(2018) 06 CHH CK 0209

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 73 Of 2013

Ajay Tiwari		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision: June 29, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 300, 302, 304
- Code Of Criminal Procedure, 1973 - Section 374(2)

Hon'ble Judges: Pritinker Diwaker, J; Sanjay Agrawal, J

Bench: Division Bench

Advocate: Awadh Tripathi, Aditi Singhvi, Ravindra Agrawal

Final Decision: Dismissed

Judgement

Sanjay Agrawal, J

1. This criminal appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as

the Cr.P.C. in short) against the judgment dated 18.12.2012 passed by the Additional Sessions Judge, Ramanujganj, Dist. Balrampur-Ramanujganj in

Sessions Trial No. 536/2010 whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian

Penal Code (for brevity, the IPC) and sentenced to life imprisonment with fine amount of Rs.500/- and, in default of payment of fine amount, he has to

undergo additional rigorous imprisonment for six months.

2. Briefly stated, case of the prosecution is that on 01.09.2010 at about 09.45 PM, the appellant Ajay Tiwari returned home and knocked the door, but

it was not opened despite of beating it forcibly, owing to which, he got annoyed and started beating his daughter, namely, Ku. Komal @ Mahi, aged 9

years when it was opened by her, with fists and also with the aid of iron bucket. As a result of which, she became unconscious and expired. It is

alleged by the prosecution that the appellant's brother Vijay Tiwari, who was worshiping in the temple, received telephonic information about the

alleged incident from his daughter Jyoti at about 11.00 PM and upon receiving such information, he rushed to his brother's house where he found his

niece Ku. Komal lying unconscious and her father was sitting besides her while rubbing oil on her body. Upon seeing her critical condition, he (Vijay

Tiwari) took her to Government Hospital, Ramanujganj by his motorcycle but it was declared brought dead.

3. Based upon the aforesaid incident, merg intimation (Ex.P.1) was lodged by the appellant's brother Vijay Tiwari on 01.09.2010 at 23:55 hours and

after holding enquiry on the basis of merg, F.I.R. (Ex.P.13) was registered by the Station House Officer, Ramanujganj, District Balarampur against

the father of the deceased, namely, Ajay Tiwari under Section 302 IPC. Inquest of the dead body of the deceased was conducted vide Ex.P.3 on

02.09.2010. After inquest, dead body was sent for autopsy to Community Health Center, Ramanujganj where Dr. Ajay Kumar Tirkey (P.W.12)

conducted the post-mortem examination of the dead body of the deceased and submitted its report (Ex.P.12) opining that cause of death was cardio-

respiratory arrest due to injury on vital organ kidney and, death was homicidal in nature. Disclosure statement (Ex.P.8) of the appellant was recorded

on 03.09.2010 which led to recovery of small iron bucket from him vide seizure memo (Ex.P.7).

4. After usual investigation of the matter as such, the offence punishable under Section 302 of IPC has been registered against the appellant by the

concerned Station House Officer and submitted its final report before the Judicial Magistrate First Class, Ramanujganj Distt. Balrampur on 20.11.2010

and the matter was thereafter committed to the learned Additional Sessions Judge, Ramanujganj for its trial.

5. After considering the prima facie materials available on record, the trial Court has framed charge under Section 302 of IPC against the appellant on

14.03.2011, who pleaded not guilty in connection with the aforesaid crime and claimed to be tried.

6. In order to bring home the guilt of the appellant, the prosecution examined as many as 14 witnesses while 5 witnesses were examined by the

appellant in his defence.

7. The trial Court, after considering the evidence led by the prosecution, has convicted the appellant in relation to the offence punishable under Section

302 IPC and sentenced him as aforesaid.

8. Being aggrieved, the appellant has preferred this appeal. Shri Awadh Tripathi, learned counsel for the appellant appears along with Ms Aditi

Singhvi, submits that the judgment under appeal convicting the appellant as passed by the trial Court is apparently contrary to law as the same has

been passed without appreciating the evidence in its proper perspective. According to him, the appellant was not at the village and without considering

the evidence adduced in this regard, the trial Court ought not to have convicted him as such. It is contended by the counsel for the appellant that the

alleged crime was committed by the appellant in a manner which squarely falls under Exception 4 to Section 300 IPC, therefore, the appellant cannot

be held liable to be punished under the charge of murder. He submits further that in any case, in absence of proof of any of the clauses, i.e., clauses

Firstly to Fourthly"" enumerated in Section 300 IPC, the trial Court has committed gross illegality in convicting the appellant under Section 302 IPC. In

support, he placed his reliance upon the decision rendered in the matter of ""Kishore Singh and another vs. The State of Madhya Pradesh AIR 1977

SC 2267"", ""Virsa Singh vs. State of Punjab AIR 1958 SC 465"", ""Jai Prakash vs. State (Delhi Administration) (1991) 2 SCC 32"", ""Kesar Singh vs. State

of Haryana (2008) 15 SCC 753"", ""Sellappan vs. State of Tamil Nadu (2007) 15 SCC 327"" ""Mohd. Sharif vs. State Criminal Appeal No. 468/1999

decided on 30th November, 2010) and ""S.D.Soni vs. State of Gujarat 1992 Supp. (1) SCC 567"".

