

**IN THE HIGH COURT OF MADHYA PRADESH****AT INDORE****BEFORE****HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR****ON THE 29th DAY OF OCTOBER, 2025****CRIMINAL APPEAL No. 295 OF 2000****ATUL PAWAR***Versus***STATE OF MADHYA PRADESH****AND****CRIMINAL APPEAL No. 326 OF 2000****RAJESH SONI***Versus***STATE OF MADHYA PRADESH**

Appearance:

Shri Vivek Singh, Senior Advocate along with Shri Shivendra Singh Rawat, Advocates for the appellants.

Shri Santosh Singh Thakur – GA for the respondent/State.

JUDGMENT

1. These criminal appeals under Section 374 of the Code of Criminal Procedure, 1973 are filed assailing the judgment of conviction and order of



sentence dated 26.02.2000 passed by the Third Additional Sessions Judge, Ujjain, District - Ujjain in S.T. No. 240 of 1998, whereby the learned Sessions Judge convicted the appellants Atul Panwar and Rajesh Soni for offence punishable under Section 304-I of IPC and sentenced both of them to undergo rigorous imprisonment for a period of 7 years each with fine of Rs. 2,000/- with default stipulation of rigorous imprisonment for one year in default of payment of fine.

2 The case of prosecution, in brief, is as under:-

A. The injured Manzoor Khan was brought to the District Hospital Ujjain on 27.12.1997 around 9:45 in the night. Head Constable Prakash Narayan reached District Hospital, Ujjain and recorded statement of Manzoor Khan, Ramesh and Aslam. Accordingly, FIR (Ex.P-14) for offence punishable under Sections 341, 294, 324 read with Section 34 and 506 of IPC was registered at P.S. Madhav Nagar against Atul Panwar and Rajesh Gaikwad. Manzoor Khan was examined by Dr. R.K. Tiwari on 27.12.1997. Two incised cut wounds were found on left thigh and below the left buttock of Manzoor Khan. He was referred for treatment to Residents Surgical Officer. Dr. Yogendra Kumar Vyas examined Manzoor Khan in emergency surgical ward and found that Manzoor Khan was going into coma shock. Manzoor Khan underwent operation for injuries. Dr. Yogendra Kumar Vyas and Dr. Chouhan prepared surgical operation report (Ex.P-6). Manzoor Khan was referred to further treatment to the MY Hospital Indore. Dr. Vyas opined that the injuries caused to Manzoor Khan were life threatening due to excessive bleeding. Dr. Ramesh Mehta and Dr. Thatte treated Manzoor Khan at T. Choithram Hospital. Manzoor Khnn was found vomiting blood, he was suffering from severe loss of blood. Manzoor Khan died on 4.1.1998 around 12:00. Dr. Thatte opined that Manzoor Khan has died due to



injury caused on his thigh. Dr. Raj Kumar Singh conducted postmortem examination on body of Manzoor Khan and opined that Manzoor Khan has died due to cardio-respiratory failure caused by the injuries and complications of the injury. Manzoor Khan had suffered cellulitis and septicemia .

B. The statements of witness Ramesh Sharma, Akhilesh Yadav, Rais Khan and Dilawar Khan were recorded. Dilawar Khan filed a complaint to I.G. Police (Ex.P-4) requesting proper investigation. It was revealed that Atul, Rajesh, SheKhanr and Jitendra Singh had an altercation with Manzoor Khan on 27.12.1997. Atul and Rajesh assaulted Manzoor Khan with knife. Manzoor Khan died due to injury caused by Atul and Rajesh. Accordingly, prosecution for offence punishable under Section 304-I of IPC was added. The final report was submitted on completion of investigation.

C. The Chief Judicial Magistrate Ujjain committed the case for trial to the Sessions Court *vide* order dated 13.11.1998. The learned Sessions Judge framed charges for offence punishable under Section 302 of IPC, in the alternative Section 302 read with Section 34 of IPC against the accused Atul, Rajesh, SheKhanr and Jitendra Singh.

