



2025:AHC:161862-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1429 of 2017

Chandrapal

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Hriday Narayan Pandey, Kamal Dev Rai, Noor Muhammad, Yogesh Kumar Srivastava

Counsel for Respondent(s) : G.A.

Court No. - 44

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE TEJ PRATAP TIWARI, J.**

1. Heard Shri Yogesh Kumar Srivastava along with Shri Noor Mohammad, learned counsel for the appellant and learned A.G.A. for the State.

2. Present criminal appeal arises from the judgement and order dated 07.02.2017 passed by Shri Rajeev Goyal, learned Sessions Judge, Etawah, in Sessions Trial No. 103 of 2014 (State Vs. Chandrapal). By that order, the learned court below has convicted the appellant under Section 302 I.P.C. and sentenced him for life together with fine Rs. 10,000/- and default sentence one year.

3. Upon the appeal being entertained by this Court, the first bail application filed by the present appellant was rejected *vide* order dated 25.03.2019. At present, 2nd bail application was pressed by learned counsel for the appellant. Paper book is ready and the appellant has remained confined for 8 years and 7 months (actual). In such circumstances, we considered it appropriate to hear the appeal itself, finally. With the consent of the parties, the appeal has been heard.

4. The short issue raised in this appeal is, at most the occurrence may be described as culpable homicide, not amounting to murder. The learned court below has completely erred in convicting the appellant for offence under Section 302 I.P.C.

5. Shorn of unnecessary details, the deceased Baba Mangal Das was a priest at local temple, at Etawah. The appellant and the deceased entered into a sudden quarrel on 15.12.2013 at about 5 a.m. wherein both parties received injuries. The deceased received one fatal injury to his head involving a fracture injury to his skull. That led to his death. No one saw the quarrel as it began and no one heard any word spoken by the appellant at the time of the occurrence. There is absolutely no involvement of any lethal weapon to assault the deceased. In such facts, the Written Report was submitted by a bystander namely Phresh Kumar Pathak (P.W.-1 at the trial). It is Ex.Ka-1. The F.I.R. was registered at P.S. Balrai at 7:15 a.m. on 15.12.2013 under Section 302 I.P.C. It is Ex.Ka-2 at the trial. Arising from the same, Inquest Report was prepared the same day between 11 a.m. and 1:30 p.m. It is Ex.Ka-5 at the trial.

6. Thereafter, Dr. Siddhartha Kumar (P.W.-5) conducted the autopsy examination on the dead body of the deceased. It is Ex.Ka-4 at the trial. Relevant to the present discussion, the Autopsy Examination Report estimated the age of the deceased about 50 years. The doctor noted the following ante-mortem injuries on the dead body of the deceased, Baba Mangal Das :

- "1. LW size 3.5 x 2 cm on - Rt side head fractured Line Bone.*
- 2. Multiple Abrasion size 6.3 cm on Rt. Lateral head.*
- 3. LW 2 x 1 cm muscle deep on Rt Palm.*
- 4. Abrasion 10 x 8 cm Rt Scapular region.*
- 5. Abrasion 2 x 2 cm Rt side Back of chest.*
- 6. Abrasion 2 x 1 cm Rt iliac crest.*
- 7. Multiple Abrasion 6 x 5 cm on Lt side of Buttock.*
- 8. Abrasion 3 x 2 cm on Base Penis.*
- 9. Contusion 5 x 3.5 cm on Lt chest."*

7. In his opinion, death was caused due to shock and hemorrhage.
8. Upon completion of investigation, the Investigation Officer S.S.I. Upendra Nath Rai (P.W.-6), submitted charge-sheet.
9. Upon the case being committed for trial to the Court of Sessions, the appellant was charged as below :

