Faqira vs State on 26 August, 1954

Equivalent citations: AIR1955ALL321, 1955CRILJ884, AIR 1955 ALLAHABAD 321

JUDGMENT

Roy, J.

1. Faqira, son of Nazar, aged 30 years, resident of Rardhana, within police circle Kithore, district Meerut has been convicted under Section 302, I. P. C., and sentenced to death for having committed the murder of his cousin Masit Ullah, alias Bholi on 21-3-1953 at about 2 p.m. He has preferred this appeal from his conviction and sentence and there is also the usual reference by the learned Sessions Judge for the confirmation of the sentence of death.

2 The case for the prosecution was that on the day in question gram crop was being harvested from the field of one Liaqat by the deceased and by Hafiz alias Fiza, the real brother of the appellant and by others. At about mid-day an altercation took place between the deceased and Hafiz on the question as to who should cut which portion of the standing crop. The dispute was, however, resolved by the other persons who were working on the same field and the two continued to reap the crop till about 2 p.m. It is said that at that time Faqira appellant, the brother of Hafiz, came there and Hafiz complained to Faqira of the unseemingly behaviour of the deceased. The appellant got enraged and he kicked and cuffed Masitullah alias. Bholi and gave him some blows with the wooden end of the sickle which he had in his hand Masitullah fell down unconscious and he expired about two hours later.

3. A report about the occurrence was lodged at the police station the same evening at 9-30 p.m. by Buddhu chaukidar of the village in which these details had been given and in which the eye-witnesses had been mentioned. The police took up investigation of the matter. The body was sent for post-mortem examination. The postmortem examination was conducted on 23-3-1953 by the Civil Surgeon of Meerut. The following external injuries were present on the dead body of Masitullah alias Bholi :

> 1. Contused area 6" x 4" on the back and outer side of right arm and elbow and deep congestion was present on cutting the tissues.
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> 2. Contused area 4" x 2" on left cheek with swelling around it and deep congestion was seen on cutting the tissues and this congestion extended upto neck.
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> 3. Contused area 2" x 1" on back of left elbow and arm. Due to decomposition no other external mark of injury was visible.

4. On cutting the chest wall very deep area of congestion was present on right side of chest in the lower part in an area 4" x 3" and another acrea of congestion was present in post axillary line in an area 6" x 2". On the left side of chest deep congestion was also present in an area 4" x 3"

in mid thoracic area near vertebral attachment. One pint of blood was present in right thoracic cavity and flowed like a tap on cutting inter costal muscles. Right lung was deeply congested and lacerated for 1 1/2" x 3/4". Fracture of 5th and 7th ribs was present on left side. These fractures were present near the vertebral border. The diaphram on left side was very deeply congested and blood stained. Peritoneum was also congested and blood about 8 ounces was present in splenic bed. Walls of the stomach were congested. Spleeu was congested and lacerated for 1"x 1/4" and was lying in a pool of blood. Liver and right kidney were also congested. Death in the opinion of the Civil Surgeon was due to shock and haemorrhage following fracture of ribs, laceration of lung and spleen. The Civil Surgeon was further of opinion that these injuries were caused probably by fists and kicks, and also by the handle of a sickle called daranti. The Civil Surgeon was further of opinion that all the injuries were ante mortem and they could not have been caused by a fall. He further stated that there was no evidence of any abnormality like that of a tumour in the deceased's abdomen.

5. In support of the prosecution story five eye-witnesses were produced. Three of them, namely, Jumma, Kaley and Ram Chand, P. Ws. 1 to 3 were at the time of the occurrence reaping the crop in the adjoining field of Abbas, and the other two, namely, Amar Singh (P. W. 6) and Mamraj (P. W. 9) were reaping the crop on the field of Liaqat where the occurrence took place. The first set of witnesses who were on Abbas's field did not see the beginning of the assault and they were attracted to the place after the assault had started. The second set of witnesses who were on Liaqat's field saw the occurrence from beginning to end. Their evidence coupled with the medical evidence on the record leaves no manner of doubt that the deceased had been assaulted by the appellant by fists and kicks and the wooden end of the sickle and death was due to the injuries received by him in that assault.

