

Judgement reserved on 07.01.2025
Judgement delivered on 24.01.2025

Neutral Citation No. - 2025:AHC:12394-DB

Court No. - 45

Case :- CRIMINAL APPEAL No. - 210 of 1991

Appellant :- Radhey Shyam And Ors

Respondent :- State

Counsel for Appellant :- Ashutosh Pandey,Avanindra Kumar Mishra,Dharmendra Singhal(Senior Adv.),R.K. Singh. Rajput,Shivendra Raj Singhal,Vinay Kr. Tripathi,Vinod Kumar Agarwal,Yogendra Misra

Counsel for Respondent :- A.G.A.

With

Case :- CRIMINAL APPEAL No. - 278 of 1993

Appellant :- Shyam Babu And Others

Respondent :- State

Counsel for Appellant :- G.S. Chaturvedi,Raj Kumar Srivastava A C,Rakesh Kumar Verma,Ra m Jatan Yadav,Shivendra Raj Singhal

Counsel for Respondent :- A.G.A.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard Sri Dharmendra Singhal, learned Senior Counsel alongwith Sri Shivendra Raj Singhal, learned counsel for the appellants and Sri Patanjali Mishra, learned AGA-I for the State.

2. These are convicts' appeals (two). Criminal Appeal No. 210 of 1991 arises from (i) judgement and order dated 06.02.1991 passed by Shri H.S. Sharma, learned Special/Additional Sessions Judge, Mathura, in S.T. No. 129 of 1989 (State Vs. Radhey Shyam, Om Prakash, Ram Dass, Nirottam, Shanker, Guman Singh, Yagya Dutt @ Mahesh and Anar Singh), under Sections 147, 148, 364, 452, 302, 376 IPC, P.S.

Baldeo, District Mathura, whereby the learned court below has convicted Anar Singh under Section 302 IPC for the murder of Hardei and sentenced him to undergo life imprisonment. He has also been convicted under Section 148 IPC and sentenced to undergo two years rigorous imprisonment. He has also been convicted for offence under Section 364 IPC and sentenced to undergo five years rigorous imprisonment along with a fine of Rs. 500/-, and in default of fine, to further undergo one year rigorous imprisonment. He has also been convicted for offence under Section 366 IPC and sentenced to undergo five years rigorous imprisonment along with a fine of Rs. 500/-, and in default of fine, to further undergo one year rigorous imprisonment. Also, the accused Radhey Shyam, Om Prakash, Ram Dass, Nirottam, Shanker, Yagya Dutt @ Mahesh and Guman Singh have been convicted under Section 302 IPC read with Section 149 IPC and sentenced to undergo life imprisonment and further awarded one and a half year rigorous imprisonment for offence under Section 147 IPC. They have been further convicted under Section 364 IPC and sentenced to undergo five years rigorous imprisonment along with fine of Rs. 500/-, and in default of fine, to further undergo one year rigorous imprisonment. Also, they have been convicted under Section 366 IPC and sentenced to undergo five years rigorous imprisonment along with a fine of Rs. 500/-. Last, the accused person Yagya Dutt @ Mahesh has been convicted under Section 376 IPC and sentenced to undergo seven years rigorous imprisonment along with a fine of Rs. 500/-, and in default of fine, to further undergo one year rigorous imprisonment. Second, Criminal Appeal No. 278 of 1993 has been filed by the appellants-Shyam Babu, Mirguwa, Dhullan @ Liladhar, Satyabhan and Gopal @ Bhunki against the judgment and order of conviction dated 11.02.1993 passed by Shri Ravi Narayan, the Additional Sessions Judge-III Mathura in Sessions Trial No. 134 of

1991, whereby the appellants have been convicted under Sections 147, 452, 364 and 366 IPC and sentenced him for one and a half year rigorous imprisonment, three years rigorous imprisonment along with a fine of Rs. 200/-, in default, six months rigorous imprisonment, five years rigorous imprisonment along with a fine of Rs. 500/-, in default, one year rigorous imprisonment, five years rigorous imprisonment along with a fine of Rs. 500/-, in default, one year rigorous imprisonment. Further, the appellant convicted under Section 216 IPC and sentenced for three years rigorous imprisonment. Satyabhan has been convicted and sentenced to undergo imprisonment of three years for the offence under Section 216 IPC.

3. The Criminal Appeal No. 210 of 1991 was filed by eight convicts. Of them, Radhey Shyam, Om Prakash, Ram Dass, Nirottam and Shanker are dead. The appeal filed on their behalf has been declared abated, by earlier orders. At present, the appellants Guman Singh aged about 58 years, Yagya Dutt @ Mahesh aged about 58 years and Anar Singh aged about 71 years, survive. They have been enlarged on bail *vide* order dated 13.02.1991. In Criminal Appeal No. 278 of 1993, except appellant No.-4 Satyabhan, other appellants have died and therefore that appeal was declared abated except against appellant No.4-Satyabhan, in terms of the order dated 06.11.2024 passed by a coordinate bench of this Court. All appellants in Criminal Appeal 278 of 1993 had been granted bail *vide* order dated 16.02.1993.

4(i). The prosecution case in a nutshell is, Satto (**P.W.-2**) was married in accordance with law to Gopal @ Bhunki. Arising from matrimonial discord and harassment caused to the said Satto (**P.W.-2**) by her husband and his family members, she had been forced to abandon her matrimonial home. Six months prior to the occurrence (disclosed to have taken place on 22.09.1988), the said Satto remarried Onkar

(P.W.-7).

