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

Judgment reserved on: 30.07.2018

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Judgment delivered on: 14.12.2018

+ **CRL. A. 739/2017**

AMARJEET SINGH

....Appellant

Through: Mr. K. Singhal, Advocate
(DHCLSC).

versus

STATE

....Respondent

Through: Mr. Rajat Katyal, APP for State
with Mr. Ashray Behura, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGEMENT

I.S.MEHTA, J.

1. Instant appeal is arising out of the Judgment Dated 24.05.2017 and Order on Sentence Dated 29.05.2017 wherein the accused was convicted under Section 302, 404, 380 and 201 IPC. Accused was sentenced under Section 302 IPC to undergo imprisonment for life and to pay fine of Rs. 10,000/-, in default of payment of fine, the convict is further sentenced to undergo rigorous imprisonment for a period of six months. Accused was sentenced under Section 404 IPC to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 3,000/-, in default of payment of fine, the convict was further sentenced to undergo rigorous imprisonment for

a period of one month. Accused was sentenced under Section 380 IPC to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs. 5,000/-, in default of payment of fine, the convict was further sentenced to undergo rigorous imprisonment for a period of three months. Accused was sentenced under Section 201 IPC to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs. 5,000/-, in default of payment of fine, the convict was further sentenced to undergo rigorous imprisonment for a period of three months.

2. Brief facts stated are that on receiving DD No. 28A Ex.PW4/A on 29.07.2011 at PS Hari Nagar, ASI Surender alongwith Ct. Mahesh reached at House No. WZ-74 A Ist Floor, Meenakshi Garden, Hari Nagar, Delhi where they met Harpreet Singh (PW1) and found the dead body of an old lady lying in pool of blood in main lobby of first floor of the house. There were injury marks caused by sharp edged weapon on back, near neck and on the hands of the deceased and blood smeared footprints were also found there. The statement of Mr. Harpreet Singh Ex.PW1/A, who is son-in-law of the deceased, was recorded. An amount of Rs. 50,000/- and two gold bangles from the hand of deceased were found to be missing. Crime team and photographer were called and they inspected the spot vide crime scene report Ex.PW7/A. Meanwhile, rukka Ex.PW20/A was sent through HC Arun Kumar. Consequentially, FIR No. 339/2011 Ex.PW4/D was got registered under Section 397 and 302 IPC. Further investigation was handed over to I.O. Insp. M.L. Meena. Dead body of the deceased was sent to Mortuary, DDU Hospital for post mortem. Post mortem of the dead body of Smt. Pavitra Kaur was got conducted on 30.07.2011 in DDU Hospital vide post mortem report Ex.PW19/A. Exhibits such as snapped lock and hook, blood

stains from the spot, blood stain from kitchen, blood stain from door knob of toilet and a pair of slipper were seized vide seizure memo Ex.PW1/B, Ex.PW1/C, Ex.PW1/D, Ex.PW1/E and Ex.PW1/F which were deposited with MHC(M) vide serial no. 3318 Ex.PW3/A and samples were sent to CFSL. I.O. prepared rough site plan Ex.PW26/A. During investigation name of the accused came up as a suspect after statement of the witnesses under Section 161 Cr.P.C. were recorded alongwith the statement of one Smt. Narinder Kaur. Consequentially, the mobile phone No. 9779209597 of the suspect was searched out. I.O. Insp. M.L. Meena alongwith S.I. Rajkumar, Ct. Ramchander, Ct. Ajay and Ct. Sandeep, etc left for Patiala, Punjab but could not locate the accused at the designated place where his Cell ID location was showing. Thereafter, with the help of and on the pointing out of secret informer, the accused Amarjeet Singh @ Raju @ Wadhwa was apprehended on 02.08.2011 at Anardana Chowk, Patiala. He made a disclosure after which he was arrested on 02.08.2011 vide arrest memo Ex.PW13/A and his personal search was conducted vide personal search memo Ex.PW13/B. The disclosure statement is Ex.PW13/C. In pursuance to the said disclosure statement, accused Amarjeet Singh got recovered two gold bangles which were seized vide seizure memo Ex.PW13/E and also got recovered 60 currency notes of Rs. 500 each (Rs. 30,000/-) out of robbed amount which were seized vide seizure memo Ex.PW13/D. He got recovered cosmetic items worth Rs. 20,000/- which were seized vide seizure memo Ex.PW13/F. Accused was brought back to Delhi and the case property was deposited with MHC(M) vide Ex.PW3/B and accused was produced in the court and police sought 3 days police custody remand and got the same. In pursuance to disclosure statement, the accused on 04.08.2011 was again

taken to Patiala for the recovery of the weapon of offence i.e., knife, *musli* (pestle) and blood stained t-shirt which accused disclosed to have thrown in Bakhra Nehar, Khedi Gadiya. He further disclosed the fact of throwing away the shoes, socks and the T-shirt in Bhakhra Canal Kheri Gadiya Pul, Punjab vide pointing out memo Ex.PW13/H and Ex.PW13/I. Accused also disclosed about one brown colour pant and white colour vest which he was wearing at the time of commission of the crime, and was kept at his house in Patiala. Same were recovered having blood stains, despite accused having them washed. Both the articles were seized vide seizure memo Ex.PW13/G and deposited with MHC(M) vide serial no. 3337 Ex.PW3/D. On bringing the accused back to Delhi, I.O. moved an application for recording of confessional statement of accused under Section 164 of Cr.P.C. on 05.08.2011. Same was adjourned to 08.08.2011 and accused was sent to Judicial Custody and was further adjourned to 12.08.2011. Subsequently, on 16.08.2011, his confessional statement was recorded by Ld. Metropolitan Magistrate Ms. Vandana Jain (PW24). Vide Ex.PW24/B and after the completion of the investigation chargesheet was filed. Ld. MM after complying with Section 207 Cr.P.C., sent the case for trial.

