

Neutral Citation No. - 2025:AHC:122858-DB

Court No. - 44

Case :- CRIMINAL APPEAL No. - 2191 of 2015

Appellant :- Jagdish And Another

Respondent :- State of U.P.

Counsel for Appellant :- Kartikeya Saran, Prabhakar Chandel

Counsel for Respondent :- Govt. Advocate

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Anil Kumar-X, J.

1. Heard Sri Jai Prakash Narain Raj along-with Ms. Shruti Taneja, learned counsel for the appellants and Ms. Archana Singh, learned AGA-I for the State.

2. Present criminal appeal arises from the judgement and order dated 25.04.2015, passed by Sri Anil Kumar IX, Additional Sessions Judge, Court No.2, Chitrakoot in S.T. No. 10 of 2013, (State versus Jagdish and another), arising out of Case Crime No.244 of 2012, under Sections 307/34 & 302/34 IPC, Police Station Kotwali Karwi, District Chitrakoot. By that order learned Court below has convicted both the appellants, namely, Jagdish and Smt. Soniya for offence under Sections 302/34 IPC- for causing the murder of Sonu and under Section 307/34 IPC for attempt to murder of injured Devi Dayal.

3. Accordingly, the learned Court below has sentenced the appellants for life for the offence under Section 302/34 IPC with fine of Rs.5000/- each and in default of payment of fine further two months additional imprisonment. Also, both appellants have been convicted for offence under Section 307/34 IPC and sentenced for seven years rigorous imprisonment with fine Rs.3000/- each and in default of payment of fine to suffer one month additional imprisonment.

4. The appellant – Smt Soniya was granted bail in the year 2017. At that stage, it was noted, she had remained in jail for about four and half years,

as per Custody Certificate appended to the bail application. The other appellant - Jagdish was enlarged on bail later, having remained confined for ten years.

5. At the outset, learned counsel for the appellants states that the ingredients of the offence may not travel beyond Section 304 Part II IPC. Learned Court below has erred in convicting the appellants under Section 302 IPC. Also, it has been submitted that the injuries suffered by Devi Dayal may not travel beyond the ingredient of offence under Section 324 IPC. No other submission has been advanced.

6. Prosecution story emerged on the Written Report submitted by Meena Singh (PW-2 at the trial), the wife of the younger brother of the injured Devi Dayal (PW-1 at the trial). Against that Written Report dated 26.05.2012 (Ex. Ka-1 at the trial), FIR was registered at Police Station Kotwali Karwi, District Chitrakoot on the same day at about 08:30 PM (Ex. Ka-17 at the trial). In that it was reported that on 26.05.2012 at about 06:30 PM, the sister-in-law (Jethani) of the first informant had gone to the toilet near her house. That was objected to by the accused Sanjay (son of the present appellant). He started hurling expletives at her. That was objected to by Devi Dayal (PW-1 at the trial), the husband of the deceased. It led to Sanjay (son of the present appellants), Jagdish (appellant no.1), Soniya (appellant no.2) and Annu (daughter of the present appellants) assaulting the deceased as well as injured with an Axe, Sabri, Spade /‘*fawda*’ and Sickle/ ‘*hasiya*’. Then victims suffered injuries on their head, hand, neck etc. The injured lost their senses still the assailants did not stop. On others, namely, Vinay, Amarnath, Devbali (not examined at the trial) and Monu (PW-3 at the trial) intervening, the assailants fled. The injured were carried to the hospital from where they had been referred to Swaroop Rani Hospital at Allahabad.

7. On 26.5.2012 itself, X-ray of skull and arm of the deceased was prepared. The X-ray report is Ex. Ka-3 at the trial. Her Injury Report also

dated 26.5.2012 is Ex. Ka-4 at the trial. It was prepared by Dr. Amit Prakash (PW-4 at the trial). Similarly, the injured Devi Dayal (PW-1 at the trial) was medically examined on 26.5.2012 itself. His Injury Report is Ex. Ka-2 at the trial.

