

Reserved on :- 03.05.2024

Delivered on :- 13.06.2024

Court No. - 12

Case :- CRIMINAL APPEAL No. - 1270 of 2005

Appellant :- Badri Yadav

Respondent :- State of U. P.

Counsel for Appellant :- M. P. Yadav

Counsel for Respondent :- Govt. Advocate

Hon'ble Saurabh Lavania, J.

1. Heard counsel for the appellant and learned Sri S. P. Tiwari, learned A.G.A. for the State and perused the record.

2. The present appeal under Section 374(2) of CrPC has been filed assailing the judgment and order dated 31.08.2005 passed by Additional Sessions Judge, Court No. 6, Sultanpur, in Sessions Trial No. 343 of 2004 convicting the appellant for rigorous imprisonment of 10 years and fine of Rs.10,000/- under Section 304 I.P.C. and in default of payment of fine, further six months imprisonment.

3. It would be apt to indicate that at present the appellant must be about 77 years old as when the statement of accused was recorded in terms of Section 313 CrPC on 16.06.2005, he was about 58 years old (Paper No. 22 Ka).

4. Brief facts of the case are to the effect that an FIR was lodged on 09.01.2004 implicating the appellant. This FIR is the basis of entire proceedings including the judgment, under appeal, dated 31.08.2005. The FIR on reproduction reads as under:-

"सेवा में

थानाध्यक्ष महोदय थाना कोतवाली देहात जनपद सुल्तानपुर

महोदय निवेदन है कि प्रार्थी सुरसती पत्नी जगदेव निवासी पाठक का पुरवा एच ओ उंचाहार थाना कोतवाली देहात जिला सुल्तानपुर की निवासिनी है दिनांक 06.01.2004 को मेरा लड़का महेन्द्र कुमार व मेरे गांव के लड़के अनिल गुल्ली डंडा खेल रहे थे दिन में करीब 1:00 बजे बट्टी का लड़का राम जतन हैंडपाइप पर पानी भरने के लिए गया, उसी समय गुल्ली से मारते हुए डंडा महेन्द्र के हाथ से छूटकर राम जतन की आंख पर लग गया। इतने में अचानक गुस्से में आकर बट्टी प्रसाद ने मेरे लड़के महेन्द्र को पकड़ कर बगल के कुएं में डाल दिया जब

उसे निकाला गया तो महेन्द्र मर चुका था अतः श्रीमान जी से निवेदन है कि मेरी रिपोर्ट लिख कर कार्यवाही की जाए"

5. According to the case of the prosecution on 06.02.2004, Mahendra Kumar, son of the informant, and one Anil were playing 'gulli danda' at about 01:00 p.m. and one Ram Jatan, son of appellant, came there to fetch water from the hand pump, which was situated near the place where Mahendra Kumar and Anil were playing 'gulli danda'. While playing, the danda slipped from the hand of Mahendra Kumar and injury was caused on account of the same in the eye of Ram Jatan, resulting loss of one eye, and the appellant, who was present there, without premeditation of mind, on spur of moment, threw Mahendra Kumar into the 'well' situated near the place where Mahendra Kumar and Anil were playing 'gulli danda'.

6. The appellant, thereafter, was apprehended/arrested and was sent in judicial custody. Thereafter, the investigating officer (I.O.) concerned carried out the investigation and upon due investigation filed the charge-sheet before the trial court and the trial court thereafter framed the charge under Section 304 I.P.C. and upon denial, the appellant was put to trial.

7. To prove/establish the case, the prosecution filed the following relevant documents:

FIR (Exhibit Ka-13);

Report No. 36 dated 09.01.2004 (Exhibit Ka-14);

Inquest Report dated 07.01.2004 (Exhibit Ka-2);

Photo Nash Report; R.I. Report; C.M.O. documents and Challan Nash etc. (Exhibit No.Ka-3 to Ka-7);

Site Plan (Exhibit Ka-10) and

Charge-sheet (Exhibit Ka-11).

8. The prosecution also produced witnesses, namely, Smt. Sursati/ PW-1, Kumari Sunita Yadav/ P.W.-2 (eye-witness) and Kumari Arati/ P.W.-3 (eye-witness), Sub-Inspector- Bhagwansharan Mishra/ PW-4, Senior Sub-Inspector Pannalal/ PW-5, Dr. Rajendra Kapoor/ PW-7 and Radheyshayam Tripathi/ PW-7.