3. Mr. K. Singhal has argued that the impugned judgment is not legally sustainable and further submitted that the court below- while convicting the appellant, overlooked the evidence appearing on record. He submits that the present case is based on circumstantial evidence. There is no last seen evidence; no weapon of offence was recovered, and; the confessional statement, as such, is a weak piece of evidence as it has been retracted subsequently in the statement recorded under Section 313 Cr.P.C. Also, that recovery of blood stained Pant and vest and recovery of two gold bangles

and Rs. 30,000/- cannot be relied upon for want of identification of the case property. Therefore, these evidences fail to connect the accused to the crime. He further pointed out that prosecution has failed to examine Smt. Narinder Kaur and the CDR of the accused does not connect the appellant to the crime in any manner.

4. Mr. K. Singhal further pointed out that the accused is the son of the deceased's sister and even if the version of the prosecution were to be believed, on the date of the incident, the provocation was not extended by the accused, but rather by the deceased who had spoken against the accused- that he is not taking care of her mother, which resulted in the accused losing his temper and the accused picked up *musli* (pestle) and gave a blow on the head of the deceased and he lost his self-control and used a kitchen knife for committing crime, which was lying nearby in the kitchen. It is argued that the accused did not go to the house of the deceased with the premeditation or preparation to commit the crime. It was an act committed due to grave and sudden provocation in the heat of passion at the spur of the moment.

5. Mr. K. Singhal further argued that when the accused came into his senses, he found that his maternal aunt (*mausi*) Smt. Pavitra Kaur has already died and he left the place. There was no intention to cause any harm to the deceased. Therefore, his conviction should be altered from one under Section 302 IPC as he claims that the act of the appellant is covered by the 4th exception to section 300 IPC, and he submits that, at the highest, it is a case falling under Section 304 Part II IPC. He relied on ***Hari Bahadur @ Hari V. State***, 229 (2016) Delhi Law Times 107 (DB); ***Sanjay Kumar V. State***, Delhi High Court (CRL.A. 1533/2013); ***Jamil @ Jamir V. State***, Delhi High Court (CRL.A. 1226/2013, 1383/2013, 1460/2013 and

1581/2013); **SA V. AA** [(2016) 229 DLT 675]; **Krishan Kumar @ Monu V. State**, Delhi High Court (CRL.A. 907/2012 and 246/2012); **Ajay Bind V. State NCT of Delhi**, Delhi High Court (CRL.A. 392/2016 and 925/2016); **Ankush Shivaji Gaikwad V. State of Maharashtra**, Supreme Court of India S.L.P. (Crl.)N0 6287 of 2011); **Ashok Bind V. State**, Delhi High Court (CRL.A. 89/2017) in support of his submission.

6. Per contra, Mr. Rajat Katyal, Ld. APP argued that the prosecution case is based on, firstly, circumstantial evidence and, secondly, on the voluntary judicial confession of the accused, which is completely supported and corroborated by the circumstantial evidence. The deceased Smt. Pavitra Kaur was alone at her house at the time of the incident. The accused resided in Punjab and was on visiting terms with deceased - who happened to be his *mausi* (mother's sister). On the date of the incident Harpreet Singh (PW1) recieved telephone call from Sunit Singh (PW2), son of deceased and brother-in-law of PW1, who told him to reach immediately at his house as his mother had received injury and had fallen down in the kitchen of their house. Harpreet Singh on reaching to his in law's house made a call to police at 100 No. Consequently, ASI Surender alongwith Ct. Mahesh reached at the spot and recorded the statement of Harpreet Singh, on basis of which FIR Ex.PW4/D was registered. The prosecution has examined Harpreet Singh (PW1), Sunit Singh (PW2), Kanwaljeet Singh (PW5) and Bineet Gujral (PW5) on this material point and Smt. Narinder Kaur could not be examined as she died during the trial. Mr. Katyal further argued that the dead body was sent to Mortuary, DDU Hospital for post mortem, and Post mortem report is Ex.PW19/A records that the deceased received 17 external injuries on her person. The judicial confession made by the accused is voluntary, without

pressure and inspires confidence to reach to the guilt of the accused. His statement was recorded by the Ld. Magistrate after repeatedly giving him time to think about making the same. Therefore the court below rightly convicted the appellant.

7. Mr. Rajat Katyal further argued that the facts and evidence on record does not show existence of any ingredient which could take the care out of Section 300 by virtue of Exception 4, and lead to invocation of Section 304 Part II IPC. He relied on *Kikar Singh v. State of Rajasthan*, (1993) 4 SCC 238; *S.K. Rafi V. State of A.P. & Anr.*, (2007) 13 SCC 76; *Smt. Sandhya Jadhav V. State of Maharashtra*, JT 2006 (4) SC 316; *Devku Bhikha V. State of Gujarat*, (1996) 11 SCC 641; *Mobin V. State*, MANU/DE/1413/2018; *Mohammed Asif V. State of Uttaranchal*, (2009) 11 SCC 497; *Naveen Chandra V. State of Uttaranchal*, (2009) 16 SCC 449; *Babulal Bhagwan Khandare and Another V. State of Maharashtra*, (2005) 10 SCC 404; *Gurudev Singh V. State of Madhya Pradesh* (2011) 5 SCC 721 in support of his contention.

