the Madhya Pradesh Minimum wages Fixation Act, 1962. With the greatest respect to the learned Judges of the Madhya Pradesh High Court, I am inclined to think that the observations of the Bench in *Laxmen's case* (supra) (15) go contrary to the decision of the Supreme Court in *Ambica Mills case* (supra) (13) and to the trend of judicial precedent on the point in question. In deciding the case of Laxman in the way the Madhya Pradesh High Court did, they followed their own earlier Division Bench judgment which was contrary to the view of the Punjab High Court. The only other case to which Mr. Bhagirath Dass referred on this point is the judgment of the Bombay High Court in *Savatram Ramprasad Mills Co. Ltd. Akola* v. *Baliram Ukandaji and others* (16). It may be noticed that the observations of the Bombay High Court in the aforesaid case were not approved by the Supreme Court in the *Central Bank of India case* (supra) (2). The Labour Court appears to have gone entirely wrong in holding that though there was no statutory bar to the jurisdiction vested in the Labour Court by section 33C (2) of the Act, some kind of implied bar on general principles could be created in the way of the petitioners. Error of law in the decision of the Labour Court on the second preliminary issue is, therefore, equally obvious, and the said decision is also set aside.

(25) For the foregoing reasons, this writ petition is allowed, the judgment and order of the Labour Court on the two preliminary issues is set aside and quashed, and the Labour Court is directed to proceed with the trial and decision of the claims of the petitioners on merits in accordance with law. The petitioners would be entitled to receive payment of the costs incurred by them in the proceedings in this Court from the employer, i.e., from respondent No. 2.

K.S.K.

APPELLATE CRIMINAL

Before Gurdev Singh and A. D. Koshal, JJ.

AMAR SINGH,—*Appellant*

versus

THE STATE,—*Respondent*

Criminal Appeal No. 824 of 1966.

October 24, 1968.

Penal Code (XLV of 1860)—S. 300—Thirdly—Injury "sufficient in ordinary course of nature to cause death"—Determination of—Factors to be considered—Stated—Non-availability of medical-aid or negligence of the injured in following instructions of the Doctor—Whether relevant considerations.

(16) A.I.R. 1963 Bom. 189.

Held, that whether an injury is sufficient in the ordinary course of nature to cause death is determinable as soon as the injury is inflicted provided the details of the damage caused by it are available. Whether death ultimately results from the injury or not will not necessarily be a factor to be considered in judging whether the injury was or was not of the type indicated above. An injury, which is sufficient in the ordinary course of nature to cause death, may not be allowed to cause death, by recourse to medical treatment. On the other hand, an injury which is not sufficient in the ordinary course of nature to cause death may still result in death if it is mishandled. The medical treatment or the mishandling, however, does not play any part in the determination of the question whether the injury was or was not sufficient in the ordinary course of nature to cause death provided its details at the time of infliction are known. In all such cases, therefore, the chief cause of the death in question is to be determined and if that is found to be an injury which is sufficient in the ordinary course of nature to cause death, the offence will be murder if the infliction of the injury was intentional. Negligence of the patient in such a case will not, therefore, be a very relevant consideration. It is the severity of an injury and the degree of probability of death flowing from its infliction which determine the question as to whether it is or is not sufficient in the ordinary course of nature to cause death and the availability of medical aid, the constitution of the victim and his refusal to follow the instructions of his medical adviser are not factors relevant to such determination.

(Paras 22 and 25)

Appeal from the order of the court of Shri Pritam Singh Pattar, Sessions Judge, Sangrur, dated the 17th day of August, 1966, *convicting the appellant.*

NAROTAM SINGH AND DALJIT SINGH, ADVOCATES, for the Appellant.

D. D. JAIN, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB), for the Respondent.

JUDGMENT

KOSHAL, J.—Amar Singh, aged 30/32 years, and his brother Bachan Singh, aged 32/34 years, sons of Phuman Singh and residents of village Togewal in Police Station Longowal, were tried jointly by Shri Pritam Singh Pattar, Sessions Judge, Sangrur, for offences under section 302 and section 302 read with section 34 of the Indian Penal Code respectively, the allegations against them being that on the 17th of March, 1966, at about 6 P.M., Amar Singh aforesaid committed murder by causing fatal injuries to Chand Singh, aged 30 years, a resident of the same village, in furtherance of the common intention of them both. As a result of the trial Bachan Singh was acquitted, the case against him having been found to be doubtful, while Amar Singh was found guilty of the charge framed against him, was convicted thereof and was sentenced to imprisonment for life. This appeal has been presented by Amar Singh aforesaid against

the judgment of the learned Sessions Judge which is dated the 17th of August, 1966.

