

Neutral Citation No. - 2025:AHC:31894-DB**Court No. - 45**

Case :- CRIMINAL APPEAL No. - 4686 of 2019

Appellant :- Jugendra @ Juganu

Respondent :- State of U.P.

Counsel for Appellant :- Abhishek Singh, Yadu Nath Singh

Counsel for Respondent :- G.A., Pramendra Pratap Singh

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Sri Dharampal Singh, learned senior counsel assisted by Sri Abhishek Singh, learned counsel for the appellant; Sri Patanjali Mishra, learned AGA-1 for the State and Sri Pramendra Pratap Singh, learned counsel for the informant.

2. Present criminal appeal arises from the judgement and order of conviction dated 26.06.2019 and sentence dated 27.06.2019, passed by Sri Nand Pratap Ojha, learned Additional Sessions Judge, Court No.8, Aligarh in S.T. No.751 of 2016, (State versus Jugendra @ Juganu), arising out of Case Crime No.96 of 2016, under Section 302 IPC and S.T. No.752 of 2016, (State versus Jugendra @ Juganu), arising out of Case Crime No.97 of 2016, under Sections 3/25 Arms Act, Police Station Pisawa, District Aligarh, whereby, the appellant has been convicted for the offence under Section 302 IPC and sentenced for life imprisonment with fine of Rs.25,000/- along with default clause and also convicted for the offence under Section 3/25 Arms Act and sentenced for two years with fine of Rs.2,500/- along with default clause.

3. The prosecution story emerged on the strength of FIR lodged on 10.07.2016 (Ex. Ka-17). That FIR was lodged on the basis of a Written Report dated 10.07.2016 (Ex. Ka-1) submitted by Rahul Raghav S/o Raja Ram Singh (examined as PW-1 at the trial). In that Written Report, it was reported that the present appellant married the sister of the first informant

in the year 2002. However, the appellant; his father Harpal Singh; his mother Kamla Devi; elder brother Satish and; younger brother Attan were not happy with the marriage and used to trouble the deceased as also threatened to kill her. In that fact background, on 09.07.2016 at 12:00 midnight the above named five accused persons assaulted the deceased. The appellant shot the deceased with a firearm to which she succumbed. Such Written Report was submitted through the scribe Sanjay Raghav (not examined at the trial). On 10.07.2016 itself, two Recovery Memos were prepared. While one Recovery Memo of bloodstained clothes and plain clothes of the deceased was prepared, it was marked as Ex. Ka-19 at the trial. Further, upon the arrest of the appellant disclosed to have been made about 06:00 PM on 10.07.2016, on his pointing out further recovery of one country made pistol was made form inside the house of the appellant. That Recovery Memo is Ex. Ka-10 at the trial. The said recovery led to a second FIR being lodged against the appellant on 10.07.2016 itself, under Section 3/25 Arms Act, it is Ex. Ka-28.

4. Also, on 10.07.2016 '*Panchayatnama*' was drawn between 07:35 – 09:AM. It was witnessed by five '*panch*' witnesses. The said '*Panchayatnama*' is Ex. Ka-3. Thereupon the autopsy was performed. The autopsy report was prepared on 10.07.2016 itself, by Dr. Amit Singh (PW-13 at the trial). The autopsy was conducted at about 03:25 PM on 10.07.2016. That records that the death may have been caused one to one and half day earlier. As to the *ante mortem* injuries, the autopsy report records as below:-

"1. A firearm entry wound 2.5 cm x 2.5 cm on the left side lateral upper part of abdomen 23 cm away from umbilicus at 2 O' clock position with blacking around the wound and inverted margins.

2. A firearm exit wound 3 cm x 2.5 cm on the right side front of abdomen 9 cm away from umbilicus at 8 O' clock position with inverted margins and some part of intestine coming out and interconnected with injury no.1 confirm passing the probe and no bullet recovered form abdominal cavity."

