

**Court No. - 44**

**Case :-** JAIL APPEAL No. - 245 of 2022

**Appellant :-** Mukesh @ Bhole

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Birendra Prasad Maurya

**Counsel for Respondent :-** A.G.A.

**Hon'ble Saumitra Dayal Singh,J.**

**Hon'ble Madan Pal Singh,J.**

1. Heard Shri Birendra Prasad Maurya, learned Amicus Curiae for the appellant, Shri Pankaj Kumar Tripathi, learned AGA for the State and perused the record.

2. The present criminal appeal is directed against the judgment and order dated 20.02.2020 passed by the learned Additional Sessions Judge, Court No. 16, Agra in Sessions Trial Nos. 264 of 2013 & 265 of 2013, (State Vs. Mukesh @ Bhole), whereby accused appellant has been convicted for the offence under Section 302 IPC, for causing the murder of the deceased Munna Lal. Accordingly, the appellant has been sentenced for life and fined Rs. 5,000/-. Also, he has been convicted and sentenced to undergo 2 years rigorous imprisonment for the offence Section 25 of the Arms Act, for causing death of the deceased with a country made pistol, together with fine of Rs.1000/-. As per Custody Certificate produced by learned AGA, the accused appellant has remained confined for 13 years, 7 months and 18 days with remission as on 26.05.2025.

3. The prosecution story emerged on the strength of the Written Report dated 17.12.2012 submitted by Kanhaiya Singh (PW-1 at the trial) at Police Station Achhanera, District Agra. The Written Report is Ex. Ka-1 (at the trial). Consequently, FIR was registered on the same day at about 10.30 AM at Police Station Achhanera, District Agra. It is Ex. Ka-2 (at the trial). According to the prosecution story, on 17.12.2012 at about 7.30 AM, the deceased was going to irrigate his agricultural field followed by his two sons Kanhaiya Singh (P.W.1 at the trial) and Mitthan Lal (P.W.2 at the trial), when he was stopped by the present accused near the agricultural field of Vishna.

Thereafter, altercation took place between two. At that point, the appellant shot the deceased and fled. The deceased was carried to Pushpanjali Hospital, where the doctor declared him dead.

4. The inquest was conducted on 17.12.2012 itself. It is Ex. Ka-12 at the trial. The Autopsy was conducted by Dr. Sanjay Kumar Gupta (P.W.4 at the trial) on 17.12.2012 at about 4.45 PM. In that report, he recorded one ante mortem injury :

*“Fire arm wound of entry 1 cm x 0.5 cm margins inverted and abraded 9 cm from left nipple 6 cm from midline. Path of bullet skin – subcutaneous tissue – Rib – Omerteen lacerated. Intestine – Rt. Kidney lacerated.”*

5. The doctor opined that the death could have been caused due to shock and haemorrhage due to ante mortem injuries. Autopsy Report is Ex. Ka-4 (at the trial).

6. Next day upon arrest of the present appellant, a country made pistol is said to have been recovered by Shri Sanjay Kumar Shukla, the Investigation Officer (P.W.6 at the trial), exclusively at the pointing out by the appellant. That Recovery Memo is Ex. Ka-5 (at the trial). Upon completion of investigation, the Investigating Officer Shri Sanjay Kumar Shukla (P.W.6 at the trial) submitted the charge-sheet.

7. Also, arising from the recovery of the country made pistol, another FIR was registered against the appellant on 18.12.2012, allegedly for offence under the Arms Act. It is Ex. Ka-1 at the trial. In that, charge-sheet was submitted on 20.12.2012.

8. Upon the case being committed for trial before the Court of Sessions, vide order dated 03.05.2013, the learned court below framed the following charges against the accused appellant :-

*"यह कि दिनांक 17.12.2012 को समय 7.30 बजे प्रातः वस्थान विष्णा के खेत के सामने किरावली मोड़ थाना अछनेरा जिला आगरा में आपने वादी कन्हैया सिंह के पिता मुन्ना लाल की तमंचा से गोली मारकर हत्या कारित की। और इस प्रकार आपने भा०दं०सं० की धारा 302 के अन्तर्गत दण्डनीय अपराध किया जो, इस न्यायालय के प्रसंज्ञान में है।*

