

Court No. - 44

Case :- CRIMINAL APPEAL No. - 2006 of 1985

Appellant :- Mahesh And Others

Respondent :- State of U.P.

Counsel for Appellant :- Apul Misra

Counsel for Respondent :- A.G.A

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Tej Pratap Tiwari,J.

1. Heard Shri Apul Mishra, learned counsel for the appellants and Shri Vikas Goswami, learned A.G.A.-I for the State.

2. Present appeal arises from the judgement and order dated 30.07.1985 passed by Shri K.G. Rastogi, learned Sessions Judge, Budaun, in Sessions Trial No. 327 of 1983 (State vs Ram Prasad, Ram Bilas, Mahesh and Suresh). By that judgement and order, learned court below has convicted the appellants Ram Bilas and Mahesh for offence under Section 302 I.P.C. read with Section 34 I.P.C and awarded life imprisonment. The accused Ram Bilas has also been convicted for the offence under Section 323 I.P.C. and awarded rigorous imprisonment for six months. The accused Suresh has been convicted for offence under Section 324 I.P.C. and awarded rigorous imprisonment for one year. Last, the accused Ram Prasad has been convicted for offence under Section 323 I.P.C. and awarded rigorous imprisonment for six months.

3. During pendency of this appeal, the appellant Ram Prasad died. Accordingly, his appeal is declared *abated*. Also, separate appeal filed by the appellant Ram Bilas i.e. *Criminal Appeal No. 2148 of 1985* has already been declared *abated* vide order dated 04.07.2025.

4. Present is amongst the oldest appeals pending in the Court. Pursuant to last order, non-bailable warrants issued on the appellants Mahesh and Suresh have been

executed. In that circumstance, the appeal has been heard today.

5. The prosecution story emerged on the strength of First Information Report lodged by Amar Bahadur Singh (P.W.-1 at the trial) who is the nephew of the deceased Sohan Singh. The said F.I.R. was lodged on 23.06.1983 at 11:35 A.M., at Police Station Hazratpur, District Budaun. In that, first a quarrel arose between the parties. Then, a simple physical assault is described. Later, the accused Ram Prasad and Ram Bilas are described to have carried out assault with '*lathis*' whereas the accused Mahesh and Suresh assaulted with spears ('*bhaala*'). Thus, the accused Mahesh is described to have assaulted the first informant Amar Bahadur Singh (P.W.-1) on hand by spear while the accused Ram Bilas is described to have assaulted the deceased with a spear that penetrated his rib cage. Further, the accused Suresh is described to have again assaulted the first informant Amar Bahadur Singh (P.W.-1) with a spear, and injured his right hand. Last, the accused Ram Prasad again assaulted the injured with a '*lathi*' blow which landed on the head of the Ram Swaroop whereas the '*lathi*' blow by Ram Bilas injured Puttu Singh (P.W.-2). Besides Puttu Singh (P.W.-2), the occurrence is narrated to have witnessed by Abhinath, Nawab, Gyan, Jagdish, Ram Swaroop and others (not examined at the trial). The F.I.R. is Ex. Ka.-1 at the trial.

6. Upon that F.I.R. being registered, three injured namely, Ram Swaroop (not examined at the trial); Amar Bahadur Singh (P.W.-1) and, Puttu Singh (P.W.-2) were examined by Dr. N.P. Singh (P.W.6), on 23.06.1983. All injuries received by three injured were described - 'simple'. Those Injury Reports were Exs. Ka-4, Ka-5 and Ka-6 at the trial.

7. Inquest Report was also prepared of the dead body of the deceased Sohan Singh, on 23.06.1983 at about 12:30 P.M, by Investigation Officer Sub-Inspector Indrapal (P.W.-7). It is Ex.Ka-7 at the trial.

8. Thereafter, autopsy examination was conducted on the dead body of the Sohan Singh, by Dr. S.C. Nagauriya (P.W.-3) on 24.06.1983 at 12:30 P.M. In that,

following ante-mortem injuries were reported:

"1. One lacerated wound 3 cm x 1 cm x scalp on top of head underneath blood was present under scalp, left parietal bone was found fractured.

2. One punctured wound of size 1.75 cm x 0.75 cm x cavity deep on left side front chest 3 cm below nipple at 5 o'clock position. Tissue was coming out through the wound.

