Mohd. Imran vs.state

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SooperKanoon Citation : sooperkanoon.com/1209393

Court : Delhi

Decided On : Sep-26-2017

Appellant : Mohd. Imran

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved On:

31. 08.2017 Judgment Pronounced On:

26. 09.2017 CRL.A. 1315/2014 MOHD. IMRAN STATE CRL.A. 829/2012 MUKESH @ KARKA STATE CRL.A. 452/2013 AKRAM STATE (NCT OF DELHI) versus versus versus ... Appellant No.1 ... Respondent ... Appellant No.2 ... Respondent ... Appellant No.3 ... Respondent Through: Ms. Saahila Lamba, Advocate for Appellant No.1 Mr. M.L. Yadav, Advocate for Appellant No.2 Mr. Narsingh Narain Rai, Advocate for Appellant No.3 Mr. Ravi Naik, APP for the State with Inspector Bharat Meena, SHO, P.S. Swaroop Nagar and Inspector D.K. Tejwan, P.S. Pandav Nagar CRL.A.1315/2014, 829/2012 & 452/2013 Page 1 of 30 CORAM: HONBLE MR JUSTICE SIDDHARTH MRIDUL HONBLE MR JUSTICE NAJMI WAZIRI

JUDGMENT
SIDDHARTH MRIDUL, J.

1. The present batch of criminal appeals, being Criminal Appeal Nos. 1315/2014, 829/2012 and 452/2013 instituted under the provisions of section 374(2); sections 374(2), 383 read with section 482; and section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr PC), assail the judgment dated 07.09.2011 and order on sentence dated 13.09.2011, rendered by the Ld. Additional Sessions Judge, Delhi, in Sessions Case no.144/10, arising out of FIR No.131/10.

2. By way of the impugned judgement dated 07.09.2011 and order on sentence dated 13.09.2011, Mohd. Imran (hereinafter referred to as Appellant No.1); Mukesh alias Karka (hereinafter referred to as Appellant No.2); and Akram (hereinafter referred to as Appellant No.3), were convicted and sentenced as follows: I) Appellant No.1 i) Rigorous Imprisonment for 7 years and fine of Rs.1,000/- for the offence punishable under the provisions of Sections CRL.A.1315/2014, 829/2012 & 452/2013 Page 2 of 30 3
Indian Penal Code, 1860 (hereinafter referred to as IPC). In default of payment of fine, the Appellant No.1 has been sentenced to undergo simple imprisonment for a further period of 1 month. ii) Imprisonment for Life and fine of Rs.2,000/- for the offence punishable under the provisions of Sections 3
IPC. In default of payment of fine, the Appellant No.1 has been sentenced to undergo simple imprisonment for a further period of 2 months. The sentences have been directed to run concurrently. Furthermore, the benefit of Section 428 Cr PC has been granted to the Appellant No.1. II) Appellant No.2 i) Rigorous Imprisonment for 10 years and fine of Rs.1,000/- for the offence punishable under the provision of Section 397 IPC. In default of payment of fine, the Appellant No.2 has been sentenced to undergo simple imprisonment for a further period of 1 month. ii) Imprisonment for Life and fine of Rs.2,000/- for the offence punishable under the provisions of Sections 3
IPC. CRL.A.1315/2014, 829/2012 & 452/2013 Page 3 of 30 In default of payment of fine, the Appellant No.2 has been sentenced to undergo simple imprisonment for a further period of 2 months. The sentences have been directed to run concurrently. Furthermore, the benefit of Section 428 Cr PC has been granted to the Appellant No.2. III) Appellant No.3 i) Rigorous Imprisonment for 7 years and fine of Rs.1,000/- for the offence punishable under the provisions of Sections 3

IPC. In default of payment of fine, the Appellant No.3 has been sentenced to undergo simple imprisonment for a further period of 1 month. ii) Imprisonment for Life and fine of Rs.2,000/- for the offence punishable under the provisions of Sections 3

