

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:26232-DB

Reserved on 20.02.2024

Delivered on 29.03.2024

Court No. - 10

Case :- CRIMINAL APPEAL No. - 418 of 1992

Appellant :- Desh Raj And Others

Respondent :- The State Of U.P.

Counsel for Appellant :- Balram Yadav, Harshita, Nagendra
Mohan, Umesh Chandra Pandey

Counsel for Respondent :- Ajay Kumar Singh

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Hon'ble Ajai Kumar Srivastava-I, J)

1. This appeal is at the instance of appellants, namely, Desh Raj & Ayodhya and is directed against the judgment and order dated 30.09.1992, passed by Sessions Judge, Raebareli in Sessions Trial Nos.292 of 1990, arising out of Crime No.277 of 1990, under Section 302 I.P.C., Police Station Gurubuxganj, District Raebareli, whereby appellant, Desh Raj has been convicted and sentenced to undergo life imprisonment under Section 302 I.P.C. and appellant, Ayodhya has been convicted and sentenced to undergo life imprisonment under Section 302/34 I.P.C.

2. According to prosecution story, RamAutar, the informant, is resident of Village Gram Batauva. His two brothers Haripal and Ayodhya also lived in this village in

their separate houses. On 10.06.1990 at about 4:00 P.M. in the evening, a quarrel took place between Sundara, who is the wife of accused/appellant, Ayodhya and Rajeswari, who is the wife of deceased, Haripal for placing cow dung cakes on piece of land, which according to Sundara belonged to Gram Samaj and which was being used by Sundara as she had no other suitable place to keep cow dung cakes. Sundara returned to her house to tether her cattle, however, Rajeshwari kept on insisting that Sundara remove her Patawar from the said land, claiming it to be hers. This altercation between Sundara and Rajeshwari led Hari Pal to reach the spot along with his son Ram Sajiwan and daughter Rajwati. The appellant, Ayodhya also came out of his house who caught hold of Hari Pal's waiste from behind. He exhorted his son Desh Raj to bring his licensed gun to kill Hari Pal, whereupon, Desh Raj brought Ayodhya's gun and shot the deceased, Hari Pal dead.

3. On the basis of aforesaid written report, Ext. Ka-1, First Information Report, Ext. Ka-16 was registered as Crime No. 277 of 1990, under Section 302 I.P.C. at Police Station Gurubuxganj, District Raebareli.

4. As per postmortem report of the deceased, Haripal, Ext. Ka-14, which has been proved by Dr. S.B. Singh, PW-6, following injury was reported on the person of the deceased:-

1	Oval wound of 4.5 cm x 305 cm x cavity deep at forlement of left sternoclavicular joint with contused and (sick) inverted margins.
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According to postmortem report of the deceased, Haripal, Ext. Ka-14, the cause of death is reported to be shock and hemorrhage as a result of antemortem injury.

5. As per injury report of the injured, Ram Sajiwan S/o Haripal, Ext. Ka-17, which has been proved by Dr. R. Chandra, PW-8, following injury was reported on the body of injured, Ram Sajiwan:-

1	2.5 cm x 2 cm scorched skin present 3 cm below right ear & 2 cm back to right angle of mandible towards mandible site an oval (.2 cm x .2 cm) size scab present. Referred to District Hospital Raebareli for X-ray.
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6. After registration of the case, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C., prepared the site plan, Ext. Ka-10 and upon completion of investigation, submitted charge-sheet, Ext. Ka-13 against accused-appellants.

7. The accused-appellants were charged for the offences under Sections 302/34 I.P.C., which were read over and explained to them, to which, they pleaded not guilty and claimed to be tried.

8. To bring home guilt of accused-appellants, the prosecution has examined as many as eight prosecution witnesses i.e. PW-1, Ram Autar, PW-2, Ram Sajiwan, PW-3, Ram Naresh, PW-4, Dr. Sri S.K. Trivedi, PW-5, S.O. Balmukund Pandey, PW-6, Dr. S.B. Singh, PW-7, C.P. Rajaram and PW-8, Dr. Ramesh Chandra.

