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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 136/2016**

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Judgment reserved on: 4th May, 2016
Judgment pronounced on 13th May, 2016

SATISH KUMAR Appellant
Through : Mr. S. N. Gupta & Mr. Gurdeep Singh,
Advocates
Versus
STATE Respondent
Through : Ms. Anita Abraham, APP for the State.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Present appeal was listed for hearing on an application filed by the appellant seeking for regular bail. Both the parties urged that they were ready with the matter and instead of hearing the bail application the appeal be set down for final hearing. On request the appeal is heard finally.
2. This is an appeal preferred under Section 374 read with Section 482 of the Code of Criminal Procedure and is directed against the judgment dated 13.07.2015 and order on sentence dated 16.07.2015 passed by ASJ (South-West), Dwarka Courts, Delhi in Sessions Case No. 40/13, by virtue of which the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- and in default of the payment of fine to further undergo simple imprisonment for a period of five months.

3. The brief facts of the case as noticed by the trial court are as under:

“On 21.12.2012, on receipt of DD No. 25A regarding admission of injured Pankaj with stabbed injuries at DDU hospital, ASI Onkar Singh alongwith Ct. Satpal went to the DDU hospital, where injured Pankaj was found admitted vide MLC No. 26722/12 and he was declared unfit for statement and accordingly the said DD No. 25A was kept pending. On 22.12.2012, injured Pankaj was declared fit for statement accordingly ASI Onkar Singh recorded the statement (Ex. PW18/B) of injured Pankaj, wherein he stated that in the month of November, Satish had a quarrel with his brother Karan and he had beaten him at that time and due to said quarrel, there was tension between him and Satish. He further stated that on 21.12.2012 at about 7:30 P.M., he had gone to meet Vicky and at Pandit Chowk, Raj NagarII, Palam Colony, Delhi, Satish met him and he had an altercation with him and during the said quarrel, Satish stabbed him with a knife as a result of which he sustained injuries in his abdomen and fell down and his friend Raj Kumar got him admitted in the hospital. In his statement, injured Pankaj also stated that while stabbing, Satish was saying that “Tujhe Upar Pahuncha Daita Hun” and that Satish had committed deadly assault upon him and has stabbed him with a knife and caused injuries to him and legal action may be taken against him.

On the basis of the abovesaid statement (Ex. PW18/B), a rukka (Ex. PW18/C) was prepared by ASI Onkar Singh and the same was sent to P.S. Palam Village through Ct. Rajesh for the registration of the case and accordingly, the present case was registered vide FIR No.349/12 at

P.S Palam Village and the case was assigned to ASI Onkar Singh, for investigation.

On 02.01.2013, information regarding death of Pankaj was received from DDU hospital vide DD No. 23A and accordingly, Section 302 IPC was added in this case and investigation of the case was taken over by Insp. Sunder Singh, SHO, PS : Palam Village.

In brief, case of the prosecution is that on 21.12.2012 at about 7:30 P.M., near H. No. RZF-1130, Lohia Marg, near Pandit Chowk, Raj NagarII, Palam Colony, Delhi within the jurisdiction of PS Palam Village, accused Satish Kumar stabbed deceased Pankaj with a knife with intention to kill him and consequent to the said injuries, deceased Pankaj expired in DDU hospital on 02.01.2013.

2. On completion of the investigation, the charge sheet was filed. After committal, the arguments on the point of charge were heard and on the basis of the material on record, charge for committing the offence punishable u/s 302 IPC was framed against accused Satish Kumar by the Ld. Predecessor of this court, to which the said accused pleaded not guilty and claimed trial.”

4. To bring home the guilt of the appellant the prosecution examined twenty seven witnesses in all. The statement of the appellant was also recorded under Section 313 of the Code of Criminal Procedure wherein he denied all the allegations and claimed to have been falsely implicated in the case.
5. Challenging the findings of the trial court, Mr. S. N. Gupta, learned counsel appearing on behalf of the appellant contended that the

judgment of the trial court is contrary to the facts and law and same is based on surmises and conjectures. The counsel further contended that the prosecution has failed to prove its case beyond reasonable doubt and overlooked the basic principles of criminal jurisprudence.