6. The plea raised by the appellant in his defence was four-fold. Firstly, that the deceased had been assaulted by the appellant's brother Hafiz at the time when the initial quarrel took place and not by the appellant and that the deceased died about two hours later of symptoms which simulated cholera. Secondly, that the injuries were post-mortem and had been occasioned by a fall of the dead body on the, ground when it was being taken over on a cot to the thana-Thirdly, that the deceased had a tumour and it was probable that the death ensued on account of the tumour having burst. Fourthly, that the appellant who was not present at all at the time of the occurrence, was falsely implicated at the instance of one Majji Pradhan who was inimical to him.

7 We have examined the facts and circumstances of the case and the evidence on the record and we are of opinion that the defences taken up by the appellant were not true. It cannot for , a moment be accepted that the real culprit Hafiz, the brother of the appellant, was left out and the appellant was roped in his stead. The medical evidence disclosed that the injuries found on the dead body were ante mortem and were caused by fists and kicks and by the wooden end of the sickle called daranti. The medical evidence further proved that those injuries were not caused by a fall and there was no abnormality like that of a tumour in the deceased's abdomen.

8. Three witnesses were examined on the side of defence. They were Qadra (D. W. 1), the brother of the deceased, Rahimuddin (D. W. 2), and Shrimati Allah Rakhi (D. W. 3), "the mother of the deceased. The first two stated that the incident took place with Hafiz, the brother of the appellant, and that the deceased survived the assault and worked over the field for about another hour when he vomited and purged and became unconscious and he was then removed home where he expired in the evening. The third witness, namely, Shrimati Allah Rakhi stated that when the dead body was being taken to the thana on a bullock-cart, it fell on the ground. The suggestion was that the injuries were the result of that fall. There can be no doubt whatsoever that the defence witnesses were false and suborned witnesses and the theory propounded by them had not had the slightest foundation of truth behind it.

9. The question next arises what offence was made out. The learned Sessions Judge held that having regard to the nature and extent of injuries and having regard to a Division Bench decision of this Court in -- 'Behari v. State', AIR 1953 All 203 (A), the case fell under Clause 3 of Section 300, I, P. C., and the offence amounted to murder. The learned Sessions Judge in the alternative thought that the case might be covered by Clause 4 of Section 300, I. P. C. In applying the decision in 'Behari v. State (A)', to the facts of the present case, the learned Sessions Judge relied upon a part of it as divorced from another and a very important part. Clause 3 of Section 300, I. P. C., speaks of "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."

In interpreting this provision, it was observed at p. 206 of the report in 'Behari v. State (A)', cited above :

"The difficulty that usually arises is of ascertaining the intention of the accused when, say, the injury actually caused is fracture of the skull and compression of the brain resulting in death. The injury actually caused is sufficient in the ordinary course of nature to cause death. Did the accused intend to cause the injury actually caused or did he merely intend to cause a wound on the head? The presumption is that man intends the natural consequences of his act. But this doctrine cannot be carried too far, for otherwise, it would eliminate from the law the distinction between intentional and negligent or accidental wrong doing. The true rule is that where the injury caused is not the result of accident or of negligence, a strong presumption arises that the

> injury caused was intended to be caused, though this presumption may be rebutted by other circumstances, e.g., the motive of the accused, the nature of the instrument of attack, the time and place of attack, the position and condition of the deceased, the number of injuries, the force used etc."

10. The learned Sessions Judge overlooked these observations with regard to the presumption being rebuttable and he did not direct his mind to the question whether or not the presumption has been rebutted in the present case. In the same decision it w.as laid down that Section 304, I. P. G., will apply to cases where 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 (3) of Section 300, I. P. C.

11. Now what are the facts of the present case? The deceased was the cousin of the accused and there was no enmity whatsoever between them. The attack was not premeditated. The accused flared up suddenly when his brother Hafiz complained to him about the unseemly behaviour of the accused which happened about two hours before this occurrence. The attack was lodged with fists and kicks and with the wooden side of the handle of the sickle. There was certainly no intention to kill, for if that intention had been there, the sickle would have been used very effectively by inflicting injuries with the sharp and iron portion of it. There was absolutely no motive to kill. The ordinary rule that "where the injury caused was not the result of accident or of negligence, a strong presumption arises that the injury caused was intended to be caused" was sufficiently rebutted by the circumstances narrated above, namely, :

> (1) that there was no motive or intention to kill, (2) that the act was not premeditated, (3) that the relations between the accused and the deceased who were cousins had till then been cordial, and (4) the nature of the instrument of attack and the time and place of attack. The true import of the decision in AIR 1953 All 203 (A), is most often lost sight of by the trial courts, and that is what seems to have happened in the present case as well.

