
(1967) 11 GUJ CK 0006
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Ramanlal Chimanlal Khatri

RESPONDENT

Date of Decision : 08-11-1967

Acts Referred:

Bombay Police Act, 1951 — Section 135, 87
Penal Code, 1860 (IPC) — Section 299, 300, 301, 302, 304

Citation : (1969) CriLJ 810 : (1969) GLR 611

Hon'ble Judges : J.M. Sheth, J;J.B. Mehta, J

Bench : Division Bench

Judgement

J.M. Sheth, J.—The respondent was charge-sheeted to the Court for committing murder of one Ambalal Jagjivandas Purani of Broach by giving him stab wounds with a knife at about 8.15 p.m. on 6.8.1966 at Vankarvas Tekra in Kabirpura locality in the City of Broach. He was also charged for the offence u/s 185 of the Bombay Police Act, 1951 for contravention of an order passed by the District Magistrate, Broach under Sub-section (1) of Section 87 of the Bombay Police Act, 1951. The Committing Magistrate, after making a preliminary inquiry, committed him to the Court of Sessions at Broach to stand his trial for the aforesaid two offences. The deceased Ambalal was working as a clerk in the District Court at Broach. The case had thereupon come to be transferred to the Court of Sessions at Baroda by this Court. The learned Sessions Judge, Baroda, Mr. S.M. Nanavati convicted the respondent of an offence, punishable u/s 304 part 2 of the Indian Penal Code, and for the offence u/s 135 of the Bombay Police Act, 1951. He has been sentenced to suffer four years" rigorous imprisonment on the first count and to suffer four months" rigorous imprisonment and to pay a fine of Rs. 50/- and in default of payment of fine to Buffer 15 dayB1 further rigorous imprisonment on the second count. Both the substantive sentences of imprisonment are ordered to run concurrently.

2 9. The State has filed the present appeal, feeling that the respondent ought to have been convicted of an offence, punishable u/s 802 of the Indian Penal Code. The State has also filed the aforesaid Criminal Revision Application No. 82 of

1987, feeling that the sentence awarded to the respondent for the offence, punishable u/s 304 Part 2 of the Indian Penal Code, is grossly inadequate.

10. The learned Assistant Government Pleader, Mr. Bakahi also lays stress on his argument that the offense committed could be said to be an offence punishable u/s 304 Part 1 of the Indian Penal Code. In support of his argument, he relied upon the following factor:

1. Manner of causing injuries,
2. Number of injuries,
3. Nature of injuries,
4. Parts of bodily injuries caused,
5. Weapon used,
6. Conduct of the accused-respondent at the time of the incident, and
7. Premeditated motivated assault.

He laid stress on the point that this being a case of a premeditated motivated assault and the fact that the respondent had followed the deceased with a dangerous weapon like a knife Article 10, and the deceased was not given one stab wound on the chest portion, but was given near about that region another stab wound and had not stopped at that stage but continued to strike him with a knife and taking into consideration the multiple injuries caused, it could be with a reasonable certainty said that the respondent has an intention to cause such bodily injury which is likely to cause death.

11. Another interesting argument advanced by the learned Assistant Government Pleader, Mr. Bakai and which requires a serious consideration was that it is not necessary to prove that the respondent had an intention to cause injury which is likely to cause death for the establishment of an offence punishable u/s 304 Part 1 of the Indian Penal Code. His submission was that such determination will be only regarding the question whether the respondent had an intention to cause bodily injuries. So far as the second part of the relevant clause is concerned, it will be only on an objective determination. He urged that if the prosecution is able to prove that the bodily injuries are caused and it is further able to prove that the accused-respondent had an intention to cause bodily injury, if the injury caused could be objectively determined to be an injury which is likely to cause death, the offender could be convicted for an offence punishable u/s 304, Part 1 of the Indian Penal Code. This argument of his was based on the analogy of the decisions given by the Supreme Court in the case of Virsa Singh Vs. The State of Punjab, , in the case of And a v. State of Rajasthan AIR 1963 S. C. 148 and in the case of Rajvant Singh v. State of Kerala AIR 1966 S.C. 1874.