*यह कि दिनांक 18.12.2012 को समय 3.00 बजे दोपहर वस्थान बगीची वीर प्रताप जंगल रायभा थाना अछनेरा जिला आगरा में आपके आधिपत्य से एक नाजाइज तमंचा 315 बोर बरामद हुआ जो आपके द्वारा वादी कन्हैया सिंह के पिता मुन्ना लाल की हत्या कारित करने में प्रयुक्त किया था जिसको रखने का आपके पास कोई लाइसेंस नहीं था। और इस प्रकार आपने आयुध अधिनियम की धारा 25 के अन्तर्गत दण्डनीय अपराध किया जो इस न्यायालय के प्रसंज्ञान में है।"*

9. At the trial, besides the above documentary evidence, the prosecution led oral evidence of nine witnesses. Kanhaiya Singh (P.W.1 at the trial) and Mitthan Lal (P.W.2 at the trial), both sons of the deceased were examined as eye witnesses. Both narrated, they saw the occurrence. However, there exist minor variations in the account of the two witnesses. Kanhaiya Singh (P.W.1) on 17.12.2012, he alongwith his younger brother Mitthan Lal (P.W.2) were following their father the deceased (Munna Lal) a few paces behind him. All were going to their agricultural field to irrigate their field. The deceased was stopped by the present appellant, near the agricultural field of Vishna, the present appellant stopped the deceased and he entered into a verbal altercation. The appellant was holding a country made pistol in his right hand. He shot the deceased with that firearm causing grievous injuries. The deceased fell to the ground. The appellant fled. The injured was carried to the Pushpanjali Hospital in a Bolero car where he was declared, brought dead.

10. Mitthan Lal (P.W.-2 at the trial) proved that at the time of the occurrence on 17.12.2012, at about 7:30 a.m., he alongwith Kanhaiya Singh (P.W.-1 at the trial) were going to their agricultural field. The deceased was 100 paces away. The assailant was present from before. He got involved in a verbal altercation with the deceased. He then drew a country made pistol from his pant and shot at the deceased. Thereafter he fled. Other facts, he narrated in similar manner as his brother Kanhaiya Singh (P.W.-1).

11. Thereafter, Constable Mahendra Singh was examined as P.W.-3. He proved the check FIR.

12. Next, Dr. Sanjay Kumar Gupta was examined as P.W.-4. He proved the Autopsy Report. In that he proved that the deceased suffered fatal injuries on the left side of his chest.

13. Next, Megh Singh, the scribe of the FIR was examined as P.W.-5. He proved the Written Report.

14. Next, Sanjay Kumar Shukla, Investigating Officer was examined as P.W.-6. He proved the investigation and the recovery of country made pistol.

15. Next, Manoj Kumar Mishra, the second Investigating Officer was examined as P.W.-8. He proved the further steps of investigation and the charge-sheet.

16. Thereafter, Rajiv Kumar was examined as P.W.-9. He proved the investigation under the Arms Act.

17. Thereafter, the court witness Rajiv Mishra was examined as C.W.-1.

18. Upon completion of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. In such evidence and facts, learned trial court has convicted the present appellant and sentenced him as noted above.

19. Submission of learned counsel for the appellant is two fold. First, it has been submitted that the prosecution evidence is wholly doubtful, inasmuch as neither Kanhaiya Singh (P.W.-1) nor Mitthan Lal (P.W.-2) were present at the date, time and place of the occurrence. That is established from perusal of the cross-examination of Kanhaiya Singh (P.W.-1) wherein he narrated that at the time of the occurrence he was present on his agricultural field alongwith Mitthan Lal (P.W.-2). He further maintained that the deceased was at the distance of about 100 paces from him when the occurrence took place.

20. Similarly, the presence of Mitthan Lal (P.W.-2) has been doubted on the strength of the fact asserted by him during his examination-in-chief itself, wherein he narrated that he and his brother were following their father who was about 100 paces ahead.

21. Referring to the contrary stands disclosed by two witnesses both of whom claim to be present alongwith deceased at the time of the occurrence and in view of two conflicted stands taken, one wherein they are disclosed to have followed their father (the deceased), on foot, at the time of the occurrence and the other wherein they are disclosed to be present working on their agricultural field, it has been submitted that the prosecution story is conflicted as to the presence of both eye witnesses. Both are closely related witnesses. They are interested witness. The prosecution has concealed the fact that the appellant is the real nephew of the deceased. Only for the reasons of pre-existing family dispute the appellant has been falsely implicated.