5. The autopsy report is Ex. Ka-7 at the trial. Thus the *ante mortem* injuries recorded are one entry wound at about 2 O' clock position around the navel area and the exit wound is at 8 O' clock position on the back of the deceased. The cause of death has been recorded as below :-

"Cause of death is hemorrhagic shock as a result of ante mortem firearm injury"

6. During investigation, amongst other affidavit of Mukarram Singh (PW-4 at the trial) was accepted and reduced in writing. It is proved as Ex. Ka-2. Similar affidavit (Ex. Ka-3) of Sunita Devi (PW-5 at the trial) and affidavit (Ex. Ka-4) of Satpal Singh (PW-6 at the trial) were also reduced to writing.

7. In such circumstances, the investigation was first conducted by the Investigating Officer Ram Kumar (PW-15 at the trial). Upon completion of investigation, the charge sheet was submitted by the Investigating Officer Ravindra Singh (PW-16 at the trial).

8. Thereafter charges were framed by the learned Court below vide order dated 13.01.2017. Those read as below :

"मैं, ए०एल० सरोज, अपर सत्र न्यायाधीश, न्यायालय कक्ष संख्या-08 अलीगढ़ जुगेन्द्र उर्फ जुगनू को निम्नांकित आरोपों से आरोपित करता हूँ:-

1- यह कि दिनांक 09.07.2016 को समय करीब 12.00 बजे स्थान सहजपुरा थाना पिसावा जनपद अलीगढ़ में आपने वादी राहुल की बहन शारदा जो आपकी पत्नी थी, की गोली मारकर हत्या कर दी। इस प्रकार आपने भारतीय दण्ड संहिता की धारा-302 के अन्तर्गत दण्डनीय अपराध किया, जो इस न्यायालय के प्रसंज्ञान में है।

एतद्वारा आपको निर्देशित किया जाता है कि आपका विचारण उक्त आरोपों पर इस न्यायालय द्वारा किया जाएगा। "

"मैं, ए०एल० सरोज, अपर सत्र न्यायाधीश, न्यायालय कक्ष संख्या-08 अलीगढ़ आप जुगेन्द्र उर्फ जुगनू को निम्नांकित आरोपों से आरोपित करता हूँ:-

यह कि दिनांक 10.07.2016 को समय करीब 18.00 बजे स्थान स्वयं के मकान स्थित सहजपुर थाना पिसावा जनपद अलीगढ़ में आपको गिरफ्तार किया गया तथा आपके कब्जे से एक तमचा 315 बोर मय खोका कारतूस बरामद हुआ जिसे रखने का आपके पास कोई अधिपत्र नहीं था। इस प्रकार आपने आयुध अधिनियम की धारा 3/25 के अधीन दण्डनीय अपराध कारित किया जो इस न्यायालय के प्रसंज्ञान में है।

एतद्वारा आपको निर्देशित किया जाता है कि आपका विचारण उक्त आरोप पर इस

न्यायालय द्वारा किया जाएगा।"

9. Besides the above documentary evidence, the prosecution also relied on the site plan Ex. Ka-9 with respect to the place of occurrence and Ex. Ka-11 with respect to recovery of firearm from the appellant.

10 Besides the above documentary evidence, the prosecution relied on oral evidence of 16 witnesses. In that, it first relied on the oral evidence of the first informant Rahul Raghav (PW-1) who is the brother of the deceased. He was produced to prove the demand of dowry and cruelty. Yet, Rahul Raghav (PW-1) turned hostile during his examination-in-chief itself. He was cross examined by the prosecution. He did not support the prosecution story to any extent. However, he admitted that the FIR had been lodged at his instance. Deshraj (PW-2) was examined next. He claimed to be a villager of the same village as the appellant. He also turned hostile during his examination-in-chief. He denied having made statement under Section 161 Cr.P.C. Though he denied such statement, he did admit that the deceased had succumbed to a firearm injury. Further, he did not make any statement specially with respect to the firearm used to caused the occurrence. Suresh another villager was examined as PW-3. He too was declared hostile during examination-in-chief. He did not make any further statement, of worth. Mukarram Singh was examined as PW-4. Though he was declared hostile during examination-in-chief, at the same time he did prove that he heard a gun shot at 12:00 in the night and reached the place of occurrence inside the house of the appellant. He saw the deceased lying in an injured state. He claimed that he neither saw the assailant nor he saw anybody shoot at the deceased. He denied having made any statement to the Investigating Officer. He neither denied nor admit the affidavit (Ex. Ka-2). Sunita Devi W/o Bhudev Singh was examined as PW-5. She too is a villager of the same village as the appellant. Though she also turned hostile during her examination-in-chief, at the same time she did state that on hearing a gun shot about 12:00 in the midnight of 09.07.2016, she along-with others reached the place of

