

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

+ CRL.A. 353/2003

Reserved on: 13.02.2019

Date of decision: 05.04.2019

IN THE MATTER OF:

JAGRAJ SINGH alias RAJAN BHAIYA Appellant
Through: Mr. Mohit Mathur, Sr. Advocate
with Mr. Vikram Panwar and Mr. Vikas Walia,
Advocates.

versus

STATE OF DELHI Respondent
Through: Mr. Amit Gupta, APP for State.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

HIMA KOHLI, J.

1. A limited question that has come up for consideration in the present appeal, arising from Sessions Case No.185/2001, in FIR No.301/2000, PS Patel Nagar, is as to whether the conviction of the appellant vide impugned judgment dated 21.4.2003, under Section 302 IPC and the order on sentence dated 22.4.2003, sentencing him to undergo rigorous imprisonment for life and pay a fine of Rs.5,000/-, and in default of payment of fine, undergo simple imprisonment for a period of three years, is liable to be upheld or he deserves to be held guilty for the commission of a lesser offence under Section 304 Part II of the IPC. In other words, this Court is required to examine as to what was the nature

of the offence committed by the appellant in the facts and circumstances of instant case and as a sequel thereto, the sentence that ought to have been awarded to him.

2. The factual matrix of the case as presented by the prosecution is that in the evening of 29.4.2000, the deceased, Sh. Ravi Chaudhary alongwith his wife, Smt. Shashi Chaudhary and two minor children had gone to Sidhartha Hotel, East Patel Nagar to attend a party. After attending the party, when the deceased and his family stepped out from the hotel and sat in the car, Maruti car bearing number DL-6C B 2548, to return to their home, at about 10.15/10.30 P.M., the deceased drove towards the right side of the road to take a U-turn and turn back to the Pusa Road round about. On reaching Dasa Prakash Restaurant, situated down the same road from Sidhartha Hotel, the appellant, who was driving a Maruti Gypsy bearing registration number DL 1C 4328 and had two children sitting alongwith him, drove down from the Pusa Road round about side and hit the Maruti car of the deceased causing some scratches/dent on it. A quarrel erupted between the parties. Ravi stopped his car, he and his wife came out and walked towards the Gypsy of the appellant, who remained seated in his vehicle and started hurling abuses at them. When Ravi turned back to walk towards his car, the appellant said that he will teach him a lesson and hit him with his Gypsy. Ravi was dragged for about 20 yards with the vehicle and then he fell down from the bonnet on to the road and collapsed while the appellant fled from the spot in his vehicle.

3. The victim was taken by his wife to Sir Ganga Ram Hospital ('SGR Hospital' in short) and given treatment. He could not survive for

long and expired on 30.4.2000, at about 10.10 A.M. While in the hospital, the police recorded the statement of the victim's wife on 29.04.2000 (Ex.PW5/A). Her supplementary statement was recorded by the police on the next day as well wherein, she clarified that the appellant was driving a Gypsy. Earlier, she had described the vehicle as a "Sumo type" vehicle. The appellant was apprehended and arrested by the police on 30.4.2000. On conclusion of the investigation, vide order dated 20.10.2000, charges were framed against the appellant under Section 302 IPC. He pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined 24 witnesses. The sole eye witness of the incident is the wife of the deceased, Smt. Shashi Chaudhary, who appeared as PW-5. PW-1, Dr. Sanjay Rohtagi, CMO, SGR Hospital proved the MLC prepared by him and marked as Ex.PW1/A. Dr. Rishabh Jain, Medical Officer, SGR Hospital appeared as PW-2 and proved the death certificate of the victim, marked as Ex.PW2/A and his death summary marked as Ex. PW2/B. Dr. K. Goel, who appeared as PW-3, proved the postmortem examination report of the deceased, marked as Ex.PW3/A. PW-11, ASI Karan Singh, who was posted at PS Patel Nagar at that time, was assigned DD No.40A, for investigation. He along with PW-12, Constable Devender Kumar, who was handed over DD No.42A, reached SGR Hospital on 29.04.2000 and found that the victim was unfit to give a statement. The statement of the wife of the deceased, (PW-5) recorded by PW-11, is marked as Ex.PW5/A. The said statement was endorsed by PW-11 as Ex.PW11/A and handed over to PW-12 for getting the case registered. The said witness returned to the scene of the crime and seized the blood lying at

the spot vide Ex.PW11/B. The seizure memo of the Maruti car of the deceased parked in the Hospital premises was proved by the said witness as Ex.PW11/C.

