injury he was likely

to cause with the weapon of incident. From the statements of Dr. Suman Saxena (PW4) and Dr. B.M. Gupta (PW5), the nature of injuries caused to the deceased has been brought out. A perusal thereof would leave no room for doubt, that the accused-appellant had chosen the sharp side of the 'darat' and not the blunt side. The ferocity with which the aforesaid blow was struck clearly emerges from the fact that the blow resulted in cutting through the skull of the deceased and caused a hole therein, resulting in exposing the brain tissue. When a blow with a deadly weapon is struck with ferocity, it is apparent that the assailant intends to cause bodily injury of a nature which he knows is so imminently dangerous, that it must in all probability cause death. The place where the blow was struck (at the back of the head of the deceased) by the accused-appellant, also leads to the same inference. It is not the case of the accused-appellant, that the occurrence arose out of a sudden quarrel. It is also not his case, that the blow was struck in the heat of the moment. It is not even his case, that he had retaliated as a consequence of provocation at the hands of the deceased. He has therefore no excuse, for such an extreme act. Another material fact is the relationship between the parties. The accused-appellant was an uncle to the deceased. In such circumstances, there is hardly any cause to doubt the intent and knowledge of the accused-appellant. Besides the aforesaid factual position, it would be incorrect to treat the instant incident as one wherein a single blow had been inflicted by the accused. As many as five witnesses of the occurrence have stated in unison, that the accused-appellant was in the process of inflicting a second blow on the deceased, when they caught hold of him, whereupon one of them (Mohinder Singh – PW6) snatched the 'darat' from the accused-appellant, and threw it away. In such a situation, it would improper to treat/determine the culpability of the accused-appellant by assuming, that he had inflicted only one injury on the deceased. Keeping in mind the parameters of the judgments referred to by the learned counsel for the rival parties (which have been extracted above), we have no doubt in our mind, that the accused-appellant must be deemed to have committed the offence of 'culpable homicide amounting to murder' under Section 302 of the Indian Penal Code, as the accused-appellant Som Raj had struck the 'darat' blow, with the intention of causing such bodily injury, which he knew was so imminently dangerous, that it would in all probability cause the death of Sardari Lal. Having recorded the aforesaid conclusion, we are satisfied, that the accused-appellant was justifiably convicted of the offence under Section 302 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for life, as also, to pay a fine of Rs.10,000/- (and in default, to undergo further simple imprisonment for a period of one year).

12. In view of our aforesaid conclusions, the instant appeal being devoid of merit, is dismissed.