D. Learned III Additional Sessions Judge Ujjain *vide* judgment dated 26.02.2000 passed in ST No. 240 of 1998 acquitted the accused Shekhar and Jitendra Singh of all the charges but convicted the accused/appellants Atul and Rajesh for offence punishable under Section 304 Part I of IPC and sentenced each of them as stated in para 1 of the judgment.

3 Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 26.02.2000, present appeals are filed assailing the



judgment on following grounds:-

- (i) The impugned judgment is contrary to the law and facts on record.
- (ii) The evidence of the proposed eye witness is unnatural and against human probabilities.
- (iii) The witness have stated that they have named the accused on information of Manzoor Khan.
- (iv) The test identification parade was not conducted to verify the identity of the appellants.
- (v) The evidence with regard to identity and complicity of appellants is doubtful.
- (vi) The injury caused to Manzoor Khan was on thigh which is not a vital part of body.
- (vii) There was no intention or knowledge that the injury will prove fatal.
- (viii) Manzoor Khan had died after 8 days of incident, therefore, the alleged offence is not made out.

On these grounds, it is requested that the impugned judgment be set aside and appellants be acquitted.

4 Learned counsel for the appellants, in addition to the grounds mentioned in the appeal memo contended that identity of appellants/accused was not proved beyond reasonable doubt. Learned counsel referring to the arrest memo of accused Rajesh and the evidence of the arresting officer contended that the name and identity of accused Rajesh was not established beyond doubt. The prosecution has failed to prove complicity of the appellant Rajesh in the alleged offence as the test identification parade was not conducted. Learned trial Court disbelieved the evidence of Ramesh Sharma (PW-3), Akhilesh Yadav (PW-4) and Rais Khan (PW-5), whose police statements were recorded after delay of 6 months. Therefore, the conviction of appellants is erroneous. Learned



counsel further referred to the medical evidence to contend that Manzoor has died due to septicemia which may be caused by medical negligence, therefore, the injury was not sole reason for death of Manzoor. The injuries were not caused on any vital part of the body. So the intention or knowledge to cause death is not made out against the accused. The learned counsel referred to the judgments in case of *Rajeevan and another Vs. State of Kerala (2003) 3 SCC 355* and *Gopal Singh Vs. State of Madhya Pradesh (1972) 3 SCC 268* to buttress his contentions.

5. *Per-contra*, learned counsel for the State opposed the appeals by submitting that complicity of accused Atul and Rajesh is clearly made out from the evidence of eye witness. The death of Manzoor was direct cause of the injury inflicted on his thigh. Manzoor suffered severe loss of blood which ultimately resulted in his death. Therefore, the intention or knowledge, supported by the medical opinion, was proved beyond doubt. The trial Court did not commit any error in convicting the appellants for offence punishable under Section 304 Part I of IPC. The appeals are meritless.

6. Heard both the parties. Perused the appeal memos and the record of trial Court.

7. The points for determination in both the appeals are as under:-

- a) Whether the accused/appellants Atul and Rajesh inflicted the injury by knife on thigh and below left buttock of Manzoor Khan on 27.12.1997?
- b) Whether Manzoor Khan died due to injury caused by the appellants/accused Atul and Rajesh?
- c) Whether the appellants/accused Atul and Rajesh had caused injury to Manzoor Khan with the intention of causing death or assaulted him with intention or knowledge of causing such bodily injury, as is likely to cause death?

**POINT FOR DETERMINATION No.1 - REASONS FOR CONCLUSION**

8. Dilawar Khan (PW-2) deposed that Aslam came to his house and informed that somebody has assaulted his brother Manzoor with knife near Rohit Paan Corner. Manzoor is taken to hospital. When he reached District Hospital, Ujjain, Manzoor was in operation theater. Next morning around 11:00 am, he had conversation with Manzoor. Manzoor informed that Rajesh Soni and Atul Panwar had assaulted him with knife. Manzoor further informed that he and Ramesh Sharma were going to District Hospital. Atul Panwar, Rajesh Soni, Jitu Chouhan and Shekhar were standing on the road. When he asked them to leave the way, they abused him and assaulted him. Manzoor was shifted to M.Y. Hospital, Indore. He was admitted at Choithram Hospital, Indore. Manzoor died during treatment at Choithram Hospital, Indore on 04/01/1998. Dilawar Khan's evidence with regard to conversation with Manzoor before his death remained unaffected in the cross-examination.