5. After depositing the case property in the *Malkhana* of the Police Station, PW-11 accompanied PW-20, Inspector Ombir, SHO, PS Patel Nagar to the hospital. He again returned to the spot and prepared the unscaled site plan, Ex.PW11/D. On going back to the hospital, the doctor handed over to PW-20, Inspector Ombir, the SHO, a sealed parcel containing the clothes of the deceased, seized vide seizure memo, Ex.PW11/E. PW-20 also completed the formalities relating to the inquest proceedings in respect of the deceased on 30.4.2000, by 2 P.M. and recorded the supplementary statement of PW-5. PW-12, Constable Devender deposed on the same lines as PW-11. PW-19, SI R.S. Meena was present when PW-20 arrested the appellant and seized the vehicle involved in the crime, i.e., the Maruti Gypsy alongwith its keys vide seizure memo Ex.PW10/A. The driving license and a copy of the Registration Certificate were seized vide seizure memo Ex.PW10/B. Since some blood stains were noticed on the aluminium plate near the right side of the vehicle, a photographer was called to take the photographs and the blood was seized vide seizure memo, Ex.PW10/C.

6. On 01.05.2000, the appellant was arrested and produced for his TIP in a muffled face, but he declined to participate in the TIP. The TIP proceedings of the appellant were proved by Mr. Sanjay Kumar, Civil Judge, Tis Hazari Court, Delhi, who appeared as PW-24. The said report is marked as Ex. PW24/A wherein, it was recorded that the appellant had declined to participate in the TIP proceedings. PW-16, Teerath Raj Singh

was the Draftsman, who on the pointing out of the wife of the deceased, (PW-5), had reached the place of occurrence on 13.5.2000 and prepared the scaled site plan, marked as Ex.PW16/A.

7. Dr. Rajender Singh, Sr. Scientific Officer, Grade-I, CFSL, CBI, New Delhi, who deposed as PW-21, proved the microscopical examination report dated 31.7.2000, in respect of the white colour Maruti car driven by the deceased and the white colour Maruti Gypsy driven by the appellant, as Ex.PW21/A. The FSL report dated 15.11.2000 in respect of the case material forwarded by the police was marked as Ex.PX. Pertinently, the articles forwarded to the FSL for an analysis included a piece of the aluminium plate of the Maruti Gypsy seized by the police. The analysis report stated that no blood could be detected on the exhibit. The serological report submitted by the FSL confirmed that the human blood found on the soil lifted from the scene of the crime, matched with the blood group of the deceased (AB Group), lifted from his clothes. PW-22, ASI Devender Kumar, who had mechanically inspected the Maruti car driven by the deceased and the Maruti Gypsy driven by the appellant, submitted his reports, Ex.PW22/A and Ex.PW22/B.

8. On conclusion of the evidence, the appellant was granted an opportunity to lead evidence in defence, which he declined. On 20.08.2002, his statement was recorded under Section 313 Cr.PC wherein, he stated that he was innocent and claimed that he had been falsely implicated in the case. In the impugned judgment dated 21.4.2003, the trial court has relied on the testimony of PW-5, Smt. Shashi Chaudhary and held that her statement was duly corroborated