IPC. In default of payment of fine, the Appellant No.3 has been sentenced to undergo simple imprisonment for a further period of 2 months. The sentences have been directed to run concurrently. Furthermore, the benefit of Section 428 Cr PC has been granted to the Appellant No.3 as well. CRL.A.1315/2014, 829/2012 & 452/2013 Page 4 of 30 3. The fulcrum of the case of the prosecution is that on 18.04.2010, the Appellant nos.1, 2 and 3 (hereinafter collectively referred to as Appellants), sharing common intention, caused stab injuries on the body of Dhiraj s/o Mr. Ram Nandan (hereinafter referred to as the deceased) leading to his death. The injuries were caused with a knife [Ex.P9]., whilst committing robbery, at Sanjay Jheel, Mayur Vihar Phase-II, Delhi (hereinafter referred to as Sanjay Jheel/crime spot). After committing the murder, the appellants took the mobile phone, Rs.60/-70/-, and the school ATM card of the deceased and absconded from the crime spot. The entire incident was witnessed by Ms. Sapna (PW-6), who was present with the deceased at the time of the incident.

4. A PCR call [Ex.PW13/A]. was made at the instance of PW-6 by Mr. Satish (PW-3); who was playing cricket at some distance from the crime spot, and Daily Diary No.13A was lodged at Police Station Pandav Nagar, Delhi (hereinafter referred to as the Police Station). Sub-Inspector Krishan Pal, PCR, North East zone (PW-15) alongwith Constable Murad Khan reached at the crime spot where they found the dead body of the deceased smeared in blood. Inspector B.R. Meena (PW-23/Investigating officer/IO) also reached at the crime spot, where PW-6 was also present. CRL.A.1315/2014, 829/2012 & 452/2013 Page 5 of 30 Crime team was called at the crime spot. PW-23 recorded the statement of PW-6 [Ex.PW6/A].; prepared the rukka [Ex.PW23/A]. and gave it to Constable Bahadur Singh (PW-18) for registration of F.I.R. [F.I.R. being Ex.PW19/A].; and thereafter prepared the site plan [Ex.PW23/B].. The dead body of the deceased was sent to LBS Mortuary through PW-15 and Constable Murad Khan. PW-23 took two samples each of blood soaked earth and earth controls from the crime spot [vide separate memos Ex.PW-6/B to E].. A P-Cap lying near the body of the deceased was also taken

into possession [vide memo Ex.PW-6/F].. Thereafter, PW-23 alongwith woman Constable Krishna took PW-6 to her house and took into possession the blood stained clothes worn by her at the time of the incident [vide memo Ex.PW6/G].. On 19.04.2010, PW-23 conducted inquest proceedings and the dead body of the deceased was identified by Mr. Neeraj Kumar and Mr. Ram Nandan Prasad [vide Ex.PW2/A and Ex.PW1/A, respectively].. Further, PW- 23 requested the doctor for postmortem vide application Ex.PW23/D. Postmortem was conducted and the dead body of the deceased was handed over to his relatives [vide Ex.PW1/B].. The clothes as well as the blood CRL.A.1315/2014, 829/2012 & 452/2013 Page 6 of 30 sample of the deceased were taken into possession [vide seizure memo Ex.PW23/E]..

5. It is further the case of the prosecution that the mobile device of the deceased; being amongst the articles robbed by the Appellants, was placed under surveillance and it was discovered that another mobile number being 9958103551, activated in the name of one Gulshan Bano R/o Jhuggi Jawahar Mohalla, Shashi Garden, Delhi (mother of the appellant no.1) was being used on the said mobile device. On 19.04.2010, upon reaching the area where the mother of the Appellant No.1 was residing, PW-23 was informed by a secret informer that the murder of the deceased was committed by Appellant No.1. On enquiry from the mother of Appellant No.1, the former pointed towards the latter stating that he was using the said mobile number. Consequent thereto, the Appellant No.1 was apprehended and made a disclosure statement [Ex.PW17/A]. admitting his involvement in the incident. Appellant No.1 was arrested [vide arrest memo Ex.PW17/D]. and his personal search was conducted [vide memo Ex.PW17/E].. Appellant No.1 got recovered from the fridge in his jhuggi, the mobile device of the deceased in which he was using the said mobile number. The mobile device and the SIM of the said mobile number being used therein, were taken into possession CRL.A.1315/2014, 829/2012 & 452/2013 Page 7 of 30 [vide seizure memo Ex.PW17/B].. Furthermore, the Apellant No.1 also got recovered from his jhuggi a bloodstained T-shirt, which he was wearing at the time of the commission of the offence [vide seizure memo Ex.PW17/C].. Thereafter, the Appellant No.1 led the police officials to EB-231, Jawahar Mohalla, Shashi Garden, Delhi and pointed towards Appellant No.2. Appellant No.2 was apprehended and during interrogation he also made a