4(ii). On 22.09.1988, the said Onkar and Satto were sitting on a cot under the "*Chhappar*" near the courtyard of the house of the first informant Raghunath **(P.W.-1)**, the father of Satto **(P.W.-2)**. Also present were Raghunath **(P.W.-1)**, his wife - the deceased Hardei and Charandas - the mother and younger brother of Satto **(P.W.-2)**. Charandas was not examined at the trial. At about 6-7 p.m. while Satto **(P.W.-2)** was cooking food, the accused persons namely Radheyshyam, Om Prakash, Ramdas, Shyambabu, Nirottam, Shanker, Gopal @ Bhunki, Nirgua, Liladhar and Anar Singh (wielding a gun), arrived at that place. They caught hold of Satto **(P.W.-2)** and Onkar **(P.W.-7)**, to abduct them. That was resisted by the deceased Hardei. Anar Singh shot her. She died on the spot. According to Raghunath **(P.W.-1)**, the first informant, he remained in a state of shock as he had been threatened by the accused persons not to report the matter else they would kill his young son (Charandas). The First Information Report was lodged on 23.09.1988 at about 8.30 p.m. **(Ex.Ka-1)** through the scribe Onkar Singh (not examined at the trial).

4(iii). On that FIR lodged, the Investigating Officer recovered plain and blood stained soil from the place of occurrence on 23.09.1988. That recovery memo is **Ex.Ka-12**.

4(iv). '*Panchayatnama*' was drawn on 23.09.1988 between 9:45 p.m. to 11 p.m. It is **Ex.Ka-14**.

4(v). Autopsy was performed on the dead body of Hardei. Post mortem report was prepared on 24.9.1988 at 3.30 p.m. It is **Ex.Ka-7**. In that, death was opined to have occurred, two days earlier. One firearm entry wound 4x4 cm. cavity deep on back of left side chest at the level of dorsal 6th and 7th vertebra and 10th cm. lateral to spine was

found present. Also, exit wound were noted. Cause of death was reported-"death due to shock and trauma as a result of injury sustained".

4(vi). On 25.09.1988, the abductees Satto (**P.W.-2**) and Onkar (**P.W.-7**) were recovered by the police party from the jungle near village Atrauni. In that, two accused persons namely Yagya Dutt @ Mahesh and Guman Singh were arrested while three others managed to escape. That recovery memo is **Ex.Ka-8**. Anar Singh was arrested the same day, from near a tube well, by that police party itself.

4(vii). The abductees were subjected to medical examination on 29.6.1988. 12 injuries were noted on the person of Onkar (**P.W.-7**) being contusion, abrasion and injuries over different parts of his body. According to the doctor, those were about four days old. Medical report of Onkar is **Ex.Ka-4**. Similarly, abductee Satto (**P.W.-2**) was also medically examined. Two abrasions and simple injuries were noted. Those were opined to have been caused by blunt weapon and friction. Those were also estimated to be about four days old. That injury report is **Ex.Ka-5**.

4(viii). The abductee Satto (**P.W.-2**) was also subjected to further medical examination on 27.9.1988 and the doctor could not express any opinion about rape committed. However, it was specifically noted that there was no injury on her private parts. This injury report is **Ex.Ka-6**. No other abnormality was noted in that report.

4(ix). The matter was investigated by the Investigating Officer and charge sheet was submitted. It is **Ex.Ka-1**. Cognizance was taken and case committed to trial. At that stage, charges were framed against the appellants. They pleaded not guilty. Accordingly, the trial commenced.

5. At the trial, the prosecution led oral testimony of eight witness as below :

Raghunath **(P.W.-1)**, the first informant, husband of the deceased Hardei and father of the abductee Satto **(P.W.-2)**.

Satto **(P.W.-2)**, the wife of accused Gopal @ Bhunki, the injured witness.

Ram Prakash Upadhyay **(P.W.-3)**, clerk who reported the F.I.R.

Dr. D.S. Verma **(P.W.-4)**, the doctor who examined the injured Onkar **(P.W.-7)**.

Dr. Meera Sharma **(P.W.-5)**, the doctor who examined the injured Satto **(P.W.-2)**.

Dr. M.K. Srivastava **(P.W.-6)**, the doctor who conducted the autopsy on the dead body of Hardei.

Onkar **(P.W.-7)** the second husband of Satto **(P.W.-2)** and the second injured witness.

Ganga Singh Tomer **(P.W.-8)** the I.O.

6(i). Raghunath **(P.W.-1)**, besides proving the FIR fact allegation and naming those ten accused persons, stated he lodged the FIR through Onkar Singh the scribe, on the day following the occurrence, after a group of villagers had assembled. He had signed that report. Then, during his cross-examination he stated that the Police Inspector visited the place of occurrence at 12:00 noon on the date of the FIR being lodged (i.e. 23.09.1988) and the documentation of the dead body was done during the afternoon. It was taken to the Police Station and from where it was taken to Mathura, for autopsy, next morning at about 4 a.m. Later, during cross-examination he further stated that the FIR

was not lodged on the date of occurrence because it had got late in the night. The next day a crowd gathered. He walked to the Police Station, starting from his house at 9:00 a.m. and reached the Police Station at 11:00 a.m. alongwith 2-3 other persons. On oral information being given to the Inspector the latter brought him to the place of occurrence in a police jeep, where the police stayed for two hours. Though oral report was made to the police at the Police Station, it was written in the village. He admitted to have spoken to the Inspector first and submitted the report later. Thereafter, he went to the Police Station for the second time, with the dead body.