with the expert evidence including the CFSL report of inspection, CFSL report on the serological analysis read with the medical evidence, i.e., MLC (Ex.PW1/A) and the post mortem report (Ex.PW3/A), which proved that the appellant, who was driving the Gypsy on 20.4.2000, had hit the Maruti car driven by the deceased, causing scratches on the vehicle and thereafter, in the ensuing quarrel that took place between the parties, he abused the deceased to which the latter had objected. At that, the appellant had threatened to teach him a lesson and had hit him with his Maruti Gypsy, as a result whereof the deceased was pushed on to the bonnet of the Gypsy. The appellant kept on driving the Maruti Gypsy at a fast speed and dragged him for about 20 yards whereafter the deceased fell off the bonnet on to the road and collapsed. He was taken to SGR Hospital immediately where he breathed his last and expired on the next day. Thus the appellant was convicted under Section 302 IPC and awarded a life sentence.

9. We may note that initially, Mr. Mohit Mathur, learned Senior Advocate appearing for the appellant had opened his arguments by challenging the impugned judgment on merits and had contended, amongst others, that the testimony of PW-5, the sole eye witness is neither consistent, nor reliable and even her presence at the spot is doubtful; that the medical evidence did not support the case of the prosecution; that no motive was attributed to the appellant to cause the death of the deceased and the alleged incident had also not been scientifically proved by the prosecution. Subsequently, on instructions received, learned Senior Counsel elected to confine his arguments to the nature of the offence and canvassed that this case falls under Section 304

Part II and not under Section 302 IPC, as held by the trial court. He argued that the incident that had occurred on the night of 29.4.2000, was without any premeditation and the act of the appellant in the ensuing sudden quarrel that took place with the deceased, of speeding up his Maruti Gypsy with the deceased on the bonnet of the car, who fell on to the road on the breaks being applied by him, was an act which squarely falls within the scope of Exception 4 to Section 300 IPC, thus attracting the provisions of Section 304 Part II IPC.

10. The question before us is as to whether in the given facts and circumstances of the case, the appellant has been rightly convicted under Section 302 IPC. If the answer is in the negative, then the next question is whether the act attributed to the appellant would constitute the lesser offence of culpable homicide not amounting to murder, punishable under Section 304 Part II, IPC.

11. We may first note some relevant facts. Smt. Shashi Chaudhary, (PW-5), wife of the deceased, who is the sole eye witness in the present case, had initially deposed that on 29.04.2000, the appellant, who was driving a Maruti Gypsy, had overtaken their Maruti car and signaled to her husband, Shri Ravi Chaudhary to stop his car, which he did by parking it on the side. Thereafter, her husband had stepped out from the car and walked towards the driver's seat of the Gypsy, where the accused was sitting. As soon as he reached the driver's seat, the appellant started abusing him to which her husband had objected and when he turned back towards his car, the appellant shouted "*Mai tumhein abhi maja chakhata hoon*" and thereafter, he stepped up the speed of his vehicle and hit her husband, who was pushed on to the bonnet of the Maruti Gypsy. The

appellant continued driving the vehicle for about 20 yards in this manner whereafter, her husband fell from the bonnet on to the road and collapsed while the appellant fled from the spot in his Maruti Gypsy. However, during her examination-in-chief conducted on 13.3.2001, PW-5 had denied stating to the police that even after her husband fell down from the bonnet, the driver had again hit him with his Maruti Gypsy. When confronted with her statements recorded under Section 161 Cr.PC, wherein she had not stated anything about her husband being hit by the Maruti Gypsy and falling on the bonnet of the vehicle, PW-5 had asserted that she had made such a statement for the first time around midnight of 29.4.2000, again on 30.04.2000, when her supplementary statement was recorded (Ex.PW5/DA) and had reiterated the same in her second supplementary statement (Ex.PW5/DB), recorded on 15.5.2000. PW-5 also denied having stated to the police that her husband had been dragged by the appellant, who had again hit him at point 'C', as reflected in the unscaled site plan of the spot (Ex.PW11/D). She denied having stated to the police on 15.5.2000, that on seeing the appellant, she had stated that he was the same person who had crushed her husband to death (*"mere pati ko kuchal kar mara thaa"*). In her cross-examination, PW-5 stated that the appellant was not known to her and her husband earlier and nor did they have any enmity with him. She admitted that there was no physical scuffle between the parties and stated that the appellant had started hurling abuses at her husband at which both of them had turned back towards their car without any discussion. She denied the suggestion made by the defence counsel that her husband had jumped on to the bonnet of the Maruti Gypsy to stop the appellant from driving away or to

beat him up or that he had fallen down on the road before he could balance himself.