disclosure statement admitting his involvement in the incident [Ex.PW21/C].. Appellant No.2 was arrested [vide arrest memo Ex.PW21/A]. and his personal search was conducted [vide memo Ex.PW21/B].. Appellant No.2 got recovered from his jhuggi the knife [Ex.P9]. used in the commission of the offence [vide memo Ex.PW21/E].. Furthermore, the Appellant No.2 also got recovered a white coloured blood stained T-shirt, which he was wearing at the time of the commisison of the offence [Ex.PW21/F].. Subsequent thereto, at the instance of Appellant Nos.1 and 2, Appellant No.3 was arrested. Pursuant to his arrest, Appellant No.3 also made a disclosure statement admitting his involvement in the incident [Ex.PW18/PX2].. Appellant No.3 was arrested [vide arrest memo Ex.PW18/A]. and his personal search was conducted [vide memo Ex.PW18/PX1].. Appellant No.3 got recovered a shirt having bloodstains CRL.A.1315/2014, 829/2012 & 452/2013 Page 8 of 30 from his jhuggi, which he was wearing at the time of the commission of the offence [vide memo Ex.PW18/PX4]..

6. On 20.04.2010, an application was moved by PW-23 for T.I.P. proceedings of the Appellants and the date for the proceedings was fixed as 21.04.2010. However, the Appellants refused to participate in the TIP proceedings [Ex.PW9/E to G].. On 04.05.2010, PW-23 recorded supplementary statement of PW-6 qua the identity of the Appellants, and on 05.05.2010 statement of PW-6 was recorded under the provisions of Section 164 of Cr PC [Ex.PW6/H].. The Exhibits were sent to the Forensic Science Laboratory (hereinafter referred to as the FSL). In the FSL examination [Ex.PX2]. it was discovered that human blood was present on the clothes recovered at the instance of the Appellants as well as on the knife, however, the blood group could not be detected. Insofar as the post-mortem report is concerned [Ex.PW5/A]., it has been stated therein that the following injuries were present on the body of the deceased: i) Incised stab wound 3.3 x 1.9 cms obliquely present over left side at chest 112 cms above heel and 8 cms from midline, chest cavity deep, margins sharp and regular, lower end acute, CRL.A.1315/2014, 829/2012 & 452/2013 Page 9 of 30 directed downwards, inwards and medially (hereinafter referred to as Injury No.1); ii) Incised wound .5 x .1 cms oblique, present over dorsum of left hand, skin deep, margin sharp and regular (hereinafter referred to as Injury No.2); iii) Abrasion 0.5 x .03 cms present 1 cm above medial end of right eyebrow on forehead (hereinafter referred to as