9. On the other hand, Shri Ravindra Agrawal, learned counsel for the State supported the impugned judgment by submitting, inter alia, that it has been

passed upon due and proper appreciation of the evidence of both the parties, and therefore, does not require to be interfered. He submits further that

on the fateful day the appellant came to home in the night when his minor children were sleeping and knocked the door repeatedly and as soon as it

was opened by his deceased daughter Ku. Komal @ Mahi a little bit late, the appellant started beating her vehemently and relentlessly and has

inflicted injuries on several parts of her body with the aid of iron bucket, which was sufficient in the ordinary course of nature to cause her death, as

reflected from the injuries coupled with the post- Â mortem report (Ex.P.12). The act of the appellant would, therefore, come within the definition of

murder, as defined under clause ""Thirdly"" to Section 300 IPC and the trial Court has thus not at all committed any illegality in convicting and

sentencing him as such. He submits further that the case laws cited by the learned counsel for the appellant are distinguishable and would not come as

a rescue for the appellant.

10. We have heard learned counsel for the parties and perused the entire record carefully.

11. Priyanshu @ Harsh Tiwari (P.W.10), aged 8 years, son of the appellant, is the child witness. The Court has asked questions to ensure that

whether he understands the duty to speak truth and was able to understand the questions put to him and also able to answer those questions rationally

and after satisfying it, the Court has examined him. This witness has stated in his evidence that he has two sisters and they all used to live at

Ramanujganj along with his father (appellant) and has stated further that initially his mother also used to live with them, but started living separately at

Ambikapur because of beaten by his father. He has stated further in his evidence that on the date of incident, i.e. 01.09.2010, his father (appellant)

came in the night when they all were sleeping and knocked the door continuously but due to their sound sleep they could not wake up in time. It was

also put forth by him that his father then entered the house through roof of the house and started beating his sister Ku. Komal @ Mahi as she did not

open the door in time. According to his further evidence, his father assaulted his sister relentlessly with the aid of steel bucket, as a result of which,

she became unconscious and succumbed to the injuries when she was being taken to the hospital by her uncle. This witness was firm in his cross-

examination and nothing could be elicited from his evidence.

12. Likewise, Ku. Mansha Tiwari (P.W.11), daughter of the appellant has deposed same thing. Both these witnesses have duly supported the

prosecution case.

13. Smt. Sunita Tiwari (P.W.06) is the wife of the appellant, who was residing separately from her husband, has deposed that she came to know

about the alleged incident from her children on telephone who have narrated the entire incident to her.

14. Baijnath Ram (P.W.8) is the Revenue Inspector, who prepared the spot map vide Ex.P.8. Uma Shankar Pal (P.W.9) is the Constable, who has

brought the deceased for autopsy to Community Health Center at Ramanujganj. A Kujur (P.W.14) is the Station House Officer, who investigated the

matter and they all have assisted the prosecution case.

15. Vijay Tiwari (P.W.01) is the brother of the appellant and is stated to have lodged the reports vide Ex.P.1 and Ex.P.13, i.e., merg intimation and

F.I.R. respectively, but, has turned hostile without supporting the prosecution case. Similarly, Pramod Kumar Keshari (P.W.2), Ramesh Gupta

(P.W.3), Ashok Singh (P.W.4), Amit Kumar Keshari (P.W.5) and Murlidhar Tiwari (P.W.7), all the prosecution witnesses have also turned hostile

without supporting the prosecution case. Likewise, Savitri (P.W.13), mother of the appellant has also not supported the prosecution case.

16. Dr. Ajay Kumar Tirkey (P.W.12) has conducted the post-mortem examination on the dead body of the deceased on 02.09.2010 at 8 AM and has

noticed the following injuries :-

1. Lower lip was swollen and protruding. Two lacerated wounds of 1 x 1 cm and 1 x 1 cm from inner side of lower lip.

2. Froth was coming out from nose.

3. Deep Compressed abrasion about 3 x 2 cm over the chin and crust was found developed.

4. Deep abrasion over 5th - 6th rib of left side chest, its size is 3 x 2 cm. Crust found developed.

5. Deep abrasion was present over back side of both renal region obliquely placed. Crust was found developed. Bluish discolouration of skin around

the injury mark.