6(ii). Also, during his further cross-examination he stated that the police had visited the village on the day following the occurrence, at about 2:00 p.m. when his statement was first recorded. Still later, he stated that at the time of occurrence, 5-10 neighbours were present outside his house. They dispatched the village 'Chowkidar' to lodge the report at the Police Station. The village 'Chowkidar' left for the Police Station the next morning at about 10:00 a.m. He returned and informed that the police would visit the place of occurrence. Yet, on further cross-examination he stated that the police met the informant at a distance of 2.5 'kos' from the village. Still later, he stated that the villagers had gone to call the Police Inspector. Yet, he maintained that the report was written at his house by Onkar at around noon.

6(iii). Relevant to the above, it may be noted, besides the above fact PW-1 was cross-examined also with respect to the occurrence. In that he consistently described the occurrence as narrated in the FIR. He consistently stated that his daughter Satto (**P.W.-2**) was married to Gopal @ Bhunki. For reason of bad matrimonial relationship suffered by her at the hands of her husband and his family members, she returned to her parental home. She re-married Onkar (**P.W.-7**) about 6-

7 months prior to the occurrence. As to bad relationship suffered by Satto **(P.W.-2)** in her first marriage, he clearly described an earlier occurrence when she had returned to her parental home complaining against her husband Gopal @ Bhunki who used to harass and assault her. He also admitted that his elder daughter Lachchho was married to Rambabu, the elder brother of Gopal @ Bhunki.

6(iv). As to the occurrence, he described, Anar Singh was armed with a gun whereas Shyambabu, Gopal @ Bhunki and Ramesh were armed with *lathis*. No weapon was assigned to the other accused persons. The accused persons first assaulted Onkar Singh **(P.W.-7)** with *lathi* blows. Gopal @ Bhunki and Shyambabu caught hold of Satto **(P.W.-2)** and thus abducted them. On resistance being offered by the deceased Hardei, Anar Singh shot her, once. During his cross-examination he added that the accused party comprised of 15-16 men. However, he did not add to the list of names of the accused persons. As to the exact circumstance in which the deceased was shot at, he stated Hardei was shot at while she was trying to stop the accused party from abducting Satto **(P.W.-2)** at which time a scuffle erupted. Anar Singh shot at the deceased from a distance of about 8 to 10 feet. He also admitted, before that, the deceased was holding on to Satto **(P.W.-2)**. During further cross-examination, he specified that Yagya Dutt @ Mahesh, Radhey Shyam, Om Prakash were also pulling at Satto.

6(v). Also, it may be noted, during his cross-examination, Raghunath **(PW-1)** described that the deceased Hardei was wearing some gold ornaments that were removed from her body by the informant side, after the occurrence. Similarly, Satto **(P.W.-2)** narrated that the gold ornaments she was wearing had been taken away by the accused persons. However, neither any offence allegations exists nor

recoveries were made.

7(i). The abductee Satto **(P.W.-2)** also described the occurrence similarly. In that, she named Radhey Shyam, Om Prakash, Shyam Babu, Ramdas, Nirottam, Liladhar, Nirgua, Gopal @ Gopal @ Bhunki, Anar Singh. As to the exact occurrence wherein the deceased was shot at, she stated that Anar Singh fired at Hardei when the other co-accused were abducting her and Onkar **(P.W.-7)**. She also stated, Anar Singh shot at her mother Hardei as she was protesting the abduction and that Anar Singh shot at Hardei as soon as her grip (on P.W.-2) loosened.

7(ii). She further stated, she was abducted and taken to Akbara jungle along with Onkar **(P.W.-7)** where Satyabhan used to bring food and commit rape on her. She added, Yagya Dutt @ Mahesh, Gopal @ Gopal @ Bhunki and Shyam Babu and other unknown persons also committed rape on her on many occasions described as "*teen-teen, chaar-chaar*", times. While she remained in that jungle for three days, she was recovered by the police, Yagya Dutt @ Mahesh and Guman Singh were arrested from the spot while Anar Singh was arrested from near a tube-well. The remaining appellants were arrested, later. As to her recovery and return to her paternal home, she returned on the thirteenth day of the death of her mother - Hardei. Later, she added, allegation of injury caused to her. Also, as to her confinement in jungle, she described, she and Onkar **(P.W.-7)** were detained at separate spots in the jungle.

8. Then, Onkar **(P.W.-7)**, the second injured witness and also the second husband of Satto **(P.W.-2)** was also examined. He offered an ocular account of the occurrence similar to that offered by Raghunath **(P.W.-1)** and Satto **(P.W.-2)**. According to him, Om Prakash, Shyam Babu, Ramdas, Radhey Shyam, Nirgua, Liladhar, Shanker, Nirottam,

Shanker and Gopal @ Gopal @ Bhunki had committed the offence inside the dwelling house of Ragnath **(P.W.-1)**. While Guman Singh, Yagya Dutt @ Mahesh and four others were standing outside the house armed with guns and country made guns and that they took the abductees across the river Yamuna on a boat and from there into the jungle. As to the recovery, his version remained consistent to that of Satto **(P.W.-2)**. During his cross-examination, he denied the suggestion that other than the main accused, there were four persons in the jungle. During his further cross-examination, he stated, he was detained at some distance from his wife Satto, in the jungle. As to occurrence of rape, he specifically denied knowledge of that occurrence.

9. Ram Prakash Upadhyay **(P.W.-3)** proved the G.D. entry of P.S. Baldev dated 23.9.1988, with respect lodging of the FIR.