9. Dr. R.K. Tiwari (PW-12) stated that he was working as Surgeon at District Hospital, Ujjain on 27/12/1997. The injured Manzoor Khan S/o Gaus Mohd. was brought by Ramesh S/o Biharilal. He examined Manzoor and found two cut wounds. The condition of Manzoor was serious, therefore, he was admitted for surgery. This evidence shows that Ramesh S/o Biharilal was with Manzoor at the time of incident and he had taken Manzoor for treatment to District Hospital, Ujjain.

10. Ramesh Sharma PW-3 deposed that he and Manzoor were going to District Hospital on Luna. They reached near Rohit Paan shop in Sethi Building around 9:00 in the night. Manzoor asked the accused to walk on side of the road. Atul, Jitendra, Shekhar and Rajesh Soni abused



Manzoor. Manzoor get down from his vehicle. There was a scuffle. Atul Panwar and Rajesh Soni assaulted Manzoor with knife. Manzoor fell down. He was bleeding. Akhilesh, Rais, Santosh and Aslam came there. They rescued Manzoor. Thereafter, he took Manzoor to District Hospital on Luna. Dilawar Khan, brother of Manzoor came to District Hospital after sometime. Manzoor was taken to operation theater. Later, Manzoor was shifted to M.Y. Hospital Indore, In cross-examination of para-16, Ramesh Sharma specifically stated that Rajesh had assaulted Manzoor with knife. The testimony of Ramesh Sharma remained unrebutted in cross-examination.

11. Ramesh Sharma (PW-3) has stated that Akhilesh and Rais Khan came to rescue at the time of incident. Akhilesh Yadav (PW-4) and Rais Khan (PW-5) stated that Atul Panwar, Rajesh Soni, Shekhar and Jitendra were abusing and assaulting Manzoor Khan near Rohit Paan Corner. Rajesh Soni assaulted Manzoor with knife on his thigh, thereafter, Atul Panwar also assaulted Manzoor with knife. They intervened and rescued Manzoor. Manzoor fell down on ground. He was profusely bleeding. Ramesh Sharma took Manzoor to District Hospital on his Luna. Manzoor was admitted at District Hospital.

12. Learned counsel for the appellants submitted that the police statement under section 161 of the Cr.P.C of these witness Akhilesh and Rais were recorded after delay of almost six month, therefore, their presence on the spot is doubtful. Ramesh Sharma (PW-3) was present at the spot of the incident. He had taken the injured Manzoor to District Hospital, which was corroborated by the treating doctor, Dr. R.K. Tiwari (PW-12). Ramesh Sharma has specifically mentioned presence of Akhilesh Yadav and Rais Khan on the spot, therefore, mere delay in



recording of their statements by the Investigation Officer is not sufficient to discard their corroborative testimony. Thus, the evidence of the eye witnesses Ramesh Sharma, Akhilesh Yadav and Rais Khan unanimously establish that Rajesh Soni and Atul Panwar had assaulted Manzoor with knife on 27/12/1997 near Rohit Paan Corner. Manzoor suffered injury and was taken for treatment to District Hospital, Ujjain.

13. The trial Court considering the evidence of Ramesh Sharma (PW-3), Dilawar Khan (PW-2), Akhilesh Yadav (PW-4) and Rais Khan (PW-5) concluded that although the complicity of Shekhar and Jitendra in the alleged incident and their participation in inflicting injury to Manzoor Khan was doubtful, there is no inconsistency or contradiction in the prosecution evidence with regard to the fact that Atul and Rajesh had assaulted Manzoor Khan with knife. The conclusion of trial Court, in view of the above discussion, is well reasoned and appropriate.