6. The counsel for the appellant has challenged the veracity of the dying declaration recorded by the Investigating Officer as being not trustworthy, believable and not proved beyond reasonable doubt.
7. Counsel for the appellant further submits that the trial court has erred in convicting the appellant on the basis of the statement of the deceased recorded by the Investigating Officer ASI Onkar Singh which was treated as dying declaration and converted into rukka.
8. It was further submitted that the above said ruqqa was recorded in the presence of PW19 Constable Rajesh Kumar and mother of the deceased. However, the mother of the deceased was not examined by the prosecution and PW19 did not utter a single word in his testimony before the court with regard to his presence in the hospital when he alleged dying declaration was made.
9. The counsel further submits that there is no other corroborative or circumstantial evidence to prove the guilt of the appellant and the prosecution has failed to establish a cogent link of evidence to fasten the criminal liability on the appellant.
10. The counsel for the appellant alleged that the investigation in the present case is doubtful and creates a dent in the case of the prosecution.
11. Counsel for the appellant contended that the cause of death was a result of septicemic shock and not as a result of the injuries inflicted

on her. It was fervently urged that if the injured would have been treated properly then the deceased would have been saved and thus, the injury was not sufficient to cause death.

12. To substantiate his arguments, learned counsel for the appellant has relied upon *Ramsai and others Vs. State of Madhya Pradesh* reported in *AIR 1994 SC 464*, *Darshana Devi Vs. State of Punjab* reported in *1995 Supp (4) SCC 126* and *Paramjit Singh and others Vs. State of Punjab and others* reported in *1997 A. Cr. R. 298 (S.C.)*
13. Per contra, Ms. Anita Abraham learned counsel appearing on behalf of the State contends that the trial court has considered all the relevant facts and rightly relied upon the dying declaration of the deceased in convicting the appellant herein.
14. In support of the impugned conviction and sentence, the counsel for the State strenuously submitted that there were no irregularities or inconsistencies found in the impugned judgment and deserves no interference by this Court.
15. The counsel for the State has relied upon *Kans Raj vs. State of Punjab and others* reported in *AIR 2000 SC 2324*, the relevant para is as under:

“...The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of

such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement.”

16. Reliance was also placed by the learned counsel for the State on ***Laxman vs. State of Maharashtra*** reported in ***AIR 2002 SC 2973*** wherein it was held that:-

“....There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind.”

17. The counsel further relied on ***Anil Kumar vs. State*** reported in ***2014 (1) JCC 256***, the relevant para 13, 18, and 20 are as under:

“13. As would be seen from the above, the statement which was made by the victim Trilok Chand to ASI Balbir Singh-PW18 ultimately turned into his dying declaration after he had succumbed to his injuries on the fateful day of 15.11.1985. Had he remained alive, his statement would have been considered under Section 161 Cr.P.C. which could be useful only to corroborate or contradict him during his deposition in the court, however, in a case where such victim dies, the same statement becomes substantive piece of evidence under Section 32(1) of the Indian Evidence Act (hereinafter referred to as IEA). The death, however, in such cases should be proximate in time and as a result of the injuries caused to the victim and not because of any negligence or external factor.

18. In the light of the aforesaid settled legal position, we do not find that the counsels for the appellants could succeed in creating any suspicion to doubt the credibility, truthfulness and trustworthiness of the statement made by the deceased, who was declared medically fit by the attending Dr. Padmalaya Devi. We also cannot lose our sight from the fact that the testimony of PW-23, who had proved the endorsement of Dr. Padmalaya Devi on the dying declaration of Trilok Chand, remained unchallenged and unrebutted as he was not cross-examined by the defence witness. No question was put to PW-18 ASI Balbir Singh about the fitness of the deceased and about his not contacting the area SDM and on the other material aspects, and therefore, also the defence cannot raise all these pleas which were not put by the defence to the prosecution witnesses.

