

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th May, 2013

+ **CRIMINAL APPEAL No.429 of 2013**

BABLOO @ BABU Appellant

Through: Mr.Ajay Verma, Advocate.

Versus

STATE Respondent

Through: Ms.Richa Kapoor, APP.

+ **CRIMINAL APPEAL No.530 of 2013**

SUNIL KUMAR @ SUNNY Appellant

Through: Mr.A.J. Bhambhani, Advocate.

Versus

STATE Respondent

Through: Ms.Richa Kapoor, APP.

+ **CRIMINAL APPEAL No.63 of 2013**

SHEIKH MAZID Appellants

Through: Mr.R.K. Anand, Advocate.

Versus

STATE Respondent

Through: Ms.Richa Kapoor, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE VED PRAKASH VAISH

SANJIV KHANNA, J.: (ORAL)

These three appeals arise out of a common judgment dated 6th July, 2012 and order of sentence dated 12th July, 2012 arising out of FIR No.561/2007 recorded at Police Station Jahangir Puri. The appellants have been convicted for murder under Section 302 of the Indian Penal Code, 1860 (IPC) and sentenced to rigorous life imprisonment and fine of Rs.50,000/- and in default of payment of which, they have to undergo simple imprisonment for three months. The fine have been directed to be paid to the family members of the deceased Ram Pratap @ Rinku as the compensation under Section 357 of the Code of Criminal Procedure, 1973 ('Cr. P.C.' for short).

2. On the question whether the appellant Babloo was the perpetrator and the appellant Sunil Kumar @ Sunny and Sheikh Mazid had common intention under Section 34 IPC, the prosecution relies upon the statement of eye-witness, Madan Kumar (PW-1) and Parsuram (PW-2). PW-1 has deposed that he and the deceased were working together as plumbers and were returning to their residence Block-C Jahangir Puri, on 18th August, 2007 at 8.00 P.M. When they reached near the Gurudwara, the appellants Babloo and Sunil caught

hold of the deceased Rinku. The said appellant had an old enmity with Rinku and uttered that they would kill him. Sunil and Sheikh Mazid caught hold of Rinku and Babloo and gave a knife blow at the back side of the right thigh. PW-1 tried to intervene and save Rinku but Babloo gave another blow on the same right thigh. PW-1 raised an alarm and public gathered at the spot. In the meanwhile, Parsuram, (PW-2), brother of the deceased, came to the spot and chased the appellants, who were running away. PW-1 and 2 removed the deceased to BJRM Hospital where he was declared as brought dead.

3. PW-1's statement in chief was first recorded on 12.5.2009 and for the second time on 28.4.2010, after Sheikh Mazid who was earlier a proclaimed offender was arrested and put to trial. In his second deposition recorded on 28.4.2010, PW-1 has been more elaborate. On the core aspects PW-1 is categorical and he has identically averred that he and Rinku were working together as plumbers and on 18.8.2007 after completing the work at house in Block-B, they were going to their residence located in Block-C at Jahangir Puri. When they reached near Gurudwara wali Gali, three boys came and stopped them. At that time Babloo had given knife blows to Rinku while Sunil and Sheikh Mazid had caught hold of him. In the statement in chief, recorded on 28.4.2010, PW-2 has stated that Babloo took out the knife from his knicker and thrust it on the body of Rinku stating "aaj isko jaan se

maar denge” i.e. that they would kill him today. Thereafter, the appellant Babu (Babloo) asked Rinku and PW-1 to come to the side. They were taken to the park near the Gurudwara. The two other boys namely, Sunil and Sheikh Mazid, caught hold of them and when they reached the park all (three) boys started beating Rinku. PW-1 tried to intervene but Babloo gave knife blow on Rinku’s right thigh. The second knife blow was also given on the right thigh. At that point, PW-1 tried to intervene for the second time. PW-1 raised an alarm and public gathered there. All three boys ran away towards 400 wali Gali. In the meanwhile, Parsuram (PW-2) on his way back from Mandi saw the appellants running away. PW-1 along with PW-2 removed Rinku to the hospital.

4. We are inclined to accept and believe the statement made by PW-1 though, as noticed above, we find elaboration in the statement in chief made on 28.4.2010 viz. the statement made on 12.5.2009. The second statement is certainly more detailed but on four aspects, the two statements are identical and match each other, namely, (a) PW-1 and the deceased were returning together from work, from B- Block Jahangir Puri, when the incident occurred; (b) the location where the three appellants met PW-1 and the deceased, i.e. near the Gurudwara wali gali; (c) there was an old enmity and the appellants had stated that they would kill him and (d) the appellants Sunil and Sheikh Mazid

caught hold of PW-1 and the appellant Babloo inflicted knife blows on the deceased's right thigh.