8. The prosecution has examined Harpreet Singh (PW1) who stated that he was residing at Hari Nagar, near to the house of the deceased. He reached to the spot of the incident at about 3:30-3:45 PM on 29.07.2011 after receiving information from Sunit Singh (PW2) regarding the injury on the person of the deceased. He, on reaching the place of the incident, met Smt. Narinder Kaur. Thereafter, he called the police at 100 number. Meanwhile, Kanwaljeet Singh (PW5) and Sunit Singh (PW2) also reached to the spot. Thereafter, ASI Surender Singh alongwith Ct. Mahesh reached the spot, and recorded his statement Ex.PW1/A on the basis of which, FIR No.339/2011 vide Ex.PW4/D was got registered and crime team was called. After

reaching, the crime team got the place photographed, all the exhibits were seized from the spot and were deposited in MHC(M) and subsequently sent to CFSL, Rohini. It was found that two gold bangles and money amounting to Rs. 50,000/- is missing from the house.

The husband of the deceased Kanwaljeet Singh, son of the deceased Sunit Singh and grandson of the deceased Bineet Gujral who were residing with the deceased Smt. Pavitra Kaur were not present in the house at the time of the incident as they left to their respective engagements in morning and deceased Smt. Pavitra Kaur was alone in the house.

9. Further, the statement of aforesaid witnesses proves on record that the accused is the real son of deceased's sister, and they were closely related to each other and were on visiting terms.

10. The statement of PW5 Kanwaljeet Singh indicates that the accused visited the house of deceased on one Friday prior to the incident and did not talk to any of the family members and left the house from stairs, whereas, he generally used to ask for money from his *mausi* i.e., deceased. The conduct of the accused that he left the house without talking to anyone lead to the suspicion of his involvement in the crime which resulted in his arrest in the present case from Narda Chowk, Patiala, Punjab vide arrest memo Ex.PW13/A and personal search memo Ex.PW13/B.

11. The accused during investigation made disclosure Ex.PW13/C and in pursuance to the said disclosure soon after his arrest, he lead the police party to his House No. 756/3 behind Dharampura Bazaar, Patiala, Punjab and got recovered two gold bangles Ex.P4, robbed amount in cash Rs. 30,000/- Ex.P5 and purchased cosmetics amounting to Rs. 20,000/- Ex.P6. I.O. M.L. Meena (PW26) deposited the same with the MHC(M) vide entry number

3333 Ex.PW3/C on 02.08.2011 itself. The accused has not claimed the recovered articles during his cross-examination of the prosecution witness. The accused has not examined his wife in his defence to claim the said articles. The accused has not claimed that the aforesaid articles belong to him in his statement under Section 313 Cr.P.C. Further, the two gold bangles Ex.P4 have been identified by PW2 and PW1 which the deceased was wearing on the date of the incident. Therefore, planting of the aforesaid articles on the accused by the police and not conducting the TIP of Ex.P4 independently during the investigation loses its significance.

HC Ramchander (PW13) and Insp. M.L. Meena (PW26) further proved the recovery of pre-washed blood stained brown coloured pant and white vest Ex.P14 which the accused was wearing on the date of the incident from house of the accused on 04.08.2011. The said articles were seized vide seizure memo Ex.PW13/G by I.O. PW26, and was deposited with the MHC(M) vide entry No.3337 Ex.PW3/D which were subsequently sent to CFSL, Rohini and the report of the same is Ex.X2. The said report shows that human blood was detected on both the articles.

12. The prosecution has exhibited Exhibits such as snapped lock and hook, blood stains from the spot, blood stain from kitchen, blood stain from door knob of toilet and a pair of slipper which were seized vide seizure memo Ex.PW1/B, Ex.PW1/C, Ex.PW1/D, Ex.PW1/E and Ex.PW1/F.

13. The I.O. M.L. Meena (PW26) got conducted the post mortem of the dead body of the deceased Smt. Pavitra Kaur at Mortuary, DDU Hospital on 30.07.2011 by Dr. Komal Singh (PW19). He has proved the post mortem report Ex.PW19/A got conducted by him on the body of the deceased. Post mortem report indicates that deceased received 17 injuries on her person

which are as follows:

- I. Clean incised wound (CIW) of size 3.5cm x 0.5cm present on the occipital region with clean cut margins obliquely placed having acute and obtuse angle, liquid and clotted blood present in and around the wound.
- II. CIW of size 5.5cm x 0.6cm, penetrating at posterior aspect of neck which is more on right obliquely placed with regular margins with both angle acute with liquid and clotted blood in an around the wound.
- III. Bruise of size 5cm x 3cm on the outer aspect of lower right forearm just above the right wrist.
- IV. CIW of size 3cm x 1cm x bone deep present on the outer aspect of the right hand on the base of ring finger with clotted blood.
- V. Bluish green bruise of size 3cm x 2cm present on the posterior aspect of right shoulder joint.
- VI. CIW present on the posterior aspect of right upper chest medial to the medial border of right scapula of size 3.5cm x 0.5cm deep to T.C obliquely placed with both angle acute.
- VII. CIW of size 3.5cm x 0.5cm x abdominal cavity horizontally placed on the lateral aspect of right Sessions Case No. 57737/16 Page 39/59 abdominal wall, 14 cm lateral to posterior mid line, 16 cm below from the angle of right scapula, 98 cm above the right heel with medial angle acute and lateral angle obtuse.
- VIII. CIW of size 4cm x 0.5cm x deep to abdominal cavity 1 cm below external injury no.7.
- IX. CIW of size 3.5cm x 0.5cm x muscle deep, 0.5cm below external

injury no.8.

