
(2014) 04 GUJ CK 0092
In the Gujarat High Court
Case No : Criminal Appeal No. 1431 of 2008

Laljibhai Maganbhai Vasava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313
Penal Code, 1860 (IPC) — Section 299, 300, 302, 304

Citation : (2014) 3 GLR 2216

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Harnish V. Darji, Advocate for Appellant No. 1, Advocate for the Appellant; K.P. Raval, APP for Respondent No. 1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—The present appeal is at the instance of a convict accused of the offence of murder punishable u/s 302 of the Indian Penal Code and is directed against an order of conviction and sentence dated 5th April 2008 passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Surat, in Sessions Case No. 159 of 2007. By the aforesaid order, the learned Additional Sessions Judge found the appellant guilty of the offence punishable u/s 302 of the Indian Penal Code and consequently sentenced him to suffer life imprisonment.

I. Case of the Prosecution:

2. The deceased viz. Laxmiben and the accused had live-in relationship. The accused was not doing any work, whereas the deceased was working with a Corporation at Surat. She was doing domestic work like cleaning, sweeping etc. The deceased used to visit the accused at village Bodhan time to time. On 26th March 2007, the deceased had come to village Bodhan and stayed for a night at the house of the accused. At around 10 O'clock in the night, the deceased advised the accused to do some work, as a result the accused got furious and hit

blows on the body of the deceased indiscriminately with a stick resulting in the fracture of the left hand. It is also the case of the prosecution that on the next day i.e. on 27th March 2007, the accused once again assaulted the deceased with a stick. On the next day i.e. on 28th March 2007, the deceased succumbed to the injuries.

3. It appears that the PW1 Rameshbhai Vasava, brother of the deceased, lodged an F.I.R. Exh. 7 at the Mandvi Police Station, Camp Bodhan, stating that the deceased was his sister and was married before 25 years with Naginbhai, a resident of village Khuleshwar, but the marriage was dissolved within a month thereafter. It is further stated by the PW1 that before 10 years, the deceased fell in love with the accused residing at Navi Nagri, village Bodhan and started living with the accused. It is also stated that the deceased and the accused used to stay together at the house allotted to the deceased by the Corporation. In the live-in relationship between the two, no issues were born. It is also stated in the complaint that the accused and the deceased used to consume liquor and thereafter fight with each other quite frequently. On 26th March 2007, the deceased had come to the house of the first informant at around 5 O'clock in the evening and after staying there for some time, returned to her house. It is stated that on the previous day one Ishwarbhai Rathod had come to the house of the first informant at around 8 O'clock in the night and informed the first informant that his sister, the deceased, had been assaulted by the accused with a stick. The first informant was also told by Ishwarbhai that the deceased was not in a position to move and had asked him to convey to the first informant that the first informant should come and see the deceased at her house.

4. According to the first informant, he was quite afraid of the accused and, therefore, had not gone to see his sister. It is further stated that on 26th March 2007 in the morning at around 7 O'clock the accused came at the house of the first informant and conveyed to him that the deceased had passed away as she banged herself with a wall and fell down. After some time, the accused told the first informant that the deceased had passed away as she had met with an accident. As the first informant was not convinced with the explanation given to him by the accused, he, in company of the Village Sarpanch Manharbhai, reached at the house of the deceased and found her lying dead on an iron bed. The PW1 also stated that he could notice the marks of the stick blows inflicted on her body and a fracture on the left hand. He has also stated that there were many marks of injury on the back and the gluteal region. He has stated that his sister was dead and the Sarpanch viz. Manharbhai thereafter informed the police.

5. On the complaint being filed, the investigation had commenced. The inquest panchnama Exh. 18 of the dead body was drawn in presence of the panch-witnesses. The panchnama of the collection of clothes of the deceased Exh. 20 was drawn in presence of the panch-witnesses. The scene of offence panchnama Exh. 19 was drawn in presence of the panch-witnesses. The dead body of the deceased was sent for the postmortem examination and the postmortem report

Exh. 22 revealed that the cause of death of the deceased was due to rupture of the spleen.

6. On 28th March 2007, the accused was arrested and the arrest panchnama Exh. 17 of his person was drawn in presence of the panch-witnesses.