9. After conclusion of prosecution evidence, statements of accused-appellants were recorded under Section 313 Cr.P.C. The accused-appellants have stated the prosecution case to be false, claimed themselves to be innocent and also stated to have been falsely implicated.

10. DW-1, Satish Kumar & DW-2, S.P. Khanna were examined by the accused-appellants in their defence.

11. The learned trial Court vide impugned judgment and order dated 30.09.1982 convicted the accused-appellants for the commission of crime for which the charges were framed against them.

12. Aggrieved by the impugned judgment and order dated 30.09.1992, the accused-appellants have preferred the instant criminal appeal.

13. Heard Shri Nagendra Mohan, learned counsel for the surviving appellant, Shri Vijay Prakash Dwivedi, learned A.G.A.-I for the State and perused the entire record.

14. At the outset, it is relevant to mention that the appellant no.2, Ayodhya has died during the pendency of appeal, therefore, the appeal has been abated in respect of appellant no.2 vide order dated 11.01.2024. The appeal, therefore, survives only with regard to the appellant no.1, Desh Raj.

15. Learned counsel for the surviving accused-appellant has submitted that the finding of guilt of the surviving accused-appellant is against the weight of

evidence available on record. His further submission is that both the appellants have sustained injuries in this incident; however, there was no mention in the written report, Ext. Ka-1 about injuries sustained by the appellants. Therefore, it can safely be inferred that the prosecution did not disclose the real genesis of this incident, rendering the prosecution case doubtful and therefore, the surviving accused-appellant deserved benefit of doubt, which was not accorded to them by the learned trial Court. In this regard he has placed reliance upon the judgment rendered by Hon'ble Supreme Court in **Lakshmi Singh Vs. State of Bihar**¹, wherein Hon'ble Supreme Court has held that where the prosecution fails to explain the injuries on the accused, two results follow : (1) that the evidence of the prosecution witnesses is untrue ; (2) that the injuries probabilise the plea taken by the appellants.

16. Learned counsel for the appellant has also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Suresh Singhal Vs. State (Delhi Administration)**². In this case the accused exceeded the power given to him by law in order to defend himself but the exercise was in good faith in his own defence and without premeditation, therefore, the Hon'ble Supreme Court set aside the conviction under Section 302 I.P.C. and modified it to one under Section 304 I.P.C. Learned counsel for the sole surviving appellant has drawn attention of this Court to the fact that the appellants had sustained injuries in this incident itself speaks volumes

¹ (1976) 4 SCC 394

² (2017) 2 SCC Criminal 123

about their case being based on the plea of self-defence. Therefore, the surviving accused-appellant could not have been convicted under Section 302 I.P.C., having regard to the provisions contained in Sections 96, 97 & 100 I.P.C.

17. His further submission is that in fact, the first informant and the deceased were the aggressors and the surviving appellant was only exercising his legitimate right of self-defence, therefore, he could not have been convicted for the offense under Section 302 I.P.C. He has also submitted that in view of his submissions noted above and also having regard to the fact that the incident was not premeditated and it was a case of a single shot, in any case, the case of the surviving appellant fell under Section 304 Part II of I.P.C. and accordingly, the surviving appellant could not have been convicted of the offence under Section 302 I.P.C. He, therefore, prays that the conviction and sentence awarded by the impugned judgment and order dated 14.03.1983 be set aside.

18. Per contra, learned A.G.A. has opposed the submissions made by learned counsel for the sole surviving appellant. He submits that the prosecution witnesses, by means of their consistent and reliable testimonies, have proved the prosecution case beyond reasonable doubt. His further submission is that having regard to the place of occurrence, presence of deceased, first informant and other witnesses, who are said to be related witnesses, was natural. Even otherwise, his submission is that the prosecution is at liberty to examine such witnesses only on the basis of whose testimony the

prosecution proposes to prove its case beyond reasonable doubt. It is not the legal requirement that the testimonies of related witnesses need to be corroborated by the testimony of independent witness(s) in all cases.