6. Multiple abrasions over whole back side upto buttock region. Some injuries appear to be 2 - 3 days old and some 0 -1 day's old.

7. New abrasion mark over lateral part of left thigh, hip and external part of knee. Injury mark over middle left thigh, size 2 x 3 cm in bluish colour.

8. Contusion of 2 x 2 cm dia over left parietal region.

Rigor mortis was present.

17. After noticing the aforesaid injuries, Dr. Ajay Kumar Tirkey submitted its report giving opinion regarding death of deceased, which reads as

under:-

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18. In his (P.W.12) cross-examination, he opined further at paragraph 3 that one of the injuries, namely, injury No.5, as described by him in paragraph

2, was sufficient in the ordinary course of nature to cause her death, which reads as under:-

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-5 , ,

19. Vinod Kumar Pandey (D.W.1) is the manager of Vivek Lodge situated at Sasaram, owned by one Baban Tiwari, has produced the Entry Register

(Ex.D.1C) showing that one Ajay Tiwari stayed in the said Lodge on 01.09.2010. According to him, he has been working as Manager w.e.f.

05.06.2012, much after the occurrence of alleged incident, and does not know the appellant in person. Statement of this witness, therefore, cannot be

relied upon.

20. Ajay Tiwari (D.W.4), the appellant herein, has stated in his evidence that he was at Sasaram on the date of incident, which is 400-450 kilometers

away from Ramanujganj. He has stated further that he came to know about the death of his daughter on the next date of the incident and cremation

of his daughter was already carried out by the time when he returned to Ramanujganj in the evening at 6.00 PM on 02.09.2010. However, the version

of this witness (appellant) cannot be relied upon as he has not deposed anywhere that he stayed at the said Hotel, as deposed by Vinod Kumar

(D.W.1). Moreover, his statement in this aspect cannot be acceptable, in view of the statement of his children (P.W.10 and P.W.11), who were

eyewitnesses to the alleged incident.

21. Bhaskar Dutt Sharma (D.W.2) has stated in his evidence that one Rajwade, Advocate and appellant's wife have tutored the appellant's children as

to how to narrate the incident so as to hold the appellant guilty. Shailesh Kumar Gupta (D.W.3) is the neighbour of the appellant, who has stated in his

evidence that he came to know that appellant's daughter Ku. Komal has expired due to accident. Banafar Pal (D.W.5) has deposed in his evidence

that the appellant's land is adjoining to the land of Dr. Ajay Tirkey, who conducted the post-mortem examination of the deceased Ku. Komal and a

dispute arose between them when Dr. Ajay Tirkey tried to make out a road through appellant's land. The evidence of this witness is not concerned

much with regard to the occurrence of the alleged incident. These witnesses have thus not supported the defence version and appear to have been

entered into the witness box just in order to help the appellant in relation to the commission of the alleged crime.

22. A close scrutiny of the entire evidence adduced by the parties would show that the appellant was in his village on the fateful day, i.e., 01.09.2010

and returned home at about 09.45 PM. After returning home, he started knocking the door continuously as it was not opened by his children in time.

As a consequence of it, he got annoyed and started beating his daughter Ku. Komal @ Mahi vehemently and relentlessly with fists and iron bucket on

several parts of her body. As a result of which, she became unconscious and succumbed to the injuries when she was being taken to the hospital by

her uncle. Injuries sustained by her, vis-a-vis, opinion (Ex.P.12) given by Dr. Ajay Kumar Tirkey (P.W.12) would lead to an irresistible conclusion that

she was beaten up vehemently by her father, which led to her death instantly.

23. The question which now arises for determination, as contended by the counsel for the appellant, is as to whether the act on the part of the

appellant would constitute the offence of murder, as defined under Section 300 IPC or culpable homicide not amounting to murder, as defined under

Section 299 IPC.

24. In order to ascertain the answer of the said question, it is necessary to examine the scheme framed under the Penal Code. Section 299 defines

culpable homicide"" which reads as under:-

299. Culpable homicide.---- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily

injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

and Section 300 defines ""murder"" which reads as under:-

300. Murder.---- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the

intention of causing death, or Secondly---- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the

death of the person to whom the harm is caused, or Thirdly---- 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, or Fourthly-----If the person committing the act knows that it

is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without

any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.--- When culpable homicide is not murder.--- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control

by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or

accident.

