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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 17th August, 2017

+ **CRL.A. 457/2015**

RAJNI

..... Appellant

Through : Mr.Ajay Verma and Ms.Divya
Chugh, Advocates

versus

STATE

..... Respondent

Through : Mr.Rajat Katyal, APP

+ **CRL.A. 521/2015**

UDAIVEER @ PAPPU

..... Appellant

Through : Ms.Saahila Lamba, Advocate

versus

STATE

..... Respondent

Through : Mr.Rajat Katyal, APP

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. Present appeals have been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') against the judgment dated 05.11.2014 and the order on sentence dated 13.11.2014 passed by the Trial Court in Sessions Case 37/2011, FIR 55/2011 Police Station Harsh Vihar by which the appellants have been held guilty for the offences under Sections 302/201/34 of the Indian Penal Code, 1860 ('IPC') and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.5,000/- each, in default of payment of fine to undergo simple imprisonment for six months each for the offence

punishable under Section 302/34 IPC; and rigorous imprisonment for five years with a fine of Rs.2,000/- each, in default of payment of fine simple imprisonment for three months each for the offence punishable under Section 201/34 IPC. Both the sentences were ordered to run concurrently.

2. Both the appeals have been heard together and common arguments have been raised by the learned counsel for the parties and thus, both the appeals are being decided by a common judgment.
3. The case of the prosecution, as noticed by the Trial Court, unfolds as under:

“2. Brief facts, as per prosecution are that on 10.04.2011 at about 9.50 p.m a PCR call vide DD No.8A, was received in the Police Station to the effect that “at D-4, Block, Gali No.5, Harsh Vihar, one lady alongwith her friend has killed her husband. Since 8.00 p.m dead body is lying here”. SI Shailender alongwith Ct. Subhash were sent to the spot and SHO, ATO, I-29 also reached at the spot, where at house no. 138, dead body of one person aged about 40 years was found lying on floor, whose named was revealed as Ram Prasad @ Babban, S/o Late Kishan Lal, R/o B-4/138, Gali No.5, Harsh Vihar, Delhi. The family members and relatives of the deceased were collected there. Dead body was randomly (sarsari) searched and no visible injury was found on the body of deceased, which could be resulted into unnatural death. By the order of SHO PS Harsh Vihar, inquest proceedings U/s 174 Cr.P.C were initiated by SI Yogender Singh, who on 11.04.2011 got conducted the postmortem on the dead body of deceased at GTB Hospital and thereafter, handed over the dead body of deceased to its claimant. On 18.04.2011 SI collected the Postmortem Report no.447/11 of deceased from GTB Hospital, wherein doctor opined the cause of death “shock as a result of ante mortem injury to head produced by blunt force impact”. Viscera was preserved on the request of IO. IO made his endorsement on DD No.8A and got registered the FIR of instant case and inquiry was conducted from family members. Photographs of the scene of crime were got

photographed through Crime Team, spot was inspected, rough Site Plan was prepared, statements of the eye witnesses i.e. Vicky and Nicky, son and daughter of deceased respectively were recorded U/s 161 Cr.P.C and later on their statements U/s 164 Cr.P.C were also got recorded through Ld. MM, wherein they stated that “their mother and father used to quarrel with each other. Their mother used to call Udaiveer @ Pappu, their neighbour, in the house, which was objected by their father. On 09.04.2011, when heater was not running, their mother called Pappu at their house for repair of electricity and asked for match box. When their father objected to the coming of said Pappu, his father started giving beatings to their mother and also started abusing to Pappu in the name of mother and sister. Their mother while praising Pappu, asked their father as to why he is abusing Pappu, in the meantime Pappu came in the house and caught hold of their father from behind. Their mother picked up the cricket bat and hit with it on the head of their father, resultantly their father get down on the floor. With the help of Pappu, their mother laid down their father on the cot and tried to make him conscious but could not succeed. Urine was passed out (papa ka peshab nikal gaya) and they both (their mother and Pappu) took out the clothes of their father and burnt the same in Chulha and put another clothes on their father. Their mother told them if they disclose about this happening to anyone, she will beat them and will sent them to their father at place of god. Due to fear they did not disclose anything to anyone. ...”