(2) The prosecution case may be stated thus. About 15 days before the occurrence some cattle belonging to the appellant and his brother Bachan Singh trespassed into the fields of the deceased who lodged a protest in that connection with them. Instead of mollifying him they hurled abuses at him.

(3) Some days later, the appellant was passing in a drunken condition in front of the house of the deceased whom he abused and by whom he was consequently slapped.

(4) On the 17th of March, 1966, at about 6 P.M., Chand Singh deceased was sitting on a *khund* near the door of his house in village Togewal and was talking to Mukhtiar Singh (P.W. 6). Jang Singh (P.W. 5), a brother of the deceased, was taking his bath at a short distance. Amar Singh appellant and his brother Bachan Singh came there armed with a *gandasa* and a *lathi* respectively from the side of their outer house. Bachan Singh shouted to Chand Singh that the latter would not be spared. Immediately thereafter the appellant gave a *gandasa* blow on the right side of the head and another in the right hip to Chand Singh. Jang Singh (P.W. 5) and Mukhtiar Singh (P.W. 6) raised an alarm when the appellant and his brother ran away, carrying their respective weapons with them.

(5) Chand Singh had fallen on the ground and was put on a cot and taken inside his house by Mukhtiar Singh and Jang Singh, P.Ws. Thereafter it was raining during the whole of the night. Next morning, at about 7 A.M., Jang Singh, P.W., started with his injured brother Chand Singh in a cart for Longowal which lies at a distance of six miles from Togewal. It was raining heavily and the two brothers had to break journey a number of times, so that they were able to reach the Longowal Health Centre as late as 5 P.M. Chand Singh was examined by Dr. V. K. Jindal (P.W. 4) at 5.36 P.M. and was found to have the following injuries on his person:—

"1. An incised wound about $3\frac{1}{4}'' \times \frac{3}{4}'' \times$ bone deep placed obliquely over right parietal region sclap extending from the middle line to 2" from the right ear.

2. An incised wound about $2'' \times 1'' \times$ muscle deep placed obliquely over right hip about $1\frac{3}{4}''$ from the right anterior superior iliac spine."

(6) Chand Singh was fully conscious and was responding to questions. Injury No. 2 was found to be simple with a probable duration of "within 24 hours". X-ray was advised for injury No. 1.

(7) On receipt of a *ruqa* from Dr. Jindal, Assistant Sub-Inspector Santa Singh (P.W. 9) reached the Health Centre and recorded statement Exhibit P.M. of Chand Singh which was completed at 7.30 P.M. First Information report Exhibit P.M. 2 was registered at Police Station Longowal at 8 P.M. on the basis of that statement.

(8) On the 19th of March, 1966, the Assistant Sub-Inspector went to village Togewal and inspected the place of occurrence which was a part of a thoroughfare. The Assistant Sub-Inspector took into possession turban Exhibit P. 2 of Chand Singh which was produced by Jang Singh (P.W. 5) and had cuts on it.

(9) On the same day Chand Singh was removed to the Civil Hospital, Sangrur, where he was X-rayed by Dr. H. S. Bakshi on the 21st of March, 1966. The doctor found that the right parietal bone had been fractured.

(10- Dr. K. L. Batra (P.W. 2) attended to Chand Singh at the Civil Hospital, Sangrur, from the 19th of March, 1966, to the 29th of March, 1966, when Chand Singh was discharged from the hospital with advice to take complete rest. Chand Singh, however, was brought back to the hospital in an unconscious state on the 2nd of April, 1966. He remained as an indoor patient in the hospital till the 13th of April, 1966, when he died.

(11) The autopsy was performed by Dr. B. R. Dular (P.W. 1) on the 13th of April, 1966, from 3 P.M. onwards. He found on the dead body of Chand Singh an injury which he has described as follows :—

> "Wound $2\frac{1}{2}'' \times \frac{1}{4}'' \times$ bone deep on the right side in the cocipito temporal region of the scalp with its anterior end $2\frac{1}{2}''$ from the right ear. The margins of the wound were infected with some slough sticking to the edges of the wound. On reflecting the scalp there was some haemorrhage underneath on the right side. There was linear fracture $2\frac{1}{2}''$ long through and through involving posterior part of temporal and anterior part of the occipital bone on the right side. On lifting the bone there was extensive extradural fresh haemorrhage on the right side. There was

hole 2¼"×1½" by going obliquely into the brain substance in the membrane. There was clotted blood over the hole. On further dissection there was lacerated wound 2¼"×2" into the brain on the right side in the parieto occipital lobe of the brain. There was extensive subdural haemorrhage all over the brain more on the right side."