The above exception is subject to the following provisos :--

First.--- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.---- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of

such public servant.

Thirdly.---- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.--- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.--- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property,

exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation

and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.--- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public

justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the

due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

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.

Exception 5.---- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or

takes the risk of death with his own consent.

25. A bare perusal of the aforesaid provisions, particularly as provided in opening sentence of Section 300 IPC, i.e., ""Except in the cases hereinafter

excepted"" would show that all ""murders"" are ""culpable homicides"" but all the ""culpable homicides"" cannot be held to be ""murders"", if falls any of the

exceptions enumerated in the above mentioned exceptions of Section 300 IPC. Meaning thereby, the ""culpable homicide"" cannot be held to be

murder"" if any of the exceptions provided in Section 300 IPC is attracted.

26. The Scheme of the Penal Code relating to ""culpable homicide"" has been explained by the Supreme Court in the matter of ""State of Andhra

Pradesh v. Rayavarapu Punnayya and another (1976) 4 SCC 382"" at para 12 of its judgment as under:-

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 greatest 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.

27. In the said matter, i.e., State of Andhra Pradesh v. Rayavarapu Punnayya and another[8] (supra), the Hon'ble Supreme Court has further observed

at para 21 as under:-

21. ..... whenever a court is confronted with the question whether the Â 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 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.

28. Reverting back to the case in hand where we find, based upon the injuries sustained by the deceased, vis-a-vis, the post-mortem report (Ex.P.12),

that she died because of serious injuries caused by her father with the aid of iron bucket. It emerged further that on account of those injuries, she

became unconscious and died on the spot. The injuries so caused were intentional leading to her instantaneous death. Considering the facts of the case

and the manner in which the alleged assault was made, it is difficult to hold that any of the Exceptions provided to Section 300 IPC would be attracted

so as to hold that the act of the appellant is not murder, as contended by his counsel.

29. At this juncture, it is contended by the counsel for the appellant, by placing reliance upon the decision reported in the matter of Kishore Singh and

anotherÂ¹ (supra) that even though none of those exceptions are pleaded or prima facie established, yet the prosecution under the law must require to

bring the case under any of the four clauses enumerated under Section 300 IPC before holding the appellant guilty under the charge of murder. It is,

therefore, contended that though the alleged crime was committed by the appellant on the fateful day but it cannot be said that the injuries so caused

by him to his daughter were intentional and were sufficient in the ordinary course of nature to cause her death so as to hold that the act of the

appellant comes within the ambit of any of the clauses, much less, clause ""Thirdly"" to Section 300 IPC.

30. Based upon the aforesaid principles, it is clear that the prosecution has to establish the fact that the act of the appellant comes within the ambit of

any of the said four clauses of Section 300 IPC to sustain the charge of murder and in absence thereof, the appellant cannot be held liable to be

punished under Section 302 IPC.

31. We shall now examine the question whether clause ""Thirdly"" to Section 300 IPC would apply in the facts and circumstances of the present case or

not?

32. Clause ""Thirdly"" to Section 300 IPC is relevant for the purpose is reproduced here in as under:-

Thirdly---- 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, or

33. The language of the aforesaid clause would speak of ""intention"" at two places and in each of the sequence is to be established by the prosecution

before the case can fall within the ambit of that clause. A bare perusal of this clause would, therefore, show that it consists of two parts. The first part

is that there was an intention to inflict the injury that is found to be present and the second part of that the said injury is sufficient in the ordinary

course of nature to cause death. Under the first part, the prosecution has to prove from the given facts and the circumstances that the intention of the

accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter

of inference or deduction from the particulars of the injury.

34. The aforesaid clause has been interpreted in the leading case reported in the matter of Virsa SinghÂ² (supra) and which has been relied upon by

the counsel for the appellant is essentially to be noted herein in order to ascertain the question whether clause ""Thirdly"" to Section 300 IPC would be

applicable in the present case or not. That is the case where the appellant was sentenced to imprisonment for life under Section 302 IPC. There was

only one injury on the deceased and that was attributed to him. It was caused as a result of the spear thrust and the doctor opined that the injury was

sufficient in the ordinary course of nature to cause death. In these factual scenario, it has been observed at paragraphs 11, 12 and 13 as under :-

(11) In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for

example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to

have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels

fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be

convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not

the kind of enquiry. It is broad-based and simple and based on commonsense; the kind of enquiry that 'twelve good men and true' could readily

appreciate and understand.

(12) To put it shortly, the prosecution must prove the following facts before it can bring a case under 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.

