

Sl. No. 1

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.A. 742 of 2014
With
CRAN 3 of 2021
Sunil Murmu & Anr.
Vs.
State Of West Bengal**

For the Appellant : Mr. Pravash Bhattacharyya
Mr. Dilip Kumar Sadhu

For the State : Ms. Zareen N Khan
Ms. Trina Mitra

Heard on : 02.08.2022

Judgment on : 23.09.2022

Ananya Bandyopadhyay, J.:-

The appeal is preferred against judgment and order of conviction dated 29.04.2014 and 30.04.2014 passed by Learned Additional District and Sessions Judge, 1st Court, Purulia in Sessions Trial no. 22 of 2013 arising out of Sessions Trial No. 139 of 2013 convicting the appellants under Sections 323/302/34 of the Indian Penal Code (for short IPC) and sentencing them to suffer imprisonment for life and to pay a fine of Rs.

10,000/- each in default to undergo simple imprisonment for six months more.

The prosecution case originated from a complaint dated 19.02.2013 wherein the complainant Surajmani Mandi stated at about 6 pm. the appellant Lalmohan Murmu, the husband of her sister-in-law and his elder brother appellant Sunil Murmu @ Vicku Deshmal of village and P.S Belpahari had come to their house. After some time the aforesaid appellants quarrelled with her father-in-law and assaulted him with a "*Lathi*". They were intercepted by her "Pisisasuri" (Aunt-in-law) who had come to their house and prevented the appellants from assaulting. The appellants thereafter assaulted the Aunt-in-law on her head and other parts of the body with the "*Lathi*" who fell on the ground bleeding profusely and died instantly. The appellants fled from their house. The commotion caused the local people to rush to their house. The father-in-law was taken to the hospital along with her. She accordingly sought for necessary action to be taken against the guilty persons.

Based on the written complaint Bandowan P.S. case No. 04 of 2013 dated 19.02.2013 under Sections 323, 325, 302, 304 of the IPC was instituted. A formal FIR was registered against the appellants Sunil Murmu and Lalmohan Murmu and the investigation was initiated and a chargesheet being no. 08 of 2013 dated 09.04.2013 was submitted under Sections 323/302/34 IPC to which the appellant pleaded not guilty and claimed to be tried.

The prosecution cited 16 witnesses and exhibited certain documents in order to establish its case.

The Ld. Advocate for the appellants submitted that the motive to commit the offence along with a conspiracy to effectuate the same was not proved. There had been inconsistencies in the complaint lodged by the PW 1 and her deposition before the Court which ought to be discredited. Moreover, due to a sudden quarrel and on spur of the moment the appellant presumed to have assaulted the victim resulting in her death without any premeditated intention to cause her death. The offending weapon i.e. the “*lathi*” was not produced before the Court during trial for identification. It was further submitted that the said weapon was recovered belatedly and such recovery raised a suspicion with regard to its placement at the relevant place of recovery, considering the provision of Section 27 of the Indian Evidence Act. In absence of common intention and inconsistencies in the evidence adduced by the prosecution witnesses, the ingredients to constitute the offence punishable under Section 302 of the Indian Penal Code could not be established by the prosecution apart from proving the place of occurrence. The prosecution failed to prove its case and accordingly, the appeal was to be allowed.

The Ld. Advocate for the State submitted that the direct evidence of PW1 and PW6, the injured witness, the prosecution case attended finality strengthened by the fact of injury sustained by the deceased as well as PW6 which was corroborated by the PM Doctor’s report marked as Exhibit 10. The offending weapon had been recovered to substantiate the injuries

inflicted to cause the death. The independent witnesses also supported the case of the prosecution and the chain of the circumstances had been proved by the prosecution and accordingly, the appeal is liable to be dismissed.

PW 1 Surajmani Mandi stated about the time and place of the incident when a quarrel occurred between the appellants i.e. Sunil Murmu and Lalmohan Murmu and her father-in-law Ruitu Mandi. Subsequently, the appellants assaulted her father-in-law by "*lathi*". Her "*Pisisasuri*", the deceased Bimala Mandi tried to rescue her father-in-law and restrained the appellants who in turn assaulted her by the "*lathi*" resulting in her death instantaneously in the presence of PW 1 and her parents-in-law at her house. Subsequently, the appellants fled from the spot. She lodged a complaint scribed by Babulal Mahato as dictated by her thereafter signed by her. The written complaint and the signature of the witness were marked as Ext. 1 and 1/1 respectively. She was interrogated by the Police who prepared the inquest report and her signature as a witness on the carbon copy of the inquest report had been marked as Ext. 2. The blood stained mud was collected from the Place of Occurrence under a seizure list signed by her as a witness and her signature was marked as Ext. 3.