5. Presence of PW-1 is confirmed and corroborated with the recordings made in the MLC (Ex.PW3/A) which was recorded on 18.8.2007 at 8.30 P.M. at BJRM Hospital. The MLC records the name of PW-2 as the brother of the deceased and particularly mentions that the patient was brought by his friend and relative. The said MLC (Ex.PW-3/A) was proved by Dr. Neeraj Choudhary (PW-3), who identified the handwriting and signatures of Dr. Prashant, Dr. Chander Bhan and Dr. Manideepa, who had left the services of the hospital. The patient was examined by several doctors and was referred to surgery department at 8.35 p.m. Subsequently, at 9.15 p.m., he was declared dead by Dr. Manideepa, who had made endorsement Ex.PW3/A. The body was thereafter shifted to the mortuary.

6. Ashwani Sharma (PW-17) has deposed that he had awarded sanitary work in his House No. B 151/152, Block-B, Jhangir Puri to PW-1, who along with his associate Rinku had worked in his house for 2-3 days prior to this incident. They used to start work at 10.00 a.m. and leave at about 07.00- 08.00 p.m. On the date of the incident, the said persons had continued work till 7.30 p.m. and had left thereafter. After about two days, police came to his house and made inquiries from him. He then learnt that Rinku had been killed.

7. PW-1 is the complainant and on his statement Ex.PW1/A, FIR was recorded. The statement Ex.PW1/A was recorded on 18.8.2007 at 10.40 p.m. and the FIR in question was recorded at 10.50 p.m. on the same date itself. In the complaint, PW-1 has specifically named the three appellants and had also stated that there was an old enmity which was the cause or motive behind the crime.

8. PW-2 has deposed that on 18.8.2007 at about 8.00 p.m., he was returning from his job and was passing through Block B and C, “500 wali Gali”, when he saw three boys were running towards “400 wali Gali” and one of them was having a knife stained with blood. He identified all the three boys and named them in the Court. He heard the noise ‘Mar diya’ and rushed towards “Pathiliwali Gali” near Gurudwara. There he saw his brother Ram Pratap @ Rinku was lying in an injured condition. The blood was oozing out. PW-1 was present there and he informed him that the injuries were caused with knife by the three appellants and they had run away. PW-2 chased the three appellants in “400 wali Gali” but they managed to escape. He came back to the spot and with PW-1 removed Rinku to BJRM Hospital in the rickshaw. After sometime, the doctors declared that Rinku had expired.

9. Learned counsel for the appellants have pointed out that Parsuram (PW-2) , in his deposition, has averred that he had seen

blood stained knife in the hand of Babloo but this fact is not recorded in his statement under Section 161 Cr. P.C. This shows exaggeration in the deposition and makes us cautious but this cannot be a ground to reject PW-2 entire testimony. Presence of PW-2 at the spot immediately after the occurrence and the factum that he has seen the three appellants running away has also been deposed by PW-1 and is clearly stated by PW-2 in his testimony. He had taken his injured brother to the hospital. We, therefore, accept the testimony of PW-2 to the extent that he reached the spot immediately after the occurrence and had seen the three appellants running away after having caused the injuries. Thereafter PW-2 had rushed behind them. It is important here to notice that the occurrence had taken place at 8.00 p.m. and the deceased got admitted to the hospital at 8.30 p.m. The time gap between the incident and when they reached the hospital was merely 30 minutes and the presence of PW-2 is recorded and specifically mentioned in the MLC, Ex.PW3/A.

10. Learned counsel for the appellants have questioned and raised doubt about the manner in which Sunil and Babloo were arrested on 19.8.2007. Our attention is drawn to the arrest memo Ex.PW2/D and Ex.PW2/E. The arrest memos record that the appellants Sunil and Babloo were arrested on 19.8.2007 at 4.35 p.m. and the relatives were informed. However, the column “place of arrest” is left blank.

