APPELLATE CRIMINAL.

Before Mr. Justice Zafar Ali and Mr. Justice Dalip Singh.

INDER SINGH AND OTHERS—APPELLANTS

versus

THE CROWN—RESPONDENT.

1928

Oct. 26.

Criminal Appeal No. 952 of 1928.

Indian Penal Code, 1860, sections 299, 300—Murder—Culpable homicide—sections explained—injuries likely *to cause, and injuries which must in all probability cause, death —distinction.*

The accused beat the deceased with blunt weapons (only) to such an extent that he died, one of his thighs being a mass of bruises and both legs fractured (below the knee), but no bone in the trunk was found to have been fractured nor was the head or any vital organ injured.

Held, that the inference to be drawn from the facts was that the accused knew that the injuries actually given were *likely* to cause death, but those injuries could not be said to be so imminently dangerous that they *must in all probability* cause death, therefore the offence did not fall within any of the clauses of section 300 of the Penal Code, but under the third part of section 299 and was therefore punishable, not under section 302 but under section 304, part II.

The offences of culpable homicide and murder, explained and differentiated.

Appeal from the order of H. A. C. Blacker, Esquire, Sessions Judge, Lahore, dated the 21st July 1928, convicting the appellants.

KESAR SINGH, for Appellants.

MACKAY, for GOVERNMENT ADVOCATE, for Respondent.

JUDGMENT.

DALIP SINGH J.—The five appellants before us DALIP SINGH J. have been convicted by the learned Sessions Judge

1928

INDER SINGH
v.
THE CROWN.

DALIP SINGH J.

under section 302/149, Indian Penal Code, and have each been sentenced to transportation for life. There is also an application on behalf of the complainant to enhance the sentences.

The prosecution evidence shows that one Dewa Singh and others of this party had some three or four years previously broken the leg of Sohan Singh, appellant. They were tried and convicted, and sentenced to various short terms of imprisonment. After that case both sides had certain members of their party bound over under section 107, Criminal Procedure Code. Thereafter the *panchayat* of the villagers brought about a temporary compromise between the parties but some members of the party persisted in not speaking to other members of the opposite party, and it was clear that the bad feelings still existed.

On the 31st March, 1928, Dewa Singh, deceased, was going from his own village Bhangur, which is contiguous with the village Lakhanke of the appellants, in order to get some medecine for his father. He passed the *haveli* of the appellants. Three of the appellants are brothers sons of Wadhawa Singh and the other two are their first cousins. The five persons all set upon Dewa Singh. According to the prosecution four of the appellants had *dangs* and Sohan Singh had a *takwa*.

The medical evidence shows that Dewa Singh received a very large number of injuries, the doctor stating that it was impossible to count them. But most of the injuries were simple, except two, one of which fractured the fibula bone of the left leg and one fractured both the tibia and fibula bones of the right leg. The wound on this leg beneath which the bones were fractured was 5″ by 2″, and death was due

to hæmorrhage following this injury. The doctor was of opinion that this injury might have been the result of more than one blow. Teja Singh and Indar Singh who were eye-witnesses of this occurrence, rescued Dewa Singh and sent for his father and brother, etc., and Dewa Singh gave the whole story of the attack on him to his father and brother.

We see no reason to distrust the direct evidence of Teja Singh, Indar Singh and Yaru, nor the evidence about the dying declaration of Dewa Singh. The only question, therefore, that remains for decision is whether the offence falls under section 302/149 or under some other section of the Indian Penal Code. The law on the point has often been stated but is frequently misunderstood, and I think it is necessary to try and re-state it as clearly as possible. Section 299 of the Indian Penal Code runs as follows :—

" 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."

Section 300 lays down that :

" 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

1928

INDER SINGH
v.
THE CROWN.

DALIP SINGH J.

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 bodily injury as aforesaid."

The learned Sessions Judge appears to have held that the offence of the present accused came within the fourth clause of section 300. From a comparison of section 299 with section 300 it appears that, if death is caused by doing an act with the intention of causing death, the offence committed is murder unless it happens to fall within the exceptions to section 300, Indian Penal Code. It is also clear that, if an act is done with the knowledge that the doer is likely by such act to cause death, the offence is culpable homicide unless the act done is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and is committed without any excuse in which case the offence is 'murder.' If the act is done with the intention of causing such bodily injury as is likely to cause death the offence is culpable homicide unless the offender knows that the act done is likely to cause the death of the person to whom the harm is caused or if the bodily injury is sufficient in the ordinary course of nature to cause death. It thus appears that the first part of section 299 corresponds to the first clause of section 300; the second part of section 299 to the second and third clauses of section 300; and the third part of section 299 corresponds to the fourth clause of section 300. Little difficulty arises in the