8. After such FIR being registered, S.I. Ghanshyam Pandey, made recoveries of blood stained and plain earth from the place of occurrence, on 27.5.2012. That Recovery Memo is Ex. Ka-7 at the trial. Also he recovered an Axe, Sabri, Spade /'fawda' and Sickle/ 'hasiya' at the pointing out of co-accused Sanjay, on 28.5.2012. That Recovery Memo is Ex. Ka-8 at the trial.

9. One injured, namely Sonu died on 26.5.2012 on her way to the Swaroop Rani Hospital at Allahabad. Arising from her death, SI Mede Lal Verma (PW-7 at the trial) prepared the Inquest Report on 27.05.2012, it is Ex. Ka-12 at the trial.

10. Thereafter the dead body of the deceased Sonu was subjected to autopsy examination by Dr. A.K. Garothiya (PW-5 at the trial) on 27.5.2012. In that following ante mortem injuries were noted :-

“1. Head – Back 1 lacerated wound 7 x 3 cm left side 4 cm from ear left. Bone fractured. Colour radish / brown clotted blood seen.

2. Lacerated wound 5 x 2 cm, 4 cm above from no.1 injury – Bone deep.

3. Incised wound – below back of neck 5 x 1 cm muscle deep.

4. Incised wound 13 x 3 cm – Bone fracture 2 cm above from right ear. Had edge clean cut.

5. Left arm incised wound – Medial 8 x 4 cm muscle deep.”

11. The doctor opined that the death had been caused due to ante mortem injuries resulting in hemorrhage and loss of blood and shock caused by ante mortem injury. The Autopsy Report is Ex. Ka-5 at the trial.

12. The Investigating Officer, S.I. Ghanshyam Pandey (PW-6 at the trial)

submitted charge sheet against all accused persons, namely, the present appellants and their son and daughter, namely, Sanjay and Annu.

13. It is also a fact that the co-accused Sanjay and Annu were declared juvenile and their proceedings have been separated. The present appellants were tried together. On the case being committed for trial in the Court of Sessions, following charges came to be framed against the appellants :-

"प्रथम- यह कि दिनांक 26.05.2012 को समय 6.30 बजे शाम स्थान वादी के घर के पास बने शौचालय के पास वहद ग्राम चितरा गोकुलपुर थाना कर्वी जनपद चित्रकूट में आप अभियुक्तगण अन्य के साथ सामान्य आशय से वादिनी के जेठ देवीदयाल व जेठानी सोनू को जान से मारने के उद्देश्य से कुल्हाड़ी, सबरी, फावड़ा, हँसिया से प्राणघातक प्रहार कर गम्भीर चोटें पहुंचायी। यदि आपके प्रहार से चोटहिलों की मृत्यु हो जाती तो आप अभियुक्तगण हत्या के अपराध के दोषी होते। एतद्वारा आपने ऐसा अपराध किया जो भा०दं०वि० की धारा 307 सपठित धारा 34 के अधीन दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

द्वितीय- यह कि उक्त तिथि, समय व स्थान पर आप अभियुक्तगण अन्य के साथ सामान्य आशय से वादिनी की जेठानी सोनू को हँसिया, फावड़ा, सबरी एवं कुल्हाड़ी से प्राणघातक प्रहार कर मृत्यु कारित करके हत्या कर दी। एतद्वारा आपने ऐसा अपराध किया जो भा०दं०वि० की धारा 302 सपठित धारा 34 के अधीन दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।"