occurrence i.e. the house of the appellant and saw the deceased lying dead. Also, she claimed to have seen a country made pistol lying next to the deceased. During her cross examination, she was confronted with her affidavit (Ex Ka-3). She denied knowledge of what was written on that document as she was illiterate. Satpal Singh was examined as PW-6. He also stated that he heard a gun shot at about 12:00 in the midnight on 09.07.2016. He ran to the place of occurrence i.e. the house of the appellant and found the deceased lying dead. He denied having seen the assailant or anybody commit the assault. He claimed ignorance about his affidavit, Ex. Ka-4. Sri Om was examined as PW-7. He also described having heard gun shot about 12:00 midnight on 09.07.2016. Upon reaching the house of the appellant, he found the deceased lying dead. He further stated that the appellant was not present at the time of place of occurrence as he had gone to Khair to visit his parents. He admitted that his signature on Ex. Ka-5. However, he claimed ignorance as to how such narration came on record. During his further cross examination by the defence, he also stated that he had seen a county made pistol lying next to the deceased. Gulbahar another villager was examined as PW-8. He is a '*panch*' witness. Nothing of substance emerged during his examination, as to the occurrence. Dhirendra (PW-9) was examined next. He stated he heard a gun shot in the night of 09.07.2016. Upon running to the dwelling house of the appellant, he found the deceased lying in an injured state. At that stage he was declared hostile. During his cross examination he denied the correctness of his statement recorded under Section 161 Cr.P.C. Mukesh Kumar (PW-10) was examined next. He too is a villager residing in the same village as the appellant. According to him, he heard the gun shot on 09.07.2016 between 12:00 midnight – 01:00 AM. On reaching the residence of the appellant he found the deceased lying in an injured stage. 5 to 10 other villagers were also present. He claimed to have seen a country made pistol lying next to the deceased. However, he admitted that he had reached the place about 15 to 20 minutes later. He also stated that

the deceased had been murdered. However, he did not know any thing about the assailant. He was cross examined by the defence. In that he denied having made any prior statement to the police and he also denied his affidavit. Mongraj another villager was examined as PW-11. He was declared hostile during his examination-in-chief. During his cross examination he also disassociated himself from the statement recorded under Section 161 Cr.P.C. Ompal Singh (PW-12) was examined next. He claimed to have heard a gun shot. He ran to the house of the appellant and found the deceased lying dead. Dr. Amit Singh (PW-13) was examined next. He proved the autopsy report. Thereafter Sri V.P. Giri was examined as PW-14. He proved part of the investigation that was conducted by him. Thereafter, Ram Kumar (PW-15) was examined. He proved the arrest of the appellant and firearm recovery. In that he stated that he started from the police station on 10.07.2016 on a police jeep along-with other police officials, at about 02:30 PM. Upon reaching the village where the occurrence had been caused, he left the jeep and the police party walked to the house of the appellant on information received from an informer that the appellant was present at his house, at that time. In such circumstances it is another proven fact that the appellant was arrested from his house, at 06:00 PM, on 10.07.2016. Thereafter, besides the confessional statement that is attributed to the appellant, he is described to have pointed to the firearm that was recovered from inside his house, having been kept on a loft / “*taand*” in a room, as was disclosed by the appellant. One empty was recovered being stuck inside the barrel of the firearm. Nothing significant emerged during his cross examination S.I. Ravindra Singh (PW-16) was examined next.

11. Thereafter statement of the appellant was recorded under Section 313 Cr.P.C. In response to the adverse circumstances put to him, he did not offer any suggestion as to the manner in which the occurrence may have taken place inside his house. No other defence evidence was led. In such circumstances, the learned Court below has believed the prosecution story

that the deceased died inside her house. She was murdered by the appellant. Accordingly, the appellant has been convicted under Sections 302 IPC and 3/25 Arms Act.