14. Learned counsel for the appellants forcefully argued that there is material discrepancies with regard to identification of accused Rajesh. Ramesh (PW-3) in his police statement (Ex.D-2) informed that the assailant was Rajesh Gaikwad resident of Mahananda Nagar. Later, he stated that assailant was Rajesh Chabutara of Dabaripeetha. Learned Counsel referred to para 5, 10 and 11 of testimony of Ramesh (PW-3) to point out the inconsistencies. Head Constable Prakash Narain Dubey informed that he has arrested Rajesh Soni *vide* arrest memo (Ex.P-8) on his appearance before the P.S. Madhav Nagar. He stated that Rajesh himself told him that he is Soni and also known as Gaikwad. Rajesh did not tell him that he is resident of Mahananda Nagar. He tried to search Rajesh in Mahananda Nagar but the local residents informed that Rajesh lives in the city. He tried to search Rajesh in city, but could not find him.



Learned counsel referring to arrest memo (Ex.P-8) contended that “@ Gaikwad” was added subsequently. Learned Counsel further contended that no test identification parade was conducted to verify identity of Rajesh Gaikwad as Rajesh Soni during investigation. Thus, the prosecution with regard involvement of Rajesh in the alleged offence is doubtful.

15. The test identification parade under Section 9 of the Evidence Act is conducted for the purpose of satisfaction of the investigation officer with regard to identity of assailant. It is not a substantive evidence. The substantive evidence with regard to identity of assailant is “Dock identification” conducted in the Court during trial.

16. The Supreme Court in case of *R. Shaji v. State of Kerala, (2013) 14 SCC 266*, observed as under-

57. It has further been submitted that the prosecution failed to hold the test identification parade. Therefore, the prosecution case itself becomes doubtful.

58. In *Vijay v. State of M.P.* [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] this Court, while dealing with the effect of non-holding of a test identification parade, placed very heavy reliance upon the judgments of this Court in *Santokh Singh v. Izhar Hussain* (1973) 2 SCC 406: AIR 1973 SC 2190, *State of H.P. v. Lekh Raj* (2000) 1 SCC 247 : AIR 1999 SC 3916 and *MalKhansingh v. State of M.P.* (2003) 5 SCC 746 and held that the evidence from a test identification parade is admissible under Section 9 of the Evidence Act, 1872. The identification parade is conducted by the police. The actual evidence regarding identification is that which is given by the witnesses in court. A test identification parade cannot be claimed by an accused as a matter of right. Mere identification of an accused in a test identification parade is only a circumstance corroborative of the identification of the accused in court. Further, conducting a test identification parade is meaningless if the witnesses know the accused, or if they have been shown his photographs, or if he has been exposed by the media to the public. Holding a test identification parade may be helpful to the investigation to ascertain whether the investigation is being conducted in a proper manner and with proper direction. (See also *Munna Kumar Upadhyay v. State of A.P.* (2012) 6 SCC 174)

59. In the instant case, the witnesses, particularly Jose (PW 8), Baiju (PW 9), Reji (PW 11) and Shanavas (PW 12), made it clear that they were acquainted with the appellant since he was posted in the control room of their city. Moreover, just after the incident took place, the same being a sensitive case



wherein the main accused was a highly ranked official of the Police Department, wide publicity was given to the same by the media. In the light of the aforementioned fact situation, the holding/non-holding of a test identification parade loses its significance. It is also pertinent to note that the defence did not put any question to B. Muralidharan Nair (PW 77), the investigating officer in relation to why such TI parade was not held.

61. Be that as it may, when a statement is recorded in court, and the witness speaks under oath, after he understands the sanctity of the oath taken by him either in the name of God or religion, it is then left to the court to appreciate his evidence under Section 3 of the Evidence Act. The Judge must consider whether a prudent man would appreciate such evidence and not appreciate the same in accordance with his own perception. The basis for appreciating evidence in a civil or criminal case remains the same. However, in view of the fact that in a criminal case, the life and liberty of a person is involved, by way of judicial interpretation, courts have created the requirement of a high degree of proof.

