



## SECTION 300(C) OF THE INDIAN PENAL CODE: FROM FIRST PRINCIPLES

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*Section 300(c), the most frequently invoked murder limb of the Indian Penal Code, is also one of the most contested provisions under the Code. In order to provide a clear understanding of the section, the author undertakes an analysis of its bare text, and the various possibilities that are potentially covered under it. Such an analysis clearly shows that the leading authority on the section, *Virsa Singh v. State of Punjab* imposes the extra (and in the author's opinion, mistaken) requirement of a nexus between the type of bodily injury intended and inflicted, thereby excluding cases where the bodily injury actually inflicted is not the bodily injury intended to be inflicted, which could still come under the purview of Section 300(c), read in its ordinary meaning. The author believes this to be a material discrepancy with the provision, and hence challenges our current understanding of Section 300(c) as it stands.*

Here is Section 300(c), a murder limb of the Indian Penal Code (which governs approximately 20% of the world's population):

**300.** Except in the cases hereinafter excepted culpable homicide is murder —...

- (c) if [the act by which the death is caused] 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[.]

How to understand this limb – the most frequently invoked murder limb – is one of the most hotly debated questions in the Indian Penal Code [hereinafter “Code”] jurisprudence. This, combined with the fact that I believe it has been almost universally misunderstood, makes proper elucidation thereof highly important.

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In what follows I will explain, from first principles, what this provision means.<sup>1</sup> Discerning the correct understanding of Section 300(c) will show that it does not lead to *clearly* unjust murder convictions (however, that is not to say Section 300(c) should remain in the Code). It is important to stress that the very important question of whether Section 300(c) should remain in the Code is *not* my *principal* focus in this paper. To be sure, having a clear understanding of the meaning of Section 300(c) – my principal focus – is a prerequisite to, and of assistance in, determining its justifiability. But, to repeat, Section 300(c)'s justifiability is not my principal focus here.<sup>2</sup>

I close by comparing the true meaning of Section 300(c) with the leading authority on Section 300(c), the 1958 Indian Supreme Court case of *Virsa Singh v. State of Punjab*,<sup>3</sup> and by offering a conjecture as to the reason for the

<sup>1</sup> My account of Section 300(c), and the leading authority thereon, is, to the best of my knowledge, wholly novel. Recently, Jordan Tan, “Murder Misunderstood” SINGAPORE JOURNAL OF LEGAL STUDIES 112-33(2012), has proposed a reading of Section 300(c) with which I am in broad agreement, however I depart from Tan’s reasoning at several junctures (in particular, Tan’s discussion of the doctrine of “transferred malice”, with respect to his reading of Section 300(c), is a red herring). And, moreover, I – unlike Tan – propose, and extendedly reflect on, a conjecture as to why case law on Section 300(c) has taken a wrong turn. Regarding case law, on my reading of Lord Diplock’s judgment, *Ike Mohamed Yasin bin Hussin v. Public Prosecutor*, (1974-76) SLR(R) 596 stakes out a position closest to my proposal. For a comprehensive survey of case law and academic commentary on Section 300(c) (including some novel proposals thereon), see S. Yeo, N. Morgan and C.W. Cheong (“YMC”), *Criminal Law in Malaysia and Singapore* (2<sup>nd</sup> ed.), 233-45 (2011). (LexisNexis).