4. Charges were framed under Sections 302/201/34 IPC, to which both the appellants pleaded not guilty and claimed trial. The prosecution examined 26 witnesses in all and statements of the appellants were recorded under Section 313 Cr.P.C. The appellant Rajni stated that her husband/deceased used to consume liquor in ‘adequate quantity’ and on the day of the incident, when there was no electricity supply, he fell down and sustained internal injuries resulting in his death;

while appellant Pappu merely claimed false implication. No evidence was led by the defence.

5. After examining the evidence led by the prosecution, the Trial Court found the case of the defence repelled by the medical evidence and the prosecution being able to prove its case beyond reasonable doubt and convicted the appellants as noticed in paragraph 1 foregoing.
6. Mr.Verma and Ms.Lamba, learned counsel appearing for the appellants, submit that the appellants have instructed them not to contest the appeals on merits as far as the judgment on conviction is concerned, except that no case under Section 302 IPC is made out which is evident upon reading of the testimony of eye witnesses Master Vicky (PW-1) and Ms.Nikki (PW-22).
7. The learned counsel for the appellants submit that the impugned judgment passed by the Trial Court is bad in law and is thus, not sustainable. Learned counsel contends that the Trial Court has lost track of the fact that PW-1 has categorically deposed that the grand-parents and others were not aware that his parents used to quarrel and that the a fight had erupted when their father/Ram Prasad ('deceased') had seen the appellant Pappu at his home, whose presence he had repeatedly objected to and thus, it is clear that the incident took place at the spur of the moment. There was no motive and the weapon of offence was procured at the spot. The appellants also had no motive to kill the deceased and thus, no case under Section 302 IPC would be made out.
8. Additionally, learned counsel for the appellants submit while placing reliance on the testimony of Dr.A.K. Tyagi (PW-8), who conducted the post-mortem, that the result of death was on account of one injury which was inflicted on the head of the deceased by a blunt object

which resulted in his death. Mr.Verma and Ms.Lamba, learned counsel for the appellants, submit that in case there was any intent on the part of the appellants to kill the deceased, the post-mortem report would have indicated further injuries on the body of the deceased. In the fit of rage, when the appellant Rajni felt helpless on account of the fact that the entire burden of the family, which comprised of four minor children, was on her and she was unable to cook food in the absence of the heater being functional, appellant Rajni had approached appellant Pappu for a match box to enable her to prepare the food for her children; in turn appellant Pappu had helped in restoring the electricity which had been disconnected on account of extra load which was not taken in the proper perspective by her husband. The deceased initially abused the appellant Pappu and after Pappu left, he started beating his wife and abused her. It is in this backdrop, that the incident took place and which resulted in the death of Ram Prasad/deceased. The learned counsel also contend that appellant Rajni had sought the help from the neighbours and having regard to the social status and educational background, the appellants did not call the police, but the appellants did not act in a cruel manner. Mr.Verma and Ms.Lamba have relied upon the judgments in the case of *Kesar Singh v. State of Haryana*, JT 2008 (5) SC 407: (2008) 15 SCC 753 (paragraphs 10, 22 and 22.1); *Thangaiya v. State of T.N.*, (2005) 9 SCC 650 (paragraphs 15 and 22); and *Thakarda Lalaji Gamaji v. The State of Gujarat*, (1974) 3 SCC 639 (paragraphs 12 and 13) in support of their submission that no case under Section 302 IPC is made out as the incident took place on the spur of moment, there was no weapon of offence barring a bat which was lying in the house, the appellants did not act in an unusual manner, there was only

one fatal injury, there was no pre-meditation, resultantly, the appellants plead that a case under Section 304 Part I IPC would be made out.