(12) In the opinion of the doctor death had resulted from shock and intracranial haemorrhage consequent upon the injury to the brain which was sufficient in the ordinary course of nature to cause death. The time-gap between the injury and the death was estimated at about 25 days and that between the death and the autopsy at 14 hours and 25 minutes.

(13) The applicant and his brother Bachan Singh were arrested by the Assistant Sub-Inspector on the 26th of March, 1966, as they were not available earlier. The appellant was interrogated on the same day in the presence of Ram Singh (P.W. 7) and one Atma Singh, when he made a disclosure statement in pursuance of which *gandasa* Exhibit P. 1 was recovered from inside a heap of *bhusa* lying in a room of his house.

(14) When examined in pursuance of the provisions of section 342 of the Code of Criminal Procedure, the appellant and his brother denied the correctness of all the allegations made against them by the prosecution and took the stand that they had been falsely implicated on account of the fact that during the Panchayat elections they were helping one Nikka Singh whose opponent Ram Singh was being assisted by the deceased and Jang Singh and Mukhtiar Singh, P.Ws.

(15) Except for the part said to have been taken by Bachan Singh in the occurrence, the learned Sessions Judge found the ocular testimony of Jang Singh (P.W. 5) and Mukhtiar Singh (P.W. 6) to be fully reliable, supported as it was by the dying declaration of Chand Singh contained in Exhibit P.M. and by the medical evidence. There being no evidence of the presence of stains of blood on *gandasa* Exhibit P. 1, he held that the recovery of the *gandasa* did not connect the appellant with the commission of the crime but that it was "a circumstance which goes against him". The evidence about the *lalkara* said to have been raised by Bachan Singh, brother of the

appellant, at the time of the occurrence was found to be discrepant and the case against Bachan Singh was therefore, found to be doubtful while the appellant was convicted and sentenced aforesaid.

(16) The first contention raised by learned counsel for the appellant is that ocular evidence should be thrown out as unreliable by reason of the delay by which the first information report was lodged at the police station. With this contention we do not find ourselves in agreement. It is no doubt true that the occurrence took place about 24 hours earlier to the point of time when statement Exhibit P.M. of Chand Singh was recorded at the Longowal Health Centre, but then this delay has been very plausibly explained by Jang Singh (P.W. 5) who stated that it was raining throughout the night following the occurrence and that even after he started next morning for the police station, heavy rain continued so that he had to break journey on the way a number of times and could not reach the Health Centre before 5 P.M. on the 18th of March, 1966. The correctness of the time of his arrival at the Health Centre Longowal is not disputed which indicates that there must have been compelling reasons for Jang Singh (P.W. 5) not to make proper medical aid available to his seriously injured brother earlier. The only explanation for the delay is that given by Jang Singh (P.W. 5) and even though he and the other prosecution witnesses were cross-examined at length no material could be brought on the record from which we may conclude that the explanation was forged. It is to be noted that the explanation forms a part of statement Exhibit P.M. itself which fact militates against its connection. Under the circumstances no significance attaches to the delay.

(17) The only other attack made on behalf of the appellant against the ocular testimony was that Mukhtiar Singh (P.W. 6) was a chance witness and that his deposition should on that account be held to be unreliable. This argument also has no force. The house of the witness is no doubt 100 or 150 *karams* distant from the place of occurrence but then there is nothing unnatural in the explanation which he offers for his presence at the time and place of the attack. He stated that he was returning to his house from the house of some carpenters when he found the deceased sitting outside his own house and began talking to him. There is no evidence at all to indicate that the witness is in any way interested in the prosecution or against the

appellant and there is no reason why he should agree to make a false deposition in support of the charge of murder against the appellant.

(18) Jang Singh (P.W. 5) and Mukhtiar Singh (P.W. 6) have given the same details of the occurrence as have been set out above as part of the prosecution case. They both stated that Amar Singh appellant and his brother Bachan Singh came armed with a *gandasa* and a *lathi* respectively, that Bachan Singh gave a *lalkara* that Chand Singh would not be spared and that the appellant then gave a *gandasa* blow in the head and another in the hip to Chand Singh. The medical evidence has already been set out above and fully supports the depositions of the two eye-witnesses which find further and important corroboration from statement Exhibit P.M. which constitutes the dying declaration of Chand Singh and in which the injuries found on the deceased have been attributed to *gandasa* blows by the appellant. In this view of the matter we find the ocular testimony to be fully reliable in so far as it goes against the appellant and confirm the finding of the learned Sessions Judge in that regard.