19. Learned A.G.A. has further submitted that the prosecution has proved its case against the sole surviving appellant on the basis of cogent and reliable testimonies of prosecution witnesses. The sole surviving appellant has been convicted by the impugned judgment and order dated 30.09.1992 which is well discussed and reasoned, wherein no interference by this Court is warranted.

20. In order to buttress his aforesaid submission, learned A.G.A. has placed reliance upon the judgments rendered by the Hon'ble Supreme Court in the cases of **State of Rajasthan Vs. Shiv Charan and Others**³ and **Laxman Vs. State of Maharashtra**⁴.

21. Before proceeding to scrutinize the testimonies of witnesses of fact, it is relevant to mention that S.O., Balmukund Pandey has been examined as PW-5, who has proved the panchayatnama as Ext. Ka-3. He has also proved photo of cadaver, Ex. ka-4, letter written to C.M.O. for post mortem, Ex. Ka-6. He had taken blood stained earth as well as plain earth from the place of incident and had prepared a memo thereof as Ex. Ka-7. The blood stained clothes of deceased Hari Pal were collected by him and a memo was prepared, which is Ex.Ka-8. An empty cartridge was also recovered from the place of occurrence,

³ (2013) 12 SCC 76

⁴ (2012) 11 SCC 158

a memo thereof is Ex. Ka-9. He has prepared site plan of the place of incident, Ex.Ka-10. The gun which was used in this incident was also recovered by the police. A memo was prepared thereof as Ex. Ka-11. He has also proved the charge sheet, Ex.Ka-13. Constable, Rajaram has been examined as PW-7, who has proved the first information report, Ext. Ka-16. Dr. S.B. Singh has been examined as PW-6, who has conducted the postmortem of the deceased and he has reported that the cause of death of the deceased was shock and hemorrhage as a result of antemortem injuries. He has proved the postmortem report as Ext. Ka-14.

22. Having heard learned counsel for parties and upon perusal of the record, we find that according to written report, Ext. Ka-1 the entire incident was witnessed by PW-2, Ram Sajiwan, who is the son of the deceased, Rajwati, who is daughter of the deceased and PW-1, Ram Autar, first informant, who is the real brother of the deceased. It is also mentioned in the written report, Ext. Ka-1 that on hearing commotion, Ram Naresh and other villagers of the vicinity had also reached at the spot. However, the prosecution has examined the first informant, Ram Autar as PW-1, Ram Sajiwan, son of the deceased as PW-2 and Ram Naresh as PW-3.

23. PW-1, Ram Autar, who is the real brother of the deceased, in his testimony has supported the prosecution case in its entirety as contained in written report, Ext. Ka-1. PW-2, Ram Sajiwan, who is the son of the deceased, has also supported the prosecution case as contained in

written report, Ext. Ka-1. PW-3, Ram Naresh has been declared hostile, who has not supported the prosecution case. Thus, we are left with the oral testimonies of PW-1, Ram Autar and PW-2, Ram Sajiwan for ascertaining whether the prosecution has been able to prove its case against the sole surviving appellant or not?

