



# Jus Corpus Law Journal

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## Case Comment: Phoolabai and Others vs State of Madhya Pradesh

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### FACTS OF THE CASE

The victim, a man by the name of Veer Singh, was brutally beaten up on the street in front of his house, by a woman, identified as Phoolabai, his wife and her two sons, Kalyan Singh and Halke. This was observed by Komal Bai, the daughter of Veer Singh, who did not for once, protest against the way her father was beaten up. Ultimately, Veer Singh died and a DehatiNalishi was launched, against Phoolabai and her 2 sons. This DehatiNalishi was formed on the basis of the words of hear-say evidence by the Kotawar, Heera. Thus, Phoolabai and Kalyan were tried in the Trial Court of Guna, where they were adjudicated guilty.

### RELEVANT ISSUES

1. Whether on 8.5.2000 at about 7 pm the death of Veer Singh was culpable homicide.
2. Whether the culpable homicide of deceased Veer Singh comes within the purview of 'murder'.

3. Whether the aforesaid act was done by the appellants/accused persons Phoolabai and Kalyan Singh.
4. Whether the accused persons were knowing that the act done by them was sufficient in the ordinary course of nature to commit culpable homicide of the deceased.
5. Whether the aforesaid act was done in furtherance of common intention.

## RULES & PROVISIONS

- **Section 299,<sup>1</sup> Indian Penal Code 1860** - Defines **Culpable Homicide** and elements required for the same.
- **Section 300,<sup>2</sup> Indian Penal Code 1860** - Defines the term “**Murder**”.
- **Section 302,<sup>3</sup> Indian Penal Code 1860** - **Punishment for Murder.**
- **Section 304<sup>4</sup>; Indian Penal Code 1860-** **Death by virtue of Negligence**, not amounting to culpable homicide.
- **Section 324,<sup>5</sup> Indian Penal Code 1860** - **Voluntarily Causing Hurt by Dangerous Weapon.**

## JUDGEMENT

The case in question was adjudicated by Hon'ble Justice Gural Singh Ahluwalia. Justice Ahluwalia had analysed that the enquiry, in this case, was limited to whether the offence in question was covered by the *Third Clause of Section 300 of IPC*. The contention, that the accused had no intention to murder or cause death is erroneous for judging the scope of subsection 3 as the phrase “*Intention of causing death*” occurs in the *first clause and not the third clause*. However, an offence is still deemed to fall within the ambit of the third clause even though the offender didn't intend to cause death so long as death ensues from intentional bodily harm and the victim shall succumb to death owing to such injuries. Thus, the contention that there was no *intention to cause death is irrelevant* to decide if the case falls

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<sup>1</sup> Indian Penal Code, 1860, s 299

<sup>2</sup> Indian Penal Code, 1860, s 300

<sup>3</sup> Indian Penal Code, 1860, s 302

<sup>4</sup> Indian Penal Code, 1860, s 304

<sup>5</sup> Indian Penal Code, 1860, s 324

under the ambit for subsection 3 of S.300 of IPC<sup>6</sup>. However, clauses 1 and 4 of S.300 of the IPC cannot be attached to this case as there exists a clear emphasis on the word *knowledge*. “The judge adjudicated that Culpable Homicide is the first kind of Unlawful Homicide”. He also mentions that according to the provisions of IPC, *Culpable homicide is the genus and the species is Murder*. Through Paragraph 20, the judge mentions that the death of a Human Being is not enough unless one of the mental stages of men’s rea in culpable homicide is present. Ahluwalia J further claimed that the nature of the offence did not only stem from the location of the injury, but also depends upon the *facts and the circumstances of the case*.

Dissenting the opinion of the judge in the matter of *Virsa Singh vs the State of Punjab*, Ahluwalia J pointed out that the Judge has *linked the intent required with the seriousness of the injury and that is not a prerequisite of S.300*. These matters are *separate and distinct*, even though evidence may overlap. In answer to the question of S.34<sup>7</sup> of the IPC, the judge answers that the three ingredients, namely

*“(a) Criminal act is done by more than a single person*

*(b) Such act is done in Furtherance of Common Intention and*

*(c) Each of the persons is liable for the act in the same manner as if it was done by him alone”* shall guide the court in determining whether an accused is liable to be convicted with the aid of S.34. The first two acts, in accordance to Ahluwalia J., are construable related to the accused and the third is the consequence. He states *“Every individual member of a whole group charged under S.34 of IPC must, therefore, be a participant in the commission of the joint action and results in their combined activity. The Section has not envisaged a separate act by all of the accused people for being deemed responsible for the ultimate criminal act. If such loose interpretation is accepted, the purpose of Section 34 of IPC shall be rendered unfruitful”*. Further, he lays his insight saying that *S.34* is intended to meet a situation wherein *all the co-accused have also committed something to constitute the commission of a criminal act*. *“If, however, common intention can be proven, but*