- X. CIW of size 4.5cm x 0.5cm x deep to cavity, 0.3cm below external injury no.9.
- XI. CIW size 5cm x 0.7cm x deep to cavity, 0.2cm below external injury no.10.
- XII. CIW of size 3cm x 0.5cm x muscle deep, 2.5 below external injury no.11.
- XIII. CIW of size 2.5cm x 0.8cm x deep to oral cavity present on the right side of face.
- XIV. CIW of size 3cm x 0.5cm x deep to abdominal cavity, 9.5cm above the umbilicus and 7cm below from sternum medical angle acute lateral angle obliquely place.
- XV. CIW of size 1.5cm x 0.3cm x muscle deep, 2cm below the umbilicus.
- XVI. CIW of size 3cm x 1cm x muscle deep present on the lateral aspect of the lower left forearm, 6cm above the left wrist joint.
- XVII. CIW of size 3.5cm x 0.5cm x deep to skull. All CIWs are covered with clotted blood.

The cause of the death as per the post mortem report is *“hemorrhagic shock subsequent to multiple stab injuries involving the vital organs of the body”*. No.2 and No.7 injuries were sufficient to cause the death in the ordinary course of nature either individually, or in combination. The time since death is approximately 24 hours prior to the post mortem which was conducted at 12:05 PM on 30.07.2011 which connects to the date and time of the incident with the accused.

14. The prosecution has examined I.O. Insp. M.L. Meena (PW26) who has proved the arrest of the accused on 02.08.2011 in Punjab on the pointing

out by the secret informer and the recovery made on the basis of the disclosure statement of the incriminating articles i.e. 2 gold bangles Ex.P4 and robbed amount in cash Rs. 30,000/- Ex.P5 and the purchased cosmetics amounting to Rs. 20,000/- Ex.P6 on the same day. He has deposed that the accused was brought back to Delhi and he deposited the articles with MHC(M) and moved the application Ex.PW24/A on 05.08.2011 before the Ld. MM M.P. Singh at the instance of the accused, for recording his confession, while accused was in police custody. The said application was marked to Ld. MM Ms. Vandana Jain (PW24) being link MM. She did not record the confessional statement of the accused on the said date and warned the accused that if he makes the confessional statement before her, the same could be used against him and gave him time to rethink before making such statement. The matter was adjourned to 08.08.2011. On 08.08.2011 the accused was brought again by the I.O. for recording his confessional statement. The Ld. MM Ms. Vandana Jain again warned him of the consequences of making his confessional statement, and again gave time to rethink, the accused was sent to JC and the matter was adjourned to 12.08.2011. On 12.08.2011 the accused was produced before Ld. MM Ms. Vandana Jain, I.O. was also present. Ld. MM Ms. Vandana Jain further made inquiries and warned him once again of the consequences of making confessional statement and again gave time to rethink and remanded the matter for 16.08.2011. On 16.08.2011 accused was produced from JC and I.O. was not present and one Insp. Harpal Singh was present and he was directed to remain present outside the court and due inquiries were made from the accused by Ld. MM in question answer form to assess his voluntariness and to ensure that he was under no fear before recording the

statement to bring out the truthful statement. The Ld. MM Ms. Vandana Jain, after satisfying herself that the accused was under no fear and capable to make a voluntary statement, allowed him to make the confessional statement. English translation of the said confessional statement Ex.PW24/B is as follows:

I, on 29.07.2011 at 1 PM reached at my aunt (mausi) Pavitra Kaur's place who resided in Subhash Nagar (Hari Nagar), Delhi. At that time she was alone at home. I asked from her Rs. 50,000/- on interest as my financial condition is not good. She refused to give money, she got angry and started saying against my family. Then she went to cook food in kitchen. There she started saying things against my mother that "your mother has got a bad luck, and you are not even capable enough to take care of her". On this I got angry. Then I saw a metal pestle, I attacked on her head with that pestle, blood started gushing out. On seeing that I got panicked. I saw knife there. I lost my self control and I stabbed her. I lost all my self control. I even don't know that how many times I stabbed her. Thereafter, I removed 2 bangles from her hand, and took out Rs. 50,000/- from almirah. Almirah was locked, I broke the lock with knife. I washed my shoes thereafter, put my ensanguined T-shirt in a plastic bag and wore another T-shirt which I picked from other room. Some jewellery was also kept there which I did not pick. I put the knife, pestle and T-shirt in a plastic bag and from there I went to Ambala, from Ambala I went to Patiala. On the way there is a canal, I threw away that plastic bag in that canal. Thereafter, I came back home. I then noticed that there was blood on the back side of my shoes. Those shoes and T-shirt which I picked from my Aunt's house, I threw them away in yet another canal. Thereafter, I came back home. On the next day, I came to my Aunt's funeral. Thereafter, I again went back to Patiala. On 01.08.2011, police caught me at Patiala. I took this step in anger. I did not do this intentionally.