During her cross-examination she stated that appellant Lalmohan Murmu had a cordial relationship with their family devoid of any "enmity or quarrel" between their family and the appellants. It was further stated the appellant Lalmohan had visited their house on the relevant day and had accompanied her daughter Chhayarani to her school hostel at Dharampur. The appellant Lalmohan returned and thereafter had meal and departed for

his house in Deshmukh village in the District of Medinipore in the afternoon. Appellant Sunil Murmu, the elder brother of appellant Lalmohan also had meal in their house and went to his own house.

PW 2 Gurupada Mandi is the son of one Tupu Mandi who was the brother of the deceased Bimala Mandi. He had been to the house of his uncle Ruitu Mandi and saw him lying injured on the bed and the deceased with injury lying dead on the floor.

PW 3 Babulal Mahato was the scribe who narrated the incident and stated to have written the complaint as per the dictation of PW 1 which was written by him in his own handwriting and duly signed by him and the signature of the witness on the written complaint was marked as Ext. 1/2. He also identified his signature on the inquest report, seizure list and label marked as Ext. 2/1, Ext. 3/1 and Ext. 4 respectively. He did not witness the incident.

PW 4 Khagendra Nath Mahato reached the house of Ruitu Mandi hearing the commotion and witnessed injury on the head of Ruitu Mandi and the dead body of Bimala Mandi on the floor of the room. Suraj Mani Mandi informed him about the assault. He identified his signature on the seizure list and the inquest report and label marked as Ext. 3/2, 2/2 and Ext. 4/1 respectively.

PW 5 Satadal Mandi stated that Surajmani Mandi was her daughter-in-law and confirmed the relationship with appellants who visited their house on the date of the incident and returned home after taking their meal.

However, they had again come to her house. She did not witness the incident but saw the deceased lying dead and asserted the appellants to have caused her death.

PW 6 Ruitu Mandi stated that the appellant Lalmohan was his son-in-law whose elder brother was Sunil Murmu. He stated the appellants assaulted him with a "*Lathi*" on his protest towards the ill-treatment of her daughter suggesting them to keep his daughter well. His sister Bimala Mandi was assaulted by the appellants resulting in her death by a "*Lathi*". He was taken to Bandwan Hospital. The appellant Lalmohan returned in the afternoon to his house after leaving his granddaughter Chhayarani Mandi at her school hostel. The appellant left for his house after taking meal.

PW 7, A.S.I. Jayram Pal was posted as the Duty Officer on 20.02.2013 and had been a witness to the seizure list prepared by the Investigating Officer Chandan Sen in his presence which was signed by him and marked as Ext. 5 and his signature on the label was marked as Ext. 6.

PW 8 Sk. Abul Kalam had taken the deadbody of Bimala Mandi to Purulia Sadar Hospital for post-mortem examination and identified his signature on the deadbody challan marked as Ext. 7. He also identified his signature on the seizure list through which the wearing apparels of the deceased and a sample of blood were seized and the same was marked as Ext. 5/1. He further identified his signature on the seizure list marked as Ext. 8 of having received the sample of blood. He identified his signatures on the labels marked as Ext. 9 series and 6/1.

PW 9 Bidhan Mondal the Police Constable No. 885 stated to have been a witness to the seizure list concerning handing over of Alamat by PW 8 to the Investigating Officer in the Police Station wherein his signature was marked as Ext. 5/2. He identified his signature on the documents being the label on the Alamat marked as Ext. 9/3, 9/4, 9/5 and 6/2 respectively.

PW 10 Dr. Amal Nath was the Medical Officer Medico Legal attached to Purulia Sadar Hospital on 20.02.2013 who conducted the post-mortem examination of the deceased Bimala Mandi and found the following injuries:

- 1) *Bleeding from mouth and nostrils*
- 2) *Lacerated injury ½ inch x ¼ inch x bone deep right side of the forehead.*
- 3) *Lacerated injury ½ inch x ¼ inch x bone deep behind left ear*
After dissection, it was found
 - a) *Subcutaneous hematoma left side of skull*
 - b) *Fracture of left temporal bone*
 - c) *Intra cerebral hemorrhage base and left side of brain was present.*
 - d) *Subcutaneous hematoma left lower chest anterior with multiple fracture ribs left side.*
 - e) *Lacerated injury in left lungs*
 - f) *Rupture left lobe of liver*
 - g) *Rupture pedicle of spleen*

He further stated that the injuries were caused by hard and blunt substance. In his opinion the death was due to shock and haemorrhage owing to the injuries described in the Post Mortem report ante mortem and homicidal in nature. The Post Mortem report was marked as Ext. 10. According to him the injuries were caused by assault of "Lathi".