12. Learned counsel for the State has relied upon the decision in -- 'Badri v. State', AIR 1953 All 189 (B), in support of his contention that the offence in the present case would be an offence of murder. We have looked into the facts of that case and we are of opinion that it is clearly distinguishable. There it was found that the injuries Inflicted were intentional and they were of such a nature as to cause death in the ordinary course of nature and the injuries were so severe that there was no escape from the conclusion that the case fell under Clause 3 of Section 300, I. P. C. The conviction in that case was, however, maintained under Section 304, I. P. C., but in the exercise of the revisional jurisdiction the sentence was enhanced. The observations made in that case would not, however, be pertinent to the facts of the present case which are entirely on a different level. Having regard to the facts and circumstances of the present case and the evidence on the record we are of opinion that the offence that was made out against the appellant was one of culpable homicide not amounting to murder punisliable under Section 304, Part II, Penal Code, and we are further of opinion that the exigencies of the case would be sufficiently met if the appellant is awarded a sentence of three years

only.

13. We, therefore, allow the appeal, set aside the conviction and sentence of the appellant under Section 302, I. P. C., but instead we convict him under Section 304, Part II, Penal Code, and sentence him to undergo three years' rigorous imprisonment. The reference is rejected.

Beg, J.

14. While agreeing with my learned brother on the conclusions arrived at by him regarding the conviction and sentence of the appellant I would like to make some comments on the evidence adduced by the prosecution in this case and on questions of fact and law involved in it. The salient facts of this case have already been set out in the judgment of my learned brother. It is therefore, not necessary to recapitulate them. No doubt, the prosecution has succeeded in proving "its case that the appellant Paqfra caused injuries to Masitullah alias Bholi on the afternoon of 21-3-1953 and further that these injuries resulted in his death. The prosecution evidence, however, relating to the manner of attack deserves to be sifted on certain particulars.

15. It seems to me that the prosecution case that the attack was launched by the appellant simultaneously with fists and kicks as well as with the wooden side of scythe is improbable. It would obviously be inconvenient for a person to effectively wield the wooden handle of a scythe as well as his hands and legs at the same time. The probabilities are that the appellant struck the deceased only with fists and not with the wooden side of the scythe at all. Amar Singh (P. W. 6) who was working in the field along with Masitullah alias Bholi clearly stated in his evidence to the following effect :

> "I saw him being beaten only with fists, I did not see him being beaten with the handle of a daranti or with kicks."

Then in the next breath he changed this statement and the court recorded it thus :

> "(Now says) Faqira beat Bholi with kicks and the handle of a daranti also. It was by mistake that I stated that Bholi was beaten only with fists."

Subsequently the witness stated as follows :

> "When I was to appear before the committing Magistrate the Daroghaji had told me that I should state that Bholi had been beaten with fists, kicks and the handle of a daranti and I stated whatever I was asked by the Daroghaji to state."

This statement leads one to think that the prosecution version that the injuries were caused by fists and kicks as well as by the wooden side of a daranti is an embellishment in the case which required some police pressure to support it. (16) Ram Chand (P. W. 3) also at one stage of the cross-examination stated :

> "I saw with my own eyes Faqira giving fist blows to Bholi".

There is no allegation or even suggestion that any of the above witnesses had turned hostile. On the other hand, the prosecution has throughout relied on them. There is, therefore, absolutely no reason why that part of the evidence of these witnesses which is in favour of the accused should not be accepted, especially as it is supported also by the medical evidence of the doctor who stated that the injuries found on the person of the deceased could be caused by fists and kicks. (17) Next it should be noted that although an attempt has been made on the part of the prosecution witnesses to make out that the attack was a unilateral one and the deceased was quite inactive in the matter, it appears to me that this is not quite a true picture of the incident, It seems that the position was that both the deceased as well as the appellant were grappling with each other. Their, bodies would in that position be inter-locked. This picture of the incident is borne out by Bam Chand (P. W. 3) who stated in cross-examination as follows :

> "I was still in the field in which I was reaping the grams. I saw Faqira and Bholi grappling with each other."

