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NEUTRAL CITATION NO: 2022/DHC/002959

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 05.08.2022

CRL.A. 131/2019

ANIL KUMAR

.....Appellant

versus

THE STATE (GOVT.OF NCT DELHI)

.... Respondent

Advocates who appeared in this case:

For the Appellants: Mr. Pramod Kr. Dubey, Senior Advocate (DHCLSC) with Mr. Sumer Kumar Sethi, Mr. Kaustubh Chauhan, Mr. Vikalp Sharma, Mr. Deep Narayan Sarkar & Mr. Akshay Sharma, Advocates.

For the Respondent: Mr. Ashish Dutta APP for the State with Inspector Rajesh, P.S.: Sabzi Mandi.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present appeal preferred under the provision of Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter “Cr.P.C.”) assails the Judgment of Conviction dated 12.09.2018 and Sentencing Order dated 03.10.2018 passed by Ld. ASJ-02, Sh. Poonam Chaudhry, (Central) District Court, Delhi, emanating from



FIR No. 33/2012 registered at P.S.: Subzi Mandi, whereby the appellant was convicted for the offence under Section 302 of the Indian Penal Code, 1860 (“IPC”) in Sessions Case No. 27265/2016, titled as ‘*State Vs. Anil Kumar*’.

2. By way of the impugned judgment dated 12.09.2018 and order on sentence dated 03.10.2018 the appellant was convicted for the offence punishable under Section 302 of the IPC and sentenced to rigorous imprisonment for life and to pay a fine of Rs. 10,000/-. In default of payment of the fine, to further undergo R.I. for three additional months.

3. **Prosecution’s Case: In a Nutshell**

- (i) The matter relates to the murder of one Rajesh *alias* Pappi (“**deceased/victim**”) caused due to deadly injury, inflicted upon him with an intention to cause his death.
- (ii) On the night of 19.02.2012 at about 08:45 PM, at the corner Gali Chakki Wali, Kabir Basti, Malka Ganj, Delhi, the accused namely, Anil Kumar (“**the appellant**”) murdered Rajesh @ Pappi by stabbing him with a knife and thereby committed an offence under Section 302 of the IPC.



- (iii) At about 9:05pm on the said night of 19.02.2012, P.S.: Sudzi Mandi, where S.I. Veersen (“PW-24”) is stated to have been posted, received information regarding the quarrel. Through DD No. 24A (Ex. PW-23A) the matter was assigned to PW-24, who acting on the information along with Ct. Shamsher (“PW-17”) reached the spot at Chakki Wali Gali, Kabir Basti, Malkaganj, Delhi (“crime scene”). No public witness was found, however, blood was found lying on the corner of Chakki Wali Gali in front of H.No.398 and blood was also found lying in front of H.No- 442 Shastri Gali. Thereafter, PW-24 stated that he found one half-pant stained with blood and one pair of shoes stained with blood lying in front of the H. No. 442.
- (iv) On inquiry from a passer-by, it was revealed that the injured had been moved to Hindu Rao Hospital. At 9:20pm SHO/IO/Inspector Tanveer Ashraf/PW26 (hereinafter “the IO”) arrived at the crime scene. Further, according to the prosecution, PW-24 was asked to guard the crime scene by the IO; and the IO along with PW-17 went to Hindu Rao Hospital.
- (v) The IO collected the MLC (MLC No. 933/12 – Ex PW-2/A) of the injured victim who was declared dead on arrival at the hospital owing to a deep “V” shaped wound. The IO further



stated that it was brought to his knowledge that eye-witnesses

Ram @ Deepu (“**PW-4**”) and Vishal (“**PW-7**”) had gotten the deceased admitted to the hospital and were therefore present at the hospital.