12. Before we advert to those authorities cited on behalf of the appellant. State, we first propose to refer to the question whether on the aforesaid facts or factors

relied upon by the learned Assistant Government Pleader and the facts found in this case, could it be said that a reasonable certainty that the respondent had an intention to cause such bodily injury which is likely to cause death? There is no doubt that 5 injuries have been caused to the deceased. Two of those injuries were only serious injuries and those injuries collectively were likely to cause death according to the medical evidence. Those injuries were found on the chest portion about 3" below and outward to the left nipple. Injury No. 2 was 1/2" below the injury No. 1. It is significant to note that none of the vital organs was injured. On operation, the Doctor had found the depth of these two injuries to be only 1/2". We have also in the instant case, the size of the blade of the weapon used. It is the prosecution case and the prosecution evidence that it was the knife Article 10 that was used and that knife had been recovered at the instance of the respondent. The evidence of the Panch witness Bhogilal Ex. 24 indicates that that knife was recovered at the instance of the respondent. The panchnam regarding it is Ex. 25. He has testified to the correctness to that panchnama. That panchnama reveals that the blade of the knife was 2" long and 1/2" broad. Taking into consideration the dimensions of that knife, it appears to be an ordinary penknife. It is not a Chhura. The depth of the injuries caused was only 1/2". No vital organs were injured. Taking into consideration the depth of these two serious injuries and the circumstance that the vital organs were not injured, it could be said with some force that the force used must not be very great. It was not even suggested to the doctor that great force was used. Even though two injuries are caused on the aforesaid chest portion, both the injuries are only 1/2" deep. Taking into consideration the nature of those injuries, even though those injuries are caused on a chest portion and taking into consideration the size of the knife in question, it could not be said with a reasonable certainty that the respondent had an intention to cause such bodily injury which is likely to cause death. In our opinion, in the instant case, there is a further circumstance to point to the same conclusion. It is the evidence of the eye-witnesses to the incident, examined by the prosecution that the deceased was thrown on the ground after two serious injuries were caused and the respondent sat over him and farther caused two injuries. It will be significant to note that these two injuries are as under:

A traverse incised wound 2" x 1/2" on inner and upper part of right fore-arm.

A lacerated wound 1" x 1/8" on left side of chin.

It will be significant to note that none of those injuries is caused on a vital part of the body. Furthermore, the depth of those injuries also is very small. If really the respondent had an intention to cause such bodily injury which is likely to cause death, he had at that point of time an opportunity to strike a more serious injury by selecting the vital part like the neck or the middle of the chest. That is also a circumstance to indicate that it could not be said with a reasonable certainty that the respondent had an intention to cause such bodily injury which is likely to cause death. The two injuries are only serious injuries. The rest of the injuries,

namely, the other three injuries are very minor injuries. It could not, therefore, be said that it is a case where number of serious injuries are caused. The conduct of the respondent at the time of the incident, namely, giving two knife blows on the aforesaid chest portion and thronging him on the ground and sitting over his body and causing two other injuries and running away thereafter, is not necessarily indicative of his intention to cause such bodily injury it is likely to cause death. It is equally possible to infer therefrom that he had an intention to cause injury and not necessarily a fatal injury to the deceased. Similarly, the circum-stances that this was a premeditated and motivated assault will also indicate that it is a case of a deliberate assault with a knife. It could be with an intention to cause injury. It would not necessarily indicate an intention to Cause such bodily injury as is likely to cause death in the absence of a very strong motive for the crime. We have already found earlier that the motive in the instant case is not such a strong motive. Furthermore, these litigations had been decided round about in the year 1964.65 and the incident had taken place on 6.3.1966. No doubt, it does appear from the prosecution evidence that there were bickering going on, thereafter between the deceased and the respondent. That fact ha3 been brought out by the defence from the prosecution witnesses. We are, therefore, of opinion that taking into account all the relevant attendant circumstances, we are not in a position to say with a reasonable certainty that the respondent had an intention to cause Such bodily injury as is likely to cause death. It could only be said that the respondent had the knowledge that his act is likely to cause death. The respondent, therefore, could be convicted of an offence punishable u/s 304 Part 2 unless we find that the second submission made by the learned Assistant Government Pleader is well founded.