In this situation it is obvious that the position would be a confused one and it would not be possible to predicate that the blow caused by the appellant at any particular spot was aimed by him at that very spot or that he was able to anticipate exactly the nature & effect of each blow or the amount of damage that a particular blow would cause to the deceased. Further, in this situation, it is possible that an injury or damage caused might not necessarily have been the injury or damage intended to be inflicted by the appellant, since in this situation there is a fair possibility of the infliction of an accidental injury exceeding in violence the injury actually intended.

It is also to be borne in mind that it is the admitted c'ase of the parties that the relations between the deceased and the appellant prior to that date of incident were quite cordial. The attack by the appellant on the deceased was a sudden one and was the result of a complaint made by Fiza to his brother Faqira, the appellant, that Masitullah alias Bholi had beaten him (Fiza) earlier in the day. This had led to the sudden provocation of the appellant who had flared up in rage on getting this information. In fact the appellant was related to the deceased as uncle. They were living in different portions of the same house. Even after the present case was started against the appellant, the daughter of the deceased namely, Kumari Jamila, as well as the mother of the deceased viz., Srimati Allah Rakkhi, gave evidence in court supporting the case of the appellant.

18. In the light of the above remarks on the evidence produced by the prosecution In this case the question of law that arises may now be approached. On the above facts, the question that has to be decided is, whether the offence made out is one of murder or that of culpable homicide not amounting to murder. The word 'murder' is defined in Section 300, J. P. C., which provides as follows :

> "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 2ndly : 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 3rdly : If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or 4thly : 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." (Exceptions 1 to 5 omitted).

19. So far as the first clause is concerned, it can have no application to the facts of the present case as it is not possible by any stretch of imagination to attribute to the appellant the intention of causing death. It is also not possible to bring the present case within the second clause. The evidence does not disclose that the deceased had any physical infirmity or defect in his body or any special feature in his constitution, which brought about his death or that the offender was aware of any such weakness, defect or special feature. None of the parties has argued before us that the case can be brought under any of these two clauses. It must, therefore, be taken that none of the first two clauses of Section 300, I.P.C., is applicable to the present case.

20. The trial court has come to the conclusion that the facts in the present case attract the operation of Clauses (3) and (4) of Section 300, I.P.C., mentioned above and this position deserves to be examined closely. To attract the provisions of Clause (3), two requirements have to be fulfilled. The first requirement is that the act by which the death is caused should have been done with the intention of causing bodily injury to any person. This requirement would not present much difficulty in most of the cases as the very fact that a person strikes or assaults another or does an act to harm another would by necessary implication point to the conclusion that he intended to cause bodily injury to that person. The second requirement of this clause is that bodily injury intended to: be inflicted should be such as is sufficient in the ordinary course of nature to cause death.

On behalf of the State it is argued that the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death is enbugh to bring the offender within- the clutches of Clause (3). I find it difficult to uphold this contention. If it is accepted, then in every case where the injury paused is sufficient in the ordinary course to cause death, the offender would have to be convicted under Section 302, I.P.O., barring of course the cases in which an exception applies. Moreover this interpretation would have the effect of making the words "intended to be inflicted" a surplusage. I am of opinion that the words "intended to be inflicted" can not be ignored nor the qualification which they import into this clause whittled down in this fashion.

Further, it is to be noted that the words used in this section connote intention and not know-ledge. Knowledge as contrasted with intention would more properly signify a state of mental realisation in which the mind is a passive recipient of certain ideas and impressions arising in it or passing before it. It would refer to a bare state of conscious awareness of certain facts in which human mind might itself remain supine or inactive. On the other hand, intention connotes a conscious state in which mental faculties are roused into activity and summoned into action for the deliberate purpose of being directed to-wards a particular and specified end which the, human mind conceives and perceives before Itself. Mental faculties which might be dispersed; in the case of knowledge are in

the case of intention concentrated and converged on a particular point and projected in a set direction. The difference between the shades of the meaning of the two words is fine but clear, and the use of the one in place of the other by the Legislature can-not be without purpose. The words used by the Legislature must, therefore, be given their full effect.