“यह कि दिनांक-15.12.2013 को समय करीब 5.00 बजे सुबह बस्थान सतधारा आश्रम वहद ग्राम नगला तौर अन्तर्गत थाना बलरई, जिला इटावा में आपने अपने सामान्य आशय की पूर्ति में बाबा मंगलदास को मारपीट कर गम्भीर उपहति कारित की, जिसके फलस्वरूप जिला अस्पताल इटावा में उसकी मृत्यु हो गयी। इस प्रकार आपने ऐसा अपराध किया जो भा0द0संहिता की धारा-302 के अंतर्गत दण्डनीय है तथा इस न्यायालय के प्रसंज्ञान में है।”

10. Besides relying on the above documentary evidence, the prosecution relied on three witnesses of fact namely Phresh Kumar Pathak, the first informant was examined as P.W.-1. His son Ramendra Pathak was examined as P.W.-3. The third witness of fact Deepak Pathak @ Deepu was examined as P.W.-2. He was declared hostile. Only two formal witnesses were examined. First, Dr. Siddhartha Kumar was examined as P.W.-5. He proved the autopsy examination and findings. Last, Investigation Officer S.S.I. Upendra Nath Rai was examined as P.W.-6.
11. Thereafter, statement of the accused was recorded under Section 313 Cr.P.C. He claimed false implication. He also examined Dr. Vivek Choudhary and Dr. Sushil Yadav as defence witness (D.W.-1 and D.W.-2 at the trial). Dr. Sushil Yadav (D.W.-2) examined the injuries of the accused Chandrapal, caused in the occurrence in issue. He noted the following injuries on the body of the appellant-Chandrapal :

- “1. फटा हुआ घाव 3 से०मी० X 1 से.मी. सिर के मध्य में 7 से०मी० नाक के बेस के ऊपर, खून बह रहा था, उसके एक्सरे की सलाह दी गयी।
2. फटा हुआ घाव 3 से०मी० X 1.5 से०मी० सिर के मध्य में, 5 से०मी० पहली चोट के ऊपर, खून बह रहा था, उसके एक्सरे की सलाह दी गयी।
3. फटा हुआ घाव 2.5 से०मी० X 1 से०मी० सिर में दायीं तरफ, 12 से०मी० दायें कान के ऊपर, एक्सरे की सलाह दी गयी, चोट से खून बह रहा था।
4. फटा हुआ घाव 3 से०मी० X 1 से०मी०, सिर में बायीं तरफ 7 से०मी० कान के ऊपर, खून बह रहा था। एक्सरे की सलाह दी गयी।
5. नीलगू निशान 6 से०मी० X 5 से०मी० दायें हाथ में बाहर की तरफ, कोहनी से 7.5 से०मी० ऊपर, एक्सरे की सलाह दी गयी।
6. नीलगू निशान 3 से०मी० X 3 से०मी० दायें हाथ में सामने और बाहर की ओर, कोहनी से 7 से०मी० नीचे, रंग लाल।
7. नीलगू निशान 8 से०मी० X 3 से०मी० पीठ पर दायीं तरफ 10 से०मी० कंधे से नीचे, लाल रंग था। एक्सरे की सलाह दी गयी।

8. नीलगू निशान 7 से०मी० X 5 से०मी० पीठ पर लेफ्ट साइड कंधे से ठीक नीचे।
9. लेसरेटेड ब्रून्ड 3.5 से०मी० X 2 से०मी० दायें हाथ में फोर आर्म 7 से०मी० कलाई से ऊपर, खून बह रहा था। एक्सरे की सलाह दी गयी।
10. नीलगू निशान खरोंच के साथ 5 से०मी० X 2.5 से०मी० बायें आर्म पर बाहर की तरफ, 12 से०मी० कोहनी से ऊपर, रंग लाल।
11. नीलगू निशान खरोंच के साथ 12 से०मी० X 3 से०मी० दांयी तरफ पेट में बाहर की तरफ, 20 से०मी० बगल से नीचे, रंग लाल।
12. नीलगू निशान खरोंच के साथ 5 से०मी० X 1.5 से०मी० कमर में बाहर की तरफ लेफ्ट साइड में।
13. नीलगू निशान 8 से०मी० X 5 से०मी० दायें पुड़े पर, लाल रंग का। "

12. Submission of learned counsel for the appellant is, other than the bystanders who may have seen some part of the quarrel between the appellant and the deceased, no other evidence exists to establish either the genesis of that quarrel or the motive or the intention of the appellant to cause the death of or injury to Baba Mangal Das. Referring to the undisputed injuries suffered by the present appellant in the same occurrence, it has been stressed that the quarrel that developed into a physical assault was witnessed by both sides to the quarrel. Both received injuries. Unfortunately, one injury received by the deceased Baba Mangal Das may have led to his death. All other injuries received by the injured were simple in nature as may never have resulted in death. In fact none may be described as grievous or serious.