9. Smt. Sursati/ PW-1, Kumari Sunita Yadav/ P.W.-2 (eye-witness) and Kumari Arati/ P.W.-3 (eye-witness) being witnesses of the fact were examined. All these witnesses of the facts proved the incident occurred on 06.01.2004. In cross-examination, these witnesses remained intact.

10. After considering the evidence on record, medical evidence and statements of the witness recorded before the trial court, the trial court

convicted the appellant for for rigorous imprisonment of 10 years and fine of Rs.5,000/- under Section 304 I.P.C. and in default of payment of fine, further six months imprisonment.

11. In the aforesaid background of the case, the present appeal has been filed.

12. While pressing the appeal, counsel for the appellant stated that the sentence awarded by the trial court under Section 304 I.P.C. is liable to be interfered by this Court, in view of the evidence, particularly, the statements of the witnesses of facts before the trial court, Section 304 Part I I.P.C. would not be attracted. It is stated that to punish an accused under Section 304 Part I I.P.C., the prosecution is required to alleged and prove beyond doubt that the act by which the death is caused is done with intention of causing death or causing such bodily injury as is likely to cause death. Accordingly, to convict an accused the prosecution has to establish the intention of causing death and from a bare perusal of the FIR, as also the statement of witnesses of the facts, it is apparent that the appellant committed crime, as alleged by the prosecution, without premeditation of mind on spur of moment on account of the fact that his son sustained eye injury and undisputedly he lost his eye on account of the injury.

13. He further says that the FIR itself indicates the word '*achanak*' which proves that the act was done without intention of causing death and there was no intention to cause death.

14. He also stated that the informant is not an eye-witness of the story of the prosecution. Eye-witness of the story of the prosecution, as indicated in the FIR, if at all were P.W.-2/ Kumari Sunita Yadav and P.W.-3/ Kumari Arati and a bare perusal of their statement(s), which were taken note of by the trial court, would show that these witnesses have not stated anything so as to attract Section 304 Part I I.P.C.. Thus, while awarding of punishment under Section 304 Part I I.P.C., the trial court committed error of fact and law both.

15. It is further submitted that the appellant at the time of filing of appeal was about 58 years old and presently, he would be about 77 years old and he is on bail in terms of the order of this Court dated 30.09.2005 and except this judgment of conviction, the appellant has no criminal history nor he has committed any crime either earlier or after lodging of FIR dated 09.01.2004 or after judgment of conviction and these facts have not been disputed.

16. It is lastly submitted that taking note of the aforesaid, as also the facts and evidence available on record, the judgment under appeal be interfered and the appellant be acquitted.

17. Learned A.G.A. for the State in support of the judgment under trial stated that the trial Court after considering the relevant documentary evidence, as also the statements of the witnesses of the fact and other witnesses found that on account of the act of the appellant, the son of the informant died and the thereafter the trial court rightly awarded the punishment in terms of Section 304 I.P.C.. Prayer is to dismiss the appeal.

18. Considered the aforesaid submissions and perused the record.

19. In order to appreciate the aforesaid, to the view of this Court, it would be appropriate to refer the relevant portion of the statements of P.W.-2/ Kumari Sunita Yadav and P.W.-3/ Kumari Arati, who remained intact.