10(i). Dr. D.S. Verma **(P.W.-4)** proved the injuries suffered by Onkar **(P.W.-7)** being contusion, abraded contusion, multiple scabbed abrasions, scabbed abrasion, traumatic swelling etc. Thus, 12 injuries were noted. He also proved that the contusions and the scabbed abrasions were also suffered by Satto. Suffice to note, no inconsistency or doubt arose during his cross-examination.

10(ii). Then, Dr. Meera Sharma **(P.W.-5)** was examined. She proved the injuries suffered by Satto **(P.W.-2)**. As to rape, she opined if gang rape were committed by four to five persons on a non-consenting victim then, injuries-both internal or external or either may be found on the person of the victim.

10(iii). Next, Dr. A.K. Srivastava **(P.W.-6)** was examined. He proved the autopsy report. In short, he proved the cause of death as shock and hemorrhage caused by antemortem firearm injuries, as reported.

11. Ganga Singh Tomar, Investigating Officer, was examined as the last prosecution witness (**P.W.-8**).

12. Thereafter, statement of the accused persons were recorded under Section 313 Cr.P.C. and defence evidence was led. Krishna Kumar Tiwari, Head Constable, at the relevant time was posted at Thana Pur Raman, District Aligarh-the place of posting of the appellant Anar Singh, was examined as **D.W.-1**. He sought to prove that the Anar Singh had recorded a report on 22.9.1988 at 6:05 AM. However, he specifically stated that he did not see the accused Anar Singh throughout the day i.e. on 22.9.1988. As to further reports recorded at about 8:00 PM on 22.9.1988, he stated, he had recorded the same in his own handwriting.

13. In such facts and evidence, the trial Court has found the appellants guilty of the offences to the extent noted above. It has disbelieved the defence assertion that the occurrence was otherwise, by way of a dacoity committed by unknown assailants and that the appellants were not present at the time and place of occurrence or that they had not caused the occurrence. The learned court below has not accepted the doubts in the prosecution story claimed on the strength of inconsistencies in the testimony of **P.W.-1** with respect to the time and manner of the First Information Report being lodged. It has also remained unimpressed by the fact that the First Information Report was lodged with delay of more than 24 hours. The fact that FIR was not reported to the Magistrate till late has also not found favour with the learned court below, to doubt the prosecution story.

14(i). Learned counsel for the appellants would submit that the prosecution story is wholly incredible. Admittedly, Satto (**P.W.-2**) was legally married to Gopal @ Bhunki. She may never have got remarried during subsistence of her marriage to Gopal @ Bhunki. Yet,

it is admitted to the prosecution that she remarried Onkar (**P.W.-7**) and was living with him outside the lawn. Aggrieved, Gopal @ Bhunki had lodged and instituted a criminal case under Section 494 IPC, before the occurrence. However, that case is described to have been dismissed for want of prosecution, after the occurrence. Thus, it has been suggested that Gopal @ Bhunki had no motive to cause the occurrence. In that regard, it has been further stated, according to prosecution story itself, elder sister of Satto namely Lajjo is married to the elder brother of Gopal @ Bhunki and that said Lajjo stopped visiting her parental home after the occurrence. Heavy reliance has been placed on the fact that all the close relatives of Gopal @ Bhunki have been implicated including his elder brother (Shyambabu), who is married to Lajjo. Reference has also been made to contradiction in the statements of P.W.-1, P.W.-2 & P.W.-7 as to the names of accused involved in abduction.

14(ii). As to the reason for such false implication, it has been vehemently urged that the occurrence took place by way of dacoity by unknown persons. Therefore, the first informant felt scared and did not report that incident. On knowledge being gained by the police authorities, they forced and succeeded to persuade the informant to not lodge the FIR-reporting dacoity as that would have serious consequences on the functioning and credibility of those police authorities. Therefore, wholly unnatural occurrence emerged of the dead body of Hardei being not subjected to inquest and it being kept lying at the place of occurrence for 24 hours, without any FIR lodged.

14(iii) In that regard, reliance has been placed on Village and Road Police (NWP) Act No. XVI of 1873 and Oudh Laws Act, 1876 to submit that the village '*Chowkidar*' was obligated to inform the police of such occurrence, immediately. Though such action was performed

by the '*Chowkidar*' in the morning of 23.9.1988, as deposed by P.W.-1 himself, no First Information Report came to be lodged till late evening. Then, though that FIR ought to have reported to the learned Magistrate, no such report was made for over two days. Referring to the cross-examination statements of P.W.-1, it has been asserted, it is wholly unbelievable and false that such FIR came to be lodged with long delay of more than 24 hours. In fact, the FIR was deliberately delayed, because time was consumed in concealing the true occurrence. The said witness has therefore stated different facts at different points of cross examination. The police authorities deliberately delayed the FIR and did not produce it before the learned Magistrate, in time. No explanation has been offered for that inordinate delay.

14(iv). Heavy reliance has been placed on the fact that adverse circumstances found by the Court were not put to the accused persons in the manner prescribed by law. Wholesome/lump sum prosecution evidence was cited as a circumstance to which no intelligible response may ever have been furnished by the accused persons. In that regard, reliance has been placed on a three-judge bench decision of the Supreme Court in **Maheshwar Tigga Vs. State of Jharkhand (2020) 10 SCC 108** and a recent decision in **Premchand Vs. State of Maharashtra (2023) 5 SCC 522**.

14(v). To further doubt the occurrence it has been asserted, Onkar (P.W.-7) and Satto (P.W.-7) were not harmed. Thus, it has been suggested, the abductees were released upon payment of ransom to the unknown dacoits.