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<sup>6</sup> *Virsa Singh v The State of Punjab* (1958), AIR 465, SCR 1495

<sup>7</sup> Indian Penal Code, 1860, s 34

*no overt act can be linked to the accused individual, S.34 can be attracted<sup>8</sup>". Common intention is considered a pre-oriented plan and acting in pursuance to the plan. "Thus, there must exist some common intention, beforehand to the commission of the act.<sup>9</sup> The burden to prove the actual participation of more than a person for the commission of the act lies solely on the shoulders of the prosecutors.<sup>10</sup>"*

Thus, only two elements are needed to fulfill the requirements of S.34. *The person is to be present in the scene and There should exist a pre-arranged plan<sup>11</sup>.* On the question of whether the death of Veer Singh was homicidal by nature or not, the court through Justice Ahluwalia answered that the death causative agent as examined by the forensic officer was by virtue of an injury sustained in the brain. The death was caused by virtue of being stuck in the head by a hard, blunt object sometime in the last 24 hours, and hence, the death was homicidal in nature. However, the judge upheld, keeping in mind the facts of the case and arguments of the petitioners that the trial court had explained its findings through the evidence given by Heera, who had collected information from Ramkrishna Raghuvanshi. His statements were based on the facts conveyed to him by Raghuvanshi and thus, is hearsay evidence and cannot be conclusively considered reliable evidence. Considering the lack of evidence as to the uncertainty of facts, Justice Ahluwalia disposed of the case in favour of the appellant, stating that the prosecution has failed to prove their case beyond doubt. **Thus, the appellants are acquitted of the charges filed against them under Section 302, Section 34 of the IPC, and the trial court's conviction and sentence are set aside and the bail bonds for the convicted are discharged.**

## CRITICAL ANALYSIS AND CONCLUSION

The appellant has pointed out the fundamental flaws in questioning the provisions that govern IPC. The Council on behalf of the appellant has very aptly pointed out the *failure to*

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<sup>8</sup> *Suresh Sankharam Nangare v State of Maharashtra* (2012)

<sup>9</sup> *Shyamal Ghosh v State of West Bengal* (2012)

<sup>10</sup> *Mrinal Das v State of Tripura* (2011)

<sup>11</sup> *Bijay Singh v State of M.B.*(1966), AIR 145, SCR (3) 358

*record proper evidence by the respondent.* They have pointed out the *mismatch in the statements* recorded, and how the Trial Court has used *unreliable and baseless evidence* to adjudge the Appellant guilty. In fact, on further inspection of the statements recorded, various questions regarding provisions of the IPC arise and whether the situations were in cohesion with the judicial interpretations of the provisions in previously upheld cases. For example, on the question of mens rea being present as an element in the ambit of S.300, Justice Ahluwalia has examined the crucial definition of Culpable Homicide through his readings of the case of *Virsa Singh vs the State of Punjab*. The crucial question of whether this case involves S.34 or not and whether it *amounts to murder, by virtue of a homicidal act* are also amply mentioned. He ultimately upholds that there is no construable evidence proving this. He cites the crucial principles that explain the legal positions of the terms succinctly and establishes the criterion for the reading of such cases under such provisions and whether they justify the prerequisites to establish a basis for the appellant's crime. In doing so, he rightfully disposes of any ambiguity regarding the procedure for examining the bases of a crime as enshrined by the IPC and subsequently provides a just explanation for the same.

Further, there were differences in statements of Komal Bai, filled with contradictions to her own point and her modus operandi is unnatural. Despite being the daughter of the victim, Veer, Komal Bai had not once tried to stop the incident from taking place. Her house too, in accordance with her, is situated far away and she had recorded her statement saying that no one was around when the incident took place. Thus, Komal Bai's statements can be construed as unreliable by virtue of her statements. Thus, from the above facts, it is construable that the evidence used by the Trial Court, in this case, was based on the report of Kotawar Heera, whose evidence is hearsay from Ramkrishna. However, Ramkrishna was never examined by the Prosecution. Thus, the side petitioner has provided evidence on locus standi of a hearsay situation. There is no concrete evidence and there has been the failure to examine the primary witnesses, thus causing reasonable question as to whether the crime actually took place in the way stated in the reports.