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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL. A. 622/2014

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Judgment dated 28.03.2016

SOHEL AHMED

..... Appellant

Through : Mr. K. Singhal, Advocate.

Versus

STATE

..... Respondent

Through : Ms. Aashaa Tiwari, APP for the State with
SI Ramesh Kumar, PS-Sultan Puri.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Present appeal has been preferred by the appellant under Section 374 of the Code of Criminal Procedure against the judgment dated 25.07.2013 whereby the Additional Sessions Judge-01, Rohini, Delhi in Sessions Case No. 28/12 held the appellant guilty for the offences punishable under Sections 302 and 324 of the Indian Penal Code read with Section 27 of the Arms Act and vide order dated 05.08.2013 sentenced him to undergo imprisonment for life and to pay a fine of Rs.20,000/- and in default of payment of fine simple imprisonment for six months for the offence under Section 302 of the Indian Penal Code. The appellant was further sentenced to undergo rigorous imprisonment for a period of 3 years with a fine of Rs.5,000/- and in default of payment of fine simple imprisonment for three months for the offence punishable under Section 324 of the Indian Penal Code. The appellant was also sentenced to undergo rigorous imprisonment

for 5 years with a fine of Rs.5,000/- and in default of payment of fine simple imprisonment for 3 months for the offence under Section 27 of the Arms Act. All the sentences were ordered to run concurrently.

2. The prosecution case in a nutshell is that on 18.12.2011, an information was received in PCR that one person had been stabbed in a quarrel; that DD No. 49A was recorded to this effect and assigned to SI Kulvir Singh who along with Ct. Prakash reached at the spot where Ct. Vijender met him and produced the accused and stated that accused had stabbed Suresh Chand and his son and injured persons had been removed to the hospital; that SI Kulvir Singh recorded the statement of Suresh Chand to the effect that the accused along with Luvkush came to his house and asked to give Rs.100/- and that when he refused to give him the money, the accused attacked him with a knife and stabbed him on his abdomen and right thigh; that Luvkush fled away from the spot; that when Suresh Chand called his son Laxman, he came from upstairs and tried to apprehend the accused but accused stabbed him also; that Suresh Chand and his son managed to apprehend the accused; that family members of Suresh Chand brought him to the hospital; that statement of injured Laxman was recorded and an FIR was registered under Section 307 of the Indian Penal Code and Section 27 of the Arms Act; that the accused was arrested and his confessional statement was recorded; that after 14 days injured Suresh Chand expired and the case was converted to Section 302 of the Indian Penal Code and Section 25/27 of Arms Act; that after completion of

the investigation, charge sheet under Section 302/324 of the Indian Penal Code and Section 25/27 of Arms Act was filed.

3. To bring home the guilt of the accused and to prove its case, the prosecution examined 24 witnesses in all. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure wherein he reiterated his innocence and took a plea that at the relevant time, he was under the influence of intoxication and was called by one Luvkush at the place of incident where some public persons had indulged in attacking each other. No evidence was led by the appellant in his defence.
4. Mr. Singhal, learned counsel for the appellant confined his submissions on the sentencing part only and contended that even on a demurrer if the allegations levelled by the prosecution were accepted in its entirety, the present case would fall within the ambit of Section 304 Part II of the Indian Penal Code as the intention to kill the deceased could not be fastidiously imputed upon the appellant. The incident occurred on extreme provocation and at the spur of the moment without any premeditation. Learned counsel pointed out that at the time of occurrence, the age of the appellant was only about 20 years and further submitted that keeping in mind the small size of the weapon of offence i.e. knife, the appellant cannot be imputed with the knowledge that a single blow with the said knife was likely to result in the death of the deceased. The counsel further submitted that the victim died after 14 days of the incident and the cause of death was not the injuries inflicted on him but the septicemic shock, accordingly

the sentence may be modified to the period undergone by the appellant.

5. The counsel for the appellant has argued that the present case is squarely covered under Exception 4 of Section 300 of the Indian Penal Code, which reads as under:

"300. Murder-

Exception 1. - xxxx xxxx xxxx xxxx

Exception 2. - xxxx xxxx xxxx xxxx

Exception 3. - xxxx xxxx xxxx xxxx

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 offenders 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."