For the aforesaid reason I am of opinion that to bring an act within the four corners of Clause (3), it is not enough that the injury actually inflicted is sufficient in the ordinary course of nature to cause death. It is further necessary that the offender should intend to cause an injury of this nature. From the fact that the injury caused is sufficient in the ordinary course of nature to cause death, it does not necessarily follow that the offender intended to cause an injury of that nature. The one does not conclusively prove the other. It is possible that the offender intended to cause one degree of harm and the injury actually inflicted cause a degree of harm exceeding in violence the harm intended by him. To my mind, the effect of a finding by the court that the injury actually inflicted is sufficient in the ordinary course of nature to cause death is to raise a presumption that the offender intended to cause bodily injury of that nature. Presumption, however, is not proof. The presumption thus arising is a rebuttable one. Once this presumption has arisen, the court will have to ascertain whether the facts brought out in the case are such as to rebut the presumption that has been raised against the accused.

In other words, the Indian Law has prescribed both an objective as well as a subjective test in this regard. The prosecution passes the objective test when once the court has given a finding to the effect that the injury actually caused is sufficient in the ordinary course of nature to cause death. Having reached that conclusion, the court is thrown back on an enquiry regarding the subjective condition of the offender's mind and has to ascertain whether it is in a position to say that the subjective requirement has also been fulfilled i. e. whether the accused intended to cause the said injury. It is only after both the objective and subjective tests have been gone through, that this part of the requirement of the third clause can be said to have been fulfilled.

This process may be re-stated in another manner, The court has first to ascertain whether the injury is sufficient in the ordinary course of nature to cause death from the nature of injuries inflicted. Once this fact is found in favour of the prosecution, it has succeeded in proving that the objective requirement is fulfilled. This gives rise to a presumption regarding the subjective requirement. The court then turns to the circumstances of the case to ascertain as to how far this, subjective requirement which is presumed in such cases has been rebutted by the circumstances emerging in that case. It is not possible to lay down any abstract rule in regard to this matter as the circumstahces of particular case vary. The extent to which this presumption is rebutted will depend upon the consideration of a number of factors peculiar to that particular case. The weapon used, the degree of force utilised in wielding it, the antecedent relations of the parties, the manner in which the attack was made, the nature and number of the 'injuries inflicted and the part ot the body where the injury was inflicted, all these and numerous other factors which may arise in a case have to be considered/and the court has to see whether the presumption raised is rebutted as a cumulative effect of all the factors brought to light in the case before it.

If the Court finds that the force of such circumstance is insufficient to displace the presumption raised against the accused, it "would hold that the necessary requirements of Clause (3) have been fulfilled. On the other hand, if the Court finds that the totality of circumstances brought out in evidence are strong enough to rebut the presumption thus raised, it would hold that the requirements of Clause (3) have not been fulfilled. Further, it is also to be remembered in this connection that even if the weight of such facts and circumstances is such as to create a balance against the presumption so to produce in the mind of the Court a state of mental equipoise, the legal principle of the benefit of doubt would be thrown into the pan in favour of the accused thereby tipping the scales of Justice on his side.

21. Amongst the factors to be considered in this regard by the court, the kind of weapon used is no doubt an important circumstance. Where the weapon used is a firearm or a sharp-edged weapon, it may be difficult to rebut the presumption. Where such a weapon is used on a vital part of human body the difficulty in rebutting this presumption might be enhanced. Instances of the border line cases presenting difficulty might arise where the weapon used is a blunt one. The weakest type of prosecution cases in this regard would be those in which no weapon at all is used and the attack is found to have been launched merely with flats or fists and kicks.

22. Another relevant factor, as mentioned above, is the antecedent relations between the parties. If the previous relations have been bitter, it is easier to come to the conclusion that the accused intended to cause the fatal harm, The position of the prosecution would be stronger if the attack is a premeditated one. If, on the other hand, it is found that there was no previous enmity between the parties and the attack was a sudden one and made in provocation that would be a factor which would go in favour of the accused as tending to neutralise the presumption initially raised against him. Again, so far the circumstance of motive is concerned, the weakest form of prosecution case would be the one where it is found that there is no antecedent enmity between the parties but on the other hand the parties are closely related and their relations prior to the date of the incident have been cordial.