20. Deceased Trilok Chand who had received 17 injuries on his body must have seen his death very near and therefore, he was not expected to make any false statement to ASI Balbir Singh or to have falsely implicated accused persons who were in fact well known to him and who wanted to teach him a lesson for having dared to ask for return of his money. The said dying declaration made by the deceased also finds its corroboration from the evidence of PW4-Gyan Chand & PW5-Pritam. PW4-Gyan Chand, is the real brother of the deceased Trilok Chand and he had gone to visit RML hospital to meet his brother on the evening of 06.09.1985 and he had enquired from his brother as to who had stabbed him and in answer to the same, the deceased had named these accused persons who had injured him with the help of knives. To the same effect is the deposition of PW5-Pritam, who also happens to be the brother of the deceased and had visited the hospital after the said incident. The learned Trial Court is right in observing that the statement made by the deceased to his said two brothers also amounts to dying declaration and the same

were totally in consonance with his own statement as made by him to the ASI Balbir Singh. The corroborative evidence of PW-4 and PW-5 further lend support in accepting the dying declaration made by the deceased being most truthful, reliable and free from any kind of suspicion or doubts.”

18. We have heard the learned counsel for the parties and perused the record and also examined the judgment in detail rendered by the trial court.
19. The sole question that arises before us is that whether the dying declaration made by the deceased vide Ex.18/B, before the Investigating Officer ASI Onkar Singh can be treated as a dying declaration?
20. Learned Counsel for the appellant contended that this statement cannot be treated as a dying declaration for the reasons:
 - (i) that it was recorded in the presence of PW19 Constable Rajesh Kumar and mother of the deceased. However, PW19 did not utter a single word in his deposition in this context. Further, mother of the deceased was not examined by the prosecution as witness;
 - (ii) that the doctor who declared the deceased to be fit to make the statement had not been examined;
 - (iii) that the statement Ex.18/B had not been recorded by the Doctor nor by the S.D.M., therefore, it creates a doubt about it being the statement of the deceased; and finally
 - (iv) that reliance on MLC Ex.18/B was misplaced as it was not proved properly nor the Doctor who conducted the post-mortem was examined.

21. At the outset before delving into the merits of the submissions made by the counsel for the parties, it would be necessary to have a look at the law relating to dying declaration i.e. Section 32 of the Indian Evidence Act which reads as under:

Section 32: Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

When it relates to cause of death:

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

22. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. It is material to note that such statements are

relevant whether the person making them was or was not under expectation of death at the time when such statements were made.

23. The legal position about the admissibility of a dying declaration is settled by the Apex court in several judgments. The similar issue has been dealt by the Hon'ble Supreme Court in ***Munnu Raja & Anr vs The State of Madhya Pradesh*** reported in **1976 AIR 2199**, wherein the Apex court held as under:

“The learned Sessions Judge probably assumed that since the statement was recorded as a first information report, it could not be treated as a dying declaration. In this assumption, he was clearly in error. After making the statement before the police, Bahadur Singh succumbed to his injuries and therefore the statement can be treated as a dying declaration and is admissible under section 32(1) of the Evidence Act. The maker of the statement is dead and the statement relates to the cause of his death.”

24. In ***Banarsi Dass & Ors vs State Of Haryana*** reported in **(2014) 15 SCC 485**, the Apex court highlighted the essential ingredients before placing reliance on the dying declaration which are as under:

“A bare analysis of the provision, for the purpose of the case at hand, would show that a statement by a person made before his death to be relevant, the following ingredients are to be satisfied:

- a) The statement is made by a person who is conscious and believes or apprehends that death is imminent.*
- b) The statement must pertain to what the person believes to be the cause or circumstances of death.*
- c) What is recorded must be the statement made by the person concerned, since it is an exception to the rule of hearsay evidence.*

*d) The statement must be confidence bearing, truthful and credible as held by this Court in **Laxman v. State of Maharashtra 1974 SCC (1) 309** and consistently followed including the very recent one in **Mallella Shyamsunder v. State of Andhra Pradesh (in Criminal Appeal No. 1381 of 2011 decided on 29.10.2014)**.*

e) The statement should not be one made on tutoring or prompting.

f) The court may also scan the statement too see whether the same is prompted by any motive of vengeance.”