14. At the trial, besides the above documentary evidence the prosecution relied on oral evidence led by seven witnesses. In that three are fact witnesses while the others are formal witnesses. Thus, the prosecution first examined Devi Dayal the injured witness as PW-1. During his examination-in-chief, he proved that he had two brothers, one elder and one younger, namely, Jagdish and Hemraj. They had partitioned their properties. In that, the use of toilet that became the subject matter of dispute in this occurrence, fell in the share of the appellant Jagdish. However, its use was permitted by others, till the appellant Jagdish paid the amount spent on its construction. Then, he proved on the date of the occurrence, the deceased Sonu Devi, wanted to use that toilet but found the same had been locked by Jagdish. On being questioned why he had locked toilet, Jagdish denied permission. On that a dispute arose, wherein,

Jagdish armed with a Spade/'*fawda*'; his wife Soniya armed with Sabri; his son Sanjay armed with an Axe and his daughter Annu armed with Sickle/'*hasiya*' assaulted the deceased. When the witness tried to intervene, he was assaulted with a Sabri and Sickle/'*hasiya*'. Being thus injured, both were carried to the hospital by his brother-in-law Monu (PW-3 at the trial) and two others, namely, Vijay Singh and another unnamed person (both not examined at the trial). The injured were carried to Sonpur Government Hospital from where they were referred to Allahabad but Sonu Devi died on way. Thus, he proved that he received medical treatment for twenty days at Jeeven Jyoti Hospital, Allahabad thereafter he was discharged. Last, he has proved that Jagdish has assaulted with a Spade/'*fawda*' and that he had been hit on his head by Sanjay.

15. Next, Meena Devi was examined as PW-2. She is the wife of the younger brother of Devi Dayal (PW-2 at the trial). She also maintained that the occurrence occurred on 26.05.2012 at about 06:00 PM upon Soni Devi being prevented from using the toilet near her house. In that she first narrated that Sanjay (son of the present appellants), had objected to such use and he started abusing the deceased. When Devi Dayal (PW-1 at the trial) intervened and asked Sanjay to not do such things, Sanjay, Jagdish, Sonia and Annu, armed with Axe, Sabri, Spade /'*fawda*' and Sickle/'*hasiya*' assaulted Devi Dayal. Next, she proved that her husband Hemraj (not examined at the trial), the brother-in-law of Devi Dayal (PW-1 at the trial) namely, Monu (PW-3 at the trial), and Vijay Singh (not examined in the trial) ran to save the deceased and the injured Devi Dayal (PW-1 at the trial). The assailants fled. She also narrated that the injured were grievously hurt. Devi Dayal (PW-1 at the trial) received injuries on his neck, head and ribs whereas the condition of the deceased Sonu Devi was serious. They were taken to the Government Hospital at Sonpur from where they were referred to S.R.N. Hospital, Allahabad. On way to Allahabad, Sonu Devi died.

16. She also proved that the Written Report was written on her dictation by the scribe Kamlesh Kumar (not examined at the trial). She further proved that under an earlier partition, the toilet (that became subject matter of the instant dispute), fell in the share of the appellants. However, it was agreed that the appellants would allow its use by other parties till the appellant paid up the cost of construction of that toilet. However, the appellants acted against that settlement reached and prevented the deceased from using the toilet even before making the payment of the cost of construction of that toilet.

17. Monu the brother of the deceased and brother-in-law of the injured Devi Dayal (PW-1 at the trial) was examined as PW-3 at the trial. He also proved that the occurrence took place on 26.05.2012 at about 06:30 PM, when the deceased wanted to use the toilet constructed near her house. As to his presence, he disclosed, at that time, he was visiting his sister and had reached her home six days earlier. As to the occurrence, he proved that the deceased was prevented from using the toilet by Sanjay who started abusing her. That was objected to by Devi Dayal (PW-1 at the trial). At that time the witness also reached the place of occurrence. He saw, Jagdish armed with a Spade/'*fawda*'; his wife Soniya armed with a Sabri; his son Sanjay armed with an Axe and his daughter Annu armed with a Sickle/'*hasiya*' assaulted the deceased and Devi Dayal (PW-1 at the trial). Both injured lost consciousness. On alarm being raised by the witness and others, the assailants fled. Both the injured were carried to the Government Hospital at Sonpur from where they were referred for higher medical facility at Allahabad. On way to Allahabad, the deceased died.