24. While analyzing the testimonies of PW-1, Ram Autar and PW-2, Ram Sajiwan, we are aware of the fact that PW-1, Ram Autar is the real brother of the deceased, whereas PW-2, Ram Sajiwan is the son of the deceased. Being related to the deceased, their testimonies need to be scrutinized carefully. If we look at the chronology of this incident, which started due to an altercation between Sundra, the wife of the appellant, Ayodhya and Rejeshwari, the wife of the deceased, Haripal, we notice that the site plan, Ext. Ka-10, reveals that the houses of the first informant and the appellants are not too far apart. The factum of altercation between Sundara, the wife of the appellant, Ayodhya, and Rajeshwari, the wife of the deceased, Haripal at the place shown in the site plan, Ext. Ka-10 appears to us to be natural, considering the rural background of the deceased, the first informant and the appellants. The time of the incident, according to the first information report, is reported to be about 4:00 P.M. in the evening. Therefore, we find the presence of PW-1, Ram Autar and PW-2, Ram Sajiwan, at the place of occurrence to be natural. The first information report, Ext. Ka-16, was lodged on 10.06.1990 at 06:15 P.M. The incident, according to the prosecution, occurred on 10.06.1990 at 4:00 P.M. The distance of police station is

about 22 KM. Therefore, we find that the first information report was lodged promptly.

25. Shri Nagendra Mohan, learned counsel for the surviving appellant, has contended that there was no mention in the written report, Ext. Ka-1, that any injury was sustained by PW-2, Ram Sajiwan. Therefore, his testimony should be discarded as false as he states in his testimony that pellets also went through touching his neck.

26. As per injury report of injured, Ram Sajiwan, Ext. Ka-17, following injury was reported on his body :-

"2.5 cm x 2 cm scorched skin present 3 cm below right ear and 2 cm back to right angle of mandible towards mandible site an oval (.2 cm x .2 cm) size scab present"

27. After examining such injury report, we do not find anything unusual in it. At this juncture, we also want to make it clear that the first information report is not an encyclopedia as held by Hon'ble Supreme Court in the case of **Satpal vs. State of Haryana**⁵.

28. As the injury sustained by PW-2, Ram Sajiwan, was of very trivial nature, the fact that this injury was not mentioned in the written report, Ext. Ka-1, does not render the testimonies of PW-1, Ram Autar and PW-2, Ram Sajiwan unreliable. For the same reason, it also does not render the first information report to be untruthful.

29. A careful scrutiny of the testimony of PW-1, Ram Autar and PW-2, Ram Sajiwan, who have withstood

⁵ (2018) 6 SCC 610

rigorous cross-examination, appears to us to be cogent and consistent in respect of time, place and manner of incident, therefore, the judgment and order dated 30.09.1992 rendered by the learned trial court seems to us to be in accordance with the law because a three judges Bench of Hon'ble Supreme Court, in **Karulal v. State of M.P.**⁶, has held that the testimonies of related witnesses, if found to be truthful, can be the basis of conviction. The fact that the witnesses, PW-1, Ram Autar and PW-2, Ram Sajiwan are related one cannot be taken as a factor for doubting the prosecution case, particularly when evidence of related witnesses has been found reliable.

30. Thus, on the basis of reliable and cogent testimonies of PW-1, Ram Autar and PW-2, Ram Sajiwan, it is evident that an altercation occurred between Sundara, wife of the appellant, Ayodhya and Rajeshwari, wife of the deceased, Haripal. This altercation led to the arrival of prosecution witnesses PW-1, Ram Autar and PW-2, Ram Sajiwan as well as the sole surviving appellant and his father, Ayodhya, who has since passed away during the pendency of this appeal. The sole surviving appellant brought his father's gun and shot at the deceased, resulting his death due to gunshot injury. This fact is corroborated by the postmortem report, Ext. Ka-14, which has been duly proved by Dr. S.B. Singh, PW-6. It is also noted that the gunshot was fired from a distance of 15 steps approximately as stated by PW-1, Ram Autar and

⁶ (2021) 13 SCC 391

corroborated by Dr. S.B. Singh, PW-6, who conducted the postmortem examination of the deceased.

31. Learned counsel for the sole surviving appellant has vehemently argued that the surviving appellant was not the aggressor; in fact, it was the deceased and the complainant party who were the aggressors. The surviving appellant had fired in exercise of his legitimate right of private defence, which ultimately resulted in the death of the deceased. His further submission is that the plea of self-defence, being a legal plea, can be raised at the appellate stage as well. If found entitled to it, the sole surviving appellant could not be denied its benefit at the appellate stage.

