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**(2009) 09 BOM CK 0058**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 152 of 2007**

Kaka @ Anil Namdeo Magar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 30-09-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Evidence Act, 1872 — Section 27  
Penal Code, 1860 (IPC) — Section 299, 300, 302, 304, 323

**Citation :** (2009) 111 BOMLR 4276

**Hon'ble Judges :** Shrihari P. Davare, J; Naresh H. Patil, J

**Bench :** Division Bench

**Advocate :** Sadhana S. Jadhav, for the Appellant; S.D. Kaldate, APP, for the Respondent

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## Judgement

Shrihari P. Davare, J.—Challenge in this appeal is to the judgment and order rendered by the learned Adhoc Additional Sessions Judge-1, Latur, in Sessions Case No. 50 of 2006 on 23.2.2007, convicting the appellant/accused No. 1 for the offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and also fine.

2. The factual matrix, as recited in the first information report, are as follows:

Complainant PW5 Gulab Rama Kamble is the resident of Siddheshwar Ves, Latur and was residing along with his family members consisting of his wife, namely PW1 Chandrabhaga and 7 sons and 2 daughters including the victim deceased Bharat, out of which, 4 sons and 1 daughter were married. The house of accused No. 4, namely Nandeo Shekhaji Magar was situated in front of house of the complainant and accused No. 4 is having 3 sons i.e. Accused Nos. 1 to 3 herein, namely Kaka @ Anil Namdeo Magar i.e. appellant herein, Sunil Namdeo Magar and Ambadas Namdeo Magar, respectively.

3. It is alleged that on 24.3.2006 at about 7.00 a.m. the complainant, his sons including deceased Bharat and his wife and daughter-in-law were present in the

house and deceased Bharat was sitting in the door in front of the house. At that juncture, accused Nos. 1 to 4 were abusing to deceased Bharat on the count that he used to stare at the wives (female folk) belonging to the accused persons. Due to the said quarrel, the complainant and others came outside the house and found that accused Nos. 2 to 4 had caught hold of his son Bharat and accused No. 1 i.e. appellant herein stated that he would not leave Bharat alive and inflicted a blow of knife on the stomach of victim Bharat from the front side. The complainant, his wife and their sons intervened and tried to rescue victim Bharat. PW1 Chandrabhaga sustained scratches of knife on her two fingers of left hand, as well as the complainant also sustained minor injuries to index finger near the thumb of left hand.

4. During the course of the said assault, the neighbourers, namely Savitra, Sarju, Rajaram gathered there, who rescued the quarrel. Since Bharat sustained serious injuries he was removed by auto rickshaw belonging to one Thakur to the Government Hospital, Latur and was admitted there and intimation thereof was given to Gandhi Chowk police station. However, during the treatment victim Bharat expired in the hospital at about 8.00 a.m. on the said date i.e. 24.3.2006. Thereafter the complainant reported to Gandhi Chowk police station and filed the first information report on the same day, which was registered at C.R. No. 77 of 2006 and the investigation was commenced with.

5. It is the case of the prosecution that during the course of investigation, the investigating officer PW10 P.S.I. Vajinath Shamrao Kendre prepared the inquest panchanama of the dead body of deceased Bharat and same was sent to postmortem purpose. The clothes of the deceased were seized under the panchanama as well as spot panchanama was prepared and statements of witnesses, namely PW1 Chandrabhaga, PW6 Savitribai, Bandubai and Sandipan were recorded. He also collected medical certificates of PW1 Chandrabhaga and PW5 complainant Gulab. The postmortem notes were collected. The police personnel also arrested all the four accused on the same day and seized their clothes under the panchanama. The Investigating Officer also recorded statements of Sanju, Nagina, Mathurabai, Ginyan, Raju, Madhukar and Madhusing on 25.3.2006.