18. Thereafter Dr. Amit Prakash was examined as PW-4. He proved the Injury Report of Devi Dayal (PW-1 at the trial). In that he proved two injuries suffered by the injured on his neck measuring 7 cm x 3 cm on either side. Both were clean cut injuries. The injured had suffered excessive blood loss and his nerves were damaged. Hence, he was

referred to higher medical facility. He also proved that at the same time he had examined the deceased Sonu and noted two injuries suffered by her – one; on the back side of her head, being an incised wound 7 cm x 3 cm, bone deep with clean cuts and the second injury suffered by the deceased being 7 cm x 3 cm bone deep, on her left forearm.

19. Dr. A.K. Garothiya who conducted the postmortem on the dead body of the deceased was examined as PW-5. He proved the following injuries :-

“1- सिर के पीछे की तरफ बायीं तरफ 7 x 3 cm के आकार का लैसरेटेड घाव व बांये कान से 4 cm उपर था। सिर की हड्डी टूटी थी। घाव लाल / भूरा खून जमा हुआ था।

2- 5 x 2 cm के आकार का लैसरेटेड घाव चोट न० 1 से 4 cm उपर जो हड्डी तक गहरा था।

3- 5 x 1 cm के आकार का Incised था गर्दन में पीछे की तरफ मांस तक गहरा था।

4- 13 x 3 cm के आकार को Incised घाव सिर पर लगे कान से 2 cm उपर सिंह की हड्डी टूटी पड़ी थी। घाव के किनारे क्लीन कट था।

5- बाये हाथ की बाह में के 8 X 4 cm आकार का मांस तक गहरा Incised घाव था।”

20. He also proved the cause of death to be excessive blood loss and brain hemorrhage, resulting in shock.

21. Thereafter S.I. Ghanshyam Pandey, who had made the recoveries was examined as PW-6. He proved the registration of the FIR as well as the investigation and submission of charge sheet etc.

22. S.I. Meda Lal Verma who had prepared the Inquest Report was examined as PW-7. He proved the Inquest Report.

23. Thereafter the statement of the accused persons were recorded under Section 313 Cr.P.C.

24. Thereafter the defence also led evidence through Chota Patel (DW-1) and Shyam Sunder (DW-2) to set up a plea of self defence.

25. In such state of evidence, the learned Court below has convicted the appellants as noted above and sentenced them accordingly.

26. Submission of learned counsel for the appellants is that at most the occurrence may be described to be an offence under Section 304 IPC Part II. It is a self proven fact by the prosecution as is clearly borne out from the statements of the fact witnesses Devi Dayal (PW-1 at the trial), Meena Singh (PW-2 at the trial) and Monu (PW-3 at the trial), that the parties were not enjoying best relations from before. It had led to partition of their immovable properties such that the toilet which the deceased wanted to use fell in the share of appellant Jagdish. Second, though inconsistent account had been offered if such toilet had been locked or not and further inconsistent account has been offered if resistance was first offered by appellant Jagdish or his son Sanjay, assuming that such objection had been raised by the informant side, it is clearly proven that the occurrence was preceded first by objection raised by the appellants side to prevent use of the toilet by the deceased; second, by a verbal quarrel that escalated to expletives being hurled by both sides; third, to a physical assault not involving any weapon or equipment etc. Again both sides participated in the same; fourth, at the last stage, it has been claimed that the appellants brought Axe, Sabri, Spade /‘*fawda*’ and Sickle/ ‘*hasiya*’ from their house and caused the occurrence.