- (vi) The IO recorded the statement of the PW-4 (“**the complainant**”) and PW-7 at the hospital and went back to the crime scene along with the complainant, PW-7 and PW-17.
- (v) The IO further deposed that he prepared rukka (Ex. PW-26/A) and sent PW-17 to the Police Station for registration of the case. After registration of the case, PW-17 returned to the crime scene and handed over a copy of the FIR and rukka to the IO. Thereafter, the IO prepared the site plan (Ex. PW-26/B) at the instance of complainant. The complainant and PW-7 handed over their blood-stained clothes to the IO which were sealed and taken into possession. The IO further stated that he had seized blood from the corner of Chakki Wali Gali as well as from Shastri Gali near H. No. 442, Kabir Basti, through a gauze, blood-stained earth, earth control, cream colour pant (one leg of which was smeared with blood and other leg was missing), one pair of blood stained canvas shoes and took the same into



possession vide seizure memo Ex. PW-4/E and Ex. PW-4/F, respectively.

(vi) The IO further deposed that, he tried to search for the assailants and that the appellant was apprehended at the instance of the complainant and arrested on 20.02.2012 vide arrest memo Ex.PW-4/G, and the appellant's personal search was taken vide memo Ex.PW-4/H. The disclosure statement was taken vide memo Ex. PW-24/A. The appellant is stated to have disclosed that he had hidden the weapon of offence, a knife, behind the TV on the ground floor of his house and the IO recovered the same. A sketch of the knife is at Ex. PW-17/B. The IO further stated that he seized the blood-stained shirt worn by the appellant vide seizure memo Ex PW-24/B, furthermore that the appellant led them to the place of the incident and pointed out the exact location of the crime which was recorded under memo Ex PW-17/A.

(vii) The presence of human blood on the knife recovered from the appellants house, vide pointing out and seizure memo Ex PW 17/C, was confirmed by FSL Report (Ex PW10/A-B). The



subsequent opinion regarding the weapon of offence (EX

PW3/B-1) by Dr. M.K.Panigrahi, CMO, Hindu Rao Hospital (“PW-3”) is further alleged to support the prosecution's case. After completion of the investigation, chargesheet was filed. Cognizance of the offence was taken against the appellant. Charges were framed against the appellant vide order dated 15.05.2012 for the offence punishable under Section 302 of the IPC to which the appellant pleaded not guilty and claimed trial.

4. The Prosecution examined 26 witnesses to prove its case. The Appellant in his defence chose not to lead any evidence.

SECTION 313 STATEMENTS:

5. The Appellant, in his statement under Section 313 Cr.P.C, denies the Prosecution Case in toto. He claims innocence and false implication.

TRIAL COURT’S FINDINGS:

6. The Trial Court whilst rejecting the defence set up by the Appellant, convicted him as stated hereinbefore, based on the following evidence:-



- (i) Testimony of eyewitnesses PW4, PW5 and PW7. Eyewitness PW14 who had not been cited but appeared in court pursuant to the applications under Section 311 Cr.P.C.
- (ii) Death of the deceased was due to haemorrhage and shock consequent to injuries.
- (iii) All the injuries were ante-mortem and recent in nature.
- (iv) External injury no.1 could have only been caused due to forceful thrust of a sharp weapon/ object and was sufficient to cause death in ordinary course of nature.
- (v) Medical evidence shows that the death of the deceased was homicidal in nature.
- (vi) The circumstance of recovery of weapon of offence viz the knife at the instance of accused shows his complicity in the offence. The discovery of weapon/knife was made only after accused made disclosure statement. Thus, the facts disclosed by accused and the discovery made at his instance was admissible against him under Section 27 of the Indian Evidence Act, 1872 (hereinafter “**Evidence Act**”).



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(vii) As per the Report of the Chemical Analyst (PW-10), the

knife had rusty brown stains and the clothes of deceased and appellant also bore dark brown stains.

(viii) The biological and serological reports show that human blood was detected on the knife and clothes of accused.

(ix) The Appellant in his statement under Section 313 CrPC stated that his blood-stained clothes were seized by the police and the same became blood stained when he lifted deceased with others, thereby admitting his presence at the scene of the crime.