23. The part of the body where the injury has been inflicted and the number of injuries inflicted may also help the court in this regard. The fact that the injury is inflicted on the head or a vital part of the body would strengthen the case of the prosecution. If however, the injury is inflicted on a lower part of the body or on a part of the body which is not vital, the case of the prosecution would not be so strong. The force with which the injury was caused is also an important circumstance. But in considering this circumstance the Court cannot ignore the question whether the degree of harm caused was the result of a set purpose or of accidental factors arising from the situation of the parties in the course of the transaction. The number & nature of injuries inflicted may also be of help in determining this question. The Court may also consider the fact whether the attack was made by a solitary person or was a concerted one made by a number of persons. In a case in which the attack is made by a number of persons on a solitary individual and is a concerted one, it is a strong factor pointing to the conclusion against the accused. On the other hand, if it is an attack made by a solitary individual and is further an unpremeditated one that would be a circumstance in favour of the accused.

24. Having enumerated instances of some of the considerations that may arise in such cases and the manner of their application by Courts, they may now be applied to the concrete facts of the present case. No doubt, on the side of the prosecution there is the substantial fact that the injuries caused by the accused were sufficient in the ordinary course of nature to cause death. This is enough to raise the initial presumption against the accused. On the other hand, on the side of the accused the evidence presents a number of counter-balancing factors for rebutting this presumption. It clearly shows that the previous relations between the parties were cordial. The appellant was a relation of the deceased. Both of them had joint cultivation. Even after the prosecution was launched against the appellant, the daughter" and the mother of the deceased supported him. The attack was not a pre-

meditated or a deliberate one. It was the result of a sudden provocation, resulting from a feeling of resentment arising from a realisation of the fact that the brother of the appellant was beaten by the deceased. The probabilities are that no weapon was used by the appellant and that he made the attack only with fists. Dr. Nand Lal in his commentary on the Indian Penal Code, 1929 Ed. Volume II pages 1369-70, while discussing the case of a man who makes a very violent attack on another person with fist on the head which is a vital part of the body makes the following remarks :

> "Every man giving another a very violent blow on the head with his fist must be taken to know that the result of the blow may be, and even, is likely to be, injury to the other, sufficient to kill him, but unless it must be taken that ordinary knowledge experience or instinct tell a man that such a result is an ordinary and, therefore, probable consequence of so striking another man, the striker's act would not amount to a greater crime than culpable homicide for at most, it would be an act done with the knowledge that he was likely to cause death, and an intention to cause more than he tsknew was likely, could not be imputed to him, unless there was further evidence showing what his actual intention was."

Even if it be assumed for a moment that the attack was made by a scythe, the prosecution case itself is that scythe was deliberately inverted and the attack was made from the wooden end with a view to avoid any fatal harm. No doubt the injuries caused were of a serious type but there is also the circumstance that they were caused when the appellant and the deceased were grappling with each other and a situation was created in which the possibility of an injury accidently exceeding in violence the degree of harm intended cannot be eliminated or brushed aside. If the blow had struck slightly away from the ribs and fallen on the fleshy part of the abdomen a serious harm of this nature might not have been caused. The number of external injuries is only 3, so that the attack was not pursued further nor was it continued after fall.

It is possible that the accused having realised that he had caused more harm than intended, himself recoiled and stopped immediately. It is also to be remembered that this is not a concerted attack by a number of persons but a solitary attack made by one individual on another in a state of passion and at the spur of the moment. In my opinion, the effect of the totality of the circumstances mentioned above is to destroy the initial. presumption raised against the accused. In any case, the position is not such as to be free from doubt and the benefit of it should go to the accused. The act

would, therefore, be taken out of Clause (3) of Section 300, I.P.C., and would descend to culpable homicide not amounting to murder unless Clause (4) of Section 300 is applicable to it.

25. The last question, therefore, that arises is whether Clause (4) of Section 300, I. P. C., can be applied to the present case. The earlier part of this clause refers to cases where the act of the accused is itself so imminently dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death. The emphasis in the preceding part of Clause (4) is on the imminently dangerous nature of the act itself. It cannot be said that the attack by fists or even by the wooden end of a scythe is by itself of such a nature as must, in all probability, cause death. Death in an attack of this nature is an exception rather than the rule. It is unusual to expect death in cases of this type. Further, Clause (4) is usually applied to cases where the act of the offender is not directed against any particular person. There may even be no intention to cause harm or injury to any particular individual. The act proceeds not from any malicious intention towards any particular individual but is the result of a general disregard for human life and safety. There may, however, be rare cases in which the target of attack even under Clause (4) may be a single individual. The act of a person practising feats of archery by aiming his arrow at the cap of a human being walking at some distance away or of a mother leaving a new born babe in the open might provide an instance of, it.