13. In the case of Willie (William) Slaney Vs. The State of Madhya Pradesh, , His Lordship Bose J, speaking on his behalf and His Lordship S.R. Das, Actg. C. J., has made the following instructive observations:

We now come to the merit, and the question is whether that is a case u/s 802 or u/s 304 Part II of the Indian Penal Code. The injury was inflicted with a hookey stick. The head was fractured but the deceased lived for 10 days. The doctor says-

I consider the head injury on the head of a my the was of a very serious nature and was "likely" to result in fatal eon sequence. Therefore, the doctor in whose care the patient was till ha died, places the injury no higher than "likely" to cause death.

The learned Sessions Judge exonerated the appellant of any intention to kill and the learned High Court Judges say that they agree with his findings. If there was no intention to kill, then it can be murder only if

- (1) the accused knew that the injury in flicted would be likely to cause death or
- (2) that it would be sufficient in the "ordinary course of nature" to cause death or

(3) that the accused "knew" that the all "must" in all probability cause death.

If the case cannot be placed as high as that and the act is only "likely" to cause death and there is no special knowledge, the offense comes u/s 304 Part II of the Penal Code." His Lordship Ghandrasekhara Aiyar J. speaking on his behalf and His Lordship Jagannadha das J. at p. 138 has expressed the same view.

14. In the case of Chamru Budhwa Vs. State of Madhya Pradesh, , the following observation] have been made at p. 653 by Bhagwati J. speaking on behalf of the Court:

It now remains to consider whether the offence which he committed falls within the first part or the second part of Section 304 of the Penal Code. When the fatal injury was inflicted by the appellant on the head of the deceased by only one blow given in the manner alleged by the prosecution it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death within the meaning of Part II of Section 304 of the Penal Code." This is, in our opinion, a complete answer to the argument advanced by the learned Assistant Government Pleader in regard to his second submission also.

15. In the case of Mathuri and Others Vs. State of Punjab, . His Lordship Das Gupta J. has explained the concept of the word "intent". The relevant observations are made by referring to the observations made by Bhatt J. in a decision Bhagwant v. Kedari ILR (1300) Bom 202. They are as under:

The word "intent" by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible result - foreseen perhaps as a not improbable incident, but not desired - but rather connotes the one object for which the effort is made - and thus has reference to what has been called the dominant motive, without which the action would not have been taken.

16. In the case of Basdev Vs. The State of Pepsu, , at p. 490 the following observations have been made by His Lordship Chandrasekhara Aiyar J.:

Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less an intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion.

In para 9 of the judgment, at page 190, the observations made by Coleridge J. in Beg v. Monkhouse (1849) 4 Cox CC (55) have been referred to. They can be

referred to, with advantage at this stage as they are very illuminating:

The inquiry as to intent is far less simple than that as to whether an act has been committed because we cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered. For instance, if such an act were done by a born idiot, the intent to kill could not be inferred from the act. So if the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely; was he rendered by intoxication entirely incapable of forming the intent charged?