3. One wound of size 0.5 cm x 0.5 cm x back left scapular region through which tissue was coming out; pbc passing through injury no.2 is corresponding to injury no.3."

It was opined, death was caused about one day earlier. The Autopsy Report is Ex.Ka-2 at the trial.

9. Upon completion of the investigation, the Investigation Officer Sub-Inspector Indrapal (P.W.-7) submitted charge-sheet against all the accused persons.

10. Upon the case being committed to trial to the court of sessions, following charges came to be framed against the appellants:

"First:- That you on 23.6.83 at about 10 A.M. on the outskirts of village Hari Ram Pur, police station Hazratpur, district Budaun, in furtherance of the common intention of you all did commit murder by intentionally and knowingly causing the death of Sohan Singh and thereby committed an offence punishable under section 302 I.P.C. read with sec.34 I.P.C.

Secondly:- That you on the said date, time and place, and in furtherance of the common intention of you all, caused injuries to Ram Saroop, Amar Bahadur and Puttu Singh with such intention and knowledge and under such circumstances that if you by that act had caused the death of either of them you would have been guilty of the offence of murder and thereby committed an offence punishable under section 307/34 I.P.C.

Thirdly: That you on the said date, time and place, in furtherance of the common intention of you all, voluntarily caused injuries to Amar Bahadur by a spear, a sharp edged weapon, and thereby committed an offence punishable under section 324/34 I.P.C. and within the cognizance of this court of sessions."

11. At the trial, besides relying on the above documentary evidence, the prosecution relied on the oral evidence of three ocular witnesses, namely, the first informant and an injured Amar Bahadur Singh (P.W.-1); injured Puttu Singh (P.W.-2) and the Lekhpal, Antram (P.W.-6). It also relied on the medical evidence led by Dr. N.P. Singh (P.W.-5) who had examined the three injured and, Dr. S.C. Nagauriya (P.W.-

3) who prepared the Autopsy Report. The Investigation Officer Sub-Inspector Indrapal was examined as P.W.-7 whereas Constable Ram Naresh was examined as P.W.-4. He proved the registration of the F.I.R.

12. Thereafter, the statements of the accused persons were recorded under Section 313 Cr.P.C. In such facts and evidence, the learned court below has convicted the appellants guilty of the offences as noted above.

13. Submission of learned counsel for the appellants is, the best case of the prosecution is that a sudden quarrel had erupted between the parties in the course of consolidation proceedings that were underway at village Harrampur. In that, the parties to the dispute who were living peacefully from before and who had no pre-existing dispute between them were suddenly confronted with a situation where property dispute arose owing to third party/State action - of carving out fresh consolidated plots/'Chak'. A simple measurement and demarcation dispute escalated at the spur of the moment. It first experienced a simple quarrel that got heated. It led to a simple assault between the two sides. In that heat of passion, some assault may have arisen with use of simple agricultural implements and items commonly available with the agriculturists. Neither there was any pre-meditation nor there was any intention to murder. Therefore the occurrence may not travel beyond ingredients of offence under Section 304 Part II I.P.C.

14. In that context, heavy reliance has been placed on the evidence led by the prosecution. It nowhere establishes existence of pre-meditation and intention. In a free for all quarrel that was witnessed by both sides, unfortunately, the injury suffered by the deceased may have led to his death. However, that was never proven to be intentional or with knowledge to cause death. Here, it has been stressed, other than the deceased, according to the prosecution story itself - as proven before the learned court below, three injured persons received simple injuries, only.

15. In that context, reliance has been made to the cross-examination statement of

the Amar Bahadur Singh (P.W.-1) and Puttan Singh (P.W.-2), to suggest vast improvement had been made to the prosecution story at the stage of evidence being led at the trial. At that late stage, both prosecution witnesses tried to establish that the appellants Ram Bilas and Ram Prasad who were unarmed at the beginning of the quarrel, brought '*lathis*' and spears to the place of occurrence and thereafter caused the occurrence. That part of the prosecution story is completely false inasmuch as during their cross-examination, those witnesses could not explain how such narration was not contained in their previous statements, recorded by the Investigation Officer, during investigation. In that regard, it has also been stressed, the Investigation Officer Sub-Inspector Indrapal (P.W.-7) was confronted with such improvement made by Amar Bahadur Singh (P.W.-1) and Puttu Singh (P.W.-2). He denied any previous statement made by the said witnesses that the accused Ram Bilas and Ram Prasad had later brought '*lathis*' and spears to the place of occurrence.