(Thumb Impression of confessor/accused)

The proceedings were subsequently concluded vide Ex.PW24/C. The statement and the proceedings were sent in a sealed envelope to ACMM West Delhi immediately thereafter. The said statement and the proceedings became the part of the chargesheet, and copies thereof were supplied to the accused alongwith the chargesheet. The plea of the accused for retraction of the statement on the ground of pressure from police officials- that he would be released soon if he makes the confessional statement under Section 164 Cr.P.C. before Ld. MM loses significance, as I.O. M.L. Meena (PW26) himself was not present while the proceedings were conducted on 16.08.2011 and the accused was produced from JC and he was given adjournments on three different occasions to rethink about making his statement under Section 164 Cr.P.C. from 05.08.2011 to 16.08.2011. He was also repeatedly counselled and warned that his judicial confession could be used against him. Therefore, the plea that his judicial confession was made under coercion or undue influence is an afterthought and nothing else. In this regard, reliance is placed on ***Dharumiah @ Dharumaiyan V. State***, 2008 Indlaw MAD 87 and on Apex Court judgment in ***Aloke Nath Dutta and Others V. State of West Bengal***, (2007) 12 SCC 230.

15. The plea of *alibi* of the accused, based on the statement of DW1- daughter of the accused, fails in face of the aforementioned confessional statement and other facts on the record.

16. As discussed above, the facts emerging from all corners of the present case establishes that the death of the deceased Smt. Pavitra Kaur was a homicidal death; the accused is a real son of deceased's sister who resided at house No. 756/3 behind Dharampura Bazaar, Patiala, Punjab; he was on

visiting terms with deceased due to close relationship, and; he often sought financial help. On suspicion, when accused was arrested, he made disclosure statement as well as confessional statement before judicial magistrate. The statement of the witnesses PW1, PW2 and PW5 shows that deceased was wearing two gold bangles and the said bangles during the course of the incident were removed forcefully resulting into bruise of size 5cm x 3cm on the outer aspect of lower right forearm just above the right wrist. The recovery of gold bangles Ex.P4 and blood stained brown pant and white vest Ex.P14 on which human blood was found remains unexplained satisfactorily by the accused. The subsequent confessional statement Ex.PW24/B recorded on 16.08.2011 also corroborates the other factors emerging on the records to connect the accused to his guilt. Therefore, we unhesitatingly conclude that the accused was involved in committing the crime.

17. We may now consider the plea of the appellant whether the accused is entitled to the benefit of exception 4 of Section 300. Exception 4 to section 300 IPC reads as follows:

“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.”

To avail benefit of this exception, following four pre-requisites must be satisfied:

- (1) Offence is committed in a sudden fight;
- (2) absence of pre-meditation;
- (3) act was done in a heat of passion;
- (4) no undue advantage was taken by the accused and he/ she did not act

with cruelty or in an unusual manner.

In the present case, the deceased was 63 years of age, who suffered 17 injuries on her person. The accused was the son of sister of the deceased Smt. Pavitra Kaur. The accused entered into the house of the deceased at First Floor, WZ 74A, Meenakshi Garden, Hari Nagar, New Delhi when she was alone at about 1 PM to 3:30 PM, as shown in the site plan Ex.PW26/A and scaled site plan Ex.PW17/A. The accused demanded Rs. 50,000/- on interest as financial help from the deceased. The deceased refused to help and went in the kitchen to cook food. While the accused followed the deceased in the kitchen - as shown in the site plan Ex.PW26/A (and the scaled site plan Ex.PW17/A) there, she used derogatory remark against the accused and his mother by saying, "*your mother has got a bad luck, and you are not even capable enough to take care of her*", which resulted into the aggravation of the anger and the accused got provoked to such an extent that he picked up a pestle which was lying nearby in the kitchen and hit her on the head. Because of the said hit blow, blood gushed out from her head which resulted in his getting panicked. He lost his mental stability and picked up a knife and repeatedly stabbed her. Thereafter, he removed 2 gold bangles from her hand and broke open the almirah and took out Rs. 50,000/- and left. Thereafter, he threw away the knife, pestle and blood stained T-shirt in a canal on his way to Patiala.

The confessional statement Ex.PW24/B has put light on the events that took place chronologically at the relevant point of time. As such there are two distinct situations, one which took place in the hall and other which took place in the kitchen. The question that arises for consideration is, as to what led the accused to follow the deceased to the kitchen. There was

sufficient time to understand by any prudent man, that the deceased was not accepting his proposal to give him money., Despite that, the accused followed her to the kitchen. Such action is not explained by the accused in his statement Ex.PW24/B. Even if, it is assumed that there was a sudden provocation, giving a blow with the pestle on the head of the deceased was enough to give vent to the anger of the accused. His subsequent conduct of not letting go, and rather of picking up the knife in the kitchen, and repeatedly stabbing more than 15 times on the person of deceased is a brutal act, and any prudent man would have knowledge that such an act would, in all probability, result into a homicidal death.