22. Alternatively, it has been submitted that both the witnesses of fact Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2) maintained that sudden heated verbal altercation arose between the deceased and the appellant, immediately before the occurrence. It being a fact that the parties are closely related to each other, it has been submitted, even otherwise, a sudden quarrel arose between the deceased and appellant. It is admitted to the prosecution that both the parties, participated in it. It is not the case of the prosecution that the appellant confronted the deceased, abused and shot him without any provocation. What nature of quarrel erupted between the deceased and the appellant, has not been disclosed by the prosecution. To that extent, the prosecution has concealed the vital part of the story from the Court. Further, keeping in mind the fact of single firearm injury suffered by the deceased, the ingredients of the occurrence may not travel beyond section 304 Part-1 IPC. The appellant has remained confined since his arrest. Therefore, he has remained confined for more than 12 years.

23. On the other hand, learned AGA would submit that the prosecution story is wholly consistent and reliable. Minor inconsistencies in the statement of Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2) may not be projected as material contradictions or inconsistencies. Being simple villagers, both Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2) disclosed they were engaged on their agricultural field alongwith the deceased. Being farmers, it was wholly natural on their part to be present on their agricultural field (alongwith the deceased), in the morning hours as they further disclosed that they were irrigating their crops. No doubt emerged during their cross-examination with respect to the basic claim that both the witnesses were farmers and sons of the deceased and therefore, they were present on or were going to their agricultural field. Thus, during his cross-examination, Kanhaiya Singh (P.W.-1) stated he was working on the field. In absence of any confrontation with the previous statement made during examination-in-chief, no adverse inference may be drawn, on.

24. In the alternative, the learned AGA would submit that the occurrence was caused with lethal weapons. It falls within the 4<sup>th</sup> category of cases defined under the definition of murder under Section 300 IPC. Therefore, the benefit of section 304 IPC may not be given.

25. Having heard learned counsel for the parties and having perused the record, first, this is a case of direct evidence. The prosecution relied on two eye-witness accounts furnished by Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2), both sons of the deceased Munna Lal. On one hand, they may be described as close relatives of the deceased and therefore interested witness and on the other hand it is safe to begin on a premise that on account of the close relationship with the deceased, they would not look to falsely implicate another person in place of the actual assailants.

26. Second, during the extensive cross-examination offered, the defence could not bring out any doubt in their testimony in that regard i.e. any intent on the part of those eye-witnesses to falsely implicate the present appellant. No history of bad relations or disputes etc. was alleged as may have offered

any strong motive or occasion to those witnesses to falsely implicate the present appellant.

27. Then, the presence of Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2) near the place of occurrence may be natural. Coming from an agriculturist family and both being farmers, they narrated that their presence at the time of occurrence arose for reason of being engaged in agricultural activity with their father, the deceased Munna Lal. In that regard, the FIR was registered at the instance of Kanhaiya Singh (P.W.-1). He stated that in the morning of 17.12.2012, at about 7:30 a.m. the deceased was walking to their agricultural field to irrigate that agricultural field. The first informant/P.W.-1 and his younger brother Mitthan Lal (P.W.-2) were walking at some distance behind the deceased when the occurrence was caused. At the trial, during his examination-in-chief Kanhaiya Singh (P.W.1) proved that fact. Only addition that he made thereto was that the deceased was about 100 paces ahead of him. This is not a material improvement. Even during his cross-examination, he mentioned the same distance. Merely because once stray sentence appeared during his cross-examination that he was in an agricultural field at the time of occurrence, is of no consequence. Neither in the FIR nor during his examination-in-chief, the said witness ever asserted that the deceased and/or the said witness and his younger brother Mitthan Lal (P.W.-2) were walking on a road or a path. He only proved that at the time of the occurrence being caused, those three persons were walking on foot to their agricultural field. Therefore, the solitary statement made by this witness during his cross-examination that at the time of the occurrence he was in an agricultural field cannot be read in isolation is neither here nor there. It cannot be read out out of context. In absence of any confrontation of that witness with any previous statement, that statement of Kanhaiya Singh (P.W.-1) that he was in an agricultural field at the time of occurrence, cannot be read to infer that he has materially contradicted or changed the prosecution story. He only indicated that he was walking through agricultural fields, a little behind the deceased.

28. Then, the other witness Mitthan Lal (P.W.-2) similarly proved during the examination-in-chief that his brother, Kanhaiya Singh (P.W.-1) and his father, Munna Lal (deceased) were walking to their agricultural field when the occurrence was caused. He also proved that his father Munna Lal (the deceased) was about 100 paces ahead of him. No contraction or material improvement or inconsistency emerged during his cross-examination. Thus, it stood proved beyond reasonable doubt that both witnesses Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2) were present at the time and place of occurrence.