16. As to the sentence awarded, it has been stressed, the appellant Mahesh is about 72 years of age while the appellant Suresh is about 71 years of age and is completely bed-ridden. Upon non-bailable warrant executed against him, he has been confined though he is unable to move on his own. The other accused Ram Prasad and Ram Bilas are dead. Their appeals have already been abated.

17. As to the conviction of the appellant Suresh under Section 324 I.P.C., it has been stressed, against sentence of one year, he has remained confined for close to one month.

18. On the other hand, learned A.G.A. has submitted, present is a case where the appellant side is clearly the aggressor. They violated the measurement and demarcation of land made by the State authority, namely, the Lekhpal [Antram (P.W.-6)]. There is no defence theory that there was any dispute to the orders passed by the consolidation authorities or that there was any order of any competent authority under which the appellants may have claimed that the boundary of their

consolidated plot/'Chak' should extend two yards into the consolidated plot/'Chak' of the deceased Sohan Singh. They took the law into their own hands without any reason or occasion. The occurrence was witnessed by the injured witnesses whose presence may never be doubted as their presence is wholly natural for reason of their unproven injuries.

19. Second, it has been stressed, the prosecution witnesses, namely, Amar Bahadur Singh (P.W.-1) and Puttu Singh (P.W.-2) clearly proved that the Ram Bilas and Ram Prasad brought '*lathis*' and spears to the place of occurrence well after the quarrel had arisen. Therefore, at that stage, pre-meditation and intention had arisen on the evidence led by the prosecution.

20. Third, referring to the seat of injury suffered by the deceased, it has been submitted, clearly, the pre-meditated act of the assailants was with common intention to murder the deceased.

21. Alternatively, it has been submitted, in any case, the occurrence may be described as one under Section 304, Part I, I.P.C. but not Section 304, Part II, I.P.C.

22. On the issue of sentence, on query made, learned A.G.A.-I could not dispute the fact that the two appellants are dead and the surviving appellants are more than 70 years of age. One of them - convicted for lesser offence, may also be bed-ridden.

23. Having heard learned counsel for the parties and having perused the record, we may note, F.I.R. was lodged wholly promptly, within two hours of the occurrence. The prosecution story has been led and supported by two injured witnesses. Their injuries though simple in nature, are proven. The medical opinion also corroborates the date and time of occurrence. In light of the above, we find that the F.I.R. has been lodged wholly promptly and may not be doubted.

24. As to the occurrence, as noted above, neither in the F.I.R. lodged by the injured Amar Bahadur Singh (P.W.-1) nor at the trial, the said Amar Bahadur Singh (P.W.-1) and the second injured Puttu Singh (P.W.-2) made any statement to establish the

existence of any prior dispute or quarrel between the parties. They simply narrated that consolidation proceedings was underway at Village Harrampur. The Lekhpal - Antram (P.W.-6) had measured the consolidated plot/'Chak' of the appellant Ram Bilas that morning, in the presence of both parties. At that instance, the accused Ram Bilas doubted and disputed the measurement and demarcation made by the Lekhpal, Antram (P.W.-6). He first claimed that his plot should extend two yards into the plot of the deceased. It was objected by the deceased. Thus, the quarrel erupted. It appears to have escalated between the parties for obvious reason of property dispute. Both sides are agriculturists. The livelihood of both sides depends solely on their agricultural lands. It also cannot be doubted, in the course of the consolidation proceedings, often disputes arise. Agriculturists are often displaced from their pre-existing agricultural plots and are required to accept and adjust on different/altered plots offered to them under consolidation proceedings. While the participation of the State authorities is to offer agricultural holdings more conducive to efficient farming, all participating agriculturists may not align to that perspective, at least at the beginning when they are made to make the change.