17. The eye witness Ramesh Sharma (PW-3) supported by other eye witness Akhilesh Yadav (PW-4) and Rais Khan (PW-5) have specifically identified all accused during their evidence before the trial Court and specifically stated that Rajesh Soni had assaulted Manzoor Khan with knife. The testimony with regard to the identification of Rajesh Soni as assailant remained unrebutted in cross-examination. Apparently, there is no discrepancy with regard to identity of Rajesh Soni. Therefore, the benefit of precedents relied upon by the appellants is not available.

18. The learned trial Court in para 25 of the judgement has dealt with this contention and concluded that the minor discrepancy with regard to pet/alias name and the residence is not sufficient to discard the evidence with regard to complicity of accused/appellant Rajesh Soni in the alleged offence. The finding of trial Court is appropriate in view of above discussion.

POINT FOR DETERMINATION No. 2- REASONS FOR CONCLUSION

19. Dr. R.K. Tiwari (PW-12) deposed that he had examined Manzoor Khan brought by Ramesh Sharma at District Hospital, Ujjain on



27/12/1997. He found one cut injury below left buttock and one cut injury on outer side of left thigh of Manzoor Khan. Manzoor was bleeding. His condition was serious. The injury was caused within two hours of the examination. The evidence of Dr. R.K. Tiwari (PW-12) and primary medico- legal examination report Ex.P/12 and 13 corroborate the alleged incident that Manzoor Khan has sustained injury around 9:00 pm on 27/12/1997. It further corroborates the nature of injury and the possible weapon used to inflict such injury.

20. Dr. Yogendra Kumar Vyas (PW-6) , the treating surgeon deposed that he had treated Manzoor Khan on 27/12/1997 at District Hospital, Ujjain. Manzoor had sustained two incised wounds on his thigh. He was bleeding. Manzoor was going into shock, therefore, he was administered four bottles of blood. He and Dr. Chouhan, Surgical Specialist operated Manzoor. They found that the incised wound was bone deep. It was profusely bleeding. The vessels were cut. On 02/01/1998, Manzoor was referred for treatment to M.Y. Hospital, Indore *vide* referral letter (Ex.- P/7). Dr. Yogendra Kumar Vyas (PW-6) opined that the injury caused to Manzoor was life threatening in absence of treatment and due to excessive bleeding. In para –9 of cross-examination, Dr. Yogendra Kumar Vyas (PW-6) admitted that the injuries were not on any vital part.

21. Dr. Chandrashekhar Thatte (PW-8) deposed that Manzoor Khan was admitted at Choithram Hospital, Indore on 03/01/1998. Manzoor Khan had sustained incised wound on left thigh. He was vomiting blood and blood was oozing from his anus. He was severely anemic. He was administered blood and treated by medicine. On 04/01/1998 around 12:00 in the noon, Manzoor Khan expired. Manzoor Khan died due to injury



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caused on his thigh. Dr. Ramesh Gupta (PW-9), C.M.O of Choithram Hospital, Indore also deposed on same lines.

22. Dr. Rajkumar Singh (PW7) conducted postmortem examination of Manzoor Khan on 05/01/1998. Dr. Singh opined that Manzoor had died of cardio respiratory failure due to injury and its complications. There were traces of cellulite and septicemia. Thus, the medical evidence proves the fact that Manzoor has died on 04/01/1998 due to injury caused on his left thigh by knife in the night of 27/12/1997. Manzoor Khan was continuously undergoing treatment after the incident. The death of Manzoor Khan is not attributal to any other intervening factor or circumstance.

23. The learned trial Court in para 13 to 18 and 26 of the judgement has considered the medical evidence to conclude that there was continuity in treatment of Manzoor Khan. His condition deteriorated day by day and ultimately, he succumbed to death due to injury inflicted in the alleged incident and its complications. The conclusion of trial Court is based on medical evidence available on record.

POINT FOR DETERMINATION No. 3- REASONS FOR CONCLUSION

24. The trial Court in para 29 of the judgement has considered the circumstances with regard to alleged incident and concluded that both the accused assaulted Manzoor Khan without any premeditation in the heat of moment during quarrel. Therefore, the offence punishable under Section 302 or Section 302 read with Section 34 of IPC is not made out. However, while inflicting the injury with knife on the thigh of Manzoor Khan, the assailants Atul and Rajesh were aware of the fact that the injury



might cause death of Manzoor Khan. They had knowledge that the injury is sufficient to cause death of Manzoor Khan.