12. Submission of learned senior counsel for the appellant is that the occurrence is of midnight on 09/10.07.2016. No one had seen the occurrence. The FIR was lodged by the brother of the deceased who was living separately. Referring to the site plan as was proved by the prosecution and the other facts and circumstances admitted to the prosecution, it has been submitted that there are three children born to the deceased, one of whom would have been about 13 years of age on the date of occurrence. Neither that girl child nor any other child of the appellant (and the deceased) and who were the most natural witness was produced at the trial-to support the prosecution story. All witnesses of fact, namely, PWs 1 to 12 turned hostile. None supported the prosecution story of the appellant having caused the occurrence. In absence of any other injury noted in the autopsy report proven at the trial, it has been strenuously urged that the occurrence was suicidal and not homicidal. The deceased shot herself with a country made pistol. Various prosecution witnesses though hostile, clearly suggested that the said firearm was lying next to the body of the deceased immediately after the occurrence. As to his own presence, learned senior counsel for the appellant would submit that no evidence exists of the appellant being present at the place and time of occurrence. He was visiting his parents at Khair. It is only upon receiving the information of the incident that the appellant returned home when at about 06:00 PM on 10.07.2016, when he was arrested by the police from inside his house. The police story that it started from the police station at about 02:30 PM on 10.07.2016 but reached the appellant's place at about 06:00 PM, is unbelievable, considering that the distance of the police station from the place of occurrence has been disclosed to be 12 Kms.

13. In such circumstances, it has been further asserted the recovery of firearm is planted. As suggested by various prosecution witnesses (though hostile) the firearm was found lying next to the body of the deceased. It was discovered and thus recovered not upon police arresting the appellant but in the morning of 10.07.2016. False case has been made out on the strength of the planted recovery.

14. As to that recovery it has been submitted, neither there are any independent witnesses nor there is disclosure statement Part-I and Part-II recorded on the recovery memo. Therefore such recovery may never be relied to corroborate an otherwise inconsistent and unproven prosecution story.

15. None of the three children who are the most natural witnesses and whose presence was admitted to the prosecution, was examined. Once their presence was accepted to the prosecution and that was wholly natural, the occurrence having taken place in the mid of the night, non-production of such witnesses is a serious lapse on part of the prosecution. In face of otherwise doubtful testimony led at the trial where all witnesses of fact (PWs 1 to 12 turned hostile), the order of conviction may never have been passed. The ballistic report, it has been submitted was not received in Court when the Investigating Officer was examined. Therefore no cross examination took place. However, it is not disputed that such document exists. Also, it is not disputed according to that forensic report dated 03.02.2018 prepared by the FSL Agra, the bullet injury suffered was caused by the firearm recovered during investigation. In case of such facts and doubts, it has been submitted that the order of conviction may not be maintained.

16. On the other hand learned AGA would submit that the distance of the police station is about 12 Kms. The place of occurrence being inside a village, no presumption may be drawn as to the exact time that may have been consumed by a police party to reach the place of occurrence, that too

on foot. At present no material exists to doubt that the police party travelled and reached the place of occurrence on 10.07.2016, at 06:00 PM, moving on foot. Even otherwise, it has been submitted no material defect exists in the veracity or credibility of the prosecution story, even if the exact time of arrest of the appellant is taken to be different from that disclosed. In any case, the police were acting on the information received that the appellant was visiting his house. According to the proven case, the police entered the house of appellant and found him in the courtyard. It is at that time and in that manner he came to be arrested at about 06:00 PM. In absence of any doubt emerging during cross examination and in absence of any other evidence as may suggest any other fact with respect to the arrest of the appellant, no undue emphasis may arise as to the time of his arrest.

17. Referring to the solitary firearm injury, it has been strenuously urged that the same may never be caused in a suicidal occurrence. Not only the entry wound is at 2 O' clock around the navel of the deceased and the exit wound is around 8 O' clock position on the back of the deceased but it was clearly proven at the trial that the injury points downwards from the entry wound to the exit wound. In absence of any other fact proven that the deceased had a dominants left hand, no doubt may arise that such an occurrence was caused by the deceased in her attempt to die by suicide. Clearly, that fact itself suggests otherwise and is consistent to the prosecution story that the deceased was shot from the front by the appellant. In that nature of that occurrence, the injury as proven by the prosecution wholly corroborates the occurrence. As to the recovery, it has been submitted that not only the recovered weapon is proven to have caused the occurrence but recovery itself is from a place known to the appellant only. It was secreted inside a loft '*taand*' in one of the rooms, as depicted in the site plan.