Further, the accused still did not stop. He proceeded to remove the two gold bangles from the injured/ deceased Smt. Pavitra Kaur, leaving her behind all alone to die, and breaking open the almirah to steal cash amounting to Rs. 50,000/- and running away from the spot after removing the evidence, itself is sufficient to reject his claim that his case is covered by Exception 4 to Section 300 IPC. The appellant took undue advantage of the loneliness of the old helpless lady, who was his own aunt (mausi) and attacked her brutally such that she suffered 17 injuries – two of which were fatal independently. Therefore reliance is placed on *Mohd. Asif V. State of Uttaranchal* (2009) 11 SCC 497.

18. Reliance placed by appellant on **Hari Bahadur @ Hari V. State** (supra), **Sanjay Kumar V. State** (supra), **Jamil @ Jamir V. State** (supra), **Krishan Kumar @ Monu V. State** (supra), **Ajay Bind V. State NCT of Delhi** (supra), **Ankush Shivaji Gaikwad V. State of Maharashtra** (supra) and **Ashok Bind V. State** (supra) is misplaced. As such accused is guilty of taking undue advantage by stealing the gold bangles and cash

amounting to Rs. 50,000 /- after killing the deceased with a blow on the head by a pestle and stabbing by knife. We have placed reliance on *Akal Mahomed (1865) 3 WR (Cr) 18*.

Furthermore, reliance placed by appellant on **SA V. AA** (supra) is of no relevance to the instant case. As the facts and contents of the said case are vague to the instant case.

19. Thus we are of the opinion that the appellant has rightly been found guilty of commission of offence under Section 302 and we place our reliance on *Dharumiah* (supra), *Aloke Nath Dutta* (supra) and *Mohd. Asif* (supra). Therefore, Judgment Dated 24.05.2017 and Order on Sentence Dated 29.05.2017 passed by the learned Additional Session Judge is upheld.

20. For reasons aforementioned, there is no merit in the appeal and same is dismissed accordingly. All pending applications are accordingly disposed of.

21. LCR file be sent back forthwith alongwith a copy of this judgment. No order as to costs.

**I.S.MEHTA
(JUDGE)**

VIPIN SANGHI, J.

1. I have read the opinion of my learned Brother I.S. Mehta, J. I entirely agree with his reasoning and conclusion that the appeal merits dismissal. However, I consider it necessary to say a few words, particularly, in respect of the alternate submission of the appellant that the offence, in the present case, does not fall under Section 300 IPC, but under Section 304 IPC on

account of the same being covered either by Exception 1, or Exception 4 to Section 300 IPC.

2. Section 300 IPC reads as follows;

“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-

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.

Exception 1- When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of

doing more harm than is necessary for the purpose of such defense.

Exception 3- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

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

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

3. Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, unless the case falls in one of the Exceptions 1 to 5. The “Secondly”, “Thirdly” and “Fourthly” clauses of Section 300 seek to deal with different species of the cases - the genus whereof is the generally stated principle, that intentional culpable homicide is murder. The different species dealt with in the fine exceptions take the case out of “murder”.

4. Thus, even if the benefit of the doubt were to be given to the accused that the act by which the death was caused, was not done with the intention of causing death, or with the intention of causing such bodily injury as he knew to be likely to cause the death of the deceased, it needs examination

whether the act which caused the death of the deceased, in the present case, was done by the accused with the intention of causing bodily injury, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause the death i.e. whether the case falls in the “Thirdly” category of Section 300.

5. In *Virsa Singh v. State of Punjab*, AIR 1958 SC 465, the Supreme Court examined Section 300 IPC, particularly, the “Thirdly” clause thereof. At this stage, we may observe that even as per the case of the prosecution, the present does not appear to be a case falling in the first category, namely, where the act by which the death is caused is done with the intention of causing death. This category is ruled out, since there was no pre-meditation on the part of the accused to cause the death of the deceased – his maternal aunt. He did not go armed with any weapon to the house of the deceased, and the death was caused with the use of the articles/ weapon found at the spot.

6. In *Virsa Singh* (supra), the Supreme Court observed that in respect of a case covered by the “Thirdly” clause of Section 300 IPC, the prosecution must, firstly, establish objectively, that a bodily injury is present; secondly, the nature of injury should be established; thirdly, it must be proved that there was an intention to inflict that particular bodily injury i.e. to say, it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the inquiry proceeds further and it must be proved that the injury of the type described above is sufficient to cause death in the ordinary course of nature. This part of enquiry is purely objective and inferential, and is not related to the intention of the offender.

7. Once these elements are established by the prosecution in discharge of its burden, the offence is of murder under Section 300 IPC “Thirdly”. It does not matter that there was no intention to cause death, or there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature. It is also not relevant that there is no knowledge that an act of that kind will be likely to cause death. The intention to cause the bodily injury – which caused the death, and which is sufficient in the ordinary course of nature to cause death, is sufficient to bring the case under Section 300 IPC “Thirdly”.

8. In the facts of the present case, the evidence on record conclusively establishes that the appellant inflicted injuries on the body of the deceased while intending to cause those injuries. This is so established from- firstly, the nature; location, and; number of injuries, and the weapon used to cause the injuries, and; secondly, from the confessional statement of the accused which stands duly corroborated. The injuries inflicted on the body of the deceased were not accidental; or, suffered during a fight; or, caused due to intervention of any external factor or force beyond the control of the accused. They were inflicted by the voluntary, conscious positive act of the accused. The objective medical opinion has established that two of the injuries were independently sufficient to cause the death of the deceased.