20. P.W.-2/ Kumari Sunita Yadav in her examination-in-chief stated as under:-

"मेरा नाम कुमारी सुनीता यादव आयु करीब 15 वर्ष पुत्री जगदेव निवासी पाठक का पुरवा थाना कोतवाली देहात जिला सुल्तानपुर ने सशपथ बयान किया कि घटना हुए आज से करीब 11 माह हुआ दिन के 1:00 बजे का समय था। घटना के दिन मेरे पिता व माता गोमती हास्पिटल सुल्तानपुर में थे वहां पर मेरे पिता जगदेव यादव के पथरी का ऑपरेशन हुआ था। वह घटना के 3 दिन पहले से भर्ती थे। घर पर मैं आरती तथा मेरी कलावती मौसी व महेन्द्र मेरा भाई थे। घटना के दिन मैं अपने खेत में बरसीम काटने आरती के साथ गई थी। बरसीम काटकर हम दोनों घर लौट रहे थे कि दिन में 1:00 बजे देखा कि बंदी यादव मेरे भाई महेन्द्र का हाथ पकड़कर खींचते हुए आए और कुएं में डाल दिए जब मैं चिल्लाई तो अभियुक्त बंदी यादव भाग कर अपने घर की ओर चले गए। मैं जब कुएं में जाकर देखी तो कुछ नहीं दिखाई पड़ा रहा मेरा भाई डूब गया था। मेरे चिल्लाने पर गांव वाले आए और मेरे भाई महेन्द्र को कुएं से निकाले और बाहर आने पर वह मरा हुआ था। मुझे घर आने पर पता चला कि महेन्द्र व अनिल गुल्ली डंडा खेल रहे थे और महेन्द्र के हाथ से डंडा छूटकर राम जाता के आंख पर लग गया था उसी गुस्से में बंदी ने महेन्द्र को कुएं में डाल दिया था। मेरी मां घटना के दिन ही 4 बजे शाम को आई और मैंने उसे पूरी बात बताई थी। घटना के सम्बन्ध में दरोगा जी ने मेरा बयान लिया था मेरे भाई महेन्द्र मृतक की आयु करीब 12 वर्ष थी। दरोगा जी के साथ जाकर मैंने कुएं व बरसीम खेत भी दिखाया था। मेरा बरसीम वाला खेत कुएं की थोड़ी दूर पर स्थित है।"

21. P.W.-3/ Kumari Arati in her examination-in -chief stated as under:-

"मेरा नाम कु० आरती आयु करीब 10 वर्ष पुत्री बाबूलाल निवासी ग्राम पाठक का पुरवा थाना कोतवाली देहात सुल्तानपुर सशपथ बयान किया कि घटना हुए 1 वर्ष हुआ दिन के 1:00 बजे का समय था घटना करीब 1 घंटा पहले मैं दीदी सुनीता के साथ बरसीम काटने गई थी करीब 1:00 बजे दिन में मैं सुनीता के साथ बरसीम काट कर लौट रही थी तो देखा कि बंदी ने मेरे भाई महेन्द्र का हाथ पकड़ा पकड़ कर लाए और वही स्थित कुएं में डाल दिए मैं व दीदी चिल्लाई तब बंदी चिल्लाने पर बंदी भाग गए और हम भागे कुएं की ओर देखा तो मेरा भाई पानी में डूब गया था कुछ दिखाई नहीं दे रहा था चिल्लाने की आवाज पर गांव वाले दौड़ कर तो महेन्द्र को कुएं से निकाले लेकिन वह मर गया था मैं रोने लगी घर लौट कर पता चला कि अनिल व मेरा भाई महेन्द्र गुल्ली डंडा खेल रहे थे महेन्द्र के हाथ से डंडा छूटकर राम जतन के आंख में लग गया था जिस पर बंदी यादव महेन्द्र को ले जा कर कुएं में डाल दिया था दरोगा जी मुझसे पूछताछ किया व मेरा बयान लिया था।"

22. Considering the issue involved in the instant case in the light of the arguments advanced by the counsel for the appellant, it would also be

appropriate to refer the observations made by the Hon'ble Apex Court in the case on **N. Ramkumar Vs. State Represented by Inspector of Police, 2023 SCC OnLine SC 1129**. The relevant portion of the judgment is extracted hereinunder:-

"14. The cause of death assigned in the post-mortem report as already noticed is "died of head injury". It is a trite law that "culpable homicide" is a genus and "murder" is its species and all "murders" are "culpable homicides, but all "culpable homicides" are not "murders" as held by this court in Rampal Singh v. State of Uttar Pradesh, (2012) 8 SCC 289. The intention of the accused must be judged not in the light of actual circumstances, but in the light of what is supposed to be the circumstances.

15. In the case of Basdev v. State of Pepsu, AIR 1956 SC 488 at page 490 the following observations have been made:

"Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion."

16. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat 'intent' and 'knowledge' in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 I.P.C.. It is in this background that the expression used in Penal Code, 1860 namely "intention" and "knowledge" has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300I.P.C., it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted. This Court in the case of Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh, (2006) 11 SCC 444 : AIR 2006 SC 3010 has observed:

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking

of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.

17. This Court in the case of Pratap Singh @ Pikki v. State of Uttarakhand, (2019) 7 SCC 424 had noticed that the deceased-victim had suffered total 11 injuries and had been convicted for offences under Section 304 Part-II/Section 34 I.P.C. apart from other offences. It was noticed that some altercation took place and the groups entered into scuffle without any premeditation and convicted accused for the offence punishable under Section 304 Part-II/Section 34 I.P.C.. Taking into consideration that the appellants therein were young boys and had served sentence of more than three years and five months and there was no previous enmity, persuaded this Court that the quantum of sentence is excessive and accordingly sentenced them to the period already undergone for the offence under Section 304 Part-II/Section 34 I.P.C. by observing thus:

“27. We do find substance in what being submitted by the learned counsel for the appellant and in the first place, it is to be noted that the trial Court, while awarding sentence to the appellant has not made any analysis of the relevant facts as can be discerned from the judgment (page 96-97 of the paper book) dated 12th January, 1998. Even the High Court has not considered the issue of quantum of sentence. From the factual position which emerge from the record, it is to be noticed that they were young boys having no previous enmity and were collectively sitting and watching Jagjit Singh night. On some comments made to the girls sitting in front of the deceased, some altercation took place and they entered into a scuffle and without any pre-meditation, the alleged unfortunate incident took place between two group of young boys and it is informed to this Court that the appellant has served the sentence of more than three years and five months. Taking into consideration in totality that the incident is of June 1995

and no other criminal antecedents has been brought to our notice, and taking overall view of the matter, we find force in the submission of the appellant that the quantum of sentence is excessive and deserves to be interfered by this Court.”

18. In the case of *Deepak v. State of Uttar Pradesh*, (2018) 8 SCC 228 it came to be noticed by this Court that incident had taken place in the heat of the moment and the assault was by a single sword blow in the rib cage was without any premeditation and incident had occurred at the spur of the moment, and thus inferred there was no intention to kill and as such the offence was converted from Section 302 I.P.C. to Section 304 Part II I.P.C. and the appellant was ordered to be released forthwith by sentencing them to the period of conviction already undergone. It was held:

“7. On consideration of the entirety of the evidence, it can safely be concluded that the occurrence took place in the heat of the moment and the assault was made without premeditation on the spur of time. The fact that the appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the appellant, coupled with the duration of the entire episode for 1½ to 2 minutes. Had there been any intention to do away with the life of the deceased, nothing prevented the appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib-cage area, knowledge that death was likely to ensue will have to be attributed to the appellant.

8. In the entirety of the evidence, the facts and circumstances of the case, we are unable to sustain the conviction of the appellant under Section 302 I.P.C. and are satisfied that it deserves to be altered to Section 304 Part II I.P.C.. It is ordered accordingly. Considering the period of custody undergone after his conviction, we alter the sentence to the period of custody already undergone. The appellant may be released forthwith if not required in any other case.

9. The appeal is therefore allowed in part with the aforesaid modification of the conviction and sentence.”

19. This Court in a recent judgment in the case of *Anbazhagan v. The State* represented by the Inspector of Police in Criminal Appeal No. 2043 of 2023 disposed of on 20.07.2023 has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:

“60. 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 I.P.C., 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 I.P.C.. 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 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 I.P.C. 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 I.P.C., 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 I of Section 304 of the I.P.C., if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the I.P.C.. 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 I.P.C.. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the I.P.C., may be attracted but not any of the clauses of Section 300 of the I.P.C.. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the I.P.C.. 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 I.P.C..

(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 I.P.C. 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 I.P.C., are fulfilled and the offence would be murder.

(5) Section 304 of the I.P.C. 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 I.P.C., (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 I.P.C. 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 I.P.C., 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 I.P.C., the accused need not bring his case within one of the exceptions to Section 300 of the I.P.C..

(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 I.P.C.) and murder (Section 300 of the I.P.C.) has always to be carefully borne in mind while dealing with a charge under Section 302 of the I.P.C.. 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 I.P.C.. 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 I.P.C. 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 I.P.C., 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 I.P.C..