12. Critical in this case is the medical evidence. Dr. Sanjay Rohtagi (PW-1), who had examined the injured when he was brought to SGR Hospital on 29.4.2000, at about 10.30 P.M., described the case as a 'history of road traffic accident' and stated that he had noticed "*Local injury CLW*" on the back of the scalp, left side and swelling on the left ankle and had referred him to the Neurosurgery and Intensive Care Department for further management and treatment. In the MLC prepared by PW-1 (Ex.PW1/A), he noted that the patient had been brought to the hospital by his wife, PW-5. During his cross-examination, when it was put to him by the defence as to whether the head injury of the patient was possible by a fall on the verge or by hitting with some hard/blunt object, he had answered in the affirmative. He had also stated that the said injuries were not possible on crushing and dragging by a vehicle upto 20 yards.

13. Dr. K. Goel (PW-3), who proved the postmortem examination report (Ex.PW3/A), deposed that the patient was brought to the hospital on 29.4.2000 at 10.30 P.M. and he had expired on the next day, i.e., on 30.4.2000, at 10.10 A.M. In his report, PW-3 mentioned the following injuries found on the body of the victim:-

"On external examination, the following injuries were found on the body:

1) Surgical wound over scalp extending from left frontal right parietal and right temporal upto just infront of right ear.

2) Defused bruises with over-ling abrasions scattered over left side face in area 4.5" x 3" , all over nose, forehead at places and over chin with fracture nasal bone.

3) Grazed abrasions 2.5" x 2" over front of left shoulder, 12" x 4" over lateral aspect of left arm, elbow and upper part of left fore-arm.

4) Grazed abrasions with bruises in area 5" x 2.5" over left chest around the nipple.

5) Multiple abrasions scattered over right elbow joint both knee joints, upper part of left leg, medial side of the left ankle and few over right leg at places.

6) Multiple grazed abrasions scattered allover the back of chest and back of right abdomen.

INTERNAL EXAMINATION.

There was sub scalp bruising left parieto temporal and right temporal region cranio-toum operation with removal of bones over left fronto-parietel and over right fronto-parieto temporal bones with were holes. Bone pieces were present.

There was fissur fracture over part of left temporal bona sub-dural hemotoma seen over right frontal and right temporal lob, defused sub-arachnoid haemorrhage over right fronte temporal and left temporal lob. Frontal lob was contused brain edema was present.

There was fracture of left second to 7th ribs anteriorally with clots at fracture sides. ”

The report of PW-3 concluded that “cause of death was cranio-cerebral injuries consequent upon blunt force impact. All injuries were ante-mortem in nature. Post mortem findings were consistent with hit and run by a vehicle. Time since death was about 4 hour.”

14. PW-3 was extensively cross-examined by the defence counsel. In his cross-examination, on being suggested that any of the injuries on the dead body were crush injuries, he denied the same and stated that injuries 3 to 6 could be caused on the person of the deceased by a fall in an accident case by a motor vehicle on the road or on hard rough surface. He further stated that the head injury (cranio-cerebral injury) is possible by striking of a moving head against some stationary hard blunt surface and that such an injury was possible if a person falls from the bonnet of a running Gypsy, which is running with some speed on the road, that may not be a fast speed.

15. PW-3 was recalled for further examination-in-chief on the same day, i.e., on 30.1.2001 and following are the questions put and the answers given by him:-

“Q. Whether the ante mortem injury found on the person of deceased Ravi Chaudhary in your post mortem report Ex. PW3/A. were individually and cumulatively sufficient to cause of death in the ordinary course ?