9. *Per contra* Mr.Katyial, learned counsel for the State, submits that there is no infirmity in the impugned judgment passed by the Trial Court. The appellants with a common objective and motive had hit the deceased on the head with a force, which is a vital part of the body, which resulted in his death and thereafter, an attempt was made to remove the evidence by burning the clothes of the deceased and no effort was made to remove the deceased to the Hospital. Further the placing of an empty bottle of liquor near the body clearly shows that an attempt was made to show that it was a natural death.
10. We have heard the learned counsel for the parties, considered the rival submissions and carefully perused the record.
11. We deem it appropriate to take into consideration the evidence of four material witnesses, which in our view, would be necessary for deciding the present appeals. The two eye witnesses to the incident are none else but the minor children of the deceased and appellant Rajni, i.e. PW-1 and PW-22, who were present in the house.
12. Master Vicky (PW-1) (son of deceased and appellant Rajni) deposed that his father/deceased and his mother used to quarrel very often as appellant Pappu used to visit his house very frequently and his father used to ask his mother as to why she used to call Pappu, but his mother would never listen to his father. He also stated that in his house, food used to be cooked on heater. On 09.04.2011 at about 9:00 PM, the electricity supply tripped. His mother had gone to house of appellant Pappu to get a match box but appellant Pappu came to their house and told that since electricity supply is there, he would repair it.

Then his mother asked appellant Pappu to repair the fault. In the meantime, the deceased came there, who became angry on seeing appellant Pappu, and asked his mother as to why she had called Pappu. His mother and father started quarrelling and the deceased abused appellant Pappu to which his mother objected. Then he went to sleep and his mother again called appellant Pappu. Appellant Pappu caught hold of his father from his back and his mother i.e. appellant Rajni inserted cloth in the mouth of his father. His mother hit his father on his head/neck and on private urinary part (*pishab wale raste par*), consequent to which, his father fell down on the floor. Both the appellants put his father on the cot, removed his clothes and burnt them in the oven and put another pair of clothes on his father. His father expired. He categorically deposed that appellant Rajni threatened him and his sister Nicky (PW-22) that if they disclosed the incident to anyone, then they both would be sent to their father at the place of God (*agar kisi ko bole, to papa ke pass bhagwan ke ghar bhijwa denge*). Due to fear, they did not disclose these facts to anyone. He further stated that appellant Pappu had brought a liquor bottle and his mother and appellant Pappu had consumed liquor and had put empty bottle of wine near the cot, on which his father lay. His mother called two women of the locality and then his mother gave information regarding death of his father to *Chacha* Daya Chand. In the morning, somebody gave call to the police. PW-1 also identified the weapon of offence (Ex.PW-1/P1).

13. The witness was thoroughly cross-examined before the Trial Court. He stated that his uncle and grandparents were not aware of the quarrel taking place between his parents as neither he nor his siblings had ever conveyed the fact about the quarrel which took place

between his parents. His mother had told them that his father had expired due to consumption of heavy liquor. On the day of incident his father had not gone for his work and he was staying at home the whole day. On that day, no quarrel had taken place between his mother and father in the day time. His mother used to meet appellant Pappu and this was objected by his father and his mother used to utter to his father that “*mein toh usse milne jaungi*” (I will go to meet him). On this issue his father had never quarreled with Pappu prior to the day of incident. He was threatened by his mother appellant Rajni not to disclose the same to anyone. After consuming liquor accused persons had kept the bottle near the cot. They had poured the liquor from the bottle into a glass. Only bottle was kept in the room near the cot. He had seen the bottle in the room on the next day. He did not sleep after the occurrence. Both the appellants also did not sleep. His mother had called two ladies from the neighbourhood in the night itself.

14. Ms.Nikki (PW-22) (daughter of the appellant Rajni and deceased) deposed that she knew appellant Pappu, who was residing in their neighbourhood. On 09.04.2011 at about 9:00 PM, her mother had asked for a match box from appellant Pappu, on this her father asked her mother that when he was having match box with him, then why she had asked the same from appellant Pappu. On this her mother gave a slap to her father. Thereafter, a quarrel had taken place between her parents. Her brother Saurabh (PW-19) after getting her parents separated/pacified them and went away for a *Jagran*. Then her mother called appellant Pappu, who caught hold the hands of her father and her mother inserted cloth in the mouth of her father. Thereafter, her mother gave cricket bat blow on the private part and on

the neck of his father, accordingly, her father went down on the ground. Then her mother and appellant Pappu lifted her father and laid him on the cot. Thereafter, clothes of her father were removed and burnt in *chulha* and other clothes were put on her father. Her mother and appellant Pappu consumed liquor, brought by Pappu, and put the bottle of liquor near the cot of her father. She stated that she did not raise alarm as she was threatened by her mother and appellant Pappu saying that if she raised alarm, they would kill her too like her father. Thereafter, her mother called two ladies from neighbourhood, who made a call to her *chacha* (uncle). In the morning somebody called the police. His father was taken to hospital and she came to know that her father had expired. She correctly identified both the accused persons and the bat (Ex.PW1/P1) to be the same vide which her mother assaulted her father.