14(vi). Then, it has been submitted, in any case story of rape is wholly imagined. There is no evidence oral or otherwise to sustain the conviction on that count. Last, in any case, no offence under Section

302 IPC is made out. At most the offence may fall under Section 304 IPC.

15. On the other hand, learned AGA asserts that prosecution evidence has wholly supported the prosecution story. He would submit, wholly consistent account has been offered by all the prosecution witnesses to the key elements of the occurrence. Minor inconsistencies or embellishments or doubts that may arise in the course of a long cross examination that too of simple villagers not well read in law and the procedures of Courts, may not be taken undue advantage of by the defence.

16. Having heard learned counsel for parties and having perused the record, in the first place present is a case of direct evidence. Here the key prosecution witness namely **P.W.-1, P.W.-2 and P.W.-7** have offered a consistent account of the actual occurrence. It is not in doubt that Satto (**P.W.-2**) was married to Gopal @ Bhunki and that she was living separately from Gopal @ Bhunki for reason of matrimonial discord. It is also admitted that Satto (**P.W.-2**) remarried Onkar (**P.W.-7**) only 6-7 month prior to the occurrence. No inconsistency arose either as to those facts or as to the other fact of efforts made by Gopal @ Bhunki to reclaim Satto (**P.W.-2**), even after her remarriage.

17. It is in that proven background circumstance, the said key prosecution eye witnesses namely **P.W.-1, P.W.-2 and P.W.-7** have further consistently proven that the accused persons came to the dwelling house of Raghunath (**P.W.-1**) in the evening of 22.9.1988, at about 6-7 p.m. Also, there is absolutely no inconsistency in the description of the occurrence wherein the deceased Hardei was shot at by Anar Singh while Satto (**P.W.-2**) was being abducted along with Onkar (**P.W.-7**). All eye witnesses have offered one consistent version of that occurrence, to the extent despite elaborate, repeated and long

drawn cross-examination, they have maintained that the accused first assaulted Satto (**P.W.-2**) and Onkar (**P.W.-7**), after entering the dwelling house of Raghunath, with '*lathis*'. There is also no inconsistency in the prosecution evidence that the accused party got hold of **P.W.-1** and **P.W.-2** and were trying to abduct them. That act was described (by all the three eye witnesses), to have been resisted by Hardei, who was quarreling and holding on to her daughter (**P.W.-2**). In that commotion, as Hardei let go the hand of Satto, Anar Singh shot at her from a distance of 8-10 feet. Only a single firearm injury has been described from the beginning and during oral evidence. Only that injury has been found present on the body of the deceased.

18. Also, critically there is nothing to doubt the recovery of **P.W.-2** and **P.W.-7** from Yagya Dutt @ Mahesh and Guman Singh from the jungle on 25.09.1988. Also, there is nothing to doubt their arrest at that time from that place and further there is nothing to doubt the arrest of Anar Singh from near the tubewell, while the police party was thus returning from the jungle, after recovering **P.W.-2** and **P.W.-7**. Thus, the abductees were recovered from Yagya Dutt @ Mahesh and Guman Singh.

19. Coming to the alleged inconsistencies in the statement of **P.W.-1** as to the alleged delay (and doubts raised on that delay) as also the manner of the FIR being lodged, it may be noted that there is no inconsistency as to the FIR being lodged by **P.W.-1** or its scribe being Onkar Singh. Other facts as to when the first informant first visited the police station and when the village '*Chowkidar*' first visited the Police Station or when the police party first arrived, have to be examined and considered keeping in mind the substantive and wholly consistent ocular evidence noted above and in the context of the socio-economic status of the witnesses and the level of understanding

they may be normally expected to have-of court procedures especially long drawn cross-examinations, running over many dates. They being simple villagers were subjected to extensive cross examination over a period of 17 months beginning 05.05.1989 to 12.10.1990. **P.W.-1** was aged about 60 years. The cross examination itself took place over various dates on various aspects by different counsel. Merely because that witness may have thus been led to make statements that (academically speaking), may not wholly be described as wholly consistent, may not be enough to disbelieve the substantive prosecution story based on ocular experience of a traumatic event. The suggestion that the occurrence was of dacoity which has been given its present shape at the dictation of the police, is nothing but presumptuous. No evidence exists of that event. The suggestion given was specifically denied. Essential facts as to the occurrence, including that of two injured witnesses, cannot be disbelieved on a simple defence suggestion, that too based on a presumption as to unnatural conduct of the police authorities to alter the basic facts, completely. Imaginations and possible doubts are not to be accepted to disbelieve proven facts as to the occurrence. Such doubts may not be described as reasonable.

20. While learned counsel for the appellants may be right in their submission that the inconsistencies raise simple doubts, at the same time in the totality of the proven facts and circumstances such doubts may remain confined and isolated only as to the FIR lodged on the date and the time when it was. Yet, in absence of any fact to reasonably doubt either the basic occurrence that took place on 22.09.1988, or the recovery of **P.W.-2 and P.W.-7** on 25.09.1988, including arrest of two accused persons, therefrom, the doubt being expressed solely for reason of delay in FIR being lodged cannot be

acted upon to disbelieve the basic fact allegation, itself. Substantive evidence of the occurrence remains consistent and true. Also, there is nothing to doubt the presence of Anar Singh at the time and place of occurrence.