Bearing in mind the test suggested in this decision and bearing in mind that our Legislature has used two different terminologies "intent" and "knowledge" and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death it would be proper to hold that "intent" and "knowledge" cannot be equated with each other. They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that "intent" and "knowledge" are the same. The "knowledge" will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

17. In the case *In re Mahanandi Beddi* AIR 1960 Andh Pra 141 also distinction between "knowledge and intention" is aptly explained. It is as under:

Knowledge and intention must not be confused. A man's intention has to be inferred from what he does. But there are cases in which death is caused and the intention which can safely be imputed to the offender is less grave. The degree of guilt ascertained must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the ordinary course of nature to cause death, but; which the offender knows is likely to cause the death. Proof of such knowledge throws light upon his intention. Every person is presumed to intend the natural and probable consequences of his act until the contrary is proved. It is, therefore, necessary in order to arrive at a "decision as to an offender's intention to inquire what the natural and probable consequences of his acts would be. Once there is evidence that a deceased person sustained injuries which were sufficient in the ordinary course of nature to cause death, the person who inflicted them can be presumed to have intended those natural and probable consequences. His offence would fall under the third

head of Section 300, I.P.C.

Under Section 299 there need be no proof of knowledge that the bodily injury intended was likely to cause death. Before deciding that a case of culpable homicide amounts to murder, there must be proof of intention sufficient to bring it u/s 300. Where the injury deliberately inflicted is more than merely "likely to cause death" but sufficient in the ordinary course of nature to cause death, the higher degree of guilt is presumed.

It has been further observed therein asunder:

Where the evidence did not disclose that there was any intention to cause death of the deceased but it was clear that the accused had the knowledge that their acts were likely to cause death the accused can be held guilty under the second part of Section 304, Penal Code. The contention that in order to bring the case under the second part of Section 304, Penal Code, it must be brought within one of the exceptions to Section 300, Penal Code, is not acceptable.

18. We will now refer to the three decisions of the Supreme Court, referred to above, on which reliance was placed by the learned Assistant Government Pleader in support of his second submission:

In the case of *Virsa Singh Vs. The State of Punjab*, the Supreme Court has made the following observations:

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.

Once these four elements are established by the prosecution (and of course, the burden is on the prosecution throughout), the offence is murder u/s 300 "thirdly." It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (there is no real distinction between the two), or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective, and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

Thus where no evidence or explanation is given about why the accused thrust a spear into the abdomen of the deceased with such force that it penetrated the bowel and three coils of the intestines came out of the wound and that digested food oozed out from cuts in three places, it would be perverse to conclude that he did not intend to inflict the injury that he did.

At this stage, it will be proper to refer to the wordings of this Clause 3rd of Section 300 which was a subject-matter of consideration in that decision. It runs as under:

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.

It is significant to note that two parts of that Clause (3) are independent clauses joined with conjunction "and." The first part requires the proof that an act is done with the intention of causing bodily injury to any person. The second part requires that the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. The ratio of the aforesaid Supreme Court decision is that it must be proved that the offender intended causing of the particular injury that has been caused. That will be a matter of subjective inquiry. If that is proved, the second part, namely; injury caused was sufficient in the ordinary course of nature to cause death, would be a matter of objective investigation. The crux of that decision is that the offender had an intention to cause a particular injury that has been caused if it is proved, and if it is further proved that the injury caused is sufficient in the ordinary course of nature to cause death, the offence committed would be an offence of murder, punishable u/s 302 of the Penal Code, as this Clause (3) could be attracted. It would not be necessary for the attraction of that clause to prove that the offender had an intention to cause such bodily injury which is sufficient in the ordinary course of nature to cause death. Looking to the phraseology and the wordings of that Clause (3) and especially in view of the fact that the two clauses are joined by conjunction "and," this interpretation was quite justified. In the instant case, we are concerned with the wordings of Section 304 of the Penal Code. It will be significant to note that that section does not create an offence of culpable homicide, not amounting to murder. That section provides for punishment in case of culpable homicide, not amounting to murder. The first part of it provides for punishment of such offence, when the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. The second part of it provides for punishment in a case when the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. The offence that is made punishable under that Section is the same offence namely; as offence of culpable homicide not amounting to murder. It only provides different punishments, taking into consideration, whether the act was done with a particular intention or the act was done with the knowledge that is