7. The statements of various witnesses were recorded. Finally, charge-sheet was filed against the accused appellant in the Court of the learned Judicial Magistrate, First Class, Mandvi.

8. As the case was exclusively triable by the Sessions Court, the learned Judicial Magistrate, First Class, Mandvi, committed the case to the Sessions Court u/s 209 of the Code of Criminal Procedure. The Sessions Court framed charge against the accused Exh. 3 and the statement of the accused was recorded. The accused did not admit the charge and claimed to be tried.

II. The prosecution adduced the following oral evidence in support of his case:

III. The following pieces of documentary evidence were adduced by the prosecution:

9. After completion of the oral as well as the documentary evidence of the prosecution, the statement of the accused appellant u/s 313 of the Code of Criminal Procedure was recorded, in which the accused appellant stated that the complaint was a false one and the deceased had died as she had met with an accident.

10. At the conclusion of the trial, the learned trial Judge convicted the accused appellant for the offence punishable u/s 302 of the Indian Penal Code and sentenced him as stated herein before.

11. Being dissatisfied, the accused appellant has come up with the present Appeal.

12. Mr. Harnish Darji, the learned advocate appearing for the accused appellant, submitted that the trial Court committed a serious error in holding the accused appellant guilty of the offence of murder. Mr. Darji submitted that the trial Court ought not to have placed implicit reliance on the evidence of all those witnesses who have deposed that they had witnessed the accused hitting stick blows on her body.

13. Mr. Darji submitted that even if the entire case of the prosecution is accepted, then the case at hand is not one of murder but the same falls in the category of culpable homicide not amounting to murder.

14. Mr. Darji laid much stress on the fact that the cause of death assigned in the postmortem report Exh. 22 is cardio respiratory arrest due to hemorrhagic shock as a result of rupture of the spleen.

15. Mr. Darji submitted that from the oral evidence on record including the medical evidence, it could not be said that the accused had any intention to

cause the death of the deceased nor even knowledge could be imputed that by inflicting blows with a stick the spleen of the deceased would get ruptured.

16. In such circumstances referred to above, Mr. Darji prays that the conviction of the accused appellant be altered from that of u/s 302 of the Indian Penal Code to the one u/s 304 of the Indian Penal Code.

IV. Submissions on behalf of the State:

17. Mr. K.P. Raval, the learned APP appearing for the State, vehemently opposed this Appeal and submitted that the trial Court committed no error in finding the accused appellant guilty of the offence of murder punishable u/s 302 of the Indian Penal Code.

18. Mr. Raval submitted that having regard to the manner in which the deceased was assaulted by the accused with a stick and taking into consideration the injuries as reflected from the postmortem report Exh. 22, it could not be said that the case at hand is one of culpable homicide not amounting to murder but the same is of murder as the act of the accused falls within Clause (3) to Section 300 of the Indian Penal Code.

19. In such circumstances referred to above, Mr. Raval prays that there being no merit in this Appeal, the same may be dismissed.

V. Oral evidence on record:

20. The PW1 Rameshbhai Vasava is the brother of the deceased and also the original first informant. In his evidence Exh. 6, he has deposed that the deceased was his sister. The deceased was married initially with one Naginbhai but, thereafter, the marriage was dissolved. The deceased thereafter married with the accused. In the wedlock, no issue was born. The PW1 has deposed that the accused was in the habit of consuming liquor and thereafter used to beat the deceased. Even before the incident the accused had fractured the hand of the deceased. The PW1 has deposed that one Ishwarbhai of his village had come and informed him that his sister had been assaulted by the accused and her legs were fractured. As the accused being a very highhanded person, the PW1 was quite afraid at that point of time to go and see his sister. On the next day, the accused came at the house of the PW1 and informed that his sister was dead. The PW1 has deposed that the accused conveyed to him that his sister had fallen down from a truck and died due to such accident. Thereafter, the PW1 and other persons of the locality went to the house of the deceased. The deceased at that point of time was residing at village Bodhan in new colony. On reaching the house of the deceased, the PW1 found that her hands, legs and back were broken. There were bruises all over the body.