25. The prosecution witnesses further proved that first a verbal quarrel erupted between the parties on the efforts made by Ram Bilas to shift the boundary of his consolidated plot/'Chak' into the consolidated plot/'Chak' of the deceased Sohan Singh. They further proved, that oral quarrel continued for some time inasmuch as they proved that the said quarrel kept escalating; *"Kaha Suni Kaafi Ho Gayi"*. At that stage, a physical assault was caused, whereafter, wherein Ram Bilas and Ram Prasad brought '*lathis*' and spears to the place of occurrence and assaulted. Besides the fact that the prosecution story did not narrate (initially), the said fact of '*lathis*' and spears brought to the place of occurrence, later, there is a another gap in the story as to the place from where such '*lathis*' and spears were brought or how all the accused came to be armed when only two had brought such '*lathis*' and spears.

26. In that regard, during their cross-examination, both Amar Bahadur Singh (P.W.-1) and Puttu Singh (P.W.-2) were questioned if they have ever claimed during the

investigation that Ram Vilas and Ram Prasad brought the '*lathis*' and spears to the place of occurrence after the quarrel had started. Both witnesses claimed that they had made such statement to the Investigating Officer but they could not explain why that statement was not recorded by the Investigation Officer. The fact that such statement was not made to the Investigation Officer, also, was candidly stated by the said Investigation Officer Sub-Inspector Indrapal (P.W.-7), during his cross-examination.

27. In view of the above, we find that the prosecution, insofar as element of pre-meditation and intention is concerned, suffers from a critical chink. It is not free from reasonable doubt. The F.I.R. narration also does not corroborate the improvement/alterd stand taken by Amar Bahadur Singh (P.W.-1) and Puttu Singh (P.W.-2) during their examination-in-chief. Therefore, we are unable to accept the prosecution story to the extent it alleges pre-meditation and intention to cause the murder. Rather, the occurrence is seen to have been caused at the spur of the moment, in the heat of the passion - all springing from a property dispute experienced in the course of proceedings for consolidation of agricultural holdings.

28. Other than that, we find that the prosecution story is free from doubt as to how the occurrence arose and the manner in which it escalated and also the manner in which the assault may have been carried out. In that, a quarrel arose on demarcation of land made by Lekhpal Antram (P.W.-6). Thus, a sudden quarrel arose between the parties. It continued for some time. It progressed to a physical assault which progressed into an assault with '*lathi*' and spear. No extensive injuries are noted to have been caused. All three injured (one of whom was not examined at the trial), received simple injuries. Only the deceased received injuries that were fatal. Here, we also note that the independent witness the Lekhpal, Antram (P.W.-6) did not support the prosecution story at the trial. He was declared hostile during his examination-in-chief itself.

29. In **Anbazhagan Vs. The State, Represented by the Inspector of Police, 2023 SCC OnLine SC 857**, the Supreme Court has made analysis and differentiated

between murder and culpable homicide not amounting to murder. The Supreme Court summarized the principle as below:

"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 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."

30. In view of the above, we find that the appellant-Mahesh is guilty not of offence under Section 302 I.P.C. read with Section 34 I.P.C. but of offence under Section 304 Part II I.P.C. read with Exception to Section 300 I.P.C. together with the Explanation thereto. Against maximum sentence awardable for that offence, we also note that the appellant-Mahesh is about 72 years of age. He was enlarged on bail vide order dated 28.01.1986. Thus, he may have remained confined for close to about 7 months, post conviction. At this stage, Shri Apul Mishra, learned counsel for the appellants further states that the appellant Mahesh was not on bail during

trial and has remained confined for about 20 months. In all, he may have remained confined for more than two years. Therefore, the sentence awarded to the appellant Mahesh is modified to sentence undergone by him. Insofar as the appellant-Suresh is concerned, he was convicted only for offence under Section 324 I.P.C.. Against sentence awarded for one year, he has remained confined for two months. Accordingly, the sentence awarded to him is modified to sentence undergone by him. Both surviving appellants - Mahesh and Suresh are in jail. They may be released forthwith, subject to them not wanted in any other case. Both the appellants Mahesh and Suresh are directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within a period of two months from today.

31. Accordingly, the present appeal is **partly allowed**.

32. Copy of this judgment along with original record of Court below be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

33. In view of the order passed today, Criminal Misc. (Cancellation of Warrant) Application No. 1 of 2025 has been rendered infructuous. It is *dismissed* as such.

Order Date :- 8.8.2025
Prakhar

(Tej Pratap Tiwari, J.) (S.D. Singh, J.)