likely to cause death with, out any intention to cause death, or to cause teach bodily injury as is likely to cause death. It will be significant to note that this Section 304 covers cases also where the offence is prima facie an offence of murder, punishable u/s 302, bat in view of the application of any one of the exceptions given in Section 300 of the Indian Penal Code, the offence of murder is reduced to an offence of culpable homicide, not amounting to murder., On a plain reading of these two parts of Section 304 of the Indian Penal Code; we are of the view that the two parts apply in different circumstances. For the application of the first pact when the offence committed is prima-facie culpable homicide, not amounting to murder, the prosecution must prove that the act by which the death is caused is done with the intention of causing such bodily injury as is likely to cause death. The word such plays a very significant part. Similarly, the clause which follows the words bodily injury namely; as is likely to cause death also playa a very important part. It is not correct to say that if the offender had an intention to cause any bodily injury and if the injury ultimately caused is an injury which is likely to cause death, it could be said that the offence committed would be punishable u/s 304 Part I of the Indian Penal Code. The user of the word "such" and the user of the aforesaid clause "as is likely to cause death" clearly indicate that the offence of culpable homicide not amounting to murder would be punishable under the first part if the act was done with an intention to cause such bodily injury as is likely to cause death. That particular intention must be gathered from the circumstances of the case. If the act is such an act, that such an intention can be presumed, it would be punishable under that part, of Section 304 of the Indian Penal Code. It means that if from the corium stances of the case, it could be said with a reasonable certainty that the offender did that act with an intention to cause such bodily injury as is likely to cause death, then that act of his will be punishable under the first part, of Section 304 of the Indian Penal Code, but it the Court, cannot with a reasonable certainty arrive at that conclusion from the circumstances, and the court could only say that the act was done with the knowledge that it is likely be cause death, but without any intention to cause such bodily injury as is likely to cause death, that offence will be punishable under the second part of Section 304 of the Indian Penal Code. It will be significant to note that in this Section, there are no two independent clauses joined by conjunction "and". On the contrary, the word "such" is used. It is suffixed by the words "bodily injury" which are further suffixed by the clause" as is likely to cause death". That phraseology dearly indicate that the Legislature intended to provide punishment for such offence under the first part if the offender had an intention to cause such bodily injury as is likely to cause death. If with that requisite intention, the act by which the death is caused is done, it will be punishable under the first parts. The user of the word "such" indicate that it is descriptive of the words "bodily injury intended". It is further enacted that this bodily injury must be such as is likely to cause death. In our opinion, the Legislature intended to provide punishment for such offence under the first part, if the intention was to cause such a devious injury. If the offender could only be attributed the knowledge that his act is likely

to cause death and it could not be said with a reasonable certainty that he had an intention to cause such bodily injury as is likely to cause death, the punishment was provided under the second part of that Section 304 of the Indian Penal Code. We are of the view that it will not be proper to refer to the cases decided interpreting another Section for the purpose of interpreting the present Section 304 of the Indian Penal Code, the wordings of which are quite different in our opinion.

19. In the case of AIR 1966 SC 1871, after referring to the relevant Clauses of Section 300 of the Indian Penal Code, the following observations have been made:

The mental attitude is thus made of two elements?(a) causing an intentional injury and (b) which injury the offender has the foresight to know would cause death. For the application of clause three it must first be established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death, one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established.

This decision also lays down the same ratio as in the case of Viraa Singh.

20. In the case of AIR 1966 SC 118, the two relevant Sections 299 and 300 are beautifully analyzed and the relevant observations are made at p. 151 in Para. 7. Before we refer to those observations, we would refer to certain observations made earlier. They are as under:

The offence of culpable homicide involves the doing of an act (which term includes illegal omissions) (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death or (c) with the knowledge that the act is likely to cause death. If the death is caused in any of these three circumstances. the offence of culpable homicide is said to be committed... Intention and knowledge in the ingredients of the section postulate the existence of a positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person.