(13) Once these four elements are established by the prosecution (and, indisputably, the burden is on the prosecution throughout) the offence is murder

under S. 300 ""thirdly"". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an

injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not

even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury is actually

found to be proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is

sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the

ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they

can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional.

35. Based upon the aforesaid principles, it is clear that in order to bring a case under clause ""Thirdly"" to Section 300 IPC, the prosecution must prove

the injury and its nature present in the body and it is also required to be established that the injury so inflicted was intentional in nature and it was not

occurred accidentally or some other kind of injury was intended to be caused. After satisfying these elements, it must be proved further that the injury

so caused is sufficient in the ordinary course of nature to cause death and part of this enquiry, as held in Virsa Singh'sÂ² case (supra), would be

purely objective and inferential and would nothing to do with the intention of the offender.

36. Pertinently to be noted here further that in the said case (Virsa SinghÂ²), a contention, as alleged herein also, was made with regard to the fact

that the prosecution has not proved that there was an intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of

nature and therefore the offence was not one of murder. The contention so raised was rejected while observing at paragraphs 15, 16 and 17 as under:

15. ..... In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of

force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be

perverse to conclude that he did not intend to inflict the injury that he did. Once that intent is established (and no other conclusion is reasonably

possible in this case, and in any case it is a question of fact), the rest is a matter for objective determination from the medical and other evidence about

the nature and seriousness of the injury.

16. ..... 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 nor 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. But whether the intention is there or not is one of fact and not one of law. Whether the wound is

serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner

intended to inflict the injury in question.

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

the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the

sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended

to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be

to inflict a totally different injury. The difference is not one of law but one of fact; and whether the conclusion should be one way or the other is a

matter of proof, where necessary, by calling in aid all reasonable inferences of fact in the absence of direct testimony. It is not one for guesswork and

fanciful conjecture.

37. While keeping the said principles in mind, we have examined the entire evidence, both oral as well as documentary and according to the evidence,

it emerged that the children of the appellant, who were eyewitnesses to the alleged incident, have narrated the entire incident and the manner in which

the father had inflicted injuries on his deceased daughter Ku. Komal @ Mahi with his fists and iron bucket. The post-mortem examination of the dead

body of the deceased was conducted by Dr. Ajay Kumar Tirkey (P.W.12), who noticed as many as 8 injuries as evidenced by his statement para - 2

and opined that one of it, i.e., injury No.5, was sufficient in the ordinary course of nature to cause her death and, accordingly observed further that

there was hematoma present on both the kidneys and the cause of death is cardiac and respiratory arrest due to injury on vital organ, such as, kidney.

38. Furthermore, in absence of any evidence or reasonable explanation that the appellant (the father) did not intend to cause that particular injury or

that his act was a regrettable accident and his intention was absolutely not to cause that particular injury would, based upon the principles laid down in

Virsa Singh's caseÂ[2] (supra), be difficult to hold that he did not intend to inflict that particular injury. The evidence would, therefore, clearly show that

the so called injury inflicted by the appellant leading to instantaneous death of his daughter was caused intentionally, which was neither accidental nor

some other kind of injury was intended to be caused. Pertinently to be noted here further that the appellant being a father was not the stranger to the

deceased so as to presume that he did not have any knowledge about the physical condition of his daughter. Thus, from any stretch of imagination, it

cannot be held that the injury so caused, i.e., injury No.5, was not intended to be caused by the appellant to his daughter Ku. Komal @ Mahi. We,

therefore, arrive at a conclusion that the prosecution has established its case beyond all reasonable doubt that the act of the appellant comes within the

purview of clause ""Thirdly"" to Section 300 IPC and the appellant has rightly been convicted under the charge of murder.

39. In view of the facts and circumstances of the case, the principles so laid down in Virsa Singh'sÂ[2] case (supra) and which was relied upon by the

counsel for the appellant would rather support the prosecution case. Likewise, the principles laid down in Jai PrakashÂ[3] (supra), Kesar Singh and

another[4] (supra) and Sellappan[5] (supra) while following the said Virsa Singh'sÂ[2] case (supra) would also not be of any helpful for the appellant.

40. As far as the further reliance upon the decision rendered in S.D.Soni[7] (supra) is concerned, it is noted to be distinguishable as in the said case,

there was no issue involved regarding the interpretation of clause ""Thirdly"" to Section 300 IPC. Hence, the principles laid down in the said case law is

not at all, even remotely applicable in the case in hand. Likewise, the facts involved in the matter of Mohd. Sharif[6] (supra) are entirely on different

footing and would not be applicable in the present case.

41. In view of the foregoing discussions, we do not find any substance in this appeal. The appeal is accordingly dismissed.