11. SI Balbir Singh, (PW-20) has deposed that on 19th August, 2007, they had received secret information and on that basis, they had carried out a Nakabandi near Ram Lila Ground, Kaushal Cinema Road and the two appellants Babloo and Sunil were arrested. At that time, PW-2, brother of the deceased had come and identified the two appellants. PW-21 gave a similar testimony and stated that at 4.00 p.m. they had received information from a secret informer about the appellants Babloo and Sunil, that they were sitting at Chabootra, Ram Lila Ground, Kaushal Cinema Road, near the Gate. PW-2 has deposed that he came to know that the appellants Sunil and Babloo have been arrested near Ram Lila Ground and on hearing this, reached there. PW-2 had signed the arrest memo. In view of the aforesaid position, in spite of the fact that the arrest memo does not mention the place from where the two appellants were arrested, we are inclined to accept that the appellants were arrested on 19.8.2007. We may mention here that the two appellants in their statement under Section 313 Cr.P.C. in response to specific questions on their arrest, have stated that they did not know and were not arrested in the manner indicated above but on wrong allegations.

12. PW-21 has deposed that after the arrest of the appellant Babloo, he made a disclosure statement Ex.PW20/B and thereafter on the basis of the disclosure statement, a knife was recovered from his house vide

pointing out memo Ex.PW20/D. The sketch of the knife Ex.PW20/E was prepared and the same was seized and sealed vide seizure memo Ex.PW20/F. The knife was produced by the appellant Babloo from under the box and was blood stained. It was 32.7 cm long, blade was of 19.2 cm, handle was of 13.5 cm and the width of the blade was 4 cm. The knife was identified by PW-21 as Ex.P1. A similar statement has been made by PW-20, SI Balbir Singh.

13. It may be relevant to state here that the CFSL Report Ex. PW5/A and 5/B record that blood of group 'B' was found on the knife which is the weapon of offence, and it tallies with the blood group found on the pant and shirt ("8a" and "8b") which were worn by the deceased at the time of the occurrence. The clothes of PW1 and PW2 were seized and human blood of Group 'B' was found on the pant and shirt of PW-1 and PW-2 which were given numbers 1a, 1b, 2a and 2b. Thus FSL report corroborates that PW-1 and PW-2 had taken the deceased to the hospital. It corroborates the statement that PW-1 was present on the spot at the time of occurrence and PW-2 had reached the spot immediately after the occurrence.

14. This brings us to the two contentions urged before us on the involvement of the appellant Sunil and Sheikh Mazid and applicability of Section 34 IPC and whether Bablu has been rightly convicted under

Section 302 IPC and Sunil and Sheikh Mazid have been rightly convicted under Section 302 read with Section 34 IPC.

15. On the question of common intention under Section 34 IPC, the appellants have relied upon *Mithu Singh v. State of Punjab* 2001 (4) SCC 193, *Ajay Sharma v. State of Rajasthan* 1999 (1) SCC 174, *Suresh & Anr v. State of U.P.* 2001 (3) SCC 673, *Raj Kumar v. State* Vol. 89 (2001) DLT 237 (DB).

Section 34 IPC reads as under:-

“Acts done by several persons in furtherance of common intention.-- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

Section 34 makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or pre-arranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply it is not necessary that the plan should be pre-arranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is

necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and subsequent to the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 are satisfied. We must remember that Section 34 comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants. Further, the expression/term “criminal act” in Section 34 IPC refers to the physical act, which has been done by the co-perpetrators/participants as distinct from the effect, result or

consequence. In other words, expression “criminal act” referred to in Section 34 is different from “offence”. For example, if A and B strike Lathi at X, the criminal act is of striking lathis, whereas the offence committed may be murder, culpable homicide or simple or grievous injuries. The expression “common intention” should also not be confused with “intention” or “mens rea” as an essential ingredient of several offences under the Code. Intention may be an ingredient of an offence and this is a personal matter. For some offences mental intention is not a requirement but knowledge is sufficient and constitutes necessary mens rea. Section 34 can be invoked for the said offence also. (Refer *Afrahim Sheikh & Ors. Vs. State of West Bengal*, AIR 1964 SC 1263). Common intention is common design or common intent, which is akin to motive or object. It is the reason or purpose behind doing of all acts by the individual participant forming the criminal act. In some cases, intention, which is ingredient of the offence, may be identical with the common intention of the co-perpetrators, but this is not mandatory.