Section 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Section 302 begins by setting out the circumstances when culpable homicide turns out into murder which is punishable u/s 302 and the exceptions in the same section tell us when the offence is not murder but culpable homicide not amounting to murder punishable u/s 301. Murder is an aggravated form of culpable homicide. The existence of one of four conditions

turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder.

21. We will now refer to the relevant observations made in Para. 7 at p. 151, They are as under:

The third clause views the matter from a general stand-point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here 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 way of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but within culpable homicide not amounting to murder or something less. The illustration appended to the clause thirdly reads:

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder.

In our view, therefore, it clearly appears that what the Supreme Court has laid down in the aforesaid decisions is that so far as the first part of Clause (3) of Section 300 of the Penal Code is concerned, there should be a subjective inquiry and so far as its second part is concerned, there should be objective satisfaction. The learned Assistant Government Pleader, on the analogy of the interpretation of that clause of Section 300, urged that for the subjective investigation, only first part will be referable and not the second part. The second part will be referable to objective satisfaction. In short, his argument was that the moment it is proved that the offender had an intention to cause injury and the moment it is proved that the injury caused is likely to cause death, which could be determined on objective investigation, the offence would be punishable under Part I of Section 304 of the Penal Code. In our opinion, there is only one "clause". They are not independent clauses joined with conjunction "and". The Legislature has used a different phraseology in this Section 304. For the case to fall under the first part of Section 301 of the Penal Code, the prosecution must prove that the act by which the death is caused was done either with an intention of causing death or with an intention of causing such bodily injury as is likely to cause death. If such intention cannot be inferred with a reasonable certainty; that part will not have any application. It the argument advanced by the learned Assistant

Government Pleader is accepted as a well founded argument in our opinion, the consequence would be that the second part of Section 304 would be rendered nugatory. We are, therefore, of the view that for the application of first part of Section 304 of the Penal Code, the prosecution must prove that the act was done with an intention to cause such bodily injury as is likely to cause death. The aforesaid Supreme Court decisions cannot be a safe guide to interpret this Section 304, the wordings of which are not in part I material with the wordings of Clause 3 of Section 300 of the Penal Code.

22. As said earlier, from the circumstances of the case, we are not in a position to find with a reasonable certainty that the respondent had an intention to cause such bodily injury as is likely to cause death. The offence proved beyond reasonable doubt against the respondent is an offence punishable u/s 304 Part II of the Penal Code. The learned Sessions Judge has taken that view. We are hearing an acquittal appeal. We do not find any good grounds or good reasons which would justify us to differ from that view. We, therefore, reject the argument advanced by the learned Assistant Government Pleader and hold that the respondent has been rightly not convicted of an offence, punishable u/s 302 of the Penal Code or Section 304, Part I of the Penal Code. The appeal, filed by the State, therefore, fails.

23. Coming next to the Revision Petition filed by the State for the enhancement of sentence, it will be significant to note that the respondent has been sentenced to four years' rigorous imprisonment for the offence punishable u/s 304, Part II of the Penal Code. The learned Sessions Judge has taken into account the important circumstance that this respondent was in jail as an under trial prisoner from 6.8.1966 till the date of his judgment. The judgment was pronounced on 19.10.1966. It, therefore, means that the respondent was in jail as an under trial prisoner for a period of over seven months. Taking into consideration that circumstance and the circumstance that the serious injuries caused, did not injure any vital organs and were only deep and the weapon used was an ordinary knife, it could not be said that the sentence awarded was grossly inadequate. We are of the view that even it could not be said with force that the sentence awarded was inadequate. At any rate, we do not find any good reasons to interfere with the discretion of the learned Sessions Judge in awarding punishment. The revision petition therefore, fails.

The appeal and the revision petition are dismissed. Rule is discharged.