9. Mr. Singhal made a feeble attempt to invoke Exception 1 to Section 300 IPC. In *K.M. Nanavati v. State of Maharashtra*, 1962 AIR 605, the Supreme Court held that the following conditions must be complied with for attracting Exception 1 to Section 300 IPC

“i) *The deceased must have given provocation to the accused,*

- ii) The provocation must be grave,*
- iii) The provocation must be sudden,*
- iv) The offender, by reason of the said provocation, shall have been deprived of his power of self-control.*
- v) He should have killed the deceased during the continuance of the deprivation of the power of self-control, and*
- vi) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.”*

10. In the present case, the provocation that the accused attributes to the deceased is a taunt/ reprimand by the deceased to the accused that he could not look after his own mother. Even if this version of the accused were to be accepted, the same certainly does not fall within the meaning of “Grave Provocation”. Moreover, the so - called provocation was not, in any event, sufficient to deprive any ordinary man of his power of self control. The accused himself claimed that after he gave the first blow with the pestle, blood gushed out, and he panicked. However, he did not stop; he did not attempt to rescue his aunt (mausi). On the contrary, he saw the knife, picked it up and stabbed her. He himself states that he does not know how many times he stabbed her. After she was seriously injured by him, he went on to remove the bangles from her hand and also took out Rs. 50,000/- from her almirah after breaking the lock with the knife. Thus, the submission of Mr. Singhal that the case is covered by Exception 1 of Section 300 IPC has no merit.

11. Returning to deal with the submission of Mr. Singhal premised on Exception 4 to Section 300 IPC, we may observe that the pivotal question that the Court has to decide is the question of intention of the accused in

committing the act that he did, which led to the culpable homicide of the deceased. In ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P.***, (2006) 11 SCC 444, the Supreme Court observed that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

“ 29.

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... ..”.*

12. In ***Babulal Bhagwan Khandare V. State of Maharashtra***, (2005) 10 SCC 404, the Supreme Court brought out the distinction between cases covered by Exception 1 and Exception 4 to Section 300 IPC. The fourth Exception covers acts done in sudden fights. It covers cases of provocation, which are not covered by the 1st Exception. The two Exceptions are founded upon the same principle, for in both there is absence of pre-mediation, 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, but the injury done is not the direct consequence of that provocation. Exception 4 deals with cases in which, notwithstanding that a blow may have been struck, or some provocation may have been given 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 in each situation is clearly not traceable to unilateral provocation, nor in such cases the whole blame can be placed on one side. The Supreme Court observed;

"18. The help of Exception 4 can be invoked if death is caused (a) without pre-meditation; (b) in a sudden fight; (c) without the offender's 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 had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and 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

pre-meditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

19. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken...”.

13. When the facts of the present case are viewed in the aforesaid light, the present case cannot be categorised as one falling under Exception 4 to Section 300 IPC. The defence of the accused is not that of a “fight”. Neither in his confessional statement, nor in his statement recorded under Section 313 Cr.P.C. does he claim that the deceased was embroiled in a “fight” with him. There is no evidence of it. No injury suffered by the accused at the hands of the deceased. The confessional statement of the accused is that while the deceased was busy cooking food in the kitchen, he inflicted a blow on her head with a metal pestle. It was for the accused to show, firstly, that there was a sudden quarrel and there was no pre-meditation. Even if his submission that there was no pre – meditation is accepted, it was for the accused to show that he had not taken undue advantage or acted in a cruel or unusual manner. Unfortunately, the facts on record do not support this defence of the accused, as he continued to inflict injury upon injury upon on the old lady – his aunt (mausi) – including on vital parts of her body. Even after she fell down - after the strike from the metal pestle on her head by the

accused, there were 17 injuries inflicted on her body – two of which were sufficient to cause death independently in the ordinary course. The accused took undue advantage of her being alone and being an old lady. That is how he continued to assault her, even after she fell down after the first blow with the metal pestle on her head. He also proceeded to remove her gold bangles and, thereafter, the cash from the locked drawer after breaking the lock.

14. The decisions relied upon by the accused are not apposite in the facts of the present case. In *Ajay Bind* (supra) the deceased asked the accused to keep quiet while they were embroiled in a quarrel amongst themselves in highly inebriated condition. The deceased was struck with weapons such as hammer, danda and saria picked up from the spot. The court held that the case did not fall under Section 302 IPC in the light of the aforesaid factual background. Intervention by the deceased to loudly command the appellants to keep quiet resulted in their attention – while they were running high temper, getting directed towards the deceased. The offence was committed by use of weapons picked up from the spot which are not dangerous weapons, but were ordinary tools lying on the spot. There was no pre – meditation and the violence was a result of sudden provocation in the ongoing fight between the appellants, which came from a stranger i.e. the deceased. On facts, this case is clearly distinguishable from the present one.

15. In *Ankush Shivaji Gaikwad* (supra), the dog of the deceased started barking on the accused. The accused hit the dog with an iron pipe that he was carrying in his hand. The deceased objected to the beating of the dog and this led to a verbal duel and scuffle between the two. The court accepted the defence that the incident took place in a sudden fight without any pre-meditation. The act of hitting the deceased was done in the heat of passion

upon a sudden quarrel, and the appellants did not take undue advantage. Nor they acted in a cruel or unusual manner while committing the offence. As aforesaid, there was no pre-meditation; the weapon used was not lethal and; the deceased was not given a second blow once he collapsed to the ground.