(19) The main point raised by learned counsel for the appellant was that the conviction under section 302 of the Indian Penal Code could not be maintained. It was urged that Chand Singh was discharged cured from the Civil Hospital, Sangrur, on the 29th of March, 1966, that brain haemorrhage which developed later must be attributed to Chand Singh's negligence and that it was that negligence (and not the head injury caused by the appellant) which must be held responsible for Chand Singh's death. It is submitted that under the circumstances the conviction of the appellant should be for an offence under section 304 of the Indian Penal Code only. We have given serious consideration to this aspect of the matter and find that the appellant has been rightly convicted of an offence under section 302 of the Indian Penal Code. A reference to the details of the injury given by the autopsy Surgeon and narrated above fully supports his view that the injury was sufficient in the ordinary course of nature to cause death. It is also clear from the manner in which the appellant came armed and attacked Chand Singh that he intended to cause the injury which was actually found on the person of the deceased and not an injury of another type. The case, therefore, falls squarely within the ambit of clause 3rdly of section 300 of the Indian Penal Code as explained in *Virsa Singh* v. *The State of Punjab* (1),

(1) 1958 S.C.R. 1495.

the following observations from which may be quoted with advantage :—

"To put it shortly, the prosecution must prove the following facts before it can bring a case under section 300, '3rdly';

"First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

"Once these three elements are proved to be present, the enquiry proceeds further and,

"Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

"Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout). The offence is murder under section 300, 3rdly. 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 (note that there is any real distinction between the two). It does not even matter that there is no knolwedge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death."

(20) Learned Counsel, however, has placed reliance on *Willie (William) Slaney* v. *State of Madhya Pradesh* (2). In that case the

(2) A.I.R. 1956 S.C. 116.

deceased was attacked with a hockey stick in a sudden quarrel with the result that his skull was fractured. He died in the hospital ten days later. The evidence of the doctor was that the injury was "likely" to result in fatal consequences. Being of the opinion that it was obvious that the assaulter did not intend to kill the deceased their Lordships observed:—

> "There is nothing to warrant us to attribute to the appellant knowledge that the injury was liable to cause death or that it was so imminently dangerous that it must in all probability cause death. *The fact that Donald lived for ten days afterwards shows that it was not sufficent in the ordinary course of nature to cause death.*
>
> "The elements specified in section 300 of the Indian Penal Code are thus wanting. We take the view, considering all the circumstances that the offence is the lesser one.
>
> "The appellant is acquitted of the charge of murder but is convicted under the second part of section 304, and sentenced to five years' rigorous imprisonment."

(21) It is on the underlined portion (in italics in this report) of these observations that stress is laid on behalf of the appellant, it being contended that whenever death does not occur soon after the infliction of an injury, the latter cannot be said to be sufficient in the ordinary course of nature to cause death. The inference sought to be drawn from the underlined portion just mentioned is certainly not deducible therefrom. It is to be noted that in the case dealt with by their Lordships of the Supreme Court, the quarrel was sudden, the intention to kill was definitely lacking and according to the medical evidence, the injury was only "likely" to result in death. It was in these circumstances that their Lordships considered the time-gap of ten days between the injury and the death to be a *factor* indicative of the injury not being sufficient in the ordinary course of nature to cause death. Their Lordship's observations can certainly not be interpreted to mean that whenever there is a time-gap of 10 days or more between an injury and the death following from it, the injury must be taken not to be sufficient in the ordinary course of nature to cause death. This, we think, was made clear by their Lordships by stating that the view they took had been arrived at on a consideration of "all the circumstances".