32. No doubt, the right of self-defence is a legal plea available to the accused. However, in order to avail the benefit of the general exception as contained in Chapter IV of I.P.C., the accused needs to prove the existence of such facts as would enable him to avail the benefit of the provisions contained in chapter IV of I.P.C.

33. While going through the record of the learned trial Court, we came across the statement of the sole surviving appellant, which was recorded under Section 313 of Cr.P.C. after the conclusion of the prosecution's case. In his statement, the sole surviving appellant stated that it was Ram Sajiwan whose gun was let off accidentally, causing the death of the deceased. No specific plea of self-defence was taken by the sole surviving appellant in the learned trial Court.

34. So far as the injuries, which were allegedly sustained by the appellants are concerned, we find it appropriate to quote the injuries sustained by the appellants, as reported in their medical report, as under :-

As per injury report of appellant, Desh Raj, Ext. Ka-2, which has been proved by Dr. S.P. Khanna, DW-2, following injuries were reported on the body of the appellant, Desh Raj :-

1	<i>Contusion 5cm x 2.0 cm on the back of right leg just below the knee joint. Colour of ecchymosis is bluish purple.</i>
2	<i>Contusion 5.0cm x 1.0cm on the outer side of middle 1/3 part of right leg. 15.5cm below the knee joint. Colour of ecchymosis is bluish purple.</i>
3	<i>Abrassion 3.0cm x 0.5cm on the inner side of upper 1/3 part of right upper arm 3.5cm below the apex of axillia.</i>
4	<i>Contusion 7.0cm x 1.0cm on the outer side of lower 1/3 part of left leg. 10.0cm above the leteral malleolus. Colour of ecchymosis is bluish purple.</i>

Opinion:- All the injuries are simple in nature, caused by a hard & blunt object within 3 (three) days old in duration.

As per injury report of appellant, Ayodhya, Ext. Ka-1, which has been proved by Dr. S.P. Khanna, DW-2, following injuries were reported on the body of the appellant, Ayodhya:-

1	<i>Abraded contusion 4.0 cm x 1.0 cm on the back of right forearm 6.5cm above the wrist joint. Clotted blood present at wound site. Colour of ecchymosis is purple blue.</i>
2	<i>Contused swelling on the lower 1/3 part of right leg & ankle joint 21.5cm below the knee joint. Color of ecchymosis purple blue.</i>

Opinion:- All the injuries are simple in nature, caused by a hard & blunt object within 3 (three) days old in duration.

35. At this stage, we also find apposite to extract Sections 96, 97 and 100 I.P.C. as under :-

"96. Things done in private defence.—

Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property.—

Every person has a right, subject to the restrictions contained in Section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

100. When the right of private defence of the body extends to causing death.—

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act."

36. From a perusal of the injury reports of the appellants, it is apparent that the injuries sustained by the appellants were reported to be simple in nature. They were reported to be about three days old. They were also on non-vital parts of the body. Thus, in view of the aforesaid fact and also the fact that the complainant and other witnesses who were present at the spot were not armed, the plea of appellants regarding availability of the right of self-defence is not sustainable and the same rightly came to be repelled by the learned trial Court.

37. As we have found the alleged injuries sustained by the appellants to be of trivial nature, therefore, the absence of any explanation for such minor injuries would not have any adverse impact on the prosecution's case. In this regard learned A.G.A. has rightly relied upon the judgments rendered by Hon'ble Supreme Court in **Shiv Charan (Supra)** and **Laxman (Supra)**, wherein it has been held that in all cases, non-explanation of injuries on the body of the accused cannot render the prosecution case doubtful.