16. Section 34 IPC also uses the expression “act in furtherance of common intention”. Therefore, in each case when Section 34 is invoked, it has to be examined whether the criminal offence charged was done in furtherance of the common intention of the participator. If the criminal offence is distinctly remote and unconnected with the

common intention, Section 34 would not be applicable, but if the criminal offence was done or performed is attributable, is primarily connected or was a known or reasonably possible outcome of the preconcert/ contemporaneous engagement or a manifestation of the mutual consent for carrying out common purpose, it will fall within the scope and ambit of the act done in furtherance of common intention. Thus, the word “furtherance” propounds a wide scope but the same should not be expanded beyond the intent and purpose of the statute. ***Russell on Crime***, 10th edition page 557, while examining the word "furtherance" had stated that it refers to "the action of helping forward" and "it indicates some kind of aid or assistance producing an effect in the future" and that "any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting that felony." An act which is extraneous to the common intention or is done in opposition to it and is not required to be done at all for carrying out the common intention, cannot be said to be in furtherance of common intention. [Refer judgment of R.P. Sethi J. in ***Suresh Vs. State of U.P.***, (2001) 3 SCC 673].

15. When we examine the facts of the present case, we find that the acts had a history as deposed by PW-2 and even by PW-1. PW-1 even in his first statement Ex.PW1/A has referred to the previous enmity and ill-will and the factum that deceased Rinku was cornered with a purpose. It was pre meditated or a pre-arranged plan. Parsuram (PW-

2), brother of the deceased is far more direct and categorical when he deposed in the Court:-

“I was witness in a case u/s 307 IPC and the accused persons wanted to put me in fear and attacked on the person of my brother, so that I did not make any statement in that case. I refused them to do so. At one occasion, a quarrel took place with my brother Ram Partap and accused Babu as accused Babu was in drunken position. Due to these reasons, accused persons were having enmity terms with us.”

PW-2 was not cross-examined on the said averment made by him.

17. Learned counsel for the appellants have submitted that the aforesaid statement made by PW-2 is vague and is devoid of details as he has not mentioned the FIR number, name of the accused and the prosecution proceedings. This is irrelevant and immaterial. PW-2 was a witness in a case under Section 307 IPC and has deposed that the appellants had attacked his brother Rinku to put him under pressure, threat and fear. He had earlier also refused to act under their pressure and on an earlier occasion there was a quarrel between Rinku and appellant Babloo, when Babloo was drunk. We also record that FIR No.139/2007 dated 19th February, 2007 under Sections 307/34 IPC and 27 of the Arms Act has been proved and marked Ex.PW14/A. In Ex.PW14/A, PW-2 has been shown as a witness at Sr. No.3. The factum that appellant Babloo or the other two appellants Sunil and

Sheikh Mazid are not accused in the said FIR is immaterial. It is not uncommon for third persons to put pressure or give threat to witnesses at the instance and at the behest of the accused. Moreover, PW2 was not cross-examined and his testimony to the said extent went unchallenged.

18. Testimony of PW-1 recorded on 28th April, 2010 is more elaborate and clearly sets out the role of appellants Sunil and Sheikh Mazid. PW-1 and Rinku were stopped while there were returning to their home and were taken near the park. The averments made by Babloo at that time that Rinku would be finished today have been explicitly stated. It is further stated that the three appellants started giving beatings to Rinku and when PW-1 tried to intervene, Babloo gave stab blow to Rinku. At that time, appellants Sunil and Sheikh Mazid had caught hold of Rinku. Even if we ignore the statement dated 28th April, 2010 made by PW-1 in the Court, we find that his first statement dated 12th May, 2009 itself is sufficient to show common intention of the three appellants. In the statement dated 12th May, 2009, it is clearly stated that Madan Kumar (PW-1) and Rinku were coming from the narrow lane when the accused Babloo and Sunil saw them coming and caught hold of Rinku. They had an old enmity with Rinku. They stated that they would kill him. Accused Sunil and Sheikh Mazid, who was Proclaimed Offender at the time, caught hold

of Rinku while Babloo gave knife blow to him. PW-1 tried to save Rinku but Babloo gave another knife blow on the left thigh of Rinku. Thereafter, appellants ran away. PW-2 has deposed that he had seen the three appellants running away from the spot. In these circumstances, we feel that the prosecution has been able to establish common intention under Section 34 IPC.

19. The next question is whether the acts done i.e. beatings given and stab wound was in furtherance of common intention. The answer has to be in affirmative and against the appellants. This was the second occasion on which the deceased Rinku was being beaten up or there was threat to ensure that PW-2 deposes in favour of the accused in FIR No.139/2007. The appellants had come with a pre-determined mind and appellant Babloo also had a knife with him. The sketch of the knife (Ex.PW20/E) shows that the knife was 32.7 cm long, length of the blade was 19.2 cm, length of the handle was 13.5 cm and the width of the blade was 4 cm. It was a big knife. It is not a case of sudden quarrel or a dispute, which had cropped up during discussion between the appellants and Rinku. Noticeably, PW-1, who was with Rinku, was left unharmed. The appellants had carried out knife attack with a purpose and objective.