6. It is also alleged that on 27.3.2006 accused No. 1 i.e. Appellant herein made the disclosure statement u/s 27 of the Evidence Act and the alleged incriminating weapon i.e. Knife was seized at his instance under the memorandum panchanama Exh.65. The muddemal property was sent to the Chemical Analyser on 28.3.2006 and the investigating officer collected the chemical analysis report thereof on 12.6.2006. After completing of investigation, the charge sheet was filed against all the four accused on 20.6.2006 before the learned Chief Judicial Magistrate, Latur and since the accused were charged for the offence punishable u/s 302 of the Indian Penal Code, the case was committed to the court of Sessions, Latur on 18.7.2006.

7. The learned Adhoc Additional Sessions Judge-1, Latur framed the charge

against accused Nos. 1 to 4 at Exh.21 on 12.10.2006 for the offence punishable under Sections, 302, 323, 504 and 506 r/w Section 34 of the Indian Penal Code and they were tried there under in Sessions Case No. 50 of 2006 and appellant/accused No. 1 was convicted for the offence punishable u/s 302 r/w Section 34 of the Indian Penal Code and was sentenced to suffer life imprisonment and fine, but acquitted for the offence punishable under Sections 323, 504 and 506 r/w Section 34 of the Indian Penal Code, as well as accused Nos. 2 to 4 were acquitted under the said Sections and for the offence punishable u/s 302 r/w Section 34 of the Indian Penal Code by way of judgment and order rendered by the learned Adhoc Additional Sessions Judge-1, Latur on 23.2.2007. Being aggrieved and dissatisfied by the said judgment and order, accused No. 1 i.e. appellant herein has preferred the present appeal assailing the same therein.

8. To unfold the case of prosecution and to substantiate the charges levelled against the accused persons, prosecution has examined in as much as 10 witnesses as mentioned below.

9. The aforesaid witnesses can be categories as under:

10. The first and foremost question is whether deceased Bharat sustained homicidal death or not and in he said context the evidence of PW2 Dr. Laxman enlightens the said issue, who stated that he examined Bharat on 24.3.2006 and found one stab wound on left side of the chest below nipple of surface size 2 x 1 cm. and he gave life saving treatment to the victim. Moreover, PW3 Dr. Pradeep Dhele, although stated in his testimony that he performed postmortem on the dead body of Bharat Gulab Kamble at about 12.00 noon and found stab injury over chest below left nipple oblique of size 3 x 1 cm. And entering in thorasic cavity. He stated that the said injury was ante mortem and further stated that the cause of death was hemorrhagic shock due to visceral (heart) injury due to stab injury. He also stated that he prepared the postmortem notes and signed thereon which are produced at Exh.35. He further stated that the said injury was sufficient in the ordinary course of nature to cause death. He was shown the knife i.e. the incriminating weapon and he stated that the said injury can be possible by that knife.

11. Keeping in mind the said aspects and coming to inquest panchanama Exh.34, the contents thereof disclose that the dead body of Bharat Gulab Kamble bore injury of half inch on the left side of the chest and further discloses that the said injury was sustained by the deceased by way of knife as stated by his brother. The column No. 17 of the postmortem notes Exh.35 also discloses that deceased Bharat sustained stab injury over chest below left nipple obliquely of size 3 x 1 cm. and entering in thorasic cavity and the cause of death was given as hemorrhagic shock due to visceral (heart) injury due to stab injury. Hence, it is amply clear from the testimony of PW2-Dr. Laxman, PW3Dr. Pradeep and inquest panchanama and postmortem report that deceased Bharat died of stab injury and death of Bharat is homicidal death, since it cannot be construed as suicidal or accidental death and the learned Trial Judge has rightly concluded in that

respect and no interference therein is warranted in the appellate jurisdiction.