15. During cross-examination, PW-22 stated that on the day of incident electricity had gone, so they could not take dinner. Appellant Pappu came to their house at around 9:30 PM. She conceded that sometime her mother used to cook food on the electric heater. The clothes of her father were burnt in the *chulha*. The *chulha* used to be lit by wood sticks. On that day, the *chulha* was lit by her mother later on to burn the clothes of her father.
16. The testimonies of the two witnesses are corroborated by the testimony of their brother Master Saurabh (PW-19), who deposed that his deceased father used to drink liquor and often a quarrel used to take place between his deceased father and mother. His mother used to call appellant Pappu to their house and his father did not use to like his coming in the house. His mother used to call appellant Pappu in their absence. On 09.04.2011, a quarrel took place between his

mother and father and on this he told his parents that if they continued with the quarrel then he will leave the house. Thereafter, the matter was pacified and he went to a *jagran*, which was held in their colony after bolting the door from outside. At about 10:00 PM, his brother Vicky came to him in the *Jagran* and he told him that a quarrel was going on between their parents, but he did not go back to his house and remained in the *Jagran*. However, his brother after informing him went back to his house. He came back to his house in the early morning after conclusion of the *jagran*. On reaching there, he found that his father was lying dead on the floor. When he asked from his mother as to what happened, at that time appellant Pappu was also present there. Thereafter, his mother and appellant Pappu took him aside and threatened him “*agar tumne is bare main kisi ko bataya to jaise tumhare papa ke sath hua hai tumhare sath bhi hogha*” (If you tell this to someone then you will suffer the same fate as your father). On this he was so scared and did not disclose anything to anyone. On 03.06.2011 he told all the facts to police and his statement was recorded in this regard. Certain leading questions were put to the witness by Addl. PP for state to which he conceded that on 09.04.2011 his mother called appellant Pappu as the wire of heater on which she used to cook the food had burnt and on this his father got annoyed and started abusing his mother and on this he left his house for *jagran*. He further conceded that his mother threatened him and instructed him that if someone asked about his father, he has to say that his father was ill and due to taking heavy liquor and hard work he had died. The witness was cross-examined before the Trial Court, but to no avail.

17. The ocular account is further corroborated by the medical evidence. Dr.A.K. Tyagi (PW-8) had proved the postmortem report (Ex.PW-

8/A) of the deceased, wherein it was mentioned that there were three injuries present on the body of the deceased and internally there was head injury in the form of subarachnoid haemorrhage at various parts of the brain and cause of death was opined as shock as a result of *ante mortem* injuries on the head produced by blunt force impact. We may also notice that the postmortem was conducted on 11.04.2011 at about 12 Noon and the time since death was opined to be about one and a half days and hence, the time of death can safely be estimated to be the night of 09.04.2011. Subsequent opinion (Ex.PW-8/C) was also obtained wherein PW-8 opined that the cricket bat (Ex.PW1/P1) could have caused the injuries present over the body, if the bat was hit with sufficient force on the head.

18. The viscera was also preserved and sent to the FSL, which by its report dated 16.12.2011 (Ex.PW-8/B) found presence of ethyl alcohol in exhibits '1A' (stomach and piece of small intestine), '1B' (piece of liver, spleen and kidney) and '1C' (brown coloured liquid). Further the exhibit '1C' was found to contain ethyl alcohol 193.4 mg/100 ml of blood. Accordingly, for a person/deceased weighing 73 kgs, it can be safely concluded that the deceased was heavily drunk at the moment of his death.
19. The weapon of offence, i.e. cricket bat (Ex.PW1/P1), was also recovered at the instance of appellant Rajni. Appellant Rajni was arrested on 20.04.2011, when she made her disclosure statement (Ex.PW-23/B) and led the police party to the spot of the incident. There she got recovered one cricket bat (Ex.PW1/P1) from the roof of the toilet. HC Harkesh (PW-21), Ct.Shashi Mala (PW-23), SI Prem Pal (PW-25) and Ins.Virender Singh Punia (PW-26) have deposed consistently with respect to the recovery of the weapon of offence.