25. In view of the above, the grounds of admission of dying declaration are **firstly**, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and **secondly**, the sense of impending death, which creates a sanction equal to the obligation of an oath. If it fulfills both the grounds, the dying declaration can be admissible in evidence. There is no doubt that the court has to satisfy itself as to the fact that the deceased was in a fit state of mind and was capable of making the statement at the time when such dying declaration is purported to have been made.
26. Since no one saw the deceased being stabbed by the appellant, therefore, we have to see what circumstantial evidence had been produced by the prosecution to prove the guilt of the accused. Before we deal with each of the circumstance, we may also examine the motive in the present case which plays an important role in a case based on circumstantial evidence.
27. In order to prove motive, prosecution examined PW1 Karan (brother of the deceased) who deposed as under:

“Accused Satish and one Sanju used to harass me while going to school and they used to snatch money. Said Sanju was my classmate and Satish was the friend of Sanju. In the month of October, again said, in the month of November, 2012, I was going to deposit school fee, accused Satish and his friend Sanju met me on the way and they snatched money from me. When I tried to stop them, accused Satish gave beatings on my face with Water Tap due to which my tooth was broken. I informed my brother Pankaj in this regard. My brother Pankaj wanted to meet Satish in this regard. On 21.12.2012 at about 7:30 P.M, accused Satish met with my brother at Pandit Chowk, Raj Nagar. Later on I came to know that accused Satish murdered my brother by causing injuries with the knife. I also came to know that on that day that my brother was shifted to DDU hospital. I alongwith my mother went to DDU Hospital where my brother Pankaj was found admitted in unconscious condition. Accused Satish was apprehended by the police on 22.12.2012. My statement was recorded by police on 15.03.2013.”

28. PW1 Karan in his cross examination stated as under:

“At about 7.30 PM, I came to know that my brother was beaten by accused Satish. The said information was given to me by one Vipin, friend of my brother. At that time, I was present at my house and I just came from my school and changing my school uniform. Vipin came to my house and given the said information. At that time, I alongwith my mother and sister were present at my house. The distance between my school and my house is of about 10 minutes walk. The timings of my school are from 12.30 PM to 6.30 PM. On that day, It took about 10-15 minutes to reach my house. Presently, I am studying in class XIth in Govt. Boys Senior Secondary School. Sanju was my classmate when I was in class VIII and thereafter he left the school. I used to deposit the school fee quarterly. My quarterly school fee was Rs. 75/-. Sanju and accused Satish both had snatched money from me. It is wrong to

suggest that during the month of October-November, 2012, accused Satish was not in Delhi. I do not know whether accused Satish is student of engineering. It is wrong to suggest that accused Satish did not snatch any money from me. I had taken treatment from a Doctor in Singhal Hospital, Manglapuri regarding breaking of tooth. I had not given any treatment slip to the IO in this regard. It is wrong to suggest that my tooth was broken in my childhood or that I am giving false statement in this regard. I had taken the treatment on 08.11.2012 at about 7.30 PM to 8.00 PM. My brother Pankaj talked to Satish on the next day of 09.11.2012. I do not remember the name of the doctor from whom I had taken the treatment. On 21.11.2012, the incident took place at about 7.30 PM. On that day I met with my brother in the morning and thereafter I met with him in the night. My statement was recorded at about 11.00 AM to 12.00 Noon on 15.03.2013. I had not signed any paper. I had never gone anywhere with the police during investigation. It is wrong to suggest I am deposing falsely as deceased was my brother.”

29. Thus, guided by the dictums laid down by the Hon'ble Supreme Court and this Court in the aforesaid decisions, let us examine the facts and circumstances as well as the evidence involved in the case in hand and the circumstances relied upon by the prosecution. In the present case, it is in evidence that the statement Ex.PW18/B of the deceased was recorded by PW18 ASI Onkar Singh only after obtaining permission from Dr. Nalin who made an endorsement on the document Ex.PW18/A, which was duly proved on record by PW27 Dr. Irfan. This factum of the deceased being fit for statement is also evident from the MLC which clearly states that the deceased was conscious and oriented when brought to the hospital.