12. That takes us to the direct evidence of PW1 Smt. Chandrabhaga Kamble i.e. mother of the deceased, PW5 Gulab Kamble i.e. father of the deceased and PW6 Savitrabai maternal aunt of deceased Bharat, who are alleged to be the eye witnesses to the occurrence of the incident. PW1 Smt. Chandrabhaga stated that the incident occurred on Friday i.e. on 24th at about 7.00 a.m. and all the accused were abusing deceased Bharat by saying that why he was looking towards their female members of the family. Hence, she, her husband, sons and daughter came at the spot i.e. near their house. At that time, accused Nos. 2 to 4 had caught Bharat and accused No. 1 said that he would kill Bharat and he would not leave him and by saying that accused No. 1 took out a knife and stabbed by that knife to the left side of ribs and inserted and took out the knife. She shouted what he was doing and proceeded to rescue him, but accused No. 1 assaulted her near her left hand thumb and first finger. She also stated that her husband i.e. PW5 Gulab and son Sanju intervened to rescue Bharat, but her husband also sustained injuries to his left hand by means of knife. She further stated that Rajaram, Sarjerao and PW6 Savitrabai also came there to rescue, but the accused ran away.

13. During cross-examination PW1 Smt. Chandrabhaga stated that wife of accused No. 1, namely Jaishree is a young lady and she further stated that husband must be annoyed if any other person stares at his wife. She further stated that she did not hear the words, why you are always looking towards our female family members and she also stated that she did not state before police while recording her statement before police that she heard the words, why you are always looking towards our female family members and the said contents were marked as portion A amounting to contradiction. Suggestion was also given to her that accused No. 1 did not say that he would not leave Bharat alive, but same was denied by her.

14. As regards the testimony of PW1 Smt. Chandrabhaga, learned Counsel for the appellant argued that the very prelude to the occurrence of the alleged incident i.e. Bharat looking towards the female family members of accused, comes under the suspicion, since the said very portion is the contradiction to her police statement and, therefore, the learned Counsel submitted that accused No. 1 never intended to commit murder of victim Bharat and/or never intended of causing such bodily injury and never knew that it be likely to cause death of victim Bharat to whom harm is caused and/or the appellant never intended of causing bodily injury to victim Bharat which was sufficient in the ordinary course of nature to cause death of deceased Bharat. The learned Counsel admitted the occurrence of the incident, but stated that it occurred without any premeditation in sudden fight in the heat of passion upon sudden quarrel and he did not take any undue advantage thereof.

15. Keeping in mind the said aspects and turning to the deposition of PW5 Gulab Kamble i.e. father of deceased Bharat, who is the complainant in this case and

who stated that the incident took place on 24.3.2006 at about 7.00 a.m. In front of his house and he and his family members were in the house and victim Bharat was sitting in the door of the house. He heard loud voice of quarrel from his door and, therefore, he rushed there along with his family members and saw accused No. 4, accused No. 2 and accused No. 3 had caught victim Bharat and accused No. 4 said to accused No. 1 not to leave Bharat and accused No. 1 stabbed Bharat by means of knife on left side of his chest. He and his wife i.e. PW1 Chandrabhaga went to rescue the quarrel and at that time they also sustained injuries and the accused ran away.

16. During cross-examination PW5 Gulab denied that abusement was going on, on the count that Bharat was looking towards the female family members of the accused and the said contents amounted to contradiction to the first information report lodged by him Exh.58. He further stated in cross-examination that he did state in his statement before police that accused Namdeo @ Kaka said Kaka to see towards Bharat and not to leave him, but such mention is not there in the first information report, which also amounted to omission in the first information report and improvement in his testimony.

17. As regards the testimony of PW5 Gulab, learned Counsel for the appellant argued that again very prelude to the occurrence of the alleged incident, like deposition of PW1 Chandrabhaga i.e. An abusement on the count that why Bharat was looking towards the female family members of accused amounted to contradiction in the testimony of PW5 Gulab and the first information report lodged by him and also alleged instigation given by accused No. 4 to accused No. 1 not to leave victim Bharat comes under the omission, although in the incident accused No. 1 never intended to murder victim Bharat.