Injury No.3). It has been opined by Dr. Vinay Kumar Singh (PW-5) that the cause of death was haemorragic shock consequent upon stab injury to the chest; all injuries were antemortem in nature. Injury No.1 was sufficient to cause death in the ordinary course of nature and Injury Nos.1 and 2 were caused by a single edge and sharp weapon/knife. Furthermore, on internal examination the following injuries were discovered: In continuation of Injury No.1, skin, subcutaneous tissue, muscle, in between 6th and 7th ribs, upper body at 7th rib, pleurae left side, pericardium and left ventricular of heart above apex, 2.8 x 1.5 cms were incised, about 2.5 litres of blood in cavity, all layers of muscle at left vertical were incised, cavity deep, chambers empty. PW-5 in his opinion [Ex.PW5/C]. has stated that Injury Nos.1 and 2 could have been caused by the knife/weapon of offence [Ex.P9]. recovered at CRL.A.1315/2014, 829/2012 & 452/2013 Page 10 of 30 the instance of Appellant No.2. As per the sketch drawn by PW-5 of the knife, the length and width of the blade thereof is 20.3 cms and 3.7 cms (at most), respectively. It has also been deposed by PW-5 that Injury Nos.1 and 2 have been caused from the same weapon of offence. Furthermore, PW-5 has also tendered subsequent opinion with respect to Injury No.3 [Ex.PW5/B].. It has been stated therein that the Injury No.3 could have been caused due to surface friction against a rough surface.

7. At the trial, the prosecution has examined 23 witnesses in support of its case.

8. The Appellant No.1 in his defence has chosen not to lead any evidence. However, it has been stated by him in his statement under the provision of Section 313 Cr PC that he found the mobile phone from the bushes of the park at Sanjay Jheel; where he was playing football. It has been further stated by him that he has been falsely implicated in the present case. Moreover, the recovery of the T-shirt at his instance has been denied by him. The Appellant No.2 in his statement under the provision of Section 313 Cr PC, whilst disputing the recoveries made at his instance, has also stated that he has been falsely implicated in the present case. The Appellant No.2 in his defence has produced Mr. Nasir Ahmed (DW-1), his employer, CRL.A.1315/2014, 829/2012 & 452/2013 Page 11 of 30 who asserted that at the time of the incident Appellant No.2 was present with him in Rewari, Haryana. The Appellant No.3 in his statement, under the provision of Section 313

Cr PC, whilst disputing the recovery made at his instance, has also stated that he has been falsely implicated in the present case. The Appellant No.3 in his defence has produced Md. Yasin (DW-2), his employer. It has been deposed by DW-2 that Appellant No.3 was working with him at the time of the incident.

9. The Trial Court whilst rejecting the defence set up by the Appellants, convicted them as stated hereinbefore. Broadly, the grounds that have contributed towards the conviction of the Appellants before the Trial Court are as follows: i) The testimony of PW-6, the sole eyewitness, being consistent, credible and truthful; ii) PW-6 has identified the Appellants in Court. Furthermore, PW- 6 has assigned the specific role played by each of the Appellants in the commission of the crime; iii) The recovery of the mobile phone of the deceased from the Appellant No.1; CRL.A.1315/2014, 829/2012 & 452/2013 Page 12 of 30 iv) Recovery of the weapon of offence [Ex.P9]. at the instance of Appellant No.2 and the opinion of Dr. Vinay Kumar Singh (PW-5) that the stab injuries could have been caused by the said weapon; v) Refusal on the part of the Appellants to participate in the T.I.P. proceedings; vi) Common intention shared by the Appellants whilst committing robbery, in causing the injuries present on the body of the deceased; vii) The stab injury on the chest i.e. Injury No.1, being sufficient to cause death in the ordinary course of nature.

10. Learned counsel appearing on behalf of the Appellants whilst limiting her arguments to the conviction and sentence under Section 302 of the IPC, would invite the attention of the Court to the nature of injuries caused to the deceased. It would be urged that only one fatal blow was caused to the deceased that too of the nature likely to cause death, so as to bring the instant case within the purview of clause (b) of Section 299 IPC; and not under Section 300 IPC. It would then be contended that there was no CRL.A.1315/2014, 829/2012 & 452/2013 Page 13 of 30 intention to cause any fatal injury sufficient in the ordinary course of nature to cause death.

11. In order to buttress this submission reliance would be placed on the decisions of the High Court of Delhi in Tajinder Singh @ Kaka v. State reported as (2013) 2 JCC1164 Chamela v. State being Criminal Appeal No.545 of 2004, Shiv Kumar v.