<sup>2</sup> Nonetheless, some brief remarks on its justifiability are in order. As a comparative matter, it is perhaps especially useful here to note the similar debate over Common Law murder. The House of Lords case of *R. v. Cunningham*, 1982 AC 566 (HL), since approved by the House of Lords in *R. v. Rahman*, (2009) 1 AC 129 (HL), established that intention to cause grievous bodily harm is sufficient *mens rea* for murder. (Moreover, Viscount Kilmuir, in *Director of Public Prosecutor v. Smith*, 1961 AC 290 (HL), established that “grievous bodily harm” just is “really serious bodily harm”.) Arguments for and against *Cunningham* have been vigorously proposed by academics, judges, and law reform bodies ever since. Lord Goff’s remarks, however, are perhaps especially salient (Robert Goff, *The Mental Element in the Crime of Murder*, 104 LAW QUARTERLY REVIEW 30(1988). Goff considered the proposal, as a replacement for the *Cunningham* test, that acting with “wicked recklessness”, in the sense that the defendant does not care – is indifferent to – whether or not the victim lives or dies, be sufficient *mens rea* for murder. More precisely, the key form of “wicked recklessness” which Goff appears to be considering is “the wilful use of dangerous means implying wicked disregard of consequences to life”. (There are clear “echoes” here of Section 300(c) of the Code.) Space prevents detailed examination of this debate, however it is clear that concerns over *immodest* deviations from the “correspondence principle” in Common Law murder, were a prominent motivation on all sides. And the same should be the case in debate over the justifiability of Section 300(c). Second, and relatedly, should one ultimately conclude that the *deviations* from the “correspondence principle” which Section 300(c) *permits* (classifies as murder) are too sweeping, concerns over sanctions and fair labelling may lead one to argue against its retention (see, for contrast, Section 322 of the Code – the offence of voluntarily causing grievous hurt). I return to matters concerning the “correspondence principle” in more detail later on.

<sup>3</sup> AIR 1958 SC 465. It is to be noted that at times courts purporting to be following *Virsa Singh* may, on closer inspection, have failed to faithfully render *Virsa Singh’s* ratio [*PP v. Visuvanathan*, (1977-78) SLR(R) 27].

discrepancy between the true meaning and *Virsa Singh*.<sup>4</sup> In essence, *Virsa Singh* (mistakenly) imposed a requirement, which we will shortly consider in detail, of a *nexus* between the type of bodily injury intended and inflicted. Why not, then, begin (in possibly a more conventional manner) with discussion of *Virsa Singh* itself? The reason is I want to foreground the plain/ordinary meaning of Section 300(c) *with which the court in Virsa Singh was confronted*. Only with this in hand can we understand the misstep in *Virsa Singh*, and, subsequently, why that court might have been led astray.

## I. FIRST PRINCIPLES

Let us now commence our analysis, from first principles, of Section 300(c)'s meaning.

**Clause (0):** “the act by which the death is caused”.

Thus, death must be caused<sup>5</sup> by the act in question. Thus, the injuries inflicted must (ultimately) be fatal. This *actus reus* component is explicit in Section 299 (“[w]hoever causes death”). From here on in, we are (principally) in the domain of *mens rea*.

**Clause (1):** “done with the intention of causing bodily injury to any person”.

This clause can be dealt with speedily. Clearly, there is no mention here of intending any particular type of bodily injury. (Nonetheless, I will need, in what follows, to operate with an intuitive notion – or set of notions – of distinct *types* of bodily injury. I will thus select examples which are as clear and indisputable as possible, though no set of examples can be rendered immune to an interlocutor shifting to a higher level of generality.)<sup>6</sup> It can, *for all we have said so far*, be anything: a stabbing of the leg or a stabbing of the heart, and so on. Lest the reader fear that this will extend liability for murder too broadly, clause (2) will allay any such concerns.

**Clause (2):** “the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death[.]”

Let us approach clause (2) in two stages. First, let us look at “the bodily injury intended to be inflicted”. It is *not* “the bodily injury (actually) inflicted”. Had the framers wanted to say that, they would have said that. Now, the bodily injury

<sup>4</sup> The *ratio* of *Virsa Singh* is set out below, on p. 83, with the coming “nexus requirement” contained in its “third condition”. Those eager to (re)acquaint themselves with *Virsa Singh's ratio* should consult it now.

<sup>5</sup> For present purposes we needn't enter thorny issues concerning (the metaphysics of) causation (in law).

<sup>6</sup> I frequently consider the accused intending a stabbing of the *heart*. For dialectical purposes this is apposite (*infra* note 22), however we should note that it need not be shown that the accused intended to injure a particular (vital) organ (*Virsa Singh*, ¶ 21, *per* Bose J).