18. That takes us to the testimony of PW6 Smt. Savitrabai, wherein she stated that all the accused were beating Bharat by kicks and fists and were abusing him. Accused No. 4 said to stab Bharat and to kill him. Accused No. 1 Kaka took the knife and stabbed Bharat and parents tried to rescue him. When Kaka was assaulting for second time, the mother of Bharat caught it, in the mean time, Bharat fell on the ground and when they were rescuing, all the accused ran away. However, during cross- examination, she denied recording of her statement by the police and stated that she did not state before that all the accused were beating Bharat by kicks and fists and she did not state before police that when Kaka tried to give second blow, mother Bharat caught the knife, in the mean time and Bharat collapsed and also she did not state before police that accused No. 3 said to see Bharat.

19. Learned Counsel for the appellant submitted that the contentions of PW6 Savitrabai in her testimony differ from the contentions of PW1 and PW5 in their testimonies, since PW6 Savitrabai stated that all the accused were beating Bharat by kicks and fists and PW1 and PW5 nowhere referred to the assault upon victim Bharat by kicks and fists by the accused. Learned Counsel for the appellant further submitted that none of the witnesses stated that accused No. 1

was carrying knife at the time of occurrence of the incident and hence, it is canvassed that there was no premeditation on the part of the accused persons. In fact, learned Counsel for the appellant submitted that accused No. 1 has narrated the occurrence of the incident in his statement u/s 313 of the Criminal Procedure Code and stated that deceased Bharat was armed with the knife and he proceeded towards the accused and abused him and sudden fight took place between them in the heat of passion upon a sudden quarrel and apprehending that Bharat would inflict blow of knife on the person of accused No. 1, accused No. 1 snatched the knife from Bharats hands and inflicted single blow thereof on the victim Bharat and the said assault was without any intention of committing murder of deceased Bharat.

20. Keeping in mind the afore said eye witnesses account in the testimonies of PW1 Chandrabhaga, PW5 Gulab and PW6 Savitrabai and the submissions advanced by learned Counsel for the appellant and turning to the medical evidence i.e. the testimony of PW3 Dr. Pradeep Dhele, who has stated that he carried out the postmortem on the dead body of Bharat and found stab injury over chest below left nipple oblique in size 3 x 1 cm. and entering in thoracic cavity. The said injury was ante mortem. The cause of death was hemorrhagic shock due to visceral (heart) injury due to stab injury. He prepared the postmortem notes under his signature, which is produced at Exh.35. He also stated that said injury was sufficient in the ordinary course of nature to cause death. He further stated that the incriminating weapon knife was shown to him and he stated that the said injury was possible by that knife. The postmortem notes Exh.35 and more particularly column 17 thereof discloses a stab injury over chest below left nipple oblique in size 3 x 1 cm. and entering in thoracic cavity and the cause of death stated therein corroborates with the testimony of PW3 Dr. Pradeep Dhele.

21. As regards medical evidence, learned Counsel for the appellant canvassed that the victim sustained only one injury i.e. Of single blow of knife i.e. single stab injury and during the sudden fight upon sudden quarrel he did not have any specific choice of choosing particular part of the body of the victim for inflicting blow, and more pertinently, it is important to note that the appellant herein has not taken any undue advantage and acted in a cruel and unusual manner since he inflicted only a single blow upon the victim. Learned Counsel further submitted that as stated by PW1 Smt. Chandrabhaga the honour of wife is precious to every male person and when accused no1. witnessed teasing of his wife by victim Bharat a sudden quarrel took place between victim Bharat and accused No. 1, which led to sudden fight in the heat of passion which was without any premeditation, wherein the appellant gave a single blow of knife on the chest of the victim, but did not take the undue advantage or acted in cruel or unusual manner, since he inflicted single blow of the knife upon the victim and hence, learned Counsel for the appellant canvassed that present case comes under the purview of Exception 4 of Section 300 of the Indian Penal Code without any intention to cause death of deceased Bharat.

22. To emphasize the defence of the appellant under Exception 4 of Section 300 of the Indian Penal Code and to distinguish the culpable homicide amounting to murder and culpable homicide not amounting to murder, learned Counsel for the appellant placed reliance upon the observations made by Honourable Supreme Court in the case reported at 2009 ALL MR (Cri) 2181 (S.C.), in the case of Pappu @ Hari Om v. State of Madhya Pradesh, which reads as under:

...

7. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is 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, the 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 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.

8. 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.

9. 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 offenders 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.

10. 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 the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word likely in Clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words bodily injury...sufficient in the ordinary course of nature to cause death mean that death will be the most probable result of the injury, having regard to the ordinary course of nature.

11. 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 and Anr. v. State of Kerala* AIR 1966 SC 1874 is an apt illustration of this point.

12. In *Virsa Singh Vs. The State of Punjab*, , 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 u/s 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.

13. The ingredients of clause Thirdly of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

To put it shortly, the prosecution must prove the following facts before it can bring a case u/s 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 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.

14. The learned Judge explained the third ingredients in the following words (at page 468):

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 or 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.

15. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singhs case, 2007 ALL SCR (O.C.C.) 33 (supra) 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.

16. Thus, according to the rule laid down in Virsa Singhs case, 2007 ALL SCR

(O.C.C.) 33 (supra), even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

17. 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.

18. 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.

...

23. Learned Counsel for the appellant also placed reliance on the observations made by the Apex Court in the case reported at 1994 AIR SCW 721, in the case of Hanuman v. State of Haryana, as below:

Now the question is whether the offence committed by the appellant is one punishable u/s 302 simpliciter. The quarrel, which took place between the two families was, according to the prosecution, a result of misbehaviour of Raghubir Singh with Rajbala wife of Prabhati, the brother of Hanuman. The quarrel took a serious turn and both sides indulged in fighting armed with weapons. It is during such a situation the appellant is alleged to have dealt a blow with blunt side of the axe on the head of the deceased. In these circumstances, it is difficult to hold that either Clause I or III of Section 300 is attracted. However, the appellant must be attributed knowledge that by inflicting such a blow he was likely to cause the death of the deceased. Accordingly, we set aside the conviction of the appellant u/s 302, I.P.C., and the imprisonment for life awarded therein. In the special circumstances of the case that the appellant also received number of injuries, we convict the appellant u/s 304, Part II and sentence him to undergo R.I. for five years. The appeal is disposed of accordingly.

24. To counter the said argument, Mr. Kaldate, learned A.P.P. Submitted that intention of accused No. 1 of causing bodily injury to victim Bharat and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death of deceased Bharat, can be gathered from the testimonies of PW1

Chandrabhaga, PW5 Gulab and PW6 Savitrabai, since accused No. 1 gave blow of knife on the vital part of the victim i.e. On chest and sit us of the said injury speaks for itself and attributes towards the intention of the appellant to cause such bodily injury intended to be inflicted, which was sufficient in the ordinary course of nature to cause death. Learned A.P.P. further submitted that intention can be gathered from the various factors, such as,

1. Weapon used i.e. knife in the present case.
2. Force applied while inflicting injury upon the victim in the instant case the size of injury is 3 x 1 cm.
3. Sit us of the injury i.e. Chest of victim Bharat i.e. vital part of the body
4. Previous conduct & circumstances staring towards the female family members of accused by the victim, in the present case

Accordingly learned A.P.P. Submitted that all the said ingredients cumulatively establish that the act done by the appellant was with an intention of causing bodily injury to victim Bharat and bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death of Bharat as stated by PW3 Dr. Pradeep Dhele. Hence, Mr. Kaldate, learned A.P.P. Canvassed that present case squarely fits in clause Thirdly of Section 300 of the Indian Penal Code relying upon the ratio laid down in the judgment reported at Virsa Singh Vs. The State of Punjab, . Therefore, it is submitted that learned Trial Judge has rightly concluded that accused No. 1 committed murder of victim Bharat intentionally and knowingly and rightly convicted the accused for the offence punishable u/s 302 of the Indian Penal Code and no interference therein is warranted in the appellate jurisdiction.