Thus, this is also an additional incriminating circumstance pointing towards the guilt of the appellants.

20. From the ocular account of PW-1 and PW-22, supported by testimony of PW-19, it stands established that on the fateful day, there was a quarrel between the deceased and the appellant Rajni as the deceased used to object to the coming of appellant Pappu to their home, which was pacified by Saurabh (PW-19). Thereafter, the appellant Pappu came and there was another fight, during the course of which, the appellant Pappu caught the hands of the deceased, the mother gagged him and then smacked him on his private part and head with the cricket bat (Ex.PW1/P1). Thereafter, the appellants laid the body of the deceased on the cot, changed its clothes and kept an empty liquor bottle to make it look like a natural death. The foregoing is further corroborated by the medical evidence (Ex.PW-8/A and 8/C) and the recovery of the weapon of offence (Ex.PW1/P1) at the instance of the appellant Rajni. Thus, we find no infirmity in the impugned judgment so far as the order of conviction is concerned.
21. As far as the defence raised by the appellant Rajni in her statement under Section 313 Cr.P.C. is concerned, we find the same to be improbable. Though the deceased was drunk at the moment, a fall inside the house can by no means be sufficient to cause injuries of the nature found in the postmortem (Ex.PW-8/A). Further, not even a suggestion to the effect was given to PW-8, during his cross-examination and thus, it clearly shows that the same was an after thought.
22. We proceed to analyse the contention raised at the bar, i.e. the applicability of Section 302 IPC. Mr.Verma and Ms.Laamba had contended that the present case would be covered under Exception 4

to Section 300 IPC and hence, would only amount to culpable homicide not amounting to murder. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was member, in **Kamaljeet v. State**, MANU/DE/1752/2017 (paragraph 40) observed that “[t]o bring a case under the exception, fourfold requirement must be satisfied: first, there must be a sudden fight; second, absence of pre-meditation; third, the accused must have been overcome with the heat of passion; and fourth, the accused must not have taken undue advantage or acted in a cruel or unusual manner.”

23. In **Sayaji Hanmant Bankar v. State of Maharashtra**, (2011) 14 SCC 477, the convict had thrown a water pot and a kerosene lamp on the deceased (his wife) after a quarrel with her, the burn was exasperated by the fact that the deceased was wearing a nylon sari resulting in her death. The Apex Court found that there was a sudden fight and modified the conviction from Section 302 IPC to Section 304 Part I IPC. The relevant paragraphs read as under:

“8. It is clear from the reading of aforesaid Exception 4 that if the act is done without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and if the offender does not take any undue advantage or act in a cruel or unusual manner, then Exception 4 will be attracted. 9. We have gone through the evidence carefully. It seems that as soon as the accused entered the house, there appeared to be some quarrel with his wife and in that fight first, he threw a water-pot and thereafter a kerosene lamp. The burning seems to be more out of the fact that unfortunately at that time, the lady was wearing a nylon sari. Had she not been wearing a nylon sari, it is difficult to imagine how she could have been burnt to the extent of 70%. In our view this was a case which clearly falls under Exception 4 to Section 300 IPC since there was a sudden fight. There was no premeditation either. Therefore the appellant-accused is liable to be convicted for the offence punishable under Section 304 Part I.

10. We, accordingly, alter the conviction of the accused from Section 302 IPC to Section 304 Part I IPC and sentence him to the period already undergone by him. The sentence of fine remains the same.”

(Emphasis Supplied)

24. In *Sandhya Jadhav v. State of Maharashtra*, (2006) 4 SCC 653 a solitary knife blow was given to the deceased when he attempted to intervene and separate the convicts trying to assault his uncle. The Supreme Court converted the conviction to Section 304 Part I observing as under:

“8. For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of 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. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight

suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. 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 a 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".