*intended* to be inflicted, may be the bodily injury *actually* inflicted. But, it need not. (If this clause instead read: “the bodily injury intentionally inflicted” things would be different. To intentionally inflict an injury entails inflicting that injury. Example: To *intentionally* kick a ball entails kicking that ball. But this clause doesn’t read thus. And to *intend* to kick a ball does not entail kicking that, or indeed any, ball.) So let us set out each possibility (with accompanying examples) – with the two possibilities being exhaustive and exclusive. Possibility 1: the bodily injury *intended* to be inflicted is *not* the (or a) bodily injury *actually* inflicted. Example 1: the defendant intends a stabbing of the leg, but actually inflicts a stabbing of the heart (perhaps the victim unexpectedly crouches).<sup>7</sup> Possibility 2: the bodily injury *intended* to be inflicted *is* the (or a) bodily injury *actually* inflicted. Example 1: the defendant intends a stabbing of the heart, and actually inflicts a stabbing of the heart. Example 2 (a so-called “egg-shell skull” case): the defendant intends a stabbing of the leg, actually inflicts that, but additionally (without intending to) actually inflicts (causes) a wholly unexpected pulmonary embolism.<sup>8</sup>

Now possibility 2, example 1, though useful in helping to draw out the foregoing distinction, will not detain us much longer: the example is, *without more*, a clear case of murder under any limb of Section 300 (assuming the defendant intends to cause death, and knows his act is so imminently dangerous as to meet Section 300(d)’s requirements).<sup>9</sup> Possibility 1, example 1, and possibility 2, example 2, however, will be useful in our analysis of the second component of clause 2: so far, the defendant in each of these cases is on track for a murder verdict. But that seems unjust [and these cases seem the most likely candidates for injustice under Section 300(c)]. The second stage of analysis of clause (2) will show why a murder verdict will not result.

Second, then, let us look at: “sufficient in the ordinary course of nature to cause death[.]” There is no room for doubt here: it is the bodily injury *intended* to be inflicted which must meet this sufficiency test. And, pursuing possibility 1, there is – that is: can be – a disjuncture between what’s intended and what’s actually inflicted. Let us now break down stage two yet further. How to interpret “sufficient in the ordinary course of nature”? There does appear to be a fair consensus that the best way of interpreting this locution, to maintain coherence with

<sup>7</sup> There is conceptual (and credible) space for two further types of possibility 1 case – possibility 1, examples 2 and 3. However, for reasons to become clear shortly, these are best deferred till later. As a final note, these examples (and the coming possibility 2 examples) are not meant to be exhaustive. They are, though, meant to cover the important possibilities.

<sup>8</sup> Possibility 2, example 2 may raise some difficult questions concerning (“imputable”) causation (and likewise, though perhaps to a lesser degree, for the coming possibility 1, example 2).

<sup>9</sup> Where, unlike with possibility 2, example 1, the bodily injury both intended to be and inflicted is less extreme, and thus less of a clear case of murder, when coming to test under Section 300(c) we will need to check whether it is sufficient in the ordinary course of nature to cause death. In the next paragraph I come to analyse this sufficiency test in more detail.

the rest of Sections 299/300, is as “highly likely”.<sup>10</sup> (For present purposes we can operate with an intuitive notion of “highly likely”. That is, we need not offer any particular probabilistic interpretation thereof. However, some form of *frequentism* – arguably the standard probability interpretation – is likely to be most serviceable here.)<sup>11</sup> Let us adopt this interpretation. Thus, putting things together, at stage two we are simply asking: Is the bodily injury intended to be inflicted highly likely to cause death (of a victim, of the size, age, and sex of the deceased, but otherwise of ordinary fitness/strength and physical capacity)?<sup>12</sup> And, returning to possibility 1, example 1, and possibility 2, example 2, by any reckoning, a stabbing of the leg – the bodily injury *intended* to be inflicted – is *not* highly likely to cause death. Section 300(c), thus, is not met, and, by its lights, a murder verdict does not result. Section 300(c), thus – *modulo* these type of cases are the most likely candidates for injustice under Section 300(c) –, does not, properly interpreted, lead to *clearly* unjust murder convictions.