30. To analyse the validity of the rukka which was later converted into dying declaration, it would be necessary to mention the view taken by this Court in ***Mohd. Islam vs. State (NCT of Delhi)*** reported in **2001 (59) DRJ 426**, wherein this court has discussed the admissibility of the dying declaration recorded by the police official and it was held as under:

“So far as Ex.PW-17/A is concerned, it stood proved by the testimony of Inspector Roshan Lal (PW-17). He recorded the deceased's statement after doctor declared him fit to make the statement. Inspector Roshan Lal (PW-17) completed the recording of deceased's by about 1.00 P.M. He requested the doctor on duty i.e. Dr. Neeraj Gupta to endorse the same. Dr. Neeraj Gupta did endorse the statement of the deceased Ex.PW-17/A at point 'B'. Inspector Roshan Lal (PW-17) identified the endorsement in the handwriting of Dr. Neeraj Gupta at point 'A' which according to Inspector Roshan Lal was endorsed by the doctor in his presence. Dr. Neeraj Gupta signed at point 'A' in the presence of the I.O. Hence, Ex.PW-17/A on the basis of which rukka was issued and which became a dying declaration after the death of the deceased stood duly proved by the testimony of Inspector Roshan Lal (PW-17). Even if Dr. Neeraj Gupta could not be examined because of his non-availability, it would not render the dying declaration in question unreliable or illegal. As mentioned above, the deceased was found conscious when brought to the hospital at about 11.00 O'Clock. At 12.05 again Dr. Neeraj Gupta declared him fit to make the statement and in fact statement of the deceased was recorded immediately thereon by the I.O. as proved on record vide Ex.PW-17/A. The said statement of the deceased was got foot marked by the I.O. in the presence of the doctor on duty which is apparent when doctor endorsed the same. On the basis of Ex.PW-17/A rukka was prepared and sent at 1.40 AM in the

intervening night of 6th & 7th April, 1994 to the police station for registration of the case. It shows that the said dying declaration was recorded by the I.O. in the presence of the doctor. Therefore the contention of the counsel for the appellant that since dying declaration was not recorded by a doctor does not materially effect the case of the prosecution. So far as the objection that dying declaration was not recorded by a SDM, to our mind, the Explanation given by the counsel for the State has merits. There was hardly any time for the IO to call the SDM. Had the IO not recorded the statement of the deceased vide Ex.PW-17/A perhaps the prosecution would have been deprived of even this statement recorded vide Ex.PW-17/A. It would not have been available. Possibility of deceased thereafter losing consciousness cannot be ruled out particularly when we know that deceased had 95% to 97% burn and time was too short with the I.O. To avoid any such possibility I.O. recorded the statement immediately when doctor on duty declared the deceased fit to make the statement coupled with the fact that that statement has been duly endorsed by Dr. Neeraj Gupta. Such a statement vide Ex.PW-17/A, Therefore, cannot be held to be inadmissible in evidence. In the circumstances of this case we find no infirmity in this dying declaration as recorded by the I.O. and having been endorsed by the doctor on duty.”

31. In the case of ***Dalai Singh and others Vs. State of Punjab***, reported in ***1979 SCC (Crl.) 968***, the Apex Court observed that:

“It is better to leave such dying declaration out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a doctor.

It is not that such dying declarations are always untrustworthy, but better and more reliable methods of recording dying declaration of an injured person should be taken recourse to and the one recorded by the police

officer may be relied upon if there was no time or facility available to the prosecution for adopting any better method.”

32. After perusal of the above judgements, it is clear that even an Investigating Officer is competent to record the statement of an injured person at any point of time. In the present case, the investigating officer meticulously recorded the statement of the deceased which was endorsed by the Doctor on duty. This fact stood proved by the testimony of PW19 Constable Rajesh Kumar who deposed that he was present at the time of recording of the statement by PW18 ASI Onkar Singh. The statement recorded by the PW18 which was later converted into rukka was treated as a dying declaration by the trial court. Taking into account all these circumstances, we conclude that it is clear that at the time of making dying declaration (Ex. PW18/B), the deceased was in a fit state of mind and was capable of making the statement. Furthermore, the above said dying declaration was also corroborated by PW1 Karan (brother of the deceased) who was duly cross examined by the counsel for the appellant, but nothing material had come on record which could disbelieve the credibility or trustworthiness of this witness. From perusal of the above testimonies as well as the law laid down by the different courts, we affirm the view taken by the trial court that the dying declaration recorded by the Investigating Officer is trustworthy, believable and admissible in law.