13. Third, to the extent the prosecution witnesses P.W.-1 and P.W.3 (father and son) have offered an exaggerated account of that assault wherein it has also been claimed that the appellant had bitten at the private part of the deceased, is patently false. No medical corroboration exists of any such occurrence.

14. Plainly, a sudden quarrel had erupted between the parties that was not witnessed by any person, from the beginning. Only because of one unintended injury suffered by the deceased, resulting in his death, the occurrence may not travel beyond the ingredients of offence under Section 299 I.P.C. The appellant may have been punished under Section 304 Part-I, I.P.C. only.

15. On the other hand, learned A.G.A. would submit, the motive on the part of the appellant was clearly established. He suspected that the deceased had formed illicit relationship with his wife. Arising from that,

he developed the motive to kill the deceased. Therefore, he caused the occurrence wherein deceased received fracture injury to his skull. That led to his death. As to the injuries received by the present appellant, it has been submitted, those are minor in nature. However, it could not be disputed that the prosecution did not ascribe any deadly weapon or any particular weapon to the appellant. Absolutely no recoveries were made to establish how and with what weapon of assault the deceased came to suffer one fatal injury.

16. Having heard learned counsel for the parties and having perused the record, there is no reason to doubt that the occurrence had been caused on the date, time and place as narrated by the prosecution. Also, there is less reason to doubt that other than the appellant no other person had entered into any transaction with the deceased at the time of the occurrence as may have led to his death. It however requires serious consideration if the ingredients of heinous offence of murder (under Section 300 I.P.C.), are made out.

17. Only two witnesses of fact have been relied by the prosecution to establish the occurrence of murder. In that, Phresh Kumar Pathak (P.W.-1) is a bystander who saw the appellant and the deceased involved in a quarrel wherein the appellant was sitting on the chest of the deceased and assaulting him. Without anything more i.e. without assigning any weapon to the appellant, it was narrated that the deceased received serious injury on his head. He further narrated that he along with others pulled apart the appellant and Baba Mangal Das, and carried the injured Baba Mangal Das to Saifai Hospital, where he died. Ramendra Pathak (P.W.-3) who is the son of P.W.-1, added to that narration by stating that he saw the appellant biting at the private part of the deceased. He also tried to introduce motive by relying on hearsay that the deceased was a man of bad character and that the appellant suspected that his wife had formed illicit relations with the deceased. However, there is no evidence of such illicit relations formed by the deceased with the wife of the appellant.

18. Thus, we are unable to infer from that evidence led by the prosecution-any intention on part of the appellant to cause the murder. Thus, element of pre-meditation is completely lacking. Second, in absence of assignment of any weapon of assault and third, in the absence of any description how the deceased came to suffer one fatal injury on his head as may have been caused by a hard and blunt object, we are also unable to infer any intention to cause any specific injury to the deceased that may or may not involve knowledge that it would likely cause death. Fourth, on the own showing of the prosecution, both, the deceased Baba Mangal Das and the present appellant were involved in a physical assault. They were hitting each other, perhaps with their hands. These observations we have made being mindful that only one grievous injury was suffered by the deceased. That has not been proven to be deliberately caused. Also, 13 injuries were suffered by the appellant as noted by Dr. Sushil Yadav (D.W.-2).

19. It is not common that in such physical fights with bare hands one or the other person involved, may fall either due to a push or loss of balance and unintentionally fall on hard and blunt object/s as may cause such injury. Insofar as the present appellant is concerned, he too had received lacerated wounds and cut wounds, besides abrasion and contusion. Yet, the prosecution did not prove that the one fatal injury suffered by the deceased was caused, in any particular way, by the appellant. That fact is not proven, to that extent.