I have been careful throughout to say not *clearly* unjust murder convictions. What exactly do I mean by this? We can best answer this indirectly, by attempting to discern what independent role Section 300(c) plays – what it catches that the other murder provisions do not.<sup>13</sup> So, suppose a defendant does not intend to cause death [Section 300(a)], does not intend to cause such bodily injury as he knows to be likely to cause death [Section 300(b)], and does not know his act is so imminently dangerous as to meet Section 300(d)’s requirements. Effectively, what Section 300(c), properly interpreted, will catch – pronounce as murder – is a defendant who intends (and inflicts) really serious bodily injury (a placeholder for bodily injury which is highly likely to cause death), but not death [otherwise

<sup>10</sup> However, some interpreters argue that this locution *additionally* has connotations of *proximity* with death (*infra* note 15). Finally, note that my ensuing claims will go through, *mutatis mutandis*, on any plausible interpretation of this locution, e.g. *Behari v. State*, AIR 1953 All 203 “most probably”. Note that the (somewhat anachronistic) “in the usual course, if left alone, it would” cause death interpretation (e.g. *State v. Ghana Padham*, (1979) 47 Cut LT 575) results in the application of a *subjunctive conditional*. Such an interpretation raises many interesting additional issues, but exploring them is beyond the scope of the present paper.

<sup>11</sup> Contrastingly, some courts have operated with an interpretation of “highly likely” which renders all things actually caused highly likely (in virtue of assigning all actualities a probability of 1). Such a move is doubly mistaken. First, as such courts have read section 300(c), it renders the “sufficient in the ordinary course of nature” clause otiose, as, recall, *by clause (0)* we’ve already established that death *is* caused (*Virsa Singh*, ¶ 27, *per* Bose J). Second, and more fundamentally, such courts have ignored the key present point that it is the bodily injury *intended* to be inflicted (which need not be the bodily injury *actually* inflicted) which must meet this sufficiency test. More on this later.

<sup>12</sup> And this is all regardless of the accused’s *awareness* of such a likelihood. As YMC, 233, point out (citing the relevant authorities), this test is “assessed by reference to the inherent nature of the injuries and not by reference to the possible effects of medical intervention”. Finally, there are conflicting case authorities on whether clinicians or laypersons should be the arbiters of ordinary fitness/strength and physical capacity, though the dominant view – which fits more readily with my approach – is the former.

<sup>13</sup> It is doubtless appropriate to ask things this way round (and not to ask, say, what Section 300(a) catches which the other murder provisions do not) on account of the interpretive confusion which has surrounded Section 300(c).

it would be caught by Section 300(a)], and which he does not know to be likely to cause death [otherwise it would be caught by Section 300(b)], and, finally, does not know his act is so imminently dangerous as to meet Section 300(d)'s requirements.

Two remarks. First, there is clear conceptual (and credible) space for such a state of affairs to obtain. Second, is it just to convict such a defendant of murder? Certainly it's not *clearly* unjust in the way that convicting the defendants from possibility 1, example 1, and possibility 2, example 2, of murder would *appear* to be. However, this contemplated state of affairs is either (i) a possibility 1 case, in that the bodily injury *intended* to be inflicted (really serious bodily injury, but not death) is *not* the bodily injury *actually* inflicted (bodily-injury-amounting-to-death), or (ii) a possibility 2 case, in which there is *additional* unintended bodily injury inflicted (i.e. bodily-injury-amounting-to-death). And this is all just to say, to hold this defendant criminally liable for murder [under Section 300(c)] is to contemplate some deviation from the "correspondence principle" – on which the mental element must *correspond* with the physical element caused (albeit not so gross a deviation as possibility 1, example 1, and possibility 2, example 2 would be).