21. In view of such version proven on the strength of wholly credible prosecution evidence, though learned counsel for appellants may be right in their contention that full compliance of Section 313 Cr.P.C. was not made inasmuch wholesome prosecution evidence was confronted to the accused persons and not specific adverse circumstances, yet, once the prosecution had proven the occurrence on the strength of strong, cogent and consistent ocular evidence of abduction and culpable homicide supported by medical evidence and that proof arose after extensive cross-examination by the defense without any reasonable doubt emerging therefrom, it would be travesty of justice to disbelieve that substantive prosecution story solely because of the perceived error on the part of learned court below, while recording the statements of the accused persons under Section 313 Cr.P.C. Here, we also notice, besides prosecution evidence, the defence had also led evidence and set up an alibi of Anar Singh. As to that *alibi* offered by Anar Singh, the same has been rightly disbelieved as the solitary defence witness himself stated during his examination-in-chief that he did not see Anar Singh throughout the day and that the writing on the General Diary at about 6.05 a.m. alone is that of Anar Singh.

22. In **Maheshwar Tigga v. State of Jharkhand, (2020) AIR (Supreme Court) 4535**, the Supreme Court relied on **Naval Kishore Singh v. State of Bihar, (2004) 7 SCC 502**, wherein it was observed as below :

“5. The questioning of the accused under Section 313 CrPC was done in

the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.”

23. As to facts of the case, though in **Maheshwar Tigga (supra)**, lump sump evidence was confronted to the accused persons. At the same time, as to the error arising therefrom, the parties were known to each other from before and that there existed documentary evidence of love relationship formed by them. The physical relationship (giving rise to the allegation of rape) was found to have been formed on many occasions, involving the prosecutrix living with the accused at his residence.

24. Further, there was a delay of four years in the FIR being lodged. Parties were also found to be in dispute with respect to type of marriage that was to be performed between the accused and the prosecutrix, one wanting a Hindu marriage and the other a Christian marriage. The fact of engagement ceremony performed was also admitted. It is in such facts and circumstances that the observation was made by the Supreme Court with respect to requirements of Section 313 Cr.P.C.

25. In **Premchand v. State of Maharashtra, (2023) 5 SCC 522**, the Supreme Court took note of his earlier decision in **State of U.P. v.**

Lakhmi, (1998) 4 SCC 336, Sanatan Naskar v. State of West Bengal, (2010) 8 SCC 249, Reena Hazarika v. State of Assam, (2019) 13 SCC 289, Parminder Kaur v. State of Punjab, (2020) 8 SCC 811 and M. Abbas v. State of Kerala, (2001) 10 SCC 103.

Thereafter it summarized the governing principle as below :

“15. What follows from these authorities may briefly be summarised thus:

15.1. Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.

15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised defences.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).

15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defence and proffers any alternate

version of events or interpretation, the court has to carefully analyse and consider his statements.

15.10. *Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction."*

26. We also note that recently in **Raj Kumar v. State (NCT of Delhi), 2023 SCC OnLine SC 609**, after referring to the earlier law laid down by the Supreme Court with respect to requirement of Section 313 Cr.P.C., it has been observed as below :

"17. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

27. As to facts, the said decision has arisen in the context of offence alleged under Section 120B IPC. At the trial, one witness/P.W.-5

described the presence of the appellant-Raj Kumar (wielding a gun). The Supreme Court noted that other than the above there was absolutely no evidence and that it was not a case where several incriminating circumstance appeared against that accused person. Besides the solitary statement made by P.W.-5, no other material existed. It is that solitary material circumstance which was not put to the accused persons which led to the fatal procedural defect in the decision. More recently in **Naresh Kumar v. State of Delhi, (2024) SCC Online SC 1641**, the issue of material prejudiced caused for reason of non-examination/inadequate examination under Section 313 Cr.P.C. was again considered. Though the principle in law laid down in **Raj Kumar (supra)** was taken note, it was specifically observed as below :

“21. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial qua the accused concerned and to hold the trial qua him is vitiated it is to be established further that it resulted in material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr. P.C., is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

22. In the light of the above view of the matter, we are inclined to consider the further question whether the non-questioning on the aforesaid twin incriminating circumstances to the appellant during his examination under Section 313, Cr. P.C., had caused material prejudice to him. The decision of this Court in State of Punjab v. Swaran Singh⁸, constrain us to consider one another factor while considering the question of prejudice. In Swaran Singh's case (supra), this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such an accused and, therefore, could not be held as grounds vitiating the trial qua the convict concerned...”

28. Here, though the appellants are within their rights to claim procedural inaccuracy and there may exist an error in framing of

questions under Section 313 Cr.P.C., at the same time, it is not a case of circumstantial evidence, rather, it is a case of direct evidence. Second, there is no charge of conspiracy but direct allegation exists of offence being committed by the appellants in the presence of three prosecution witnesses who have remained wholly consistent and trustworthy in their testimony as to the occurrence. Not only they were examined in the presence of the appellants but they were also subjected to extensive cross examination wherein all doubts were thrown at the witnesses, without any inconsistency or doubt resulting, as to the direct involvement of the appellants in the occurrence of abduction of Satto (**P.W.-2**), Onkar (**P.W-7**) and the culpable homicide of Hardei. Such extensive cross examination created no doubt as to the recovery of Satto (**P.W-2**) and Onka (**P.W-7**) from the jungle where there were held captive by the appellants Yagyadutt @ Mahesh and Guman Singh. In such state of evidence, we are not in a position to reach a conclusion that any material prejudice has been caused to the appellants, at the trial as may warrant either an order of remand or to grant any benefit for the procedural lapse attributed to the learned court below.