(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 I.P.C. 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 I.P.C..”

20. Thus, it emerges from the case law analysed herein-above for converting the sentence imposed under Section 302 to Section 304 Part II the facts unravelled during trial will have to be seen. In the facts of the case on hand, it is discernible that there was no premeditation to cause death or the genesis of occurrence and the single assault by the accused and duration of entire episode, were factors to adjudge the intention. The offence can be brought clearly within the ambit of Section 304 Part-II I.P.C.. In the instant case it can be noticed that appellant and the deceased were in love with each other. The fact that deceased had stopped talking to the appellant and she was talking to her neighbour Mr. Sudhakar had ignited the mind of the appellant to be furious about the conduct of the deceased and he was upset about this change of attitude of the deceased. Even according to the testimony of PW-1, who is none other than mother of the deceased there was altercation between the appellant and the deceased and exchange of words between appellant and deceased with regard to their love affair. On being confronted by the appellant as to why the accused had stopped talking to him and as to why she was trying to develop friendship with Sudhakar and the answer given by the deceased had resulted in appellant's getting infuriated and in that spur of the moment he caught hold of her hair and banged her head to the wall which resulted in blood oozing out and on seeing this he ran away from the scene of the incident. Thus, the single assault by the appellant coupled with the duration of the entire period having occurred for about 2-3 minutes would not be sufficient to infer that he had the intention to kill the deceased. Had there been any intention to do away with the life of the deceased, obviously the appellant would have come prepared and would have assaulted the deceased with pre-meditation. Yet another factor which cannot go unnoticed, the appellant had obviously approached the deceased and intended to confront her as to why she was not talking to him though they were in love and also to clear the doubts about she being friendly with Mr. Sudhakar (neighbour) and in this factual scenario, heated exchange of words have taken place and enraged by her reply the appellant has banged her head on the wall in a fit of fury, which cannot be inferred that he had any intention to take away her life, particularly when he was in love with her.”

23. It would also be apt to indicate that the Hon'ble Apex Court in the case of **Khanjan Pal Vs. State of U.P. (1990) 4 SCC 53**, after taking note of the fact(s) that incident took place on the spur of moment and without premeditation of mind and there had been no ill-will or enmity between the parties as also the injury which was caused with knife to the injured who ultimately expired, altered the sentence from Section 302 I.P.C. into Section 304 Part II I.P.C. and thereafter taking note of the other aspects of

the case including the period of incarceration i.e. for more than one year and also the age of the appellant, directed the appellant to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) in addition to the term of imprisonment he had already served and accordingly modified the sentence awarded by the High Court. The Para 4 and 5 of the judgment are extracted hereinunder:-

"4. We, however, agree with the learned counsel for the appellant that on the basis of the facts proved, the offence is not murder punishable under Section 302, I.P.C. and that the act of the appellant as proved would fall only under Section 304 Part II, I.P.C.. The appellant had in statement under Section 313, CrPC admitted that there had been an altercation between the two and the deceased received the injury in the course of a scuffle. The evidence clearly established that the whole incident was a sudden development and that the appellant had acted at the spur of the moment and without any premeditation. There had been no ill-will or enmity between the two. A casual remark made by the appellant provoked the deceased and the altercation ensued which culminated in the stabbing with knife. The appellant used the knife only once and did not act in any cruel manner. It was in the sudden quarrel in heat of passion that the appellant inflicted the injury on the deceased without any intention to cause death but having knowledge that such act was likely to cause the death of the deceased. In such circumstances, the act of the appellant falls under Exception 4 to Section 300, I.P.C. and the appellant is liable to be convicted only under Section 304, Part II, I.P.C..

5. We accordingly alter the conviction to one under Section 304, Part II, I.P.C.. We are told that the appellant had already undergone imprisonment for over one year. He had been released on bail by order of this Court dated July 16, 1979. The appellant, a young man who had been at large for over nearly 12 years, in our opinion, cannot be committed to prison for any further period at this stage. To meet the ends of justice, we direct the appellant to pay a fine of Rs 50,000 in addition to the term of imprisonment he has already suffered. We, thus modify the sentence awarded by the High Court. We also direct that the fine, if realised, shall be paid to PW 1, Umrao Singh, the father of the deceased and other legal heirs of Deep Singh. In case of default in payment of fine, the appellant shall undergo further imprisonment for one year. The appeal is partly allowed."