PW 11 Dhananjay Mahato stated on 20.02.2013, police visited their village in the afternoon and asked him to identify Sunil Murmu, who was arrested thereafter. The appellant Sunil Murmu handed over a “*Lathi*” to the Police confessing he had killed Bimala Mandi into the same. He identified his signature on the seizure list and carbon of label marked as Ext. 11 and Ext. 12 respectively.

PW 12 Ajit Mahato corroborated the deposition of PW 11 and identified his signature in the seizure list and carbon copy of the label marked as Ext. 11/1 and Ext. 12/1 respectively.

PW 13 Dr. Dhurmal Kisku was posted at Bandwan BPHC as Medical Officer On 19.02.2013 he examined Ruitu Mandi who was stated to have been assaulted with “*Lathi*” by the elder brother of his son-in-law over his head and legs. On his examination he found the following injuries.

1) Head : lacerated injury about 2 c.m long $\frac{1}{4}$ c.m breadth and $\frac{1}{4}$ c.m in breadth over left parietal scalp region. Active bleeding was present. Patient was conscious and cooperative.

2) Both legs: No external injury detected.

Nature of injury: simple

He further stated that the patient did not mention the name of the assailant.

PW 14 Madhusudan Mahato stated on 22.02.2013, police had visited their village and arrested Lalmohan who brought out one

“Lathi” which was seized by the Police under a seizure list wherein he had signed and his signature was marked as Ext. 14. He had also identified his signature on the label marked as Ext. 15. He stated that the appellants were known to him since his childhood and the appellant Lalmohan was his classmate and they had cordial relationship prior to the incident. The appellant Lalmohan had *“visiting terms with his matrimonial family”* prior to the incident.

PW 15 Nityananda Mahato stated to have been posted as a constable at Bandwan P.S on 22.02.2013. He had accompanied ASI Chandan Sen to the village Amgora and apprehended the appellant Lalmohan and on interrogation he had taken them to a mango tree and brought out a *“Lathi”* from the bush and handed over the same to the Investigating Officer which was seized under a seizure list with his signature thereon marked as Ext. 14/1 and the signature on the label was marked as Ext. 15/1.

PW 16 Chandan Kumar Sen was posted as SI of Bandwan P.S. on 19.02.2013. On the basis of a complaint received from PW 1 a registered case being no. 4/13 dated 19.02.2013 under Sections 323/325/302/34 IPC was instituted and a UD Case No. 3/13 dated 19.02.2013 was initiated under the endorsement of one Dipankar Sarkar being the OC of the aforesaid Police Station whose signature was marked as Ext. 1/3. The formal FIR signed by him was marked as Ext. 16 which was endorsed to PW 16 for investigation. PW 16 had examined the complaints of PW 1 and PW 2, recorded their

statements, visited the Place of Occurrence and conducted the inquest of the deadbody. The inquest Report was marked as Ext. 2/3. The witnesses narrated to him the manner in which Bimala Mandi was assaulted who finally succumbed to her injuries. The deadbody was sent for post mortem examination by PW 8. He had seized blood stained mud as sample from the Place of Occurrence and prepared the seizure list written and signed by him and marked as Ext. 3/3. He had prepared the sketch map along with the index of Place of Occurrence marked as Ext. 17. On search he could not trace the offending weapon and engaged source to trace the appellants. Thereafter, he went to Bandwan BPHC however, could not examine Ruitu Mandi. He had examined Babulal Mahato and Khagendranath Mahato. He seized the wearing apparels of the deceased, sealed the same, prepared the seizure list marked as Ext. 5/3. He apprehended Sunil Murmu, recorded his confessional statement and recovered the offending weapon i.e. “*Lathi*” based on his confessional statement leading to such recovery. The relevant portion of the confessional statement of Sunil Murmu leading to recovery was marked as Ext. 18. He had prepared a seizure list and the label on the seizure list was marked as 11/2. The offending “*Lathi*” bearing blood stain was sealed and labelled with his signature thereon marked as Ext. 12/2. He had examined the other relevant witnesses of the case and arrested the appellant Lalmohan Murmu on 22.02.2013. His confessional statement was recorded leading to the recovery of one “*lathi*”. The relevant portion of such confessional statement of Lalmohan Murmu

