A SUBRAN AND ORS.

v.

STATE OF KERALA

AUGUST 5, 1993

B [M.N. VENKATACHALIAH, CJ., B.P. JEEVAN REDDY AND A.S. ANAND, JJ.]

Constitution of India, 1950:- Article 137/Supreme Court Rules—Order XI: Review—Judgment—Clarification of.

C **This Court by its judgment* decided Criminal Appeal No. 237 of 1993. On a review of the said judgment, the Court felt that observation made in paragraph 11 thereof was capable of being misinterpreted.**

Substituting paragraph 11 of the judgment, this Court

D **HELD : The opinion expressed in paragraph 11 of the judgment required to be confined to the peculiar facts of the case and was not general exposition of law. [512-G-H; 513-A]**

Subran and others* **v. *State of Kerala*, **[1993] 3 SCC 32.**

E CRIMINAL APPELLATE JURISDICTION : Review Petition No. 1394 of 1993.

In

Criminal Appeal No. 237 of 1993.

F

From the Judgment and Order dated 4.9.91 of the Kerala High Court in Crl. Appeal No. 537/88.

Sudhir Gopi. Roy Abrahim and M.M. Kashyap for the Petitioners.

G M.T. George for the Respondent.

The following order of the Court was delivered :

On a review of the judgment, we find that the opinion expressed at pages 10 to 12 (internal) corresponding to para 11 of the reported judg-
H ment in 1993 (3) SCC page - 32, is capable of being misinterpreted. The

opinion expressed therein was required to be confined to the peculiar facts of the case, but it tends to give an impression as if it is a general exposition of law which it was not meant to be. We, therefore, substitute that paragraph reading "Since appellant 1 Subran ..... committed by the four appellants?" (page 10 to 12), by following:

> "Appellant No. 1, Subran, had rightly not been charged for the substantive offence of murder under Section 302 IPC. Subran, appellant No. 1, was not attributed the fatal injury or identified as the person who caused the fatal blow. According to the medical evidence, none of the injuries allegedly caused by appellant-Subran either individually or taken collectively with the other injuries cause by him, were sufficient in the ordinary course of nature to cause death of Suku. There is no material on the record to show that the injuries inflicted by Subran, with the chopper, were inflicted with the *intention* to cause death of Suku. Under these circumstances, the conviction of the first appellant, Subran, for an offence under Section 302 IPC simpliciter was neither desirable nor appropriate. The High Court, it appears, failed to consider the scope of clause (3) of Section 300 IPC in its proper perspective. In the facts of the present case, the *intention* to cause murder of Suku deceased could not be attributed to the said appellant as the medical evidence also unmistakably shows that the injuries attributed to him were not sufficient in the ordinary course of nature to cause death of the deceased. Appellant No. 1 Subran, therefore, could not have been convicted for the substantive offence under Section 302 IPC and his conviction for the said offence cannot be sustained. That Suku died as a result of cumulative effect of all the injuries inflicted on him by all the four appellants stands established on the record. The question, therefore, arises what offence did the four appellants commit?"

The Judgment is accordingly reviewed and the aforesaid substitution in the judgment effected.

R.P. Review Petition reviewed.