24. The Hon'ble Apex Court in the case of **Bhojappa Hanamanthappa Choudannavar And Others Vs. State of Karnataka (2004) 10 SCC 177**, after considering the facts of the case confirmed the conviction for offence under Section 304 Part II I.P.C. but altered the sentence to the fine of Rs.25,000/- (Rupees Twenty Five Thousand Only). Relevant Para 4, 5 & 6 of the judgment is extracted hereinunder:-

"4. It is true that a little girl died in the unfortunate incident. But it is also true that the appellant had no ire against that little girl either before or during the occurrence. It was an act done in a rash mood without any intention to cause even grievous hurt to her. Even so, the appellant must pay the penalty for it. There is only one injury which the little girl sustained and probably because the skull bone of the deceased was not grown to sturdiness as in grown-up persons, the strike had resulted in such a calamitous proportion.

5. Section 304 Part II of the Penal Code, 1860 prescribes a punishment of imprisonment which may "extend to 10 years or with fine or with both". Learned counsel made a plea that on the fact situation a sentence of fine will be sufficient to meet the ends of justice. Though we too are persuaded to think so, we are not disposed to impose any amount as fine. After considering various aspects we think that a fine of Rs 25,000 is necessary to meet the ends of justice.

6. In the result we confirm the conviction of the offence under Section 304 Part II, but we alter the sentence to a fine of Rs 25,000. If the appellant fails to remit the fine in the trial court within six weeks from today we direct him to undergo rigorous imprisonment for three years. If the fine is realised from the appellant the trial court shall pay the same to PW 1 Bhimappa (the father of Renu Kavva) by way of compensation as provided in Section 357(1) of the Code of Criminal Procedure."

25. Taking note of the facts and circumstances of the case including the contents of the F.I.R. and the statement(s) of eye-witnesses namely Kumari Sunita Yadav/ P.W.-2 and Kumari Arati/ P.W.-3, this Court finds that the incident, in which the minor ultimately died, took place in heat of passion and the appellant acted at the spur of moment and without premeditation of mind and the appellant had no intention to kill the deceased and there had been no ill-will or enmity between the parties. Thus, conviction of the appellant under Sections 304 I.P.C. cannot sustain and the appellant is liable to be convicted for the offence punishable under Section 304 Part II I.P.C.

26. On the issue of sentence to be imposed under Section 304 Part II I.P.C., this Court considered the observation made in the judgments referred above as also the following facts:

(i) Perusal of record shows that occurrence took place on 06.01.2004 in heat of passion and the appellant acted at the spur of moment and without premeditation of mind and he had no intention to kill the deceased.

(ii) The appellant was arrested on 10.01.2004 and his application for bail was allowed by Sessions Court on 30.01.2004 and thereafter he was taken into custody on 31.08.2005 (date of judgment) and thereafter in terms of order of this Court dated 30.09.2005, his bail bonds were accepted on 21.10.2005 and in this view of matter, the appellant remained in custody for about 71 days.

(iii) The appellant at present must be about 77 years old.

27. In view of aforesaid, this Court is of the view that at this juncture of time, sentencing the accused-appellant to a custodial sentence would not serve the ends of justice.

28. For the reasons aforesaid, conviction and sentence of appellant under Section 304 I.P.C. is set aside. However, accused-appellant is found guilty for offence punishable under Section 304 Part II I.P.C.

29. The accused-appellant is sentenced to a ***fine of Rs.75,000/-*** (Rupees Seventy Five Thousand Only) under Section 304 Part II I.P.C., which shall be paid to the informant. In default of payment of fine, accused-appellant shall undergo three years rigorous imprisonment. The fine shall be deposited by the appellant before the trial court within four months from the date of this judgment.

30. The appeal is **party allowed** in above terms. The appellant is stated to be on bail, hence, his personal bond is cancelled and sureties are discharged.

31. Let a copy of this judgment and record be sent forthwith to the trial court concerned for compliance.

(Saurabh Lavania, J.)

Order Date :- 13.6.2024
(Manoj K.)