Thus, even if not *clearly* unjust, one's view on whether such murder convictions are ultimately just or not will depend on one's views about modest deviations from the correspondence principle. Clearly, my discussion of precisely which *deviations* from the correspondence principle the true meaning of Section 300(c) *permits* (classifies as murder) and *forbids* (does not classify as murder) cannot be considered complete. Also, and relatedly, my classification of the charted deviations from the correspondence principle which Section 300(c) permits as "modest" is principally a comparative classification: it serves to contrast with what many would consider to be clearly "immodest" such deviations – namely, possibility 1, example 1, and possibility 2, example 2 – which I show to be forbidden by the true meaning of Section 300(c). Given all this, it is of course, as already stressed, open to argue that even these – *comparatively speaking* – modest deviations from the correspondence principle are intolerable for a murder limb of the Code, and consequently that Section 300(c) ought to be removed from the Code.<sup>14</sup>

As a code, if one is willing to tolerate modest such deviations, of the kind mandated by Section 300(c), why not simply formulate this limb: causing death by an act intended to cause really serious bodily injury?<sup>15</sup> Much simpler.

<sup>14</sup> As already noted, however, the important question of Section 300(c)'s place in the Code is not my principal present concern.

<sup>15</sup> Against this, some interpreters argue that Section 300(c) requires more serious injury than really serious bodily injury [*supra* note 10, and Victor Ramraj, *Murder Without an Intention to Kill* SINGAPORE JOURNAL OF LEGAL STUDIES, 560-589 (2000)].

## II. COMPARING THE TRUE MEANING OF SECTION 300(C) WITH VIRSA SINGH'S SECTION 300(C)

V. Bose J. concluded his judgment in *Virsa Singh* by summarising things as follows:

“First, [the prosecution] 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...

Fourthly, it must be proved that the injury of the type thus 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.”

As to Bose J.'s first condition, while this is not explicit in Section 300(c) it is a *practically necessary* precondition of causing death [clause (0)].<sup>16</sup> As such, it is not problematic. As to the second condition, this is nowhere to be found in Section 300(c). However, establishing the nature of the injury is a precondition of applying the test found in the third condition. Thus, let us postpone assessment of the second condition until assessment of the third condition. Alas, for Bose J., as with the second condition, the third condition is nowhere to be found in Section 300(c). Before coming to the fourth condition, let us take stock. Let us assume, contrary to fact, that Bose J.'s first three conditions are genuine requirements of Section 300(c), and, moreover, that they are met. In essence, the upshot of this is that we are stipulating away possibility 1 cases, and only allowing possibility 2 cases to satisfy Section 300(c). That is, we are, contrary to Section 300(c), stipulating that the only instances in which Section 300(c) can be met are cases in which the bodily injury *intended* to be inflicted *is* the (or a) bodily injury *actually* inflicted. There is an interesting consequence of this when we come to apply the concluding fourth condition. We *can* – with Bose J. – *apply* this sufficiency test in a “purely objective” manner which “has nothing to do with the intention of the offender” by asking whether the bodily injury *actually* inflicted meets this sufficiency test. However, *assuming* the first three conditions are met, it will follow that the bodily injury *actually* inflicted will meet this test *just in case* the (or a) bodily injury *intended* to be inflicted meets this test.

<sup>16</sup> Compare a remote possible world in which I can kill another merely by willing it to be so.



### III. A CONJECTURE AS TO THE REASON FOR THE FOREGOING DISCREPANCY (AND AN EXTENSIONAL UPSHOT)

It is a dangerous business inquiring into the reasons which may have led the court in *Virsa Singh*, and those following it, into error. I want, however, to conjecture why this might be so, and plumbing this conjecture brings out the extensional differences between the true meaning of Section 300(c) and *Virsa Singh*'s Section 300(c).

My conjecture begins at the end – *Virsa Singh*'s fourth condition – and works backwards. Let me set out again what I called ‘clause (2)’: “the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death[.]” And we noted, it’s *not* “the bodily injury (actually) inflicted” which must meet this sufficiency test; it is “the bodily injury intended to be inflicted”. (And, again as noted, there can be a disjuncture between these two phenomena.) This is all plain as day. Why then, might the court in *Virsa Singh*, and those following it, have ignored this?<sup>17</sup> Here is my guess. Ostensibly clause (2) sets a *causal* test. Causation is a controversial business, but, whatever else causation requires, it requires that the cause *occurs*.<sup>18</sup> My conjecture is that, realising this, and realising that *intended* results need not occur, the court in *Virsa Singh* felt compelled to apply the sufficiency test in clause (2) with the bodily injury *actually* inflicted – the fourth condition. Noting, however, the centrality of the bodily injury *intended* to the wording of s 300(c), the court then *engineered*<sup>19</sup> the first three conditions such that *assuming* the first three conditions are met, it will follow that the bodily injury *actually* inflicted will meet the sufficiency test in the fourth condition *just in case* the (or a) bodily injury *intended* to be inflicted meets this test. In sum, it is my conjecture that this “causal worry” triggered the whole (convoluted) approach of *Virsa Singh*.