21. In his cross-examination, he has deposed that his sister also used to consume liquor. He has also deposed that his sister had not officially got married with the accused, but as the deceased and the accused were in love, they were staying together. He has also deposed that as his sister was having live-in

relationship with the accused, he was feeling bad about the same. Nothing substantial could be elicited through the cross-examination of the PW1 so as to render his evidence doubtful in any manner.

22. The PW2 Sukhabhai Karsanbhai in his evidence Exh. 9 has deposed that the accused resided in his locality and was doing labour work. The PW2 has deposed that one day before the deceased passed away, the accused had beaten her with a stick and he had intervened and got them separated. He has deposed that his house is the third house from the house of the accused. As the deceased was shouting, he had gone to the house of the accused. He has also deposed that when he reached the house of the accused and the deceased, he found that both were dead-drunk and were fighting with each other.

23. He has deposed that thereafter on the third day the deceased passed away.

24. In his cross-examination, he has deposed that the deceased had not married with the accused but were residing together as husband and wife. He has also deposed that the deceased also used to consume liquor a lot. He has deposed that he had not seen the accused actually assaulting the deceased but had seen a stick in the hand of the accused. He denied the suggestion that the deceased had fallen down as she was in an intoxicated state of mind and as a result of such fall, she had died.

25. The PW3 Mangiben Vasava in her evidence has deposed that the accused and the deceased used to frequently fight after consuming liquor. Two days before the deceased passed away, the accused had assaulted her with a stick. She has deposed that at around 9 O'clock in the night, the deceased raised shouts and, therefore, she herself and Sukhabhai had gone to the house of the accused. The PW3 has also deposed that at that point of time the accused had stated, "whoever would come to help, would be beaten". She has deposed that Sukhabhai intervened to get them separated. She has deposed that she had actually witnessed the accused beating the deceased with a stick. The deceased had sustained injuries on her hand, leg and the chest. The PW3 has also deposed that on the next day, the accused had called for a doctor to examine the deceased. She has deposed that when the doctor had come, she heard the accused telling the doctor that his wife, the deceased, had fallen down from a truck and had sustained the injuries. On the next day the accused came and informed the PW3 and others that his wife had passed away. Nothing substantial could be elicited through the cross-examination of the PW3 so as to render her evidence doubtful in any manner.

26. The PW4 Jeliben Rathod in her evidence Exh. 11 has deposed that on the day of the incident, she was at her house and in the evening hours the accused was beating his wife with a stick due to which the deceased was shouting. She has also deposed that the deceased was shouting and was seeking help of the others including the PW4, and at that point of time, the accused had stated that, "whoever would come to help the deceased would also be beaten", and

therefore, the PW4 had not tried to separate the accused and the deceased. In the past, the PW4 had intervened and had separated the accused and the deceased while fighting. Nothing substantial could be elicited through the cross-examination of the PW4 so as to render her evidence doubtful in any manner.

27. The PW5 Pujabhai Rathod in his evidence Exh. 12 has deposed that one day before the deceased passed away, he was sleeping in his house and at that point of time he heard the cries and shouts of the deceased. He has deposed that hearing such cries and shouts of the deceased, he woke up and went outside the house and saw that the accused was assaulting the deceased with a stick. According to the PW5, thereafter Sukhabhai came and separated them. Nothing substantial could be elicited through the cross-examination of the PW5 so as to render his evidence doubtful in any manner.

28. The PW6 Ishwarbhai Rathod has also been examined as one of the eye-witnesses to the assault, however he failed to support the case of the prosecution and was declared as a hostile witness.

29. The PW7 Bharatbhai Rathod in his evidence Exh. 14 has deposed that the accused, on the date of the incident, was assaulting the deceased with a stick due to which the deceased was shouting. He has deposed that standing near the house of one Laljibhai he had witnessed the assault by the accused on the deceased. Nothing substantial could be elicited through the cross-examination of this witness so as to render his evidence doubtful in any manner.

30. The PW8 Bachubhai Rathod is also one of the eyewitnesses to the assault by the accused on the deceased. In his evidence Exh. 15, he has deposed that while he was at his house he heard the deceased shouting for help. The PW8 came out of his house and saw that the house of the accused was closed and the accused was beating the deceased inside the house. Nothing substantial could be elicited through the cross-examination of this witness so as to render his evidence doubtful in any manner.