was marked as Ext.19 concerning the “lathi”, which was recovered from a bush near a mango tree. He identified the seizure list marked as Ext. 14/2. The offending weapon i.e. “lathi” bore blood stain and a seizure list was prepared in respect of the same in presence of the public witnesses alongwith label marked as Ext. 15/2. The appellants were produced before the Court. The injured witness Ruitu Mandi (PW 6) was examined. The Post Mortem report of the deceased and the injury report of Ruitu Mandi were collected. The offending weapons i.e. 2 “*Lathis*” and blood stained mud were sent to FSL through the learned CJM on 21.03.2013. However, no report was received regarding the same. The labels concerning the offending weapon and the blood stained mud sent to FSL were marked as Ext. 4/2 and 6/3 respectively. He had submitted the chargesheet on complaint of the investigation against the appellants under Sections 323/302/34 of IPC.

From the evidence on record it appears that the incident of assault of the victim by the appellants had been unequivocally corroborated by the evidence of PW 1, PW2, PW3, PW 4, PW 6 describing the incident of assault of the deceased victim and the injured victim incriminating the appellants and the injuries sustained by the deceased victim resulting in her death by the effect of the offending weapon i.e. “*Lathi*” as had been corroborated by the Post Mortem Report marked as Exhibit 10. The opinion of the PW 10

regarding the cause of the injuries by hard and blunt substance is in congruity with the nature of the offending weapon i.e. the "*Lathi*".

PW 1 during her cross-examination stated that the appellant Lalmohan Murmu had a cordial relationship with their family. The appellant Lalmohan had visited their house on the relevant day.

PW 1 further stated that they did not have any "*previous enmity or quarrel*" with the appellants and on the morning of the fateful day, the appellant, Lalmohan Murmu accompanied the daughter of PW 1 to her school hostel at Dharampur. The appellant, Lalmohan Murmu returned to their village and after taking his meal, left for his house at Deshmukh village in the District of Medinipur. The appellant, Sunil Murmu, the elder brother of Lalmohan Murmu also had his lunch at the house of PW1 and left for his own house. The evidence of PW 1 was corroborated by PW 6, the injured victim, Ruitu Mandi who stated that Lalmohan Murmu escorted the daughter of PW 1 to her hostel in the morning, returned to their house and had lunch. Both PW 1 and PW 6 did not express any kind of previous hostility between the families and the same opinion was concurred by PW 5 Satadal Mandi in his evidence.

PW 14 stated that the appellant Lalmohan Murmu had "*visiting terms with his matrimonial family*" before the incident.

PW 6 Ruitu Mandi stated the appellants assaulted him with a "*Lathi*" as he protested against their ill treatment towards his

daughter suggesting them to treat her well. The evidence of the prosecution witnesses, PW 1 and PW 6 revealed that the dispute was primarily between the appellants and PW 6, wherein the deceased intervened to sort out the differences and rescue PW 6 but was incidentally assaulted by the appellant.

The PM Report marked as Exhibit 10 mentioned the cause of death due to shock and haemorrhage caused by the inflicted injuries of assault by a "*Lathi*". From the analysis of the evidence, the premeditated intention to assault the deceased is not established. The appellants had good familial relationship. The issue of ill-treatment by the appellant Lalmohan towards his wife, apart from the evidence of PW 6 to be of continuous nature was not corroborated by any other prosecution witness. PW 1 also did not state the reason as to why the appellant started assaulting her father-in-law. On the contrary from the evidence of PW 1 evinced that the appellant Lalmohan had a cordial relationship with the family to the extent that he accompanied the daughter of PW1 assuredly with her consent, trust and sense of security to the hostel and on return to their house had lunch and left for his own house. The appellant, Sunil Murmu also had lunch in the house in the afternoon. Therefore, prior to the incident, there was no pre-existing serious dispute between the appellants and the family of the injured victim PW 6. The protest of PW 6 and his subsequent suggestion to treat his daughter well must have triggered the dreadful act on the part of the miscreants, impetuously. However, the intention

to commit the crime against the deceased was absent and on the spur of moment, the deceased was assaulted out of rage. The offending weapon i.e. the “*lathis*” were seized but were not produced before the Court. PW 1 and PW 6 stated that both the appellants assaulted the deceased. Evidently, the appellants did not bear any animosity or acrimony towards the deceased who tried to pacify the appellants to control their anger and refrain from indulging in criminal activity. Nonetheless the appellants were infuriated and in a fit of fury were oblivious to discern the consequence of their act committed outrageously in the heat of passion.