20. Seen in the entirety of the facts and circumstances of the occurrence as noted above, it is clear to us, the prosecution has not come with the complete version of the occurrence inasmuch neither the genesis of the quarrel is clear nor the injuries suffered by the present appellant, have been explained.

21. Also, we note, Phresh Kumar Pathak (P.W.-1) narrated in the F.I.R., he reached the place of occurrence much later-upon hearing noise arising from some commotion. Also, he did not name his son Ramendra Pathak (P.W.-2) as one of the person who saw the occurrence. Thus, presence of

those witnesses at the time of the occurrence is also not established beyond reasonable doubt.

22. 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 I.P.C. and Section 304 I.P.C.. 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* (1947) 1 All ER 813, 816 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)

23. That governing principle has been consistently applied in our 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 I.P.C. 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 I.P.C. 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 I.P.C. and sentence him to 7 years' RI. The appeal is allowed to the above extent."

(emphasis supplied)

24. In **Jhaptu Ram versus State of Himachal Pradesh (2014) 12 SCC 410**, after consideration of the facts as proven, the Supreme Court observed as below:

"7. We have considered the matter, undoubtedly, it was a case wherein the deceased and his mother Bhagti Devi (PW.1) had been called to intervene and pacify the matter. It is also clear from the evidence on record that an altercation took place between the appellant and the deceased. There is no iota of evidence to show that there was any prior intention of the appellant to kill the deceased. As per the medical and ocular evidence, there was only gun shot fired by the appellant which proved to be fatal for deceased. More so, the prosecution failed to marshal any evidence to show that the gun was in his hand when the deceased entered his house. In such peculiar facts and circumstances of the case, we agree with the submissions advanced by Shri Sreyas, learned counsel for the appellant. 8. In these facts and circumstances of the case, we are of the considered view that the appeal deserves to be allowed partly. Hence, the conviction of the appellant is set aside under Section 302 I.P.C. and is convicted under Section 304 Part-I I.P.C. and award sentence of ten years. However, the amount of fine remains intact. With these observations, the appeal stands disposed of."

25. 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 alteration, the charge under Section 302 I.P.C. was converted to that under Section 304 Part I I.P.C.. 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 I.P.C. should be converted to one under Section 304 Part I. We accordingly hold the appellant guilty of an offence under Section 304 Part I I.P.C. and sentence him to imprisonment for a term of ten years."

(emphasis supplied)

26. 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 I.P.C. was converted to that under Section 304 Part I I.P.C.. 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 I.P.C.. 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 I.P.C.. We, therefore, convert the conviction of the appellant-accused to one under Section 304 Part I I.P.C.. 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."

27. 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 I.P.C., the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would,

therefore, be of murder falling within Clause (1) of Section 300 of the I.P.C.. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the I.P.C. and render him guilty of the offence of murder although only single injury was caused.

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

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the I.P.C. it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

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

(5) Section 304 of the I.P.C. will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the I.P.C., (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

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

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

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

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

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

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

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the

death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the I.P.C. unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the I.P.C.."

28. In view of the above, the appeal is **partly allowed**. The conviction of the appellant is modified from one under Section 302 I.P.C. to one under Section 299 read with Section 304 Part-I I.P.C. Accordingly, the sentence awarded to him is modified to sentence undergone. The appellant is in jail. He may be released forthwith, subject to him not wanted in any other case. He is directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today. Also, the appellant is fined Rs. 10,000/-. That may be paid within a period of one month from the date of his release. In default of payment of fine, the appellant shall undergo imprisonment of one year.

29. Copy of this judgment alongwith 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.

30. In view of the order passed today, Criminal Misc. 2nd Bail Application No. 07 of 2019 is dismissed as infructuous.

(Tej Pratap Tiwari,J.) (Saumitra Dayal Singh,J.)

September 12, 2025

SA