

**Manajar Allabux Vs. State**

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**Court :** Madhya Pradesh

**Decided On :** Mar-27-1961

**Reported in :** AIR1962MP244; 1962MPLJ12

**Judge :** H.R. Krishan and ;M.A. Razzaque, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

**Appeal No. :** Criminal Appeal No. 162 of 1960

**Appellant :** Manajar Allabux

**Respondent :** State

**Advocate for Def. :** Balwantsingh, Adv.

**Advocate for Pet/Ap. :** M.A. Khan, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Krishnan, J.**

1. The appellant Manjar son of Allabux of Jaora, a young man between 20 and 25 years of age, has been convicted under Section 302, I. P. C. for killing Munna Musalman--a neighbour of his, by stabbing him five times with a knife on THE evening of 18-10-1957. Death itself followed after about 48 hours. He has been

awarded for reasons given by the learned Sessions Judge, imprisonment for life. His brother Bhura Musalman was convicted under Section 323, I. P. C and sentenced to rigorous imprisonment for one year, but was acquitted of the charge under Section 302/34, I.P.C. He has not appealed. Otherwise simple, this case illustrates the tests for distinguishing between cases under Sections 302 and 304, I. P. C.

2. The common ground is that on that evening, while Munna was sitting on a platform along with some other neighbours, the appellant Manjar went to him. They began to quarrel, Manjar charging him with making false claim of money and Munna asserting for his part, that the claim was true and arose out of the dealings between them in buffaloes--the parties being butchers dealing in animals and meat. Certain neighbours who were with them and who are the witnesses to this quarrel and the subsequent events, separated them. Manjar went away for the time, apparently quiet, but came back, now with a knife in his hand and accompanied by his brother Bhura who was carrying a stick. As soon as he arrived where Munna and others were still sitting, he stabbed Munna with his knife on different parts of the body, causing, as already noted, five injuries. While four of them were comparatively less serious and did not go very deep, one of them, on the abdomen, was deep, and entering from the front went right through the peritoneal cavity and ruptured the left kidney on its lower part. It also ruptured the colon, that is the larger intestine. Munna was removed to the hospital and after about 48 hours died as a result of the peritonitis, itself the consequence of the stab injury.

3. The incident was proved by the eye-witnesses who are all neighbours and corroborated by the first information report which was given very shortly after the incident, it being the thana headquarter itself. This is all admitted and not challenged in appeal, But the point urged is that in view of the doctor's evidence, the case comes under Section 304 Part One, and therefore this Court should modify the conviction and reduce the sentence bearing also in mind the appellant's age. As against it, it has been urged that the case comes under Section 302, I. P. C. and as for the youth of the appellant, already he has been awarded the lesser penalty on this very ground, and there is no justification for further leniency.

4. The medical evidence is that the injured man had five marks of stabbing, their location indicating that it was an indiscriminate attack. One of the injuries was very serious and consisted externally of the entry in the peritoneal cavity and internally, of the injury on two organs. This was followed by peritonitis that is, inflammation of the peritoneal cavity, and entry of toxic matter into it. The death was due to peritonitis and not directly to the injury itself. In other words, the accused peritonitis caused death, and the external injury No. 1 and the internal injuries Nos. 6 and 7, which I have already described, caused the peritonitis. The injuries themselves, if not followed by the peritonitis, were not necessarily fatal. It is argued on behalf of the appellant, that the peritonitis was not a necessary but only an accidental consequence of the injuries; the case came under Section 304 Part One and not 302, I. P. C.

5. As authority, or rather an 'analogous' case is cited; Willie Slaney v. State of M. P., (S) AIR 1956 SC 116. I fail to see what parallel there is between the two. In that case, apart from the element of provocation, the appellate picked up a hockey-stick which was kept in the house and gave a single blow on the head and the victim died. The doctor opined that such, a blow was likely to cause death, but was not one which would in due course of natural events, necessarily result in death. In the present case, we have a knife brought from the house of the appellant for the purpose of attacking the victim and not a weapon picked up casually during a sudden quarrel. Again, there were as many as five stabs indicating deliberate intention and not a sudden loss of temper. Further, a knife and a hockey-stick, or as for that matter, any blunt weapon are on different footings. The first is necessarily a deadly instrument, in other words, one if used as a weapon of offence, is extremely likely in course of natural events to cause death. Thus, there is no analogy.

Further, the doctor's opinion, which is clear enough, cannot be taken out of the context in pieces. The immediate cause of death was acute peritonitis and if it had not intervened, it might be there was a chance of survival. But where the peritonium is cut open and the internal organs like kidney or intestines are injured, it is practically certain that toxic matter enters the peritoneal cavity, and death follows. Broadly speaking, we have to distinguish between two types of cases;

first, where the intervening cause of death, like peritonitis or pneumonia or meningitis, is only a remote and a rather improbable consequence of the injury; then it can be said that the injury is one which may, in particular circumstances, result in death, but which may not in ordinary course of nature be likely to lead it. Secondly, there is the type, where the so called complication which is the intervening cause of death, is itself a practically inevitable sequence to the injury. In that event, the probability is very high indeed, amounting to practical certainty; that is, death is a result in due course of natural events.

6. On behalf of the prosecution, certain cases have been cited, *Salebhai v. Emperor*, 49 Cri LJ 647 (2) : (AIR 1949 Nag 19), being typical. It was also one of stab wound in the abdomen and viscera-deep. In fact, the injuries were less serious than the abdominal ones in the instant case. It was held that it was one sufficient in ordinary course to result in death even though the immediate cause was gangrene and paralysis of the intestines. The Court held that such gangrene and paralysis of intestines were themselves consequences in ordinary course of nature of the injury inflicted.

7. Apart from the rulings cited by the Government Advocate, one has, in all such cases, to examine the various elements and find the answers to the question regarding the immediate occasion of the quarrel and the provocation, if any, caused by the victim himself; the availability of the weapon and the manner in which it comes in the hands of the assailant, whether he had brought it with the set purpose of attacking the victim or whether it happened to be nearabout and was picked up in course of a sudden quarrel; the nature of the weapon itself, whether it is a deadly one which is usually capable of causing fatal injuries; the part of the body at which the assailant aims, if it is well known fatal spot, like head, chest or abdomen, or if it is only a limb and an extremity; and finally, the number of times he strikes, whether he gives a single blow, or a number of blows indicating a grim resolve to cause multiple injuries. The total result of these answers will clearly lead to the decision whether it is a case coming under Section 302 or 304, I. P. C. An intervening cause or complication is by itself, not of much significance. What is of significance is, whether that is only a remote, possibility or is one which itself occurs in due course. In a case like this, a deep abdominal thrust with a knife

followed by injury to the internal organs is practically certain to result in acute peritonitis.

8. By these tests, this is clearly a case of murder under Section 302, I. P. C. and not merely of culpable homicide. Accordingly, the conviction and sentence are maintained and the appeal is dismissed.

**M.A. Razzaque, J.**

9. I agree.

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