29. At the same time, as to allegation of rape committed on **P.W.-2**, no credible evidence is seen to exist. In the first place, **P.W.-7 and P.W.-2** are husband and wife. They were confined in an open jungle. Though allegation of repeated gang rape was made by **P.W.-2**, as suggested by Dr. Meera Sharma (**P.W.-5**), no injury either external or internal was noted. Though **P.W.-2** alleged that she had been repeatedly raped by three to four accused persons, keeping in mind the other admitted case of the prosecution that both **P.W.-2 and P.W.-7** were confined close by, yet **P.W.-7** denied knowledge of rape committed on **P.W.-2** (his wife). Also, there is complete absence of

any injury whatsoever received on the person of **P.W.-2**. It leads to more than reasonable doubt as to the truthfulness of that part of the prosecution story. The testimony of Dr. Meera Sharma (**P.W.-5**) is lucid on that aspect. That part of the prosecution story is also inconsistent to its basic theme that Gopal @ Bhunki wanted to reclaim Satto (**P.W.-2**) as his legally wedded wife and it is that motive that led to the occurrence.

30. As to the offence of murder of Hardei, though that occurrence cannot be doubted and prosecution story was proved that she was shot at by Anar Singh with a gun while she was trying to resist the abduction of her daughter Satto (**P.W.-2**). It is equally true that Gopal @ Bhunki and others are not disclosed to have come with any premeditation to murder Hardei. The prosecution has hopelessly failed to address that issue. Then, parties were involved in a physical and oral quarrel wherein Hardei was holding on to Satto (**P.W.-2**) and resisting her abduction. Clearly, the parties were engaged in an excited and heightened emotional transaction where the accused were trying to help the co-accused Gopal @ Bhunki reclaim his legally wedded wife while the deceased was resisting that cause in her support to the second marriage of Satto (**P.W.-2**). She was shot at in that mele. Not only Hardei was resisting the assailants but it has not been denied by the prosecution that she was holding on to Satto while the latter was being abducted. The shot is described to have been fired in that heat of the moment, as she let go Satto's/ (**P.W.-2's**) hand, on her being pulled away by her abductors. The firearm is described to have been used from a distance of 8 to 10 feet, by Anar Singh. No other shot was fired and no other person received any firearm injury.

31. In **Virsa Singh Vs. State of Punjab, 1958 SCC OnLine SC 37**, the three judge bench of the Supreme Court, speaking through Justice

Vivian Bose laid down the fundamental governing principle to differentiate between Section 302 IPC and Section 304 IPC. The learned jurist observed as below :

"13. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense : the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly".

15. First, it must establish, quite objectively, that a bodily injury is present.

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury

actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

21. We were referred to a decision of Lord Goddard in *R. v. Steane*¹ where the learned Chief Justice says that where a particular intent must be laid and charged, that particular intent must be proved. Of course it must, and of course it must be proved by the prosecution. The only question here is, what is the extent and nature of the intent that Section 300 "thirdly" requires, and how is it to be proved?

22. The learned counsel for the appellant next relied on a passage where the learned Chief Justice says that: "if, on the totality of the evidence, there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on a review of the whole evidence, they either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted". We agree that that is also the law in India. But so is this. We quote a few sentences earlier from the same learned judgment: "No doubt, if the prosecution prove an act the natural consequences of which would be a certain result and no evidence or explanation is given, then a jury may, on a proper direction, find that the prisoner is guilty of doing the act with the intent alleged." That is exactly the position here. No evidence or explanation is given about why the appellant thrust a spear into the abdomen of the deceased with such force that it penetrated the bowels and three coils of the intestines came out of the wound and that digested food oozed out from cuts in three places. In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did. Once that intent is established (and no other conclusion is reasonably possible in this case, and in any case it is a question of fact), the rest is a matter for objective determination from the medical and other evidence about the nature and seriousness of the injury.

(emphasis supplied)

32. That governing principle has been consistently applied in our

¹ (1947) 1 All ER 813, 816

jurisprudence in **State of A.P. v. Thummala Anjaneyulu, (2010) 14 SCC 621**. The intention to cause the very injury that led to the death could not be established. Consequently, the charge of murder was found not proven. Only culpable homicide not amounting to murder resulting in conviction under Section 304 IPC was proved. In that, it was observed as below :

"11. The learned counsel for the accused has, however, submitted that even assuming for a moment that the prosecution story was correct and the accused liable for conviction, it was not still a case of murder as there was no evidence to show that the accused had intended to cause the very injury which had been caused and had led to the death of the deceased and he was, therefore, liable only for a charge of manslaughter and not murder. The facts of the case undoubtedly support the argument of the learned counsel. As per the prosecution story, the deceased and the accused and the witnesses had gathered outside the house of PW 6 to organise a panchayat to settle a dispute between Kistaiah and Ramulu, who were not, in any manner, connected with either party and it was at that stage that the accused was apparently provoked by the remarks of the deceased that he should not cast an evil eye on PW 3 and Manemma on which he had suddenly taken out a knife which he was carrying and caused one injury in the chest.

12. We are of the opinion that there was no intention on the part of the accused to cause the very injury which he caused which ultimately led to the death of the deceased. The accused would thus be liable for conviction under Section 304 Part I IPC and not under Section 302 thereof. We, accordingly, allow this appeal, set aside the acquittal recorded by the High Court and convict the accused for an offence punishable under Section 304 Part I IPC and sentence him to 7 years' RI. The appeal is allowed to the above extent."