(22) In the present case, as already stated, the injury found on the head of the deceased by the autopsy Surgeon was in the latter's opinion sufficient in the ordinary course of nature to cause death. This opinion is sought to be displaced on behalf of the appellant by reason of the deceased having been discharged from the hospital on the 29th of March, 1966. It is urged that the readmission of the deceased into the hospital on the 2nd of April, 1966, and the time-gap of 11 days between that readmission and Chand Singh's death must be taken to be indicative of some negligence on the part of the deceased through which he strained himself into a relapse and that the direct cause of the death was that negligence and not the injury. This argument is wholly unacceptable to us. Whether an injury is not sufficient in the ordinary course of nature to cause death is determinable as soon as the injury is inflicted provided the details of the damage caused by it are available. Whether death ultimately results from the injury or not would not necessarily be a factor to be considered in judging whether the injury was or was not of the type indicated above. An injury, which is sufficient in the ordinary course of nature to cause death, may not be allowed to cause death, by recourse to medical treatment. On the other hand, an injury which is not sufficient in the ordinary course of nature to cause death may still result in death if it is mishandled. The medical treatment or the mishandling, however, does not play any part in the determination of the question whether the injury was or was not sufficient in the ordinary course of nature to cause death provided its details at the time of infliction are known. For example, a serious brain injury like the one which we find in the present case may be sufficient in the ordinary course of nature to cause death but medicine or surgery may save the victim in spite of the serious nature of the injury which on that account, however, would not cease to be one sufficient *in the ordinary course of nature* to cause death. Again, a small wound caused by a sharp-edged weapon on a vital part would not be an injury sufficient in the ordinary course of nature to cause death but if it is mishandled and allowed to become suppurative or gangrenous, it may result in death. In all such cases, therefore, the chief cause of the death in question is to be determined and if that is found to be an injury which is sufficient in the ordinary course of nature to cause death, the offence would be murder if the infliction of the injury was intentional. Negligence of the patient in such a case would not, therefore, be a very relevant consideration. In this connection reference may usefully be made to the opinion of

Taylor at page 233 of his treatise "Principles and Practice of Medical Jurisprudence" (Eleventh Edition)—

> "The wounded person may *by his own fault* cause an otherwise simple wound to become fatal. A man who has been severely wounded during a quarrel may obstinately refuse medical assistance, or he may insist upon acting in a manner contrary to the advice of his medical attendant; or by other imprudent practices he may prevent his recovery. In the case of the notorious Governor Wall, who was convicted of causing the death of a man by excessive punishment, it was attempted to be shown in evidence that the deceased had taken his own life by the immoderate drinking while under treatment in the hospital. In charging the jury, the Judge said that no man would be justified in placing another in so perilous a predicament as to make the preservation of his life depend merely on his prudence. Neglect to call in a medical practitioner or refusal to receive medical advice, will not always be considered as a mitigatory circumstance in favour of the accused, even though the wound were originally capable of being cured. *Refusal of medical advice or treatment* does not always operate as a mitigatory circumstance on the part of an assailant, because a wounded person is not compelled to call for medical assistance, or to submit to an operation."

(23) Assistance on the point is also available from *In re Singaram Padayachi and others* (3). In that case the victim had an injury of very great severity, being a cut five inches long, three and a half inches broad and three inches deep with fracture of all the bones on the shoulder. In the opinion of the doctor, who attended the deceased, this injury was sufficient in the ordinary course of nature to cause death, and when taken in conjunction with the other injuries caused, death was all the more certain. The autopsy Surgeon, who was another witness in the case, was asked by the Court whether the injury was sufficient in the ordinary course of nature to cause death. His answer was:

> "Compound fracture may or may not cause death. It depends upon the vitality, the efficient treatment and complication such as sepsis."

(3) A.I.R. 1944 Mad. 223.

(24) The learned Sessions Judge accepted the evidence of the doctor who attended the victim and was of the opinion that the same had not been rebutted by the answer given by the autopsy Surgeon. King, J., who delivered the judgment of the Division Bench, agreed with the opinion of the learned Sessions Judge and remarked that the answer of the autopsy Surgeon was far too general to be regarded as contradicting what the doctor attending on the victim had said. King, J., further observed :

> "We are not prepared to assent to any argument that an injury sufficient in the ordinary course of nature to cause death is an injury, which inevitably and in all circumstances must cause death. If the probability of death is very great, then it seems to us the requirements of thirdly under section 300 are satisfied, and the fact that a particular individual may by the fortunate accident of his having secured specially skilled treatment or being in possession of a particularly strong constitution have survived an injury which would prove fatal to the majority of persons subjected to it, is not enough to prove that such an injury is not sufficient 'in the ordinary course of nature' to cause death."

(25) From the above discussion it follows that it is the severity of an injury and the degree of probability of death flowing from its infliction which determine the question as to whether it is or is not sufficient in the ordinary course of nature to cause death and that the availability of medical aid, the constitution of the victim and his refusal to follow the instructions of his medical adviser are not factors relevant to such determination. Viewed from this angle, the injury in the present case must be held to be one sufficient in the ordinary course of nature to cause death in conformity with the opinion of Dr. B. R. Dular (P.W. 1).

(26) For the reasons stated we conclude that the appellant was rightly convicted of murder, being an offence falling within the ambit of section 302 of the Indian Penal Code. He has already been awarded the lesser punishment prescribed by the law for offence and his appeal is accordingly dismissed.

GURDEV SINGH, J.—I agree.

R.N.M.