State of Delhi reported as (2015) 2 JCC806 and Shiv Kumar v. State (NCT) of Delhi reported as (2014) 2 JCC1282 and of the Honble Supreme Court in Mavila Thamban Nambiar v. State of Kerala reported as (2009) 17 SCC441 12. Furthermore, it would be asserted that no injury has been proved to be caused to the deceased by Appellant Nos.1 and 3, and therefore, they are liable to be acquitted of the charge under Section 302 IPC.

13. Per contra, learned Additional Public Prosecutor whilst supporting the impugned judgment in its entirety, would urge that the findings of the Ld. Trial Court require no interference. It would be asseverated that even in a case of a single injury resulting in death, the accused can be convicted under the provision of Section 302 of the IPC.

14. Further, it would be submitted that the prosecution by way of evidence on record has established beyond reasonable doubt that the Appellants CRL.A.1315/2014, 829/2012 & 452/2013 Page 14 of 30 shared the common intention to cause the fatal blow on the chest of the deceased, and therefore the mandate of the provisions of Section 34 IPC would apply to the facts of the present case.

15. We have heard the learned counsel appearing on behalf of the parties and perused the entire case record.

16. In the present case the solitary question that has been raised for our consideration is whether the act of the Appellants in causing stab injuries to the deceased, leading to his death, would amount to murder under clause (3) of Section 300 IPC or not.

17. On the facts of a case, whenever the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, it would be necessary to approach the problem in three stages. The question to be considered at the first stage being, whether the accused has done an act resulting into 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 prima facie the act of the accused amounts to culpable homicide, as defined under the

provision of Section 299 IPC. If the answer to this question is also answered in the affirmative, it would lead to the last stage viz. for consideration of the application of the CRL.A.1315/2014, 829/2012 & 452/2013 Page 15 of 30 provision of Section 300 of the IPC. At this stage, 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 IPC. If this question is answered in the negative, the offence would be culpable homicide not amounting to murder; punishable under the first or the second part of Section 304 IPC, depending, respectively, on whether the second or the third clause of Section 299 IPC is attracted. However, even if this question is answered in the positive, but the case falls under any of the exceptions enumerated in Section 300 IPC, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 IPC [Ref: State of A.P. v. Rayavarapu Punnayya, reported as (1976) 4 SCC382 18. For the purpose of adjudication of the question posed before us, it would be relevant to refer to the subject of distinction between the provisions under Sections 299 and 300 of the IPC viz. culpable homicide not amounting to murder and murder, respectively; and, in particular, between clause (b) of Section 299 IPC with clause (3) of Section 300 IPC. The Honble Supreme Court in Abdul Waheed Khan and Ors. v. State of CRL.A.1315/2014, 829/2012 & 452/2013 Page 16 of 30 A.P. reported as (2002) 7 SCC175 whilst elucidating upon this subject observed as follows: 11. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC culpable homicide is the genus and murder, its specie. All murder is culpable homicide but not vice versa. Speaking generally, culpable homicide sans special characteristics of murder is culpable homicide not amounting to murder. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide, which is defined in Section 300 as murder. The second may be termed as culpable homicide of the second degree. This is punishable under the first part of Section 304. Then, there is culpable homicide of the third degree. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide

of this degree is punishable under the second part of Section 304.

12. The academic distinction between murder and culpable homicide not amounting to murder has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences: Section 299 A person commits culpable homicide if the act by which the death is caused is done- Section 300 to certain Subject culpable homicide is murder if the act by which the death is cause is done- exceptions (a) with the intention of causing death; or (b) with the intention of causing such bodily injury as is likely to cause death; or (c) with the knowledge INTENTION (1) with the intention of causing death; or (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm 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 (4) with the knowledge that is so imminently the act CRL.A.1315/2014, 829/2012 & 452/2013 Page 17 of 30 that the act is likely to cause death. dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

13. 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.

14. 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. 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 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 CRL.A.1315/2014, 829/2012 & 452/2013 Page 18 of 30 cause death mean that death will be the most probable result of the injury, having regard to the ordinary course of nature.