16. This case is distinguishable on facts since the accused did not hit the deceased after he fell down. However, in the present case even, though there was no scuffle or fight, the accused kept on hitting the deceased incessantly even after she fell down after the first blow on her head given by the accused by the use of metal pestle.

17. *Ashok Bind* (supra) is also distinguishable on facts. It was a case where the deceased was sleeping on a bench on the railway platform. His friend was sitting on the bench and was awake. The accused came to the platform with a bag and asked them to get up. However, the friend refused to do so. This led to a quarrel. The accused went to a nearby gutter, picked up a stone from there and hit the same on the head of the deceased who was deep in sleep. He suffered injuries on his head and died. The court held that the case did not fall under Section 300 IPC as there was no evidence of pre-meditation. The incident happened in a sudden quarrel and in the heat of passion. Once again, for the reasons aforesaid, this case is clearly distinguishable on facts.

18. Reliance is also placed by the appellant on *Sanjay Kumar* (supra). In this case the accused was consuming alcohol on the day of Chhat Puja, a sudden quarrel ensued between him and one Akshay – one of the two deceased. On being separated, the appellant ran inside the factory where he was working and also residing. He picked up a jug from a can nearby, filled nitric acid in the jug and splashed the same on the two deceased who died

due to acid burns. The conviction of the appellant was converted from one under Section 302 to that of 304 Part II IPC on account of the sudden fight between the accused and the deceased. There was no pre – meditation and the offence was committed under the influence of alcohol.

19. Reliance is also placed on *Jamir* (Supra). In this case, the Court invoked Exception 4 to Section 300 while returning a finding that the offence took place without pre-meditation as a result of sudden fight and in the heat of passion. The accused did not take undue advantage of the circumstances of the deceased.

20. Reliance is also placed on *Krishan Kumar* (supra). In *Krishan Kumar* (supra) a dispute arose between the accused and the deceased as they both were interested in the same girl. The deceased was engaged to the said girl. The accused and the deceased met in the company of two others. A hot verbal dialogue resulted in a physical fight in which the accused Krishan Kumar suffered injury of a deep cut on the fore finger of the right hand. The ring finger of the left hand was decapitated.

21. In these circumstances, the Court held the case to be covered by Exception 1 to Section 300 IPC and converted the conviction from one under Section 302 IPC that to under Section 304 Part I IPC. On facts, this is materially a different situation from the one at hand.

22. Reliance is also placed on *Hari Bahadur* (supra). In this case, the accused surrendered before the police after commission of the crime i.e. strangulation of his sister (muh boli behen) due to her activities and conduct. He was given the benefit of Exception 4 to Section 300 on the premise that there was no pre-meditation; there was no enmity between him and his sister and he had no motive to commit the offence; there was hot exchange of

words that provoked the appellant to commit the crime; the exchange of words in relation to the activities of the deceased led to a sudden fight which culminated in the deceased being strangled with a silk rope. The offence was not committed by a lethal weapon and the accused did not act in an unusual or cruel manner in the prevailing circumstances.

23. Thus, the decisions relied upon by the appellant are of no avail to him. In fact, in our view, in the facts of the present case, the decision in **Kikar Singh** (supra), relied upon by the learned APP is apposite. The accused and deceased owned neighbouring agricultural land and an altercation broke out between them since the appellant was throwing soil on the land of the deceased. The deceased sought to persuade the appellant not to do so and settle the matter amicably. The appellant, however, was annoyed with the conduct of the deceased, his sons and son in law. The son of the accused instigated the accused and he inflicted a blow with kassi (spate, sharp edged cutting instrument) on the head of the deceased and with its impact the deceased fell down. The appellant thereafter inflicted two more injuries on deceased. The Supreme Court in this case observed as follows:

“5. ... Even if we assume that the appellant committed the offence during the course of a verbal quarrel between the appellant and the deceased one cannot escape from the conclusion that the offence is one of murder.

6. Section 299 IPC defines that 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. Under Section 300 except in the cases thereafter excepted, culpable homicide is murder ..., 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. Exception 4 thereof provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. Under Section 302 whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine. 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, or with fine, or with both. Under second part of Section 304 IPC 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.

7. *It is, therefore, clear that culpable homicide is murder when the accused causes death by doing an act with the intention of causing death, or causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death. If the accused intentionally causes bodily injury which is found to be sufficient in the ordinary course of nature to cause death it would attract clause Thirdly of Section 300 IPC. If the accused knows that the act he causes 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 it would attract clause Fourthly. It would be murder unless it is brought in any one of the exceptions. In a given case even if the case does not fall in any of the exceptions, still if the ingredients of clauses (1) to (4) of Section 300 are not satisfied, then it would be culpable homicide not amounting to murder punishable under Section 304 either clause (1) or clause (2). It is, therefore, the duty of the prosecution to prove the offence of murder.*

24. I am, therefore, of the considered view that there is no merit in the alternate submission that the case is covered by Exception 1 or Exception 4

to Section 300 IPC. I agree with the view taken by my learned brother Justice I.S. Mehta that the appellant stands rightly convicted and sentenced by the Trial Court and the appeal deserves to be dismissed.

VIPIN SANGHI
(JUDGE)

DECEMBER 14, 2018

JUDGMENT OF THE COURT

In view of the above, the appeal is dismissed.

VIPIN SANGHI
(JUDGE)

I.S.MEHTA
(JUDGE)

DECEMBER 14, 2018