31. The PW9 Karsanbhai Vasava has been examined as a panch-witness to the arrest panchnama of the accused. The PW9, in his evidence Exh. 16, has deposed that he was called at the police station. The accused was arrested and at that point of time, the police collected a stick from the accused. He has deposed that the stick was an old bamboo stick around three to three and a half feet long.

32. The PW10 Dr. Premchand Simon in his evidence Exh. 21 has deposed that on 28th March 2007 he was on duty as a Medical Officer at the CHC, Areth, and at that point of time a dead body of a lady viz. Laxmiben Laljibhai was brought for the postmortem examination. He has deposed that at the time of the postmortem he noticed the following external injuries on the body of the deceased:

(1) Bruise size 4 cm x 2 cm over sternum blackish in colour.

(2) Lacerated wound size 3 cm x 1 cm-0.5 cm over palmar aspects of right hand just below right thumb.

(3) Bruise size 4 cm x 2 cm over flexor aspect of left wrist joint.

(4) Multiple bruise size 12 cm x 4 cm over right and left gluteal region.

(5) Multiple bruise size 10 cm x 3 cm over left aspect of left thigh.

(6) Fracture of left lower 1/3 of forearm.

33. He has also deposed that he noticed the following internal injuries on the body of the deceased:

(1) Peritoneal cavity ruptured.

(2) Ruptured size 2 cm x 1 cm and size 2 cm x 0.5 cm over superior and inferior surfaces.

34. He has also deposed that the cause of death was cardio respiratory arrest due to haemorrhagic shock as a result of the injury over the vital organ spleen.

35. He has deposed that there was a tear of 2 cm x 0.5 cm inside the spleen. He has deposed that the postmortem report was prepared by Dr. Solanki. He identified the signature of Dr. Solanki and also his own signature. He has deposed that such injury can be caused if a person is assaulted with a stick. Nothing substantial could be elicited through the cross-examination of the PW10 except the suggestion which was accepted to be true that if a person falls down from a running truck and the left side of the body hits the ground, then the spleen would get injured.

36. The last witness to be examined is the PW11 Abhijitsingh Parmar, the Investigating Officer. The PW11 in his evidence Exh. 25 has deposed about "the various stages of the investigation. The PW11 has deposed regarding the drawing of the various panchnamas like the scene of offence panchnama, the inquest panchnama, the arrest panchnama of the accused and the panchnama of collection of clothes of the deceased.

37. In his cross-examination, he has deposed that he had not recorded the statement of the Sarpanch of the village viz. Manharbhai. He has also deposed that there was no case registered against the accused under the Prohibition Act.

38. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this appeal is, whether the trial Court committed any error in holding the accused guilty of the offence of murder.

39. It appears from the oral evidence on record, more particularly, the evidence of the PW1 Rameshbhai Vasava, the brother of the deceased and the first informant, that the deceased had got married to one Naginbhai before 25 years from the date of the incident, however, the marriage was dissolved in a very

short span of time. Long thereafter, the deceased fell in love with the accused and both started residing together. It appears that they had not got officially married but had live-in relationship. It also appears that the accused was not doing any work, whereas the deceased was working with the Corporation.

40. It also appears that the accused was addicted to liquor and the deceased was also addicted to liquor. From the oral evidence on record, it appears that both used to fight with each other quite frequently after consuming liquor. However, so far as the case at hand is concerned, there is thumping evidence of the eye-witnesses that two days before the deceased passed away she was brutally assaulted by the accused with a stick. The medical evidence on record indicates that there were multiple bruises all over the body and a fracture of the left lower forearm. However, the cause of death assigned in the postmortem report is cardio respiratory arrest due to haemorrhagic shock on account of rupture of the spleen. It is evident from the medical evidence on record that the assault must be so severe that the peritoneal cavity was also ruptured (stomach). Large amount of dark fluid blood was found in the abdominal cavity. The postmortem report also indicates that the size of the rupture of the spleen was 2 cm x 1 cm and 2 cm x 0.5 cm over the superior inferior surfaces.

41. The oral evidence of the eye-witnesses to the incident admits of no doubt that it was the accused who had assaulted the deceased with a stick and to that extent that her spleen as well as the peritoneal cavity got ruptured.