case of the first part of section 299 and the first clause of section 300. Generally speaking the offence committed where the intention is to cause death is murder unless it comes within one of the exceptions. The second clause of section 300 differs from the second part of section 299 in that stress is laid on the knowledge of the offender that he is likely to cause death by the act done. It has, therefore, ordinarily been applied to those cases where the offender has special knowledge of facts or circumstances which make the act done particularly dangerous to the life of the person to whom that harm is done. Thus if A knows that B is suffering from an enlarged spleen and with that fact in his mind proceeds to give B a violent blow in the region of the spleen and B dies, the offence comes within clause (2) of section 300 of the Indian Penal Code and not within section 299, because of the special knowledge of A. I do not propose to lay down that this is the only class of cases which is covered by clause (2) of section 300, but this is the commonest of the type of cases falling under section 300, clause (2). The third clause of section 300 differs from the second part of section 299 in a matter of degree only. If the bodily injury intended to be inflicted is likely to cause death it comes within section 299. If the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death it comes within the third clause of section 300. Opinions, of course, will differ as to whether in the particular circumstances of any case, having regard to the nature of the injury inflicted, the weapon used and other attendant circumstances, a case falls within section 299 or falls within the third clause of section 300. Generally speak-

1928

INDER SINGH
v.
THE CROWN.

DALIP SINGH J.

ing, however, it may be said that if the act done will in all reasonable probability result in death the offence is murder, whereas if it is only likely to cause death the offence is within section 299. The third part of section 299 and the 4th clause of section 300 differ from the preceding parts and clauses respectively in that intention is not a necessary element of the offence. All that is needed is a knowledge that the act is likely to cause death. The third part of section 299 differs from the second clause of section 300 by reason of the absence of intention as a necessary ingredient of the offence. It differs from the fourth clause of section 300 again in a matter of degree only. Here again opinions are bound to differ in a particular case as to whether the offence falls within section 299 or within section 300. But speaking generally, if the act must in all probability cause death the offence is within section 300, and if the act is only likely to cause death the offence falls within section 299. Of course it must be borne in mind that all cases falling within section 300 must *ex necessitate* fall within section 299, but all cases falling within section 299 do not necessarily fall within section 300. Section 304, part I, covers cases which by reason of the exceptions are taken out of the purview of section 300, clauses 1, 2 and 3, but otherwise would fall within it and also cases which fall within the 2nd part of section 299 but not within section 300, clauses 2 and 3. Section 304, part II, covers cases falling within the third part of section 299 and not falling within the fourth clause of section 300. Speaking generally again without laying down that there may not be cases which are out of the general rule, the fourth part of section 300 does not usually apply where there is an intention to cause

bodily injury which results in death because all such cases ordinarily must come within the purview of the first three clauses of section 300, Indian Penal Code.

In this particular case it is obvious that the intention of the appellants was to take revenge for the fractured leg of Sohan Singh in the previous affray between the parties. There was no injury to the head and the injuries on the trunk were confined to bruises at several places on the back, but no bone in the trunk had been fractured or any vital organ injured by the blows that were inflicted on the trunk. Most of the injuries were on the legs of the deceased, and I think that the inference can be safely drawn that the intention was to break the legs of Dewa Singh. Now, fracturing the legs of a man cannot, in my opinion, be held to come within the second and third clauses of section 300 in a case like this where the fractures were caused, as the medical evidence shows, by blunt weapons only. Nor, in my opinion, does it come within the fourth clause of section 300 as the act cannot be said to be so imminently dangerous that it must in all probability cause death. This being so, the offence can only come within section 299. In my opinion it does not fall within the first or the second part of section 299, but I think that the appellants may be credited with a knowledge that the beating that they did actually give to Dewa Singh was likely to cause death. To beat a man to such an extent that one of his thighs is a mass of bruises, to fracture both his legs below the knee and also give him various other minor injuries on the legs and on the trunk is, I think, to do an act which the offenders knew was likely to cause death because of the injuries actually given and the shock ensuing. As the learned Sessions

1928

INDER SINGH v. THE CROWN.

DALIP SINGH J.

Judge remarks it is a moderate estimate to hold that Dewa Singh had at least thirty injuries on his person. In the circumstances, therefore, I would hold that the offence comes within the third part of section 299 and is, therefore, punishable under section 304, part II of the Indian Penal Code.

As regards sentence, I consider that this was a very bad case and the act was a brutal one in that five persons armed with *dangs* assaulted and took by surprise a man who was either unarmed or had only a stick with him. I, therefore, consider that this is a case for inflicting the maximum sentence, and I would sentence the appellants to ten years' rigorous imprisonment each.

I would, therefore, accept the appeal to the extent of altering the conviction to one under section 304, part II/149, Indian Penal Code and reducing the sentence from transportation for life to ten years' rigorous imprisonment.

ZAFAR ALI J.

ZAFAR ALI J.—I agree.

N. F. E.

Appeal accepted in part; convictions reduced.