(emphasis supplied)

33. Again in **Sankath Prasad v. State of U.P., (2020) 12 SCC 564**, occasioned by the fact that the incident was caused at the spur of the moment and it was a fallout of an altercation, the charge under Section 302 IPC was converted to that under Section 304 Part I IPC. In that, it was observed as below :

"5. The facts, as they have emerged from the record, indicate that the incident had taken place on the spur of the moment and was a fallout of an altercation over the excavation of a mound by the

brother of the appellant. This was objected to by the complainant Gaya Prasad (PW 1). The altercation resulted in the appellant going into his house and bringing out a country-made pistol. The son of the complainant — deceased Uma Shanker intervened in the course of the altercation and was fired at, resulting in a single firearm injury leading to his death.

6. Having regard to the circumstances of the case, we are of the view that the conviction under Section 302 IPC should be converted to one under Section 304 Part I. We accordingly hold the appellant guilty of an offence under Section 304 Part I IPC and sentence him to imprisonment for a term of ten years."

(emphasis supplied)

34. Again in **Shaikh Matin v. State of Maharashtra and another, (2020) 20 SCC 402**, single blow suffered by the deceased caused by heavy wooden lock, the charge of murder under Section 302 IPC was converted to that under Section 304 Part I IPC. In that, Supreme Court observed as below :

"5. Taking into account the fact that the appellant-accused had delivered only a single blow but on a vital part of the body of the deceased i.e. head and that despite opportunities he had refrained/restrained himself from inflicting any further injury on the deceased we are of the view that the present is not a case under Section 302 IPC. Rather, according to us, it would be more appropriate to hold that the appellant-accused is liable for the offence under Section 304 Part I IPC. We, therefore, convert the conviction of the appellant-accused to one under Section 304 Part I IPC. As the appellant-accused admittedly has been in custody for nearly nine years now we are of the view that the ends of justice would be met if the sentence is converted to the period of custody already suffered."

35. In a recent decision of the Supreme Court in **Anbazhagan Vs. The State, Represented by the Inspector of Police, 2023 SCC OnLine SC 857**, the Supreme Court has again made analysis and the difference 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."

36. In view of our above discussion, we conclude that no offence under Section 364 and 366 IPC is made out either against Anar Singh, Yagya Dutt @ Mahesh or Guman Singh inasmuch as it is an admitted case of the prosecution that the abductee Satto (P.W.-2) was married to the co-accused Gopal @ Bhunki (since deceased) from before the date of occurrence and no evidence whatsoever was led to establish any attempt made to the life of Satto (P.W.-2) or Onkar (P.W.-7). Yet, offence under Section 362 IPC is made out. The charge may stand

altered accordingly. Similarly, we find no evidence to reach a conclusion that Yagya Dutt @ Mahesh committed rape on Satto (P.W.-2). As to the offence of murder alleged against Anar Singh, in view of the discussion made above, we find this to be a fit case to alter the charge of that offence to Section 304 Part I IPC inasmuch as culpable homicide of Hardei was committed without premeditation in the context of a sudden quarrel that erupted between the parties while the appellants and other co-accused alongwith Gopal @ Bhunki (since deceased) were supporting the cause of Gopal @ Bhunki to reclaim his legally wedded wife Satto (P.W.-2). In any case the occurrence as narrated by the key prosecution witnesses P.W.-1, P.W.-2 and P.W.-7 unfolded in the heat of passion directly as a result of the quarrel (verbal and physical) ensuing. In that moment the deceased Hardei got shot by the appellant Anar Singh on the back of left side chest at the level of dorsal 6th and 7th vertebra and 10th cm. lateral to spine. In the entirety of the facts of the case, we cannot reach a firm conclusion that that the single shot was fired in a manner that may be described to be taking undue advantage or a cruel unusual manner. To that extent, doubt exists. In **Virsa Singh (supra)**, the Supreme Court laid down the fundamental governing principle to differentiate between Section 302 IPC and Section 304 IPC. Its benefit goes to the appellant Anar Singh. In that view, we opine that occurrence of culpable homicide of Hardei falls under Part-I of Section 304 IPC.

37. To the above extent, the order of the learned court below dated 06.02.1991 calls for modification. Accordingly:

(i) the appellant Anar Singh is held guilty and is convicted for the offence under Section 362 and 304 Part I IPC read with Section 148 IPC. Considering the entirety of the facts of the case and the further facts pertaining to his age, he is awarded imprisonment of 10 years (in

all), for those offences.

(ii) the appellants Guman Singh and Yagya Dutt @ Mahesh are found guilty of offence under Sections 362, 147 IPC. Considering the entirety of the facts, they are awarded punishment of two years (in all).

37(iii). All appellants are on bail. Their bail bonds are cancelled and sureties are discharged. Chief Judicial Magistrate, Mathura is directed to arrest the appellants and send them to jail to serve out their remaining sentence, if any.

38. Insofar as the appellant Satyabhan is concerned, no element of the offence under Section 216 IPC is found proved. Accordingly, his appeal is allowed. He is acquitted of the offence alleged. The judgement and order of conviction dated 11.02.1993 is set aside. His bail bonds and sureties are discharged.

39. Thus : (i) Criminal Appeal No. 210 of 1991 is **partly allowed**.

(ii) Criminal Appeal No. 278 of 1993 is **allowed**.

40. Lower court record be returned forthwith.

41. Let a copy of this order be communicated the Chief Judicial Magistrate, Mathura for necessary compliance.

Order Date :- 24.1.2025

SA/Faraz/Abhilash/Prakhar

(Dr. Gautam Chowdhary, J.)

(S.D. Singh, J.)