25. To consider the arguments advanced by both the learned respective counsel for the appellant and the respondent aptly, it is necessary to reproduce Clause 3rdly of Section 300 and Exception 4 of Section 300 of the Indian Penal Code. Clause 3rdly of Section 300 of the Indian Penal Code reads as under:

300. Murder : Except in the cases hereinafter excepted, culpable homicide is murder,....

...

3rdly : If it 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

...

Exception 4 of Section 300 of the Indian Penal Code reads as under:

300. Murder : Except in the cases hereinafter excepted, culpable homicide is murder,....

...

Exception 4 : Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation : It is immaterial in such cases which party offers the provocation or commits the first assault.

26. Learned Counsel for the appellant relied upon the observations in the judgment reported at 1997 SCC (Cri) 726, in the case of Mavila Thamban Nambiar v. State of Kerala, which are as under:

...

After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall u/s 304 Part II of the Indian Penal Code. The appellant had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with the pair of scissors on the vital part would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from Section 302 IPC to one u/s 304 Part II of the IPC.

27. After assessing the evidence adduced and produced by the prosecution and considering the rival contentions anxiously and applying parameters laid down in the aforesaid cases and also considering the very text of Clause Thirdly of Section 300 and Exception 4 of Section 300 of the Indian Penal Code, it appears that the house of accused persons and house of the complainant were situated in front of each other and deceased Bharat used to stare at the female members of the family of complainant when they used to go to answer call of nature. It has also come in the evidence that wife of accused No. 1 was young and good looking lady and on the date of incident i.e. On 24.3.2006 the behaviour of victim Bharat was noticed by accused No. 1 and thereby a sudden quarrel took place between the accused persons and victim Bharat, which was without any premeditation, but the said quarrel culminated into sudden fight due to heat of passion and accused No. 1 gave a single blow of knife on the chest of victim Bharat.

28. Pertinently, It has nowhere come on record that accused No. 1 had carried knife on the spot of the incident and prosecution has not established the vital aspect and, therefore, answer given by accused u/s 313 of the Criminal Procedure Code that victim Bharat was carrying knife and he rushed towards accused No. 1 armed with the knife and apprehending that he would inflict blow thereof upon accused No. 1, accused No. 1 snatched the knife from his hands and gave a single blow thereof upon the victim in a sudden fight in the heat of passion cropped up out of sudden quarrel, can be accepted. It is material to note

that accused No. 1 has not taken any undue advantage or acted in a cruel or unusual manner, since he has given only a single blow upon the victim and even did not give another blow upon the victim. It appears that the passions had risen high, since accused No. 1 was to protect the honour of his wife.

29. Hence, having the comprehensive view of the matter and considering the circumstances of the case, we are of the considered view that present case falls under Exception 4 of Section 300 of the Indian Penal Code. Therefore, the offence committed by accused No. 1 would be u/s 304 Part II of the Indian Penal Code, since the appellant had knowledge that the bodily injury caused by the blow of knife given by accused No. 1 to victim Bharat was likely to cause death of victim Bharat.

30. At this juncture, the learned Counsel for the appellant submitted that accused No. 1 is of 25 years young boy, having young wife and 2 small children and there are no previous criminal antecedents of accused No. 1. Hence, considering the totality of the circumstances, we are of the opinion that R.I. For 7 years and fine of Rs. 5,000/- would be adequate punishment for the offence punishable u/s 304 Part II of the Indian Penal Code, which would meet the ends of justice.

31. In the result, we pass the following order:

(1) The appeal is partly allowed;

(2) The order of conviction and sentence rendered by the learned Adhoc Additional Sessions Judge-1, Latur, in Sessions Case No. 50 of 2006 on 23.2.2007, convicting accused No. 1 of the offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer life imprisonment and to pay fine of Rs. 2,000/-, in default to suffer R.I. for 6 months, stands quashed and set aside and instead of that the appellant/accused No. 1 is convicted of the offence punishable u/s 304 Part II of the Indian Penal Code and is sentenced to suffer R.I. for 7 years and to pay fine of Rs. 5,000/- (Rs. Five Thousand only), in default to suffer R.I. For 3 months.