15. 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 Singh v. State of Kerala [AIR 1966 SC1874:

1966. Cri LJ1509 is an apt illustration of this point.

16. In Virsa Singh v. State of Punjab [AIR 1958 SC465:

1958. Cri LJ818 Vivian Bose, J.

speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following 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.

17. The ingredients of clause thirdly of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows: (AIR p. 467, para

12) 12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 thirdly; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved; These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is CRL.A.1315/2014, 829/2012 & 452/2013 Page 19 of 30 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. 18. The learned Judge explained the third ingredient in the following words (at p. 468): (AIR para

16) 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. 19. These observations of Vivian Bose, J.

have become locus classicus. The test laid down by Virsa Singh case [AIR 1958 SC465:

1958. Cri LJ818 for the applicability of clause thirdly is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

20. Thus, according to the rule laid down in Virsa Singh case [AIR 1958 SC465:

1958. Cri LJ818 even if the intention of the 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. CRL.A.1315/2014, 829/2012 & 452/2013 Page 20 of 30 21. 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.

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. (Emphasis suppled) 19. Further, it would be relevant to note that there is no principle in law that in all cases of single blow, resulting into the death of the victim, the vigour of Section 302 IPC is not attracted. Each case of single blow has to be decided on the facts and circumstances obtaining in that case [Ref: Mahesh Balmiki @ Manna v. State of Madhya Pradesh reported as (2000) 1 SCC319 and Raj Kumar v. State of Madhya Pradesh reported as (2009) 15 SCC292.

20. On a plain reading of the decision in Abdul Waheed Khan (supra); which takes into consideration the observations made by Vivian Bose J.

in Virsa Singh v. State of Punjab reported as AIR 1958 SC465 the test on the CRL.A.1315/2014, 829/2012 & 452/2013 Page 21 of 30 anvil of which the Courts should consider the application of clause (3) of Section 300 IPC, can be summarized as follows: a) The subject injury must have been intended and should not have been caused by an accident or otherwise should not be unintentional; and b) The injury should be sufficient in the ordinary course of nature to cause death.

21. Broadly, PW-6 (the eyewitness) has deposed to the incident as follows: That on 18.04.2010, at about 10 A.M., while she was on her way to her friends house she met the deceased. The deceased was her cousin brother. They both got

engaged into a conversation and whilst simulataneously conversing and walking reached Sanjay Jheel. They both sat down there on a bench when the Appellants approached the deceased and asked him for the time. Thereafter, the Appellants asked the deceased to stand up and both of them stood up. On their standing up, the Appellants asked the deceased to hand over everything in his possession, however, PW- 6 and the deceased told the Appellants that they do not have anything and CRL.A.1315/2014, 829/2012 & 452/2013 Page 22 of 30 asked for them to be left alone. Appellant No.2 took out a knife and asked for the deceased to hand over everything in his possession or otherwise he will be killed. On the other hand, Appellant No.3 threatened PW-6 to leave from there or otherwise she too will be killed. PW-6 started walking away from the crime spot and after walking a few steps again requested to the Appellants to leave them alone. The deceased also requested the Appellants to leave them. The Appellant Nos.1 and 3 caught hold of the deceased and the Appellant No.2 stabbed the deceased on his chest. On being stabbed, the deceased started crying and after taking a few steps fell down on the ground. Thereafter, the Appellants took away the money and mobile phone of the deceased and absconded from the crime spot. PW-6 went up to the deceased while he was bleeding from his chest and asked him to get up. However, the deceased couldnt speak and was breathing heavily. PW-6 approached some boys, which included PW-3, and asked them for their help. At her request, PW-3 made the call to the police to report the incident, pursuant to which the police arrived and took the dead body of the deceased to the hospital.