20. We also notice that the attack was made on the right thigh not on the upper body or chest of the deceased. To this extent, we agree with

the appellants' counsel that the attack was not done with the intention to kill or intention to cause an injury which was sufficient in ordinary course of nature to cause death. But the facts prove the prosecution version that the attack was done with a view to create fear and threat, as PW-1 was to depose as a witness in FIR No.139/2009.

21. The next question which arises for consideration is whether the offence in question is covered by Clause III to Section 300 IPC. The said clause applies when an accused causes the intended injury, which is a question of fact and subjective to each case. Thereafter, we have to objectively examine whether the injuries caused is sufficient in ordinary course of nature to cause death. This is the objective test. For application of the second or the objective part, the intention of the accused is immaterial and it is not required and the Court should not examine whether the accused was aware that the injury caused would result in death. This is clear and elaborately explained by the Supreme Court in *Virsa Singh Vs. State of Punjab*, AIR 1958 SC 465 wherein it has been observed as under:-

“12. Once that is found, the enquiry shifts to the next clause—

“and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.”

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that is to

say, *if the circumstances justify an inference* that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, *and it can be shown* that the blow landed in the region of the heart *by accident*, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining—

“and the bodily injury intended to be inflicted”

is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 “thirdly”;

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

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

17. 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.

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 “thirdly”. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

X X X X X

24. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or

if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact; and whether the conclusion should be one way or the other is a matter of proof, where necessary, by calling in aid all reasonable inferences of fact in the absence of direct testimony. It is not one for guesswork and fanciful conjecture.”

In case of *State of U.P. v. Virendra Prasad*, (2004) 9 SCC 37 it has been held that:

“8. 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.

9. 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 probability 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.”

Further, in *Laxman Kalu Nikalje v. State of Maharashtra*, (1968)

3 SCR 685, it was expounded that:

11. That section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts; the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found on the person of Ramrao. But the second part in our opinion is not fulfilled, because but for the fact that the injury caused the severing of artery, death might not have ensued. In other words, looking at the matter objectively, the injury which Laxman intended to cause did not include specifically the cutting of the artery but to wound Ramrao in the neighbourhood of the clavicle. Therefore, we are of opinion that the *thirdly* of Section 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Laxman did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Laxman. The matter therefore comes within the third part. The act which was done was done with the knowledge that Laxman was likely by such act to cause the death of Ramrao. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 of the Indian Penal Code as culpable homicide not amounting to murder. We accordingly alter the conviction of Laxman from Section 302 to Section 304 of the Indian Penal Code and in lieu of the sentence of imprisonment for life imposed on him, we impose a sentence of rigorous imprisonment for 7 years. With this modification, the appeal shall stand dismissed.”

22. When we apply the aforesaid ratio to facts of the present case and looking at the nature of injury and the part of body on which knife and stab wound was given, we feel that the present case would fall under Section 304, Part-I IPC. To this extent, we agree with the three appellants as injuries were caused on the right thigh and the object and motive for causing the injuries, as is apparent, was to give threat to PW-2. It was argued that the injuries in question, as per the post mortem report (Ex.PW4/A) had resulted in cutting the right femoral vessels. Our attention is drawn to the testimony of Dr. Kulbhushant Goel (PW-4), who had conducted the post mortem. The post mortem report records the following external injuries:-

“(i) Incised penetrating wound 4×1 cm over medial aspect of right thigh about 16 cm below medial end of right inguinal ligament placed transversely. The front angle was more acute than the posterior one. Bleeding was present.

(ii) Incised penetrating wound 2×0.75 cm placed transversely and slightly oblique over front of right thigh about 19 cm below right mid inguinal ligament. Angles of the wound were acute.”

Thereafter, PW-4 has stated as under:-

“On exploration Injury No.(i) communicated the injury no.2 internally. Right femoral vessels and muscles in the track were cleanly cut. Vessels were completely severed. Massive blood clots were seen in the injury track and surrounding tissues. The direction of the injuries was left to right and slightly downwards and forwards.”

23. In response to a specific court question, PW-4 had stated as under:-

“Court Question:- Whether injuries caused to the injured on his vital part or not?