मह्यमेव जयते (Emphasis Supplied)

[Also see **Abhijeet Raj v. State (Govt. of NCT of Delhi)**, MANU/DE/1264/2016 and **Jagtar Singh v. State of Delhi**, 190 (2012) DLT 445]

25. Coming to the case at hand, we find all the essentials of Exception 4 to Section 300 IPC satisfied. The incident took place when the deceased saw the appellant Pappu in his house to which he had objected to before. This resulted in a sudden fight, during which, in the heat of passion, the appellant Pappu held the deceased while the

appellant Rajni gave one blow on his groin and then one on his head. The latter of which proved fatal. There was no pre-meditation on the part of the appellants, which is evinced by the fact that the weapon of offence, i.e. an old cricket bat (Ex.PW1/P1) was procured from the spot. Further, there is nothing to suggest that the appellants acted in a cruel or unusual manner. In this case, there is yet another factum in addition to ones in **Kamaljeet (Supra)**, i.e. there is no lethal weapon of offence and only a bat which was lying in the house itself.

26. The question which remains is whether the present case would fall under Part I or Part II of Section 304 IPC? We deem it appropriate to reproduce the provision, which reads as below:

“304. Punishment for culpable homicide not amounting to murder.— 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.”

(Emphasis Supplied)

27. Though the legislative has not divided the provision in any parts, it is clear that it provides for two different sentences in different circumstances. These have been labelled by the courts as ‘Part I’ and ‘Part II’ and have often been described as the courts as the second and third degree of culpable homicide, with the first being murder [See **Kesar Singh (Supra)** and **Thangaiya (Supra)**]. A careful reading of the provision would show that the difference is primarily of ‘intention’

and ‘knowledge’. A comparative chart between Part I and Part II of Section 304 can be represented as under:

Section 304 Part I

Section 304 Part II

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,	Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both,
if the act by which the death is caused is done with the <u>intention</u>	if the act is done with the <u>knowledge</u> that it is likely
(i) of causing death, or	(i) to cause death, but without any intention to cause death, or
(ii) of causing such bodily injury as is likely to cause death	(ii) to cause such bodily injury as is likely to cause death

28. Now the difference is only between ‘intention’ and ‘knowledge’, the remaining are only cosmetic in order to satisfy the English language. The two terms may seem to be interchangeable, however, in the context of the provision they have been carefully, or say even surgically, inserted. The difference is not only academic, Part I allows for a much greater punishment being ‘imprisonment for life’, which is conspicuously absent in Part II. The difference between the terms ‘knowledge’ and ‘intention’ were discussed in great detail by the Supreme Court in ***Kesar Singh (Supra)***:

“Knowledge versus Intention

26. We must keep in mind the distinction between knowledge and intention. Knowledge in the context of Section 299

would, inter alia, mean consciousness or realisation or understanding. The distinction between the terms “knowledge” and “intention” again is a difference of degrees. An inference of knowledge that it is likely to cause death must be arrived at keeping in view the fact situation obtaining in each case. The accused must be aware of the consequences of his act.

27. Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself. This was discussed extensively in *Jai Prakash v. State (Delhi Admn.)* [*Jai Prakash v. State (Delhi Admn.)*, (1991) 2 SCC 32 : 1991 SCC (Cri) 299] , stating: (SCC pp. 39, 41-42, paras 10 & 12)

“10. ... We may note at this stage that ‘intention’ is different from ‘motive’ or ‘ignorance’ or ‘negligence’. It is the ‘knowledge’ or ‘intention’ with which the act is done that makes difference, in arriving at a conclusion whether the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions. ...

12. ... The ‘intention’ and ‘knowledge’ of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words ‘intention’ and ‘knowledge’ and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to ‘knowledge’, ‘intention’ requires something more than the mere foresight of the

consequences, namely, the purposeful doing of a thing to achieve a particular end.”