18. Thus it has been submitted that the entire prosecution evidence has to

be seen on its own merits. One or two or more minor inconsistencies may not dilute the prosecution story. In an occurrence such as this nature the witnesses being simple villagers, the Court must allow for margins to exist and not look at a empirical accuracy in their statements.

19. Having heard learned counsel for the parties, merely because the witnesses have turned hostile may not be enough to acquit the appellant. It would remain to be examined by the Court to determine the nature of occurrence, on the strength of the evidence, in entirety. Here, though all witnesses may be described as hostile, it is a common theme in all depositions thus made-from PW 2 to PW-12 that the occurrence had been caused by a firearm, at about midnight on 09/10.07.2016, inside the dwelling house of the appellant. No evidence exists to doubt the place of occurrence. It was inside the house of the appellant. The statutory presumption arising under Section 106 of the Indian Evidence Act casts a burden upon on the appellant to offer an explanation. To that extent the appellant may not permitted to rely on the statement furnished by the hostile witnesses that the appellant was not present. The burden to establish that fact which appears by way of an explanation or an exception to Section 106 of the India Evidence Act, remained undischarged by the appellant. He led no positive evidence whatsoever to establish that he was not present at the time of place of occurrence namely his house. Though it is the defence assertion that three children born to the parties were present inside the house when the occurrence took place, the appellant chose not to produce any of those children to establish that he was not present at the time and place of occurrence. Thus non-examination of the three children of the deceased, cuts both ways. To that extent the presumption arising under Section 106 of the Indian Evidence Act is clearly attracted and applies.

20. Having reached that first conclusion, we also note that PW-3 Suresh stated that the deceased and the appellant, were quarrelsome. Yet, the

prosecution did not lead any evidence to establish any premeditation or motive with the appellant to cause the occurrence. The best case set out by the prosecution was that the appellant was addicted to alcohol and used to quarrel with his wife to whom he was married for last 14 years. At present, the case of demand of dowry etc. and cruelty was not proven. In the entirety of the facts and circumstances proven do indicate that the occurrence may have been as a result of sudden quarrel, and such as may be described to have been caused, in the heat of the moment. Here it is vital to note that no *ante mortem* injuries except one entry and one exit wound caused by a single firearm injury were noted. It is not the case of the prosecution that there was prior assault on the deceased or any other injury had been received where after she may have been shot. The best case that the prosecution has made out is that a single shot was fired. In **Jhaptu Ram versus State of Himachal Pradesh (2014) 12 SCC 410**, after consideration of the facts has 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 IPC and is convicted under Section 304 Part-I IPC and award sentence of ten years. However, the amount of fine remains intact. With these observations, the appeal stands disposed of.”

21. 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* (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)

22. 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 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)

23. 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)

24. 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."

25. In these circumstances, we find that the case is made out to alter the charge from Section 302 IPC to under Section 304 Part-I IPC. To that extent the prosecution story is fully proven and is free from any

reasonable doubt.

26. Accordingly, the appeal is partly **allowed**.

27. Thus the order of conviction passed against the appellant is sustained on the altered charge of Section 304 Part-1 IPC. Against maximum sentence of life imprisonment, the appellant has remained confined for more than eight years. Also, he has no criminal history. The appellant is found guilty of offence under Section 304 Part I IPC. The punishment, is modified to sentence ten years, in all.

28. The order of learned Court below is modified accordingly.

29. In view of above fine imposed under Section 302 IPC Rs.25,000/- is reduced to Rs.10,000/- for the offence under Section 304 Part-1 IPC. However, fine of Rs.2,500/- under Section 3/25 Arms Act is maintained.

30. The appellant is in jail. He may be released upon completing his sentence in case he is not wanted in any other case and compliance of Section 437-A Cr.P.C.

31. The appellant shall deposit the fine within a month from the date of his release.

Order Date :- 5.3.2025

I.A.Siddiqui

(Dr. Gautam Chowdhary,J.) (S. D. Singh,J.)