29. As to the occurrence, both Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2) maintained that they saw the accused meet up Munna Lal (deceased) and enter into an altercation, with the deceased. What exactly transpired either before or during that altercation or was the subject matter of that sudden quarrel, was never explained or proved at the trial. That narration arose in the FIR itself and was maintained at the trial during the examination-in-chief Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2). During his cross-examination, Kanhaiya Singh (P.W.-1) described that sudden quarrel as "*chiran ho rahi thi*" clearly indicating that both parties wholly participated in the verbal quarrel/altercation that arose between them, for no reason known to or proven by the prosecution. At the same time, he also proved that there was no other/old dispute between the parties and there was no rivalry etc. between the parties.

30. Similar facts were proven by Mitthan Lal (P.W.-2) as to what preceded the occurrence. He also did not prove or establish existence of any prior dispute or rivalry etc. as may have offered premeditation to the present appellant to give rise the occurrence.

31. We are also mindful that the appellant is the nephew of the deceased (Munna Lal). In absence of any prior or other dispute between the parties, no motive has been suggested by the prosecution as may give rise to premeditation or intention or planning on the part of complainant of such an occurrence. On the contrary, the prosecution evidence itself suggests that the

occurrence was caused at the spur of the moment wherein single firearm was offered by the deceased.

32. Though single firearm was caused to the deceased, who is the father of the Kanhaiya Singh (P.W.-1) and Mitthan Lal (P.W.-2), absolutely no allegation was levelled by the informant side that the deceased offered any threat to them or to the sons of the deceased or that he offered any conduct as may lead us to believe that there was any intent on his part to cause any further occurrence. The said prosecution witness namely Kanhaiya Singh (P.W.-2) and Mitthan Lal (P.W.-2) also proved that in the sudden quarrel that had erupted between the appellant and the deceased, drew his country made revolver and shot once at the deceased.

33. That single shot hit the deceased. That injury was caused to the vital body part. The entry wound appears to have been caused on the left side on the chest and appears to have travelled downwards and lacerated his kidney.

34. Thus, the elements/factors relevant to the applicability of Exception 4<sup>th</sup> to Section 300 IPC appear to exist in the present facts.

35. 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)*

36. 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)*

37. 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)

38. 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."

39. In a recent decision of the Supreme Court in **Anbazzhagan 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 I 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."*

40. 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.”*

41. In such circumstances, we find, in absence of any pre-existing rivalry and for deep seeded dispute pre-existing between the parties and in absence of any motive set up by the prosecution and further in presence of sudden quarrel proven by the prosecution itself wherein both parties i.e. the deceased and the appellant had participated, a doubt as to pre-meditation arises. As to the aspect of sudden quarrel erupting at the spur of the moment duly proven by the prosecution we find it a fit case where the charge levelled under Section 302 I.P.C. may be altered to Section 304 Part-I IPC.

42. As to the recovery of the firearm, we find, the fire-arm appears to have been recovered from an open place. Neither there is disclosure statement contained in the Recovery Memo nor the Recovery Memo was made from any concealed place. Rather the perusal of the Recovery Memo as was proven at the trial (Ex.Ka-5) only indicates that the recovery was made from an orchard. There is no ballistic report to correlate that firearm was used in the occurrence. To that extent and for that reason, we find, reasonable doubt exists in the prosecution story with respect to charge of offence under Section 25 Arms Act.

43. Accordingly, the appeal is **partly allowed**. 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 **12 years**. The appellant is found guilty of offence under Section 304 Part I IPC. The punishment, is modified to sentence undergone i.e. 12 years, in all. The order of learned Court below is modified accordingly.

44. In view of above fine is imposed under Section 304 IPC Rs. 1,000/-. In default of payment of fine, he has to undergo one month's additional imprisonment.

45. The appellant is in jail. He may be released upon completing his sentence in case he is not wanted in any other case. Appellant is directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

46. 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.

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

48. Shri Birendra Prasad Maurya, learned Amicus Curiae appearing on behalf of the appellant has rendered his valuable assistance to the Court. He be paid Rs. 25,000/- towards fee for the able assistance provided by him, in hearing of the present appeal.

**Order Date :- 10.7.2025**

**Prajapati RK**

**(Madan Pal Singh, J.) (Saumitra Dayal Singh, J.)**