22. One of the contention which was raised by the Appellants before the Trial Court in order to discredit the testimony of the sole eye-witness, PW-6 CRL.A.1315/2014, 829/2012 & 452/2013 Page 23 of 30 was that she has only deposed of one stab wound viz. Injury No.1, whereas the postmortem records two stab wounds on the body of the deceased. The Trial Court whilst rejecting this contention and holding the testimony of PW- 6 to be consistent, credible and truthful, observed as follows: 25. It is stated that as per PW6, only one stab wound was caused but as per P/M report Ex.PW5/A, deceased sufferred two stab wounds. PW6 has talked about only one stab injury inflicted by accused Mukesh on the chest of deceased. As per P/M report Ex.PW5/A, there is another stab injury present over dorsum of left hand and doctor opined that both injury No.1 and

2 are caused by single edged sharp weapon/knife. PW6 has stated that he pleaded with accused persons to leave them as they are not having any thing. On this, accused Akram threatened her to go away from there otherwise she will be killed. She started leaving from the spot, after taking few steps she again requested accused persons to leave them. As per PW6, she saw accused Imran and Mukesh caught hold deceased Dhiraj and accusecd Mukesh stabbed Dhiraj on his chest. Injury on the dorsum of left hand of the deceased shows that while being assaulted with knife as natural reaction to defend, deceased must have brought his hand in-between, as result of which he sustained this injury. Since PW6 was leaving from the spot and from some distance she saw accused stabbing deceased, it looks probable that she did not see accused inflicting injury No.2 i.e. on left hand of the deceased. Statement of PW6 is consistent. She was cross-examined by both the Ld. Defence counsels but nothing has come on record either to discredit her testimony or to establish that she is not an ocular witness to the incident and was planted as an eye witness. Ex.PW6/H is the statement of PW6 recorded by Ld. M.M. PW8 Vivek Kumar Gulia under section 164 Cr.P.C., which is exactly the same as deposed by PW6 before this I therefore do not agree with the contention raised by Ld. Court. Defence counsels. Statement of PW6 is consistent, credible and appeared to be truthful. Having considered the statements made by PW-6 in Court as well as before the Ld. Metropolitan Magistrate, we also are of the view, in keeping CRL.A.1315/2014, 829/2012 & 452/2013 Page 24 of 30 with the observations made by the Trial Court, that the testimony of PW-6 as to how the incident transpired has remained consistent and unshattered, and can therefore be relied upon. The Trial Court rightly concluded that the possible reason for PW-6 not having testified to the injury on the dorsem of the left hand (Injury No.2) could be that it was caused when she started walking away from the crime spot.

23. There were two stab injuries on the body of the deceased (Injury Nos.1 and

2) and an abrasion near the right eyebrow (Injury No.3). We are not concerned with Injury No.3 as the same is opined to have been caused due to the deceased falling, after being stabbed by the Appellants. Insofar as as Injury Nos.1 and 2 are concerned, they are stab injuries caused by the knife recovered at the instance of

Appellant No.2; Injury No.1 being sufficient in the ordinary course of nature to cause death.

24. As rightly observed by the Trial Court, Injury No.2 could have been caused as a consequence of the deceased exercising his right of defending himself by a natural reflex action against assault by Appellant No.2 with a knife. Even otherwise, it seems only logical to conclude that Appellant No.2 was not aiming for the dorsum of his left hand. CRL.A.1315/2014, 829/2012 & 452/2013 Page 25 of 30 25. However, insofar as the fatal injury is concerned i.e. Injury No.1, the same was caused by the Appellant No.2 using the knife [Ex.P9]. recovered at his instance, whilst Appellant Nos.1 and 3 had caught hold of the deceased. The Injury No.1 was on a vital part of the body viz. left side of the chest, with a force so great that it resulted into an incise wound as large as 3.3 x 1.9 cms, and as a consequence thereof, several grave and internal injuries also resulted. The Injury No.1 so caused cannot be said to be accidental, unlike Injury No.2, as with two persons holding the deceased and a stab wound already present on the dorsum of his left hand (Injury No.2), there was not much scope of movement for a young boy of an average physique. Therefore, it cannot be disputed that Injury No.1, which was sufficient in the ordinary course of nature to cause death, was caused intentionally and not accidentally.