PW 6 sustained simple injuries being hit by the “*lathi*” as opined in the medical report marked as Ext. 10.

However, the victim being an old lady succumbed to death being assaulted by the appellants in the similar manner as that of PW 6. There was no rivalry between the appellants and the deceased.

The appellants hit on the head of PW6 and categorised his injuries to be “*simple*” whereas the assault on the victim took her life as a consequence of shock and haemorrhage the appellants’ act did not display to derive an unfair or undue advantage of the assault on the victim neither was their act extremely cruel or unnatural.

In **Sridhar Bhuyan v. State of Orissa**¹ the Hon’ble Supreme Court observed that,

¹ (2004) 11 SCC 395

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

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 reasons 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 the 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 cruel or unusual manner.

*The expression 'undue advantage' as used in the provision means 'unfair advantage'. The same principle was reiterated in **Pappu vs. State of M.P. (2006) 7 SCC 391** and in **Surain Singh v. State of Punjab (2017) 5 SCC 796** where the conviction under Section 302 IPC was modified under Section 304 Part II IPC.*

In **Gurmukh Singh vs. State of Haryana** ² the Hon'ble Supreme Court observed that,

24. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- a) Motive or previous enmity;*
- b) Whether the incident had taken place on the spur of the moment;*

² (2009) 15 SCC 635

- c) The intention/ knowledge of the accused while inflicting the blow or injury;*
- d) Whether the death ensued instantaneously or the victim died after several days;*
- e) The gravity, dimension and nature of injury;*
- f) The age and general health condition of the accused;*
- g) Whether the injury was caused without pre-meditation in a sudden fight;*
- h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*
- i) The criminal background and adverse history of the accused;*
- j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;*
- k) Number of other criminal cases pending against the accused;*
- l) Incident occurred within the family members or close relations;*
- m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?*

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.

In Mohd. **Rafiq alias Kallu vs. State of Madhya Pradesh**³, the Hon'ble Supreme Court observed that,

11. the question of whether in a given case, a homicide is murder punishable under Section 302 IPC, or culpable homicide, of either description, punishable under Section 304 IPC has engaged the attention of courts in this country for over one-and-a-half century, since the enactment of the IPC, a welter of case law, on this aspect exists, including perhaps several hundred rulings by this Court. The use of the term "likely" in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines murder, however refrains from the use of the term likely, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes.

12. the decision in State of A.P. v. Rayavarapu Punnayya 1976 (4) SCC 382 notes the important distinction between the two provision, and their differing, but subtle distinction. The Hon'ble Supreme Court pertinently pointed out that,

In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder', is 'culpable homicide' not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called,

³ (2021) 10 SCC 706

'culpable homicide of the first degree'. This is the greatest form of culpable homicide which is defined in [Section 300](#) as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of [Section 304](#). Then, there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second Part of [section 304](#).

13. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of [sections 299](#) and [300](#).

13. The considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined in **Pulicherla Nagaraju v. State of A.P.** ⁴ the Hon'ble Supreme Court observed that :

Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under [Section 302](#) or 304 Part I or 304 Part II. Many petty or insignificant matters-- plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes

⁴ (2006) 11 SCC 444

culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under [section 302](#), are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under [section 302](#). The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.

Indubitably there was no premeditation to murder the victim who appeared at the scene at her own volition with an innocuous

intention to prevent the ensuing fight and in the process must have involved herself into the scuffle to her detriment enraging the appellants to assault her, albeit the distinct role or action of the individual appellant had not been vividly and specifically described by either of the prosecution witnesses.

In view of the aforesaid discussion, conviction of the appellants are converted to culpable homicide not amounting to murder under [Section 304](#) Part I of the Indian Penal Code. Sentence imposed on the appellants are also reduced and they are directed to suffer rigorous imprisonment for a period of ten years and to pay fine of Rs.10,000/-, in default, to suffer further simple imprisonment for one year more each.

With the aforesaid modification, the appeal is disposed of.

Connected applications, if any, also disposed of.

The period of detention, if any, undergone by the appellants during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of [Section 428](#) of the Code of Criminal Procedure.

The lower court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)