6. In support of his submissions, reliance is placed by the learned counsel for the appellant on the case of *Jharmal and Others Vs. State of Haryana : 1994 SCC (Crl.) 593*, wherein the Hon'ble Apex Court held that where the deceased sustained injuries on the head due to blow with an iron pipe and died after 17 days due to septicimia, the appellant could have been convicted only under Section 304 Part II of the Indian Penal Code.
7. Learned counsel for the appellant also sought support from observations of the Hon'ble Apex Court in *Bunnilal Chaudhary Vs. State of Bihar : (2006) 10 SCC 639*, wherein it has been held that :

"11. That Section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts: the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found on the person of Shambhu Raut. But the second part, in our opinion, is not fulfilled because but for the fact that the injury caused had penetrated the lung, death might not have ensued. In other words, looking at the matter objectively, the injury, which Bunnilal Chaudhary intended to cause, did not include specifically the cutting of the left lungs but to wound Shambhu Raut in the neighbourhood of the nipple on left side of chest. Therefore, we are of the opinion that Clause (iii) of Section 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Bunnilal Chaudhary did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Bunnilal Chaudhary. The matter, therefore, comes within the third part. The Act which was done was done with the knowledge that Bunnilal Chaudhary was likely by such act to cause the death of Shambhu Raut. The case falls within the third part of Section 299 and will be

punishable under the second part of Section 304IPC as culpable homicide not amounting to murder.

12. We, accordingly, alter the conviction of Bunnilal Chaudhary from Section 302 to Section 304 Part-II, IPC and in lieu of the sentence of imprisonment for life imposed on him, we impose a sentence of rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- with default stipulation of two months simple imprisonment. Criminal Appeal No. 605/2005 preferred by Bunnilal Chaudhary (A-1) is partly allowed to the extent indicated above."

8. Reliance has further been placed on ***Maniben Vs. State of Gujrat : (2009) 8 SCC 796***, wherein the Hon'ble Apex Court held that:

"There is also evidence on record to prove and establish that the action of the appellant to throw the burning tonsil was preceded by a quarrel between the deceased and the appellant. From the aforesaid evidence on record it cannot be said that the appellant had the intention that such action on her part would cause the death or such bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, in our considered opinion, the case cannot be said to be covered under Clause (4) of Section 300 of IPC. We are, however, of the considered opinion that the case of the appellant is covered under Section 304 Part II of IPC."

Learned counsel for appellant further relied upon ***Manjeet Singh Vs. State of Himachal Pradesh : (2014) 5 SCC 697***, more particularly para 26 which reads as under :

"26. The question now requires to determine is as to what is the nature of offence that the accused has committed. The evidence produced against the accused does not show that the accused had any motive to cause

death of the deceased or have intended to cause such bodily injuries which were sufficient in the ordinary course of nature to cause the death of the deceased. Evidence on record also does not establish that the injuries caused on the body of the deceased must in all probability cause his death or likely to cause his death. On the spur of the moment, during the heat of exchange of words accused caused injuries on the body of the deceased which caused his death. Therefore, the ingredients of the murder as defined in Section 300, Indian Penal Code, have not been established against the accused. In our opinion, the accused was guilty of culpable homicide not amounting to murder Under Section 304, Indian Penal Code, and considering the fact that the accused had no intention to either cause the death of the deceased or cause such bodily injury as is likely to cause death of the deceased, it would be sufficient to impose on accused a sentence of seven years rigorous imprisonment and to impose on him a fine of Rs. 5,000/- and in default of payment of fine, a further imprisonment of six months."

9. In support of the impugned conviction and sentence, Ms. Aashaa Tiwari, learned Additional Public Prosecutor, has forcefully submitted that there are no irregularities or inconsistencies found in the impugned judgment and the order on sentence rendered by the learned Trial Court deserves no interference by this Court.
10. We have heard the learned counsel for the parties and perused the record and also carefully examined the evidence adduced by the prosecution.
11. In order to consider the contention of learned Counsel for the appellant, it would be necessary to have a look at the law relating to culpable homicide and murder :-

"Section 299 Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 300 Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, or

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

12. To understand what constitutes Culpable homicide and Murder it will be useful to refer to *Chacko @ Aniyam Kunju and Ors. Vs. State of Kerala 2004) 12 SCC 269*, wherein it was held by the Hon'ble Supreme Court that:

"All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type

10. The academic of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304. Distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

1. Clause (b) of Section 299 corresponds with Clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential

requirement of Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim is sufficient to bring the killing within the ambit of this clause.

2. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under Clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding Clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in Clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature."

13. In another case of ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC 444***, the Hon'ble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Court observed:

*“...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302. **The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether***

there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention..."

14. Similarly in *Ghapoo Yadav and Ors. v. State of M.P. (2003) 3 SCC 528* and *Sukbhir Singh v. State of Haryana (2002) 3 SCC 327*, it was observed that :

"...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused Appellants had come prepared and armed for attacking the deceased...."

15. The present appeal is to be decided on the touchstone of the law laid down by the Hon'ble Supreme Court of India. SI Kulbir prepared the sketch of the knife Ex.PW1/A which shows that the length of the blade of the knife was about 11.5 cm. PW18 Dr. Manoj Dhingra and PW19 Dr. Munish Wadhawan conducted the postmortem on the dead body of the deceased who opined that the cause of death in the instant case was Septicemic Shock, a net sequel of intra abdominal organ injuries and observed as under:

- a) *Laprotomy wound 30 cm long in midline of abdomen with intestine covered with yellowish fluid smelling puss exposed.*
- b) *Stitch wound partially healed 3 cm in length on lateral aspect of right leg, 6 cm above right ankle joint.*
- c) *Stitch wound partially healed 3.2 cm in length on lateral aspect of right thigh, 10 cm below right anterior superior illiac spine.*
- d) *Drainage wound oval in shape, 1cm in diameter on left side of abdomen.*

16. After analyzing the evidence on record, it is evidently clear that there was no premeditation on the part of the appellant. There is no evidence that the appellant made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellant assaulted deceased in such a manner that the deceased suffered grievous injury which was sufficient to cause death, but considering the weapon of offence in mind i.e. knife having length of 11.5 cms without handle and the fact that the appellant did not act in a cruel or unusual manner, did not take undue advantage, we are convinced that the intention of the appellant was not to kill the deceased. Hence, the present case is covered under **Section 304 of the Indian Penal Code** which reads as under:-

"Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which

may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

17. Section 304 of the Indian Penal Code consists of two parts, the first dealing with second degree culpable homicide and the second dealing with third degree culpable homicide as has been noted above. The distinction between Section 304 Part I and Part II has been drawn by the Hon'ble Supreme Court in ***Alister Anthony Pereira v. State of Maharashtra (2012) 2 SCC 648***, in the following words:

".....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..."

18. It is well settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is very important consideration for coming to the conclusion that death is indeed a murder with intention to cause death or the knowledge that death will probably be caused.
19. In ***Sandhya Jadhav v. State of Maharashtra*** reported in ***(2006) 4 SCC 653***, the Hon'ble Supreme Court held that:

"9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a

case or prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation.....

*.... The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed, to be sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. **For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage."***

20. 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."

21. Applying the above settled principle of law which has been enumerated in the aforementioned cases, we are of the considered view that it is a fit case for modifying the sentence and the appellant ought to have been convicted under Section 304 Part II of the Indian Penal Code instead of Section 302 of the Indian Penal Code.
22. We accordingly alter the sentence of the appellant from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code and sentence him to undergo rigorous imprisonment for seven years and also to pay a fine as directed by the Trial Court. However, his conviction and sentence under Section 324 of the Indian Penal Code

and Section 27 of Arms Act remain unaltered. As per the nominal roll, the appellant is in custody and has already undergone a period of about five years. The appellant shall undergo the remaining period of sentence awarded to him by this Court.

23. The appeal is partly allowed in the aforementioned terms and disposed of.

24. Trial Court Record be returned to the Trial Court.

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25. In view of the aforesaid order, present application is rendered infructuous.

26. Application stands disposed of.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 28, 2016

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