I will shortly come to show that this “causal worry” was, and is, misplaced. Before that, a quick point about the extensional upshot of *Virsa Singh*. We noted in the foregoing section that the effect of the first three conditions in *Virsa Singh* is to stipulate away possibility 1 cases – cases in which the bodily injury *intended* to be inflicted is *not* the (or a) bodily injury *actually* inflicted. We noted – by means of possibility 1, example 1 – that some such cases are among the most likely candidates for injustice under Section 300(c). So, an upshot of the

<sup>17</sup> The court did not ignore the possibility of a disjuncture between the bodily injury *intended* and *inflicted*. On the contrary, the third condition appeals to such a distinction. (Thus it is not plausible that the court confused “intended” with “intentionally”.)

<sup>18</sup> Additionally, standardly (for “factual” causation): the effect must occur; and some counterfactual relation must hold between the cause and the effect (e.g. the “but-for” or “NESS”/“INUS tests”). Finally, there are delicate issues here concerning omissions, but they can be side-stepped for present purposes.

<sup>19</sup> Note, this is not to attribute any bad faith to Bose J., but rather merely to acknowledge the artificiality of the conditions, and of the driving third condition in particular.



(convoluted) *Virsa Singh* strategy is to stipulate away some of the most likely candidates for injustice – the possibility 1, example 1 case (and its moral equivalents). But, we have also noted that possibility 1, example 1 (and its moral equivalents) is not, on the face of it, ultimately a candidate for satisfying the correctly interpreted Section 300(c). So, *at this point*, it seems like the correct reading of Section 300(c) and the (mistaken) *Virsa Singh* reading of Section 300(c) reach the same result (and eliminate the same likely candidates for injustice) by different routes: the former by a theoretically respectable, and the latter by a theoretically obtuse, route.

So, the *Virsa Singh* route is theoretically problematic. However, it turns out that we have ignored two further, important, conceptually (and credibly) possible, possibility 1 examples – cases which the correct reading of Section 300(c) classes as murder, whereas the *Virsa Singh* reading does not. To focus discussion, assume, in the coming examples, that Section 300(c) is, on the facts, the only murder limb which can be pleaded. Possibility 1, example 2: The defendant intends a stabbing of the heart, but actually inflicts a stabbing of the lung<sup>20</sup> (perhaps in virtue of bad aim, or a shifting victim). We can call this a case of *intention different but roughly equal to injury*.<sup>21</sup> And possibility 1, example 3: The defendant intends a stabbing of the heart,<sup>22</sup> but actually inflicts a stabbing of the leg (perhaps the victim unexpectedly jumps), and additionally (without intending to) actually inflicts (causes) a wholly unexpected pulmonary embolism. We can call this a case of *intention outstripping initial injury*. In a nutshell, on the correct reading of Section 300(c) these cases are murder,<sup>23</sup> as the *intended* bodily injury satisfies clause (2), despite not being the (or a) bodily injury *actually* inflicted. And this last fact establishes that these cases are not murder by *Virsa Singh*: it means that the third condition of *Virsa Singh* is not satisfied. In sum, *Virsa Singh* adds a test – an extra hurdle for the prosecution to establish – not to be found in Section 300(c).

I do not here present arguments on the question of which of the correct reading or the *Virsa Singh* reading is more just, but I am in fact in favour of the former. Finally, in light of all this, one might offer a (complementary) conjecture for

<sup>20</sup> Or a stabbing of the neck etc.

<sup>21</sup> I believe the example will work equally well by switching the foregoing intended and actual injuries.