A. Injuries No. 3 to 6 mentioned in my P.M. report ex.PW3/A were abrasions and bruises only. In general were non fatal. The craniocerebral injuries were likely to cause death in ordinary course of nature. Likely I mean the injuries in the brain was on the frontal lobe and the deceased survived about 12 hours after the incident. There was no injury in mid brain and hind brain where the most vital parts of the brain are situated controlling the vital functions of the body.

Court question:-

Whether the frontal lobe of brain is a vital part of the body or not.

Ans. In general the whole brain is the vital part of the body but in case of frontal lobe injury the death is not instantaneous and the patient can survive.”

16. Coming next to the FSL report (Ex.PX), the report noted that the blood detected on the clothes of the deceased (AB Group) had matched with the human blood found on the soil lifted from the spot. However, no blood was detected on the piece of aluminium plate affixed on the Maruti Gypsy of the appellant, that was sent for an analysis. Dr. Rajender Singh (PW-21) proved the mechanical report in respect of the two vehicles, namely, the Maruti car, driven by the deceased and the Maruti Gypsy driven by the appellant (Ex.PW21/A), wherein he mentioned that there were dents/scratches on both the vehicles and they matched with one another in respect of their height and transfer of similar paint material. PW-21 he concluded that the right side of the Maruti car had come in contact with the left side of the Maruti Gypsy.

17. From the evidence brought on record, the following facts and circumstances stand proved:-

- (i) A road accident had taken place in the night of 29.4.2000, on the road where Hotel Siddharth is located in East Patel Nagar in which a Maruti Gypsy being driven by the appellant had hit the Maruti Car being driven by the deceased.
- (ii) That the accident had resulted in a sudden heated exchange of words between the two parties.
- (iii) That when the deceased had turned to go back to his car, the appellant had accelerated his Maruti Gypsy and hit him.
- (iv) That impacted by the hit, the deceased fell on to the bonnet of the Maruti Gypsy and the appellant continued driving for about 20 yards.

(v) That when the appellant applied the breaks, the deceased fell down from the bonnet of the Maruti Gypsy on to the road and sustained a head injury.

(vi) That on the date of the incident, the appellant's two children were sitting in his Maruti Gypsy. Similarly, the deceased, who were returning from a party at Hotel Siddharth, was accompanied by his wife and two children.

(vii) Neither of the parties were known to each other before the incident and there was no history of enmity between them.

18. The main plank of the arguments advanced by Mr. Mathur, learned Senior Advocate is that the trial court has erred in convicting the appellant under Section 302 IPC and at best, it is a case of culpable homicide not amounting to murder, punishable under Section 304 IPC. The said provision is reproduced herein below for ready reference:-

“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.”

19. A glance at the aforesaid provision shows that it casts a duty on the prosecution not only to prove the death of the person in question, but also to prove that the said death was caused by the act of the accused and he knew that the said act was likely to cause death. That is to say that once it is established that the accused has committed an act with knowledge that it is likely to cause death, but without an intention to cause death, then the sentence imposed on him may extend to 10 years along with imposition of fine.

20. As Section 304 IPC does not define the expression, ‘culpable homicide not amounting to murder’, it is necessary to fall back on Section 299 and 300 IPC that prescribe as follows:-

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

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

Secondly- XXXX, or-

Thirdly- XXXX, or -

Fourthly,- XXXX, or-”

21. As against the definition of culpable homicide provided in Section 299 IPC, Section 300 IPC defines the circumstances in which state homicide is murder and carves out five Exceptions thereto which state

that culpable homicide will not be murder, if the act is done with the intention or knowledge in the circumstances and subject to the conditions specified therein. The exceptions to Section 300 IPC, relevant in the present case read as below:-

“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 - XXXX

Exception 3 –XXXX

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

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

Exception 5 – XXXX”