27. On the fourth aspect, it has been stated that in the first place none of the weapons assigned is a lethal weapon known or used as such. These are agricultural implements that are commonly available in any agriculturist family. Second, those were not brought to the place of occurrence from any far off place but as the prosecution has narrated, from the adjoining house. Properties of the parties being one that had undergone partition, the prosecution did not lead any evidence to establish that the place of occurrence, the toilet and the house of the appellants were situated at considerable distance from each other. In fact the clear suggestion that is

inherent in the prosecution evidence is that all were part of the same property demarcated by partition between the three brothers, namely, the appellant Jagdish, Devi Dayal and Hemraj. Third, in the context of such facts, it could never be said that there was any premeditation on part of the appellants as they had only intended to prevent the deceased from using their toilet. Therefore, the occurrence may not be described to be one wherein the appellants had taken undue advantage of the situation or acted in a cruel or unusual manner. Reliance has been placed on a decision of the Supreme Court in *Rampal Singh versus State of Uttar Pradesh, (2012) 8 SCC 289*.

28. On the other hand learned AGA would submit that the defence could not establish that it had exclusive right to use the toilet. They deliberately and purposely obstructed the deceased from using that toilet to cause the occurrence. On resistance being offered by the deceased and her husband, they were brutally assaulted repeatedly by all the assailants who came to be armed with weapons as have resulted in fatal injuries. Only because of timely alarm raised, the injured Devi Dayal survived. Therefore elements of premeditation exist and are established. Also, the appellants have taken undue advantage in a petty quarrel and acted in a cruel and in any case unusual manner in assaulting the injured and the deceased, brutally. Last, it has been emphasized that in any case the appellants remained the aggressor. Therefore, the present case may not fall within the exception 4 to Section 300 IPC.

29. Having heard learned counsel for the parties and having perused the record, in the first place we note that no other challenge has been raised in the present appeal barring that which has been noted by way of submissions advanced by learned counsel for the appellants. Therefore, the only issue to be considered is if the ingredients of offence alleged under Section 300 IPC were established beyond reasonable doubt or if the evidence led by the prosecution only established occurrence under Section

304 Part II IPC.

30. In view of the above, neither the place or time of occurrence is disputed nor the presence of Devi Dayal (PW-1 at the trial), Meena Singh (PW-2 at the trial) and Monu (PW-3 at the trial) is disputed. Those are eye witnesses of the occurrence. Though Devi Dayal (PW-1 at the trial) had during his cross examination Devi Dayal (PW-1 at the trial) further proved that toilet had been locked from before, he further proved that the verbal altercation that arose lasted between the parties only for a few minutes (described as two minutes). He first denied that at the time of the verbal altercation the accused were armed. However, he immediately made another statement that they were armed. He also proved that before the occurrence his brother-in-law Monu (PW-3 at the trial), his brother Hemraj (not examined in the trial) and Meena Singh (PW-2 at the trial) as also Vijay Singh (not examined at the trial) had arrived. Therefore he placed Monu as an eye witness of the occurrence.

31. Monu is the brother of the deceased Sonu Devi. His presence, as claimed by the prosecution, is also not disputed by the defence. He had vital interest in the prosecution story being proven as his sister died in the occurrence. During his cross examination he gave a detailed account of how the occurrence unfolded. In that he disclosed that before the physical assault began, the accused were hurling expletives at the informant side. That lasted for some time whereafter the parties got involved in a physical assault situation which he described in his words “**उसके बाद मार पीट हुआ था** ”. Thereby, he clearly indicated to the Court that both parties were assaulting each other without arms. He clarified that before such assault began, the appellant side was not armed. However, he tried to prove that they were already prepared and had kept their arms ready which he saw them bring to the place of occurrence. Clearly, that would have taken place after the parties had been engaged in a physical assault situation - with both sides participating in the same. Meena Singh (PW-2 at the trial)

did not prove anything more.

32. In the state of that evidence, we have to examine if exception 4 to Section 300 IPC would apply. For ready reference it reads as below :-

“ Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault. ”

33. First, it is the prosecution story that the toilet that the deceased wanted to use fell in the share of appellant Jagdish, under a family partition. That is the prosecution story and not the defence claim.