26. The reliance placed by learned counsel on certain decisions of this Court as well as the Honble Supreme Court to establish that the present is a fit case for modifying the conviction of the Appellants from section 302 IPC to section 304 IPC, is completely misplaced, inasmuch as, they are CRL.A.1315/2014, 829/2012 & 452/2013 Page 26 of 30 distinguishable, having been rendered on the basis of the facts and circumstances as well as the evidence adduced therein.

27. In Ramesh Singh v. State of A.P. reported as (2004) 11 SCC305 the Honble Supreme Court was pleased to discuss the object of incorporating section 34 IPC as follows: 12. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code the legislature laid down the principle of joint liability in doing a

criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principle of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered from the manner in which the accused arrived at the scene and mounted the attack, the determination and concert with which the attack was made, and from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they Yusuf could Momin v. State of Maharashtra [(1970) 1 SCC696:

1970. SCC (Cri) 2

AIR 1971 SC885 .) (See Noor Mohammad Mohd. be convicted. CRL.A.1315/2014, 829/2012 & 452/2013 Page 27 of 30 13. Since common intention essentially being a state of mind can only be gathered by inference drawn from facts and circumstances established in a given case, the earlier decisions involving almost similar to determine the conclusions on facts in the case in hand facts cannot be used as a precedent 28. A plain reading of the above decision clearly postulates that section 34 IPC embodies the principle of joint liability in doing a criminal act with common intention. The common intention being a state of mind has to be inferred from the facts and circumstances of a case. If common intention is attributed to each of the accused and the act is a result thereof, then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration.

29. Furthermore, in order to attract section 34 IPC it is not necessary that each one of the accused must assault the deceased. It would suffice if it is established that all the accused shared a common intention to commit the offence and in furtherance thereof each one played his assigned role by doing separate acts, similar or diverse. [Ref: Nandu Rastogi v. State of Bihar, reported as (2002) 8 SCC9 30. The Appellants were carrying the weapon of offence/knife [Ex.P9]. when they arrived together at the crime spot to commit robbery. The Appellant Nos.1 and 3 caught hold of the deceased while Appellant No.2 CRL.A.1315/2014, 829/2012 & 452/2013 Page 28 of 30 caused stab injuries using the said knife. This circumstance coupled with the conduct of Appellant No.3, threatening to kill PW-6, conclusively establishes the fact that the Appellants shared the common intention to cause fatal injuries in furtherance of their intended object to commit robbery, and Injury No.1 was a consequence of the said shared common intention, in causing which all the Appellants played their respective assigned role.

31. Even if we presume that the Appellants did not pre-meditate causing of any fatal injury to the deceased, the presumption would be of no assistance to the Appellants, inasmuch as, intention need not necessarily involve pre-meditation.

32. Therefore, the principle of joint liability, embodied in Section 34 IPC, would apply to the act of the Appellants in causing Injury No.1 with shared common intention. The Injury No.1 being sufficient in the ordinary course of nature to cause death.

33. The question posed before us is answered in the affirmative. Injury No.1 being the result of the common intention shared by the Appellants; the injury being the one intended to be caused; and the said injury being sufficient in the ordinary course of nature to cause death, would bring the CRL.A.1315/2014, 829/2012 & 452/2013 Page 29 of 30 commission of the act of the Appellants in causing the said injury within the purview of clause (3) of Section 300 IPC i.e. Murder.

34. In view of the foregoing, there appears to be no circumstance that warrants an interference of this Court with the findings of the Ld. Trial Court.

35. Consequently, the conviction of the Appellants as recorded in the impugned judgment as well as the sentence awarded to each one of them by way of the order on sentence, are upheld.

36. The present appeals are accordingly dismissed, with no order as to costs.

37. Copy of the judgment be supplied to the Appellants through the Superintendent, Central Jail, Tihar and also be sent for updation of the records. SIDDHARTH MRIDUL, J.

NAJMI WAZIRI, J.