22. Looking at the circumstances in which the accident had taken place in the case before us, we find force in the submission made by learned counsel for the appellant that the appellant did not have any intention to cause death but at the same time, it cannot be denied that he had knowledge that his act may result in death. In the case of Prakash

Chand vs. State of H.P. reported as (2004) 11 SCC 381, the Supreme Court held as under:-

*“7. 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 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 premeditation. 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”. These aspects have been highlighted in **Dhirajbhai Gorakhbhai Nayak v. State of Gujarat** (2003) 9 SCC 322. When the factual scenario is considered in the light of legal principles indicated above, the inevitable conclusion is that Exception 4 to Section 300 IPC is clearly applicable.” (emphasis added).*

23. In Surinder Kumar vs. Union Territory, Chandigarh reported as 1989 2 SCC 217, the Supreme Court had emphasised that what is important is that the occurrence must have taken place on account of

sudden and unpremeditated fight and the offender had acted in a fit of anger, for being entitled to the benefit of Exception 4 to Section 300 IPC.

24. In Ghapoo Yadav & Ors. vs. State of M.P. reported as **2003 3 SCC 528**, apart from highlighting the sudden accident without premeditation, the Supreme Court had observed that the respondent should not have taken undue advantage or acted in a cruel or unusual manner for claiming the benefit of Section 304 IPC. A similar view was expressed by the Supreme Court in Mahesh vs. State of M.P., **1996 10 SCC 668**; Sukhbir Singh vs. State of Haryana, **2002 3 SCC 327**, Vadla Chandraiah vs. State of A.P., **2006 13 SCC 587**, Shankar Diwal Wadu vs. State of Maharashtra, **2007 12 SCC 518**, Jagriti Devi vs. State of M.P., **2009 14 SCC 771** and Ankush Shivaji Gaikwad vs. State of Maharashtra, **2013 6 SCC 770**.

25. In Alister Anthony Pareira vs. State of Maharashtra reported as **2012 2 SCC 648**, the Supreme Court highlighted the fact that criminal culpability is determined by referring to what a person with reasonable prudence would have known. In the said case, the appellant had rammed his car over the pavement during pre-dawn hours thereby killing seven persons and causing injury to eight persons and he was convicted by the High Court for offence punishable under Sections 304 Part-II and 338 IPC. While answering the question as to whether his indictment under Section 304 Part-II IPC can co-exist with Section 338 IPC, the Supreme Court had held as follows:-

“40. The question is whether indictment of an accused under Section 304 Part II and Section 338 IPC can coexist in a case of single rash or negligent act. We think it can. We do not

think that the two charges are mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused, then not only that the punishment is for the act but also for the resulting homicide and a case may fall within Section 299 or Section 300 depending upon the mental state of the accused viz. as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.

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XXXXX

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47. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304-A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II IPC may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death, offence may be punishable under Section 302 IPC.”

26. In State through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda reported as (2012) 8 SCC 450, the Supreme Court had reiterated the principles laid down in Alister Anthony Pareira (supra).

27. In the instant case, even as per the prosecution version, there was no pre-meditation in the commission of the offence. When the defence had asked PW-5, wife of the deceased as to whether the parties were known to each other from earlier, or there was any enmity between them,

she had denied the said suggestion and categorically stated that the accused was not known to her or her husband earlier. She had also stated that they had no dealing with the appellant prior to the accident and they had no enmity with him. The exchange of heated words during the quarrel over the Maruti Gypsy of the appellant scrapping the side of the Maruti car being driven by the deceased, had culminated in an altercation wherein the deceased had rolled on to the bonnet of the appellant's car on being hit by the latter. It was in the heat of the moment that the appellant had driven his Maruti Gypsy with the deceased clinging on to the bonnet for about 20 yards and had applied the breaks, that led to the deceased rolling down from the bonnet and falling on to the hard surface of the road which had caused "*Cranio Cerebral*" injuries on his head, attributable to blunt force impact.