Whether it is a case of ‘murder’ or ‘culpable homicide’

33. PW11 Dr. Vineet Kumar on the MLC Ex.PW11/A opined that the deceased when brought to the hospital was conscious and oriented. This circumstance amply proves the case of the prosecution that when the statement of the deceased was recorded, he was in a fit state of mind.
34. PW13 Dr. B.N. Mishra who conducted the postmortem on the body of the deceased deposed that the cause of death was due to septicaemia caused by peritonitis consequent upon tearing of large intestine (left side of colon) and left kidney by sharp pointed weapon and it has also been deposed that external injury no.1 i.e ***“One incised stab wound (stitched) of size 2 cm x deep to abdominal cavity present on the left lumber region just below 12th rib at mid axillary line with partly healed up”*** was sufficient to cause death in the ordinary course of nature.
35. It is also worthy to mention here that the weapon of offence, a knife was examined by Dr. B. N. Mishra, who prepared a diagrammatic sketch of the weapon vide Ex.PW13/B and recorded as under:

<i>“Length of Blade</i>	=	<i>8 cm</i>
<i>Length of Handle</i>	=	<i>10 cm</i>
<i>Total length of Knife</i>	=	<i>18 cm”</i>

36. From perusal of the above medical testimonies it has come on record that the death was due to septicaemia caused by peritonitis. PW13 Dr. B. N. Mishra who deposed regarding weapon of offence that the knife could have been used for the infliction of injuries and the torns clothes of the deceased also affirm the injuries on the body of the deceased. It

has also come on record that the cause of death was an external injury i.e. injury no.1 which was sufficient to cause death in the ordinary course of nature. It is relevant to mention that a notification dated 29.10.1980 has been issued by Deputy Secretary, Home (G), Delhi Administration, Delhi wherein it has been specifically mentioned that no person can possess a sharp edged weapon having length of the blade more than 7.62 cms. In the present case the length of the blade was 8 cms which narrowly exceeds the notified permissible limit which goes to prove that it was a simple knife generally available.

37. In the case of **Arun Raj vs. Union of India and Ors.** reported in **(2010) 6 SCC 457**, the Hon'ble Supreme Court held as under:

“.... the appellant's learned Counsel contended that the fact that there was one single blow struck, proves that there was no intention to cause death. In support of the plea, reliance is placed on the decisions of this Court in the case of Bhera v. State of Rajasthan: (2000) 10 SCC 225, Kunhayippu v. State of Kerala: (2000) 10 SCC 307, Masumsha Hasansha Musalman v. State of Maharashtra (2000) 3 SCC 557, Guljar Hussain v. State of U.P. 1993 Supp (1) SCC 554, K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309, Pappu v. State of M.P. (2006) 7 SCC 391, Muthu v. State by Inspector of Police, Tamil Nadu (2007) 12 Scale 795. A brief perusal of all these cases would reveal that in all these cases there was a sudden and instantaneous altercation which led to the accused inflicting a single blow to the deceased with a sharp weapon. Hence, there has been conviction under Section 304 Part II as delivering a single blow with a sharp weapon in a sudden fight would not point towards intention to cause death.”

38. After perusing the above settled position, the next question for consideration is whether the evidence brought on record by the prosecution establishes the guilt against the appellant a case of “**murder**” or in the alternative a case of “**culpable homicide not amounting to murder**”?
39. Both the said offences involve killing of a person. “**Murder**” is an aggravated form of “**culpable homicide**”. Section 299 of the Indian Penal Code defines the offence of culpable homicide and Section 300 deals with murder. Section 299 explains “**culpable homicide**” and sets out the circumstances when culpable homicide amounts to murder and when it does not amount to murder. As per Section 300, existence of one of the four conditions, enumerated therein, which basically reflect four mental attitudes, turns “**culpable homicide**” into “**murder**”, while the three exceptions therein again reduce the offence of “**murder**” to “**culpable homicide not amounting to murder**”. The distinction between “**murder**” and “**culpable homicide not amounting to murder**” is very thin and in fact has always been a vexed question. Therefore, the question posed has to be examined carefully in the light of the broad principles laid down in the judicial pronouncements.
40. So far as converting the case from Section 302 to Section 304 Part I or 304 Part II of the Indian Penal Code is concerned, each case has its peculiar facts and justification for it. In **Jagtar Singh vs State of Punjab (1983) 2 SCC 342**, the Apex Court has observed that:

“The question is whether in the circumstance in which the appellant gave a blow with a knife on the chest, he could be said to have intended to cause death or he could be imputed the intention to cause that particular injury

*which has proved fatal? The circumstances in which the incident occurred would clearly negative any suggestion of premeditation. It was in a sudden quarrel to some extent provoked by the deceased, that the appellant gave one blow with a knife. We cannot confidently say that the appellant intended to cause that particular injury which is shown to have caused death. There was no pre-meditation. There was no malice. The meeting was a chance meeting. The cause of quarrel though trivial was just sudden and in this background the appellant, a very young man gave one blow. He could not be imputed with the intention to cause death or the intention to cause that particular injury which has proved fatal. Neither para 1 nor para 3 of Section 300 would be attracted. We are fortified in this view by the decision of this Court in **Jagrup Singh v. State of Haryana**. It was subsequently followed in **Randhir Singh @ Dhire v. State of Punjab and Kulwant Rai v. State of Punjab**. Following the ratio of the aforementioned decisions, we are of the opinion that the appellant could not be convicted for having committed murder of the deceased Narinder Singh. His conviction for an offence under Section 302 IPC and sentence of imprisonment for life are liable to be set aside.”*

41. In **Shanmugam v. State of T.N.** reported in **AIR 2003 SC 209**, the Apex Court held as under:

“The accused stabbed the deceased, over a petty quarrel, with a spear in the abdomen and chest. The victim died after a week of septicaemia. The court imputed to the accused the intention of causing severe injury. He was punished under Part-I of Section 304.”

42. In **Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648**, where the court held:

“..... For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death....”

43. In a case decided by this Court in ***Crl. A. No.134/2009*** titled as ***Jagtar Singh @ Jagga @ Ganja Vs.State of Delhi***, there were two injuries on the neck and two in the chest, of the deceased, caused by a sharp edged weapon. There were other minor injuries and abrasions; in all there were nine injuries. According to the doctor who conducted the post mortem of Parveen's body, the shock caused as a result of the injuries to the neck and chest was sufficient to cause death in the ordinary course of nature. The surrounding circumstances in the case pointed to some previous quarrel between the deceased and the appellant; the latter was agitated and confronted the deceased in the first part of the incident; on the day of occurrence. It was held that though the appellant inflicted several blows some of which were fatal, it is clear that he did not set out with a pre-mediated intention to kill the deceased. The facts clearly established an offence under Section 304 Part-I of the Indian Penal Code in which intention was to cause such bodily injuries as would have resulted in death in the ordinary course of nature.

44. While deciding the present appeal the aforesaid principles culled out by the Apex Court are to be kept in view. In the aforesaid factual matrix, it is clear that there was no pre-meditation and no intention to kill the deceased can be attributed to the appellant. The deceased went to meet his friend Vicky at Pandit Chowk, Raj Nagar II, Palam Colony, Delhi and by chance happened to meet the appellant. Therefore, intention to kill the deceased has not been proved. In the backdrop of these mitigating factors, the appellant is not liable to be convicted for having committed the murder of the deceased.
45. Applying the above settled principle of law which has been enumerated in the aforementioned cases to the present case, the conviction of the appellant under Section 302 of the Indian Penal Code cannot be sustained. In our considered view, the appellant ought to have been convicted under Section 304 Part I of the Indian Penal Code instead of under Section 302 of the Indian Penal Code.
46. Resultantly, we partly allow the Criminal Appeal 136 of 2016 preferred by the appellant to the extent that instead of Section 302 of the Indian Penal Code the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part I of the Indian Penal Code. As per the latest nominal roll the appellant has undergone a period of 3 years and 5 months. We are of the opinion that the ends of justice would be met if we modify the sentence awarded to the appellant and sentenced to undergo rigorous imprisonment for a period of seven years. The fine imposed upon the appellant and the default sentence awarded to him

shall remain unaltered. Accordingly, the order of conviction and sentence are modified in the above terms.

47. Trial Court record be returned.
48. Copy of this judgment be sent to the Superintendent- Central Jail, Tihar for updating the jail record.

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49. In view of the order passed in the appeal, the present application is rendered infructuous.
50. Application stands disposed of.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

MAY 13, 2016

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