Ans:- It is correct that thigh is not a vital part of the body, but in this case the femoral vessel was severely damaged and femoral vessel is very large vessel, which supplied the blood to whole lower limb and then pressure of blood is very high in the vessel and any injury of such kind is always fatal. So, the injury of femoral vessel in this case was sufficient to cause death in ordinary course of nature.”

24. PW-4 has fairly stated that the injury in question was at a non-vital part of the body, but had resulted in damage to the femoral vessel, which is a large vessel and supplies blood to the whole of the lower limb. It is further stated that the injury to such vessels is always fatal. However, the question is while making the said strike with a knife, the appellant Babloo had the necessary intention to cause the aforesaid injury No.1 or during the grapple and when the strike was made, by chance it had fallen at the said part. Thigh is a considerably large area and it is difficult to accept that the appellant Babloo would have made the strike at the area which he had determined. In a grapple there are sudden and swift movements. It also appears that the intention was to cause injuries on the upper leg but not at a vital part of the body. The knife injuries were aimed at the right thigh i.e. the lower portion of the body as it would result in only an injury. Thus, we convert the

conviction of the appellant from under Section 302 IPC to 304, Part-I IPC. In *Dewan Chand v. The State*, 1984 CrL.L.J. 1045, a Division Bench of Delhi High Court has held that:

“(9) There is no reason to disbelieve Pw 3, Pw 7 and Pw 9. Statement of Daulat Ram was recorded and on the basis of the same, first information report was recorded with promptness. However, the case against Gopal is not free from doubt. Daulat Ram in his statement merely stated that Gopal had conspired with Dewan Chand. No overt act showing his common intention was alleged. During evidence, however, some improvement had been made and it has been stated by Pw 3, Pw 7 and Pw 9 that he caught hold of Dwarka Prasad and exhorted Dewan by saying "Maro Sale Ko". In view of the fact that the aforesaid was not mentioned in the statement of Daulat Ram casts doubt about the making of the exhortation and catching hold of Dwarka by Gopal. So that there should be a common intention there must be meeting of minds to commit a particular offence. There should be some pre-arranged plan even though the said plan is formed all of a sudden or at the spur of the moment. Existence of such pre-arranged plan does not stand established and, Therefore, it cannot be said that the injury to Dwarka Parshad was caused in furtherance of common intention of the appellants. That being so, Gopal must be given benefit of doubt.

10. Then we are confronted with the question as to what offence was committed by Dewan Chand, appellant. Definition of murder is given in Section [300](#) IPC. The first clause of that definition says that culpable homicide is murder if the act by which the death is caused is done with the intention of causing death. In the present case there is no circumstance leading to the conclusion that Dewan Chand wanted to cause the death of Dwarka Parshad. It is only clause 3rdly which can have the possibility of application and that clause reads that culpable homicide is murder if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary

course of nature to cause death. In the present case, cutting of femoral artery was sufficient in the ordinary course to have caused death but it cannot be said that the appellant Dewan Chand had the intention to inflict the particular injury of cutting of femoral artery. He only inflicted knife blow on thigh which is not vital part and it was only co-incidence that the aforesaid artery was cut. In a similar case in *Paramjit Singh and another v. The State*, 23(1983)DLT338, we held that the offence committed was one punishable under second part of Section 304 IPC.”

25. The last question pertains to the quantum of sentence. In the present case, we have noticed the motive and object behind the crime, which was to threaten a witness and force him to make a palatable statement at the behest and as per the directions of the present appellants. The offence in question is, therefore, heinous and serious and the appellants do not deserve a sympathetic approach.

26. In these circumstances, the appellant Babloo is sentenced to Rigorous Imprisonment for a period of 10 years and fine of Rs.10,000/-. The appellants Sunil and Sheikh Mazid are sentenced to Rigorous Imprisonment for a period of 08 years and fine of Rs.8,000/- each. We have reduced the quantum of fine noticing that the three appellants have been represented by Amicus Curiae and are not in a position to engage their own private counsel. In default of payment of fine, appellant Babloo will undergo Simple Imprisonment for a period of three months and appellants Sunil and Sheikh Mazid will undergo Simple Imprisonment for a period of two months each. Fine, if

collected, will be paid to the family members of the deceased Rinku. The appellants will be entitled to benefit of Section 428 Cr.P.C. The appeals are accordingly disposed of upholding the involvement of the three appellants, but converting the conviction from under Section 302 IPC to Section 304, Part-I. Accordingly we have modified the sentence.

(SANJIV KHANNA)
JUDGE

(VED PRAKASH VAISH)
JUDGE

May 10, 2013
Gm/NA