42. The question is, since the death of the deceased was due to the rupture of her spleen, which was the direct result of the stick blows by the accused, whether by virtue of the third clause to Section 300 of the Indian Penal Code the accused could be held liable for culpable homicide amounting to murder.

43. According to Mr. Darji, the case is not of murder, but one of culpable homicide not amounting to murder.

44. Therefore, the principal question that needs to be considered in this appeal is, whether the offence disclosed by the facts and circumstances established by the prosecution against the accused appellant is "murder" or "culpable homicide not amounting to murder".

45. In this context, we may quote with profit a decision of the Supreme Court in the case of State of Andhra Pradesh Vs. Rayavarapu Punnayya and Another, , in which the Supreme Court has very exhaustively explained the distinction between "murder" and "culpable homicide not amounting to murder". The observations made by the Supreme Court from paras 12 to 21 of the decision are worth noting:

12. In the scheme of the Penal Code, "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 this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the First Part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the Second Part of Section 304.

13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. 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 key words 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.

14. 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 intentional 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.

15. 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.

16. 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.

17. 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 another v. State of Kerala*, AIR 1966 SC 1874, is an apt illustration of this point.

18. In *Virsa Singh Vs. The State of Punjab*, , Vivian Bose J. speaking for this Court, explained the meaning and scope of Clause (3), thus:

The prosecution must prove the following facts before it can bring a case under Sec. 300, "3rdly". 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. 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.

19. Thus, according to the rule laid down in *Virsa Singh's* case (*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.

20. 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.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder," on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative, the offence would be "culpable homicide not amounting to murder", punishable under the First or the Second Part of Section 304, depending respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the First Part of Section 304, Penal Code.

46. Thus, what is discernible from the aforesaid principles explained by the Supreme Court is that Section 299 of the Indian Penal Code defines "culpable homicide", which is of two kinds: culpable homicide amounting to murder and culpable homicide not amounting to murder; Section 299 cannot be taken to be the definition of culpable homicide not amounting to murder, as the section clearly speaks of culpable homicide simpliciter; the scheme of the Penal Code is that first the genus "culpable homicide" is defined, and next is defined "murder", which is a species of culpable homicide; what is left out of culpable homicide after the special characteristics of murder have been taken away from it, is culpable homicide not amounting to murder.

47. Section 304 of the Indian Penal Code applies to the following three clauses of cases:

(i) where the case falls under one or the other of the clauses of Section 300 but it is covered by the Exceptions to that section;

(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression "sufficient in the ordinary course of nature to cause death" but is of a lower degree of likelihood which is generally spoken of as an injury "likely to cause death" and the case does not fall under Clause (2) of Section 300; and

(iii) when the act is done with the knowledge that death is likely to ensue but there is no intention to cause death or injury likely to cause death.

48. Applying these principles to the case before us, we find it exceedingly hard to see how the appellant can escape the liability u/s 302 of the Indian Penal Code.

49. We are ready to concede that in assaulting the deceased the appellant did not intend to cause her death. We might even agree that he did not intend to cause such bodily injury as he knew that was likely to cause death within the meaning of clause (2) of Section 300 of the Indian Penal Code. But in view of the circumstances in which the assault was laid, as deposed by the eye-witnesses, the ferocity with which the blows were struck, the fact that the victim was a woman, the delicate parts of her body which were hit, and the presumption that in the absence of accident or negligence every person must be presumed to intend the natural consequences of his acts, leave no room for doubt in our minds that the appellant intended to cause bodily injuries sufficient in the ordinary course of nature to cause Laxmiben's death. Since her death was due to rupture of her spleen, which was the direct result of his stick blows, he must, by virtue of the third clause of Section 300 of the Indian Penal Code be held liable for culpable homicide amounting to murder.

50. The explanation of the accused that the deceased had sustained injuries due to a fall from a running truck, on the face of it, appears to be false. Such false explanation on the part of the accused is an additional circumstance pointing towards the guilt of the accused.

51. In view of the above discussion, we have reached to the conclusion that the trial Court committed no error in finding the accused guilty of the offence of murder. Resultantly, this Appeal fails and is hereby dismissed. The order of conviction and sentence passed by the Additional Sessions Judge are hereby affirmed.