25. The Supreme Court in case of *Khokan v. State of Chhattisgarh*, reported in **(2021) 3 SCC 365**, held as under-

13. Now so far as the reliance placed upon the decision of this Court in *Sanjay v. State of U.P.*, (2016) 3 SCC 62 by the learned counsel appearing on behalf of the appellant-accused is concerned, on considering the said decision, we are of the opinion that in the facts and circumstances of the case, the said decision shall not be applicable to the facts of the case on hand. In the said case, the death occurred 62 days after the occurrence due to septicaemia. In between, the deceased was discharged from the hospital in good condition and he survived for 62 days. Therefore, having regard to the fact that the deceased survived for 62 days and that his condition was stable when he was discharged from the hospital, this Court was of the opinion that the Court cannot draw inference that intended injury caused was sufficient in ordinary course of nature to cause death so as to attract Section 300 Thirdly IPC. Thereafter, on facts, this Court modified the conviction from that of Section 302 IPC to Section 304 Part I IPC and sentenced the accused to undergo 10 years' RI. There is no absolute proposition of law laid down by this Court in the said decision that in all cases where the deceased died due to septicaemia, the case would fall under Section 304 Part I IPC. In the present case, though the deceased died due to septicaemia, however, it is required to be noted that he died while taking treatment in the hospital and that too he died within three days from the date of occurrence of the incident. Therefore, on facts, the said decision shall not be applicable.

14. However, at the same time, it is also required to be noted that the deceased was admitted to the hospital after 24 hours and thereafter he died within three days due to septicaemia. If he was given the treatment immediately, the result might have been different. In any case, as observed hereinabove, there was no premeditation on the part of the accused; the accused did not carry any weapon; quarrel started all of a sudden and that the accused pushed the deceased and stood on the abdomen and therefore, as observed hereinabove, the case would fall under Exception 4 to Section 300 IPC and neither Clause 3 of Section 300 nor Clause 4 of Section 300 shall be attracted. Therefore, as observed hereinabove, at the most, the accused can be said to have committed the offence under Section 304 Part I IPC.

26. In matter of *Nankaunoo v. State of U.P.*, reported in **(2016) 3 SCC 317**, it was held that-

10. The learned counsel for the appellant then contended that the gunshot injury was on the lower part of the left thigh which is a non-vital organ and it cannot be said that the appellant intended to cause the death of the deceased and therefore the conviction of the appellant under Section 302 IPC is not



sustainable. In the light of the above contention, the question falling for consideration is whether the conviction of the appellant under Section 302 IPC is sustainable?

11. Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of Section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. Considering clause Thirdly of Section 300 IPC and reiterating the principles stated in *Virsa Singh case* [*Virsa Singh v. State of Punjab*, AIR 1958 SC 465 : 1958 Cri LJ 818] , in *Jai Prakash v. State (Delhi Admn.)* [*Jai Prakash v. State (Delhi Admn.)*, (1991) 2 SCC 32 : 1991 SCC (Cri) 299] , para 12, this Court held as under : (SCC p. 41)

“12. Referring to these observations, Division Bench of this Court in *Jagrup Singh case* [*Jagrup Singh v. State of Haryana*, (1981) 3 SCC 616 : 1981 SCC (Cri) 768] , observed thus : (SCC p. 620, para 7)

‘7. ... These observations of Vivian Bose, J. have become locus classicus. The test laid down in *Virsa Singh case* [*Virsa Singh v. State of Punjab*, AIR 1958 SC 465 : 1958 Cri LJ 818] , for the applicability of clause Thirdly is now ingrained in our legal system and has become part of the rule of law.’

The Division Bench also further held that the decision in *Virsa Singh case* [*Virsa Singh v. State of Punjab*, AIR 1958 SC 465 : 1958 Cri LJ 818] has throughout been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury, that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas under the second part whether it was sufficient to cause death, is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The ‘intention’ and ‘knowledge’ of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words ‘intention’ and ‘knowledge’ and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences



should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end."