28. The aforesaid circumstances stand proved by the testimony of Dr. K. Goel (PW-3), who had proved the post-mortem report and opined that the cause of death was *Cranio Cerebral* injuries consequent upon blunt force impact and the post-mortem findings were consistent with hit and run by a vehicle. During his cross-examination, PW-3 had stated that no crush injury was found on the person of the deceased and that the injuries noticed, could have been caused by a fall from a motor vehicle on to the road, in an accident case. He also clarified that the injuries suffered on the scalp by the deceased, were on the frontal lobe of the brain and there was no injury on the mid and hindbrain, where the most vital parts of the brain are situated. On a Court question being posed to him as to whether the frontal lobe of the brain is a vital part of the body or not, PW-3 had answered that in general, the whole brain is a vital part of the body but in

case of frontal lobe injury, the death is not instantaneous and the patient can survive.

29. It is noteworthy that in the instant case, the deceased was brought in an injured state to SGR hospital on 29.4.2000 at 10.30 PM and he had expired after about 12 hours reckoned there from, i.e. on 30.4.2000, at 10.10AM. Thus, his death was not instantaneous, but had occurred after a period of 12 hours from the time of the accident. The medical evidence demolishes the prosecution version that the deceased was crushed under the wheels of the Maruti Gypsy driven by the appellant. Rather, the evidence brought on record, supports the version of the defence that when the appellant had accelerated his Maruti Gypsy and hit the deceased, the latter had rolled on to the bonnet of the car and had clung on to it for about 20 yards, till he had applied the breaks. Due to the impact of the breaks, the deceased fell off from the bonnet on to the hard surface of the road and collapsed. There were no crush injuries found on the body of the deceased and the injuries suffered by him showed that they were a result of blunt force impact.

30. The evidence on record further reveals that it was not the appellant who had started the attack. Rather, it was the victim who stepped out from his car and walked towards the appellant's vehicle whereafter a quarrel had erupted between the parties. From the testimony of the doctor, who had proved the post-mortem report, it has emerged that the cause of death was *Cranio-Cerebral* injuries consequent upon blunt force impact. The doctor had clarified that there was no injury on the mid and hindbrain, where most of the vital parts of the brain are situated, but on the frontal lobe of the brain that the deceased had suffered by a fall from

the motor vehicle on to the road. There is merit in the submission made by learned counsel for the appellant that after the victim had fallen down from the bonnet of the appellant's vehicle, the appellant did not try to run him over or inflict any other injury upon his person when he was in a helpless position.

31. The above circumstances demonstrate that the appellant had not taken undue advantage of the situation or acted in a cruel or an unusual manner for being deprived of the benefit available under Exception 4 to Section 300 IPC. It was an unpremeditated incident arising from a sudden accident. The use of the words "*Mein tumhein abhi maja chakhata hun*" by the appellant at the time of the incident also goes to show that he did not have any intention to kill the deceased, but to assault him. We are therefore of the opinion that considering the totality of the circumstances, the benefit of Exception 4 to Section 300 IPC ought to be extended to the appellant. Our view is also fortified by a string of decisions of the Supreme Court in circumstances where Exception 4 to Section 300 IPC has been applied and the offence against the appellant in the said case, was converted from capital offence to a lesser offence i.e., culpable homicide not amounting to murder, as noted above.

32. Coming next to the issue as to whether the present case falls under Part-I or Part-II of Section 304 IPC, in the case of State of Andhra Pradesh vs. Rayavarapu Punnayya and Anr. reported as **(1976) 4 SCC 382**, the Supreme Court held as under:-

"21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", on the facts of a case, it will be convenient for it

to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300. If the answer to this question is in the negative the offence would be “culpable homicide not amounting to murder”, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be “culpable homicide not amounting to murder”, punishable under the first part of Section 304, of the Penal Code.”

33. In the case of Kesar Singh and Ors. vs. State of Haryana reported as (2008) 15 SCC 753, the Supreme Court observed that:-

27.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."