34. Second, it is also the prosecution story that the occurrence was preceded by a verbal objection raised by the appellant side to prevent the deceased from using that toilet that they claimed in their share, under a family partition. That toilet was also described by Meena Singh (PW-2 at the trial) to have been locked from before and was not being opened by the appellant side on being asked to open the same. It is on that occurrence that the prosecution story progressed that there first occurred a verbal altercation that escalated to expletives being hurled. That escalated to a physical assault by both sides. It culminated in the final assault. Therefore, no element of premeditation was proven by the prosecution, in that nature of the occurrence. Rather, the prosecution story narrates that one occurrence led to the other and finally it culminated in assault with weapons / agricultural implements.

35. Third, in that context, we are also inclined to accept that a sudden fight had occurred between the parties wherein one side was insisting to use a toilet and the other was resisting the same on the strength of its claim to title in the property. That claim to title has also been proven by the prosecution.

36. Fourth, as to heat of passion on such sudden quarrel, the prosecution evidence has itself established that first the parties entered into a verbal altercation which escalated to expletives being hurled at each other. That followed physical assault wherein both sides may have participated. At that stage the assault with agricultural implements had arisen. We are mindful that there is no narration in the prosecution story that the sequence of events was interrupted or broken as may allow for any possibility of premeditation to arise at that later stage or as may allow any room to admit any element of undue advantage or cruel or unusual conduct. It is that heat of passion that emerged as result of the sequential play of events proven by the prosecution, that led to the occurrence wherein blows were caused with agricultural implements-blunt and sharp edged, both.

37. Keeping in mind, the explanation to Exception-4, it is also not relevant to the present facts if the appellant side was the aggressor or it had offered provocation. Therefore, the submission advanced by learned AGA that the appellants had set up the situation by locking up the toilet and had given a disproportionate aggressive response to the efforts of the informant side to open the toilet, is also not material in the present facts. In the context of prior partition proven, it is a possible fall out ever of that partition.

38. 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)

39. 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)

40. 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)

41. 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."

42. In a recent decision of the Supreme Court in **Anbazhagan Vs. The State, Represented by the Inspector of Police, 2023 SCC OnLine SC 857**, the Supreme Court has again made analysis and the difference between murder and culpable homicide not amounting to murder. The Supreme Court summarized the principle as below:

"66. Few important principles of law discernible from the aforesaid discussion may be summed up thus:—

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

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

offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

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

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

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

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

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

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses

of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

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

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

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

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

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

43. In Jhaptu Ram versus State of Himachal Pradesh (2014) 12 SCC 410, after consideration of the facts. 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.”

44. Accordingly, the charge against the appellants is altered from 302 IPC to 304 Part II IPC. They are convicted accordingly. As to sentence, we note that the appellant Jagdish has remained confined for more than ten years and the appellant Soniya has remain confined for more than four years.

45. As to offence under Section 307 IPC, in view of the nature of injuries suffered by Devi Dayal (PW-1 in the trial) and in view of the discussion made above, we find that the ingredient of the offence may not travel beyond Section 324 IPC. The order of learned Court below is modified accordingly.

46. In view of the above discussion, the appeal is **partly allowed**. The conviction of the appellants is modified to under Section 304 Part-II IPC read with Section 34 IPC and the sentence awarded to them is modified to sentence undergone by them. Both the appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged. Both the appellants are 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. Also, the appellants are fined Rs. 25,000/- each. That may be paid within a period of two months for the offence under Section 304 IPC. In default of payment of fine, the appellants shall undergo

imprisonment of three months. The appellants shall also pay a fine of Rs.5,000/- each for the offence under Section 324 IPC read with Section 34 IPC. In default of payment of fine, the appellants shall undergo imprisonment of one month.

47. Copy of this judgment along-with original records 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.

Order Date :- 25.7.2025

I.A.Siddiqui

(Hon'ble Anil Kumar-X,J.) (S.D. Singh, J.)