12. The emphasis in clause three of Section 300 IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place.

13. Keeping in view the above principles, when we examine the facts of the present case, the deceased sustained gunshot wound of entry $1\frac{1}{2}" \times 1\frac{1}{2}"$ on the back and inner part of left thigh, six gunshot wounds of exit each $\frac{1}{3}" \times \frac{1}{3}"$ in size in front and middle left thigh. Due to the occurrence in the morning at the barber shop of the deceased, the appellant emerged from the northern side of the grove carrying pistol in his hand and fired at the deceased. The weapon used and the manner in which attack was made and the injury was inflicted due to premeditation clearly establish that the appellant intended to cause the injury. Once it is established that the accused intentionally inflicted the injury, then the offence would be murder, if it is sufficient in the ordinary course of nature to cause death. We find substance in the contention of the learned counsel for the appellant that the injury was on the inner part of left thigh, which is a non-vital organ. Having regard to the facts and circumstances of the case that the gunshot injury was caused in the inner part of left thigh, the sufficiency of injury to cause death must be proved and cannot be inferred from the fact that death has taken place. But the prosecution has not elicited from the doctors that the gunshot injury on the inner part of left thigh caused rupture of any important blood vessel and that it was sufficient in the ordinary course of nature to cause death. Keeping in view the situs and nature of injury and in the absence of evidence elicited from the doctor that the said injury was sufficient in the ordinary course of nature to cause death, we are of the view that it is a fit case where the conviction of the appellant under Section 302 IPC should be under Section 304 Part I IPC.

(Also relied *Gokul Parashram Patil v. State of Maharashtra*, (1981) 3 SCC 331)

27. In view of the above discussions, it is concluded that the prosecution has proved beyond doubt that There was an altercation and



scuffle between deceased Manzoor Khan and accused Rajesh Soni and Atul Panwar around 9:00 pm in the night of 27.12.1997. The accused Atul Panwar and Rajesh Soni had assaulted Manzoor Khan with knife on his thigh and below the left buttock. Manzoor Khan has died due to the injuries and its' complications. Learned trial Court committed no error in holding that the accused had assaulted Manzoor Khan by knife with knowledge that the bodily injury inflicted to Manzoor Khan is likely to cause death. Therefore, the trial Court had committed no error in convicting the accused/appellants Atul Panwar and Rajesh Soni for offence punishable under Sections 304 Part I of IPC. The appeals assailing the conviction has no merit, hence, dismissed. The impugned Judgement of conviction dated 26.02.2000 is affirmed.

28. Now, the propriety of the sentence is considered. Both the accused Rajesh Soni and Atul Panwar were aged around 20 years at the time of alleged incident. The incident happened in the heat of moment by the youngsters, when the deceased had scuffled with them over petty issue of walking on midway. There was no premeditation. Both the accused had inflicted single knife blow to the deceased. They did not act in cruel manner. Almost 28 years have elapsed since the alleged incident. The bitter memories of incident and feel of loss might have diminished. In view of these aspects of the matter, in opinion of this Court, reduction in sentence of imprisonment with enhancement of fine may serve the ends of justice.

29. Consequently, the appeals are partly allowed only on the point of sentence. The appellants/accused Atul son of Krishnarao and Rajesh son of Kailash Chand Soni are sentenced for offence punishable under Section 304 Part I of IPC with rigorous imprisonment for (5) five years



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and fine of Rs. 5,000/- each. In default of payment of fine, the defaulter convict shall undergo additional rigorous imprisonment for one year. The period of custody undergone by the appellants/accused shall be set off in the sentence of imprisonment. The supersession warrant be prepared accordingly. The order of the trial Court with regard to disposal of the property is affirmed.

30. The record of the trial Court be remitted alongwith copy of this judgement after necessary compliances.

A copy of this judgement be retained in the record of connected criminal appeal.

C.C. as per rules.

(SANJEEV S KALGAONKAR)
JUDGE

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