34. A similar view has been expressed by the Supreme Court in a recent decision in Gurwinder Singh @ Sonu and Others vs. State of Punjab and Another reported as **(2018) 16 SCC 525** and Bhagirath vs. The State of Madhya Pradesh reported as **AIR 2019 SC 264**. In Gurvinder Singh @ Sonu (Supra), examining the scope of Exception 4 to Section 300 IPC in the light of its earlier decision in the case of Sridhar Bhuyan vs. State of Orissa reported as **(2004) 11 SCC 395**, the Supreme Court held that for bringing in operation 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. We may profitably refer to the view expressed on the scope of Exception 4 to Section 300 IPC in Sridhar Bhuyan (supra) as below:-

"8. The fourth exception of 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'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 have 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 premeditation. 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”.”(emphasis added)

35. As discussed earlier, there was a sudden fight that broke between the appellant and the deceased without any premeditation, resulting in death. The appellant did not take undue advantage of the situation or act in a cruel or unusual manner. At the same time, it can be said that the appellant had sufficient knowledge that his action was likely to cause death. Therefore, the offence committed by him is held to be “culpable homicide not amounting to murder”, punishable under Part I of Section 304 IPC. Accordingly, the conviction of the appellant for the offence punishable under Section 302 IPC is modified and he is convicted under Section 304 Part I IPC.

36. We shall now proceed to examine the mitigating and aggravating circumstances of the instant case to decide the sentence to be awarded to the appellant, in proportion to the gravity of the offence committed by him. The mitigating circumstances highlighted by the learned defence counsel are as follows:-

(i) That the appellant was about 42 years of age on the date of the incident. He was a married man, having two small children. We are informed that by now, the elder daughter has got married and the younger one has completed her graduation. At that point in time, he was employed as a Sports Coach in a private school and is continuing to work on the same post even now.

(ii) That the appellant has no previous criminal record, nor has he been involved in any other criminal case in all this duration.

(iii) The appellant had undergone sentence for a period of 05 years 07 months and 18 days as on 12.7.2006 and also earned remission for a period of 1 year and 25 days. His jail conduct was satisfactory throughout.

(iv) Prolonged trial in the present case has caused immense prejudice to the appellant whose normal life has remained disrupted and under suspended animation over the past almost two decades.

37. We may also record here the offer made by the appellant to pay compensation to the tune of Rs.5 lakhs to the family members of the victim.

38. The aggravating circumstances of the case are that-

(i) The deceased had died at the prime of his life, at the age of 39 years.

(ii) The deceased was married at that time and had a wife and two children to support.

(iii) The appellant was aware of the fact that the deceased was accompanied by his wife and two small children, who were with him in the Maruti car at the time of the incident but he did not act in a humane manner by trying to help him.

(iv) Instead of extending a helping hand and rushing the victim to the hospital for medical treatment, the appellant fled from the spot, only to be arrested by the police on the next day.

39. In our opinion, in the peculiar facts and circumstances of the present case, where the appellant has undergone sentence for almost seven years, interest of justice would be adequately met if he is sentenced for the period already undergone by him. However, the fine of Rs.5,000/- imposed upon the appellant is enhanced to Rs.7 lakhs and in default, he shall undergo simple imprisonment for a period of three years. The fine imposed upon the appellant shall be deposited before the trial court within two weeks from today. In the facts and circumstances of this case, we further direct that the fine amount of Rs.7 lakhs shall be treated as compensation payable to the wife and children of the deceased. The trial court and the SHO, Police Station: Patel Nagar shall ensure that the said amount of Rs.7 lakhs is paid to the wife and children of the deceased at the earliest.

40. The appeal is partly allowed and disposed of on the above terms. Trial court record be released forthwith alongwith a copy of the judgment. The appellant shall comply with the provisions of Section 427 of the Cr.PC at the earliest.

(HIMA KOHLI)
JUDGE

(MANOJ KUMAR OHRI)
JUDGE

APRIL 05, 2019
NA/ap/rkb