28. Kenny in *Outlines of Criminal Law* (17th Edn. at p. 31) has observed:

“Intention.—To intend is to have in mind a fixed purpose to reach a desired objective; the noun ‘intention’ in the present connection is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. Thus if one man throws another from a high tower or cuts off his head it would seem plain that he both foresees the victim's death and also desires it: the desire and the foresight will also be the same if a person knowingly leaves a helpless invalid or infant without nourishment or other necessary support until death supervenes. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed.

Again, a man cannot intend to do a thing unless he desires to do it. It may well be a thing that he dislikes doing, but he dislikes still more the consequences of his not doing it. That is to say he desires the lesser of two evils, and therefore has made up his mind to bring about that one.”

29. Russell on *Crime* (12th Edn. at p. 41) has observed:

“In the present analysis of the mental element in crime the word ‘intention’ is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims.”

30. It can thus be seen that the “knowledge” as contrasted with “intention” signifies a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, “intention” is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of “intention” mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact.”

(Emphasis Supplied)

29. To the multitude of authorities, we may add a few. The terms have been differentiated in John Salmond, *Jurisprudence*, 10th ed. 1947 (ed. Glanville L. Williams) as:

“It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended. When King David ordered Uriah the Hittite to be set in the forefront of the hottest battle, he intended the death of Uriah only, yet he knew for a certainty that many others of his men would fall at the same time and place.”

(Emphasis Supplied)

30. In *Black’s Law Dictionary*, 9th ed. 2009 (ed. Bryan A. Garner et al.) West, the terms have been defined as under:

“Intention. The willingness to bring about something planned or foreseen; the state of being set to do something.”

“Knowledge. An awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact.”

31. Simply put, ‘knowledge’ means the state of mind in which the person comprehends that his action may have a particular result, while ‘intention’ further includes the desire of it and is an active state of mind. To give an illustration, if a person intends to shoot on the leg of a person to immobilize him and misses, hitting him in his abdomen and causes his death. He will be attributed with the knowledge that

his act is likely to cause death, though he does not intend to cause such injury. On the converse, if he wanted to target the abdomen, then he had an intention to cause such bodily injury as is likely to cause death. In the former, it would come under Part II and in the latter be Part I.

32. To consider this in action, we may notice two judgments of the Apex Court. In ***Gudu Ram v. State of Himachal Pradesh*, (2013) 11 SCC 546**, the appellant/accused had hit the deceased on the head with a *thapi* (a wooden object shaped like a cricket bat used for beating clothes while washing) and pushed him in the bushes. Similarly in ***Kesar Singh (Supra)***, the appellant had given a *kassi* (spade) blow from the reverse side on the head of the deceased. In both the cases, the fatal injury was one of blunt force impact on the head and in both, the victim succumbed to his injuries. However, in ***Gudu Ram (Supra)***, the manner in which the appellant had attacked the other victim and the reaction of the eyewitness led to the Court to conclude that he had no intention to kill, though knowledge could be attributed to him and converted his conviction to one under Section 304 Part II; while in ***Kesar Singh (Supra)***, the conviction was maintained under Section 304 Part I.
33. In the present case, the appellants had given a blow with the cricket bat (Ex.PW1/P1) on the head of the deceased causing his death. The nature of the attack and the weapon used lead us to conclude that to a reasonable person, an attack of the nature launched by the appellants on the deceased Ram Prasad could cause his death. The remaining question being whether the same was intended and in the present case? We find nothing to show that the desires of the appellants were contrary to the result and hence, the appellants must be attributed with

the intention that their actions are likely to cause death and liable to penalty under Part I of Section 304 IPC.

34. Accordingly, we partly allow the appeals and set aside the conviction of the appellants for murder but convict them of the offence punishable under Part I of Section 304 IPC. We are further of the view that the ends of justice would be met if the appellants are sentenced to imprisonment for seven and a half years under Section 304 Part I IPC. The order of the Trial Court with regard to fine under Section 302 shall be read as for one under Section 304 Part I and remains the same.
35. The impugned judgment and the order on sentence are modified in the above terms.
36. Trial Court record be returned along with copy of this judgment.
37. Copy of this Judgment be sent to the concerned Jail Superintendent for updating the jail record.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

AUGUST 17, 2017

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