<sup>22</sup> It might be a stretch to stipulate that Section 300(c) is the only murder limb which can be pleaded *when the defendant intends a stabbing of the heart* (as in these two examples). Those uncomfortable with this can substitute “stabbing of the chest” (however problems might then arise over whether stabbings of the chest are highly likely to cause death).

<sup>23</sup> Assuming away any *possible* difficulties over (“imputable”) causation (*supra* note 8). In this regard, possibility 1, example 2 may be more serviceable to make my point here. Two more motley cases which raise (“imputable”) causation issues are worth mentioning in passing. First, suppose the defendant shoots intending to cause really serious bodily injury; misses; and the victim dies from a heart-attack on account of the shock of the explosion. Second, as above, but the shot causes an avalanche which kills the victim. In each of these cases, on my reading of Section 300(c), the *mens rea* test is met, and “factual” causation can be established. These cases must be handled by relying on the appropriate test, or tests, for “imputable” causation.

the wrong turn in *Virsa Singh* along the following lines: Bose J.'s third condition was designed to prevent immodest deviations from the correspondence principle in Section 300(c). Several remarks of doubt, however (given the true meaning of Section 300(c) must have been apparent to Bose J.): First, it is not clear whether such a motivation could license such a clear departure from the plain/ordinary meaning of Section 300(c). Second, I have shown the true meaning of Section 300(c) only licenses what might plausibly be regarded as *modest* deviations from the correspondence principle. And finally, even though I have just shown the true meaning of Section 300(c) classes certain cases as murder which the *Virsa Singh* reading does not, I have suggested it is plausible that those cases *ought* to be classed as murder. Given these doubts, let me turn, by way of conclusion, to explaining why the “causal worry” – my principal conjecture for the wrong turn in *Virsa Singh*, outlined earlier in this section – is misplaced.

#### IV. WHY THE FOREGOING “CAUSAL WORRY” IS MISPLACED

Though clause (2) is ostensibly a causal test, it is in fact, strictly speaking, not.<sup>24</sup> Recall, in our correct reading of Section 300(c), we followed the standard reading of “sufficient in the ordinary course of nature” to take clause (2) as a whole to be rendered as asking: Is the bodily injury intended to be inflicted highly likely to cause death?<sup>25</sup> So why is this, strictly speaking, not a causal question? In a nutshell, because being highly likely to cause death and causing death are *both-ways* independent of one another: something can cause death without being highly likely to do so; and, more importantly for present purposes, something can be highly likely to cause death without causing death. More specifically – for present purposes – a bodily injury intended to be inflicted can be highly likely to cause death, despite not occurring, and thus despite not causing death.<sup>26</sup> In sum, the reference to causation in clause (2) is somewhat misleading – and, my conjecture is that it misled the court in *Virsa Singh*.<sup>27</sup> There was, to conclude, no bar to that court correctly applying the sufficiency test set out in clause (2) with the bodily injury *intended* to be inflicted.<sup>28</sup>

<sup>24</sup> This is not doctrinally troubling as, recall, clause (0) has already established a causal test.

<sup>25</sup> Thus, to repeat, “sufficient in the ordinary course of nature” is taken as “highly likely” (*supra* notes 10 and 15). My coming point should go through, *mutatis mutandis*, on any plausible reading of this locution.

<sup>26</sup> Recall my proposed frequentist interpretation of probability.

<sup>27</sup> For a recent example of a court seemingly misled in this manner, see the Singapore Court of Appeal case of *Wang Wenfeng v. Public Prosecutor*, (2012) 4 SLR 590 (in which issues regarding the “concurrency principle” were germane): “There was concurrence of the *actus reus* and *mens rea* when the appellant intentionally stabbed Yuen and caused his death in the ordinary course of nature [my emphasis], through the massive loss of blood from the stab wounds.”

<sup>28</sup> The foregoing all establishes that there is no need to rephrase (a portion of) clause 2 in the subjunctive mood, as: “*would* be sufficient” (even if the indicative wording – “*is*” –, as a psychological matter, contributed to leading Bose J. astray). Thanks to Andrew Simester and Stanley Yeo for stimulating discussion, and to an *NLSIR* referee for helpful comments.