38. However, the fact remains that the entire incident occurred within a brief span of time and was not premeditated. It is the prosecution's own case that only one shot was fired by the sole surviving appellant, which resulted in the death of the deceased. Therefore, it is concluded that the deceased died due to the single gunshot fired by the sole surviving appellant.

39. Insofar as applicability of Section 304 Part II I.P.C. in the facts of the present case is concerned, Hon'ble the Supreme Court in **Anbzhagan vs. State Represented by the Inspector of Police**⁷ in paragraph No.66 has summed up the principle regarding applicability of Section 304 Part I and II I.P.C. as under:-

"66. Few important principles of law discernible from the aforesaid discussion may be summed up thus:—

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly

⁷ 2023 SCC Online SC 857

plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is

punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when 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 (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his

case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court

must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course

of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

(Emphasis supplied by us)

40. What is meant by intention has also been elucidated by Hon’ble the Supreme Court in **Anbazhagan’s case (supra)** in paragraph No.21 as under :-

“21. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:

1. The nature of the weapon used.
2. The place where the injuries were inflicted.
3. The nature of the injuries caused.
4. The opportunity available which the accused gets.”

41. Now adverting to the case in hand in the light of aforesaid principles, we find that according to prosecution story, the sole surviving appellant had fired at the deceased only once. Keeping in view the postmortem report of the deceased, Ex. Ka-14, which has been proved

by P.W.-6, S.B. Singh, we find the sole antemortem firearm injury sufficient in ordinary course of nature to cause death of the deceased. It is the case of prosecution that before the sole surviving appellant shot the deceased dead, an altercation had taken place between Sundara, who is the mother of the sole surviving appellant and Rajeswari, who is the wife of deceased, Haripal. The altercation was verbal and not physical. There is nothing on record to show that the act of opening fire by the surviving appellant was premeditated. All the aforesaid facts go to show that the incident-in-question took place in the heat of passion upon a sudden quarrel. The sole surviving appellant had knowledge that gun shot injury may cause death of the injured also. Though, he did not have intention to kill the deceased. Thus, it was a case of culpable homicide not amounting to murder for which the sole surviving appellant, Desh Raj deserved to be convicted under Section 304 Part II I.P.C. His conviction under Section 302 I.P.C. recorded by the learned trial Court, without adverting to the aforesaid facts and circumstances in which this incident occurred, appears to be unsustainable and the same deserves to be set aside.

42. For the aforesaid reasons, the present criminal appeal is **partly allowed**. The conviction of the sole surviving appellant, Desh Raj and sentence awarded to him under Section 302 I.P.C. is altered to one under Section 304 Part II I.P.C., for which, the sole surviving appellant, Desh Raj is awarded ten years' rigorous imprisonment. He shall also be liable to pay fine of Rs.10,000/- and in default of payment of fine, he shall

undergo six months' additional rigorous imprisonment. The conviction of sole surviving appellant, Desh Raj under Section 302 I.P.C. is hereby set aside.

43. The sole surviving appellant, Desh Raj is on bail. His bail bonds are cancelled. Sureties are discharged. The sole surviving appellant, Desh Raj is directed to surrender before the concerned Court to serve out the remaining sentence within six weeks from today, failing which, learned trial Court concerned shall issue warrant for his arrest for serving out the remaining sentence.

44. It is also directed that the period already undergone by the appellant, Desh Raj, in Sessions Trial Nos.292 of 1990, arising out of Crime No.277 of 1990, under Section 302 I.P.C., Police Station Gurubuxganj, District Raebareli, under Section 302 I.P.C., either as under trial or post-conviction, shall be adjusted towards the sentence awarded by this Court in terms of Section 428 Cr.P.C.

45. Let the record of trial court along with a copy of this order be transmitted forthwith to the learned trial court concerned for necessary information and compliance.

Order Date :- 29.03.2024

A.Dewal

(Ajai Kumar Srivastava-I, J)

(Sangeeta Chandra, J)