In any case, the degree of knowledge required in Clause (4) is so strong as to make it impossible to believe that the peril of the act ensuing in fatal consequences had not irresistibly forced it > self on the mind of the offender and yet he had deliberately chosen to disregard this danger signal. Under this clause the degree of the probability or likelihood of the act resulting in fatal harm is of the highest level. This degree of knowledge cannot be fastened on the appellant in the present case, nor can the degree of probability or likelihood required under Section 300, Clause (4) be predicated of the act in question. The utmost that can be said in the present case is that the appellant had knowledge that his act was likely to cause death. In other words, this is a case where all that can be said is that death might have been known to be the probable result of the act but not a case where death must have been known to be the most probable result of the act. This conclusion would bring the case 5ut of Clause (4) and would again reduce the offence to one of culpable homicide not amounting to murder, that is, Section 304, I. P. C.

26. As already indicated, in the present case there is no question of intention to cause death or of causing such bodily injury as is likely to cause death and this would take the case out of the purview of part I of Section 304, I. P. C. The present case would, therefore, fall under Part II of Section 304, which applies to a case where the act is done with "the knowledge that it is likely to cause death, but without any intention to cause death er of causing such bodily injury as is likely to cause death."

27. On behalf of the State reliance has been placed on two decisions, namely, AIR 1953 All 189 (B) and AIR 1953 All 203 (A), both of which are distinguishable on facts from the present case. In the case of AIR 1953 All 203 (A), the attack was a concerted one. It was a premeditated attack launched by a number of persons, who had gone together with the intention of giving a beating to the deceased. The facts of this case have no analogy to the present case in which the attack was made by a solitary person who had flared up at the spur of the moment and suddenly resorted to violence. In the case cited, the court found that previous enmity between the parties had been proved and this

previous enmity was found to be the motive of the attack. In the present case, it is admitted that there was no previous enmity between the parties and the antecedent relations between them were cordial. In the case cited the attack was made with lathis and the injuries were inflicted on the head. On the other hand, in the present case it appears that the attack was made with fists and even if the prosecution case is accepted, with the wooden side of a scythe which was deliberately inverted with a view to avoid causing any fatal injury,

28. The other case, namely, AIR 1953 All 189 (B), has also no application to the facts of the present case. In this case the attack was made by a large number of persons. The number of persons was alleged to be 16 but the court found that there were no less than fourteen. All these persons had joined together to make an attack on the deceased. The attack was the outcome of- a bitter enmity that had been existing between the parties. It was again a case of a concerted and premeditated attack by a large body of persons in which the court found that the injuries were inflicted with the intention of killing the deceased. None of the two above-mentioned cases can, therefore, provide a parallel with the present case.

29. A case that might present a closer analogy to the present one is that reported in -- 'King Emperor v. Bohram', 9 Cri LJ 245 (Sind) (C). This was a case of a sudden quarrel between solitary individuals in which the accused taking up a wooden pestle had given a blow with it to the deceased killing him in broad daylight in the presence of a number of persons. Dealing with the facts of the case the learned Judges while convicting the appellant under Section 304 Part II, Penal Code, observed as follows :

> "The circumstances indicate that the blow which killed Kadu was the unpremeditated outcome of a sudden quarrel and though a reasonable man must have known that it was likely to cause death, the probability of the fatal result was net present to the consciousness of the appellant at the moment. From this we think a sentence of seven years rigorous imprisonment is unduly severe. Maintaining the conviction which we define as passed under the latter half of the section, we reduce the sentence to rigorous imprisonment for three years."

30. For the above reasons I am in entire agreement with the view of my learned brother that the offence committed by the appellant would fall under Section 304, Part II, I. P. C., and not under Section 302, I. P. C. In view of the circum-stances of the case, the sentence of three years rigorous imprisonment passed on the appellant would meet the ends of justice.

31. BY THE COURT : We, therefore, allow the appeal, set aside the conviction and sentence of the appellant under Section 302, I. P. C., but instead we convict him under Section 304, Part II, I. P. C., and sentence him to undergo three years' rigorous imprisonment.

32. The reference is rejected.