(x) The nature of injuries proves the intention to cause death or intention of causing bodily injury which is sufficient to cause death in the ordinary course of nature.

(xi) On scrutiny of evidence, it is seen that there was no provocation or fight or sudden quarrel.

(xii) The weapon used by the appellant leaves no room for doubt that intention was to cause death; or in any event, bodily injury sufficient to cause death in the ordinary course of nature.

7. After careful analysis of entire evidence and documents, the Ld. Trial Court took the view that prosecution had succeeded in proving



that the appellant was the perpetrator of the crime and therefore, held him guilty for the commission of offence under the provisions of Section 302 the IPC.

8. We have heard Mr. Pramod Kr. Dubey, learned Senior Counsel for the appellant and Mr. Ashish Dutta, learned Additional Public Prosecutor who has appeared for the State. We have also perused the impugned judgment and have carefully gone through the evidence on record, assessing the merits and demerits of the evidence marshalled by both sides.

Arguments made on behalf of the appellant:

9. Mr. Pramod Kr. Dubey, learned Senior Counsel appearing on behalf of the appellant, at the outset, would urge the following:

- (i) Investigation in the present case suffers from various lapses and lacunae, inasmuch as, no attempt was made by the prosecution to join any independent witness at the time of seizure of the alleged weapon of crime (knife) recovered pursuant to the disclosure statement of the Appellant.
- (ii) PW-5's statement suffers from material inconsistencies and is itself full of contradictions rendering it unreliable and is therefore liable to be removed from consideration. He further



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submits that, the testimony rendered by PW-5 is unsafe to be relied upon as there are signs of improvements made by the witness all along her testimony. It is further submitted that, when PW-5's testimony is seen in the light of other witnesses it fails to instil any confidence. In this behalf, reliance is placed upon the fact that PW-5's son is a Beat Constable in P.S. Sabzi Mandi and hence the testimony offered by her is just an attempt to fill up lacunae in the prosecution case and she could possibly be a planted witness. It is further submitted that, PW-5's statement was recorded after an unjustified delay of 2 days hence it is highly unsafe to rely upon her testimony. As per the version of events narrated by PW-5, she got scared of the appellant and she did not disclose her knowledge about the incident to the police and neighbours. Only after the accused was arrested, she went to the police. However, in her cross examination she has specifically stated that she was aware of the accused, Anil's arrest on the night of the incident itself which contradicts her earlier version. It is further submitted that the Ld. Trial Court grossly erred in believing that PW-5 had offered a cogent and acceptable explanation regarding her remaining silent for 2 days. It is further reiterated that, PW-5 is



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a planted witness and has falsely implicated the appellant at the behest of police.

(iii) The learned Senior Counsel further submits that, Ms. Jaya (Wife of the deceased) (“PW-14”) is a planted witness, and her name was added to the list of witness only to overcome the anomalies and for filling the gaps in the case of the prosecution. It is submitted that, PW-14’s version is simply an afterthought and a completely concocted story as there was no actual eyewitness to the incident. It is further submitted that, PW-5 has not indicated in her testimony that PW-14 was also present at the scene of the incident. Further, that PW-14 in her testimony stated that she told her family members who had come to their house after the death of the deceased that she saw the incident herself, however Ravi Kumar’s (“PW-6”) testimony allegedly makes it abundantly clear that no such attempt was made.

(iv) The CFSL report has failed to connect the alleged weapon of murder with the deceased or that it was in fact used by the appellant herein as there were no fingerprints found on the knife and that the blood grouping remark is inconclusive.



- (v) The appellant was not apprehended at the crime scene and that no independent witness was joined at the time of alleged recovery of knife from the house of accused as provided under Section 100 Cr.P.C; therefore, rendering the recovery of the weapon of crime as doubtful.
- (vi) The FSL Report has given a finding that the knife was rusted however at the time of recovery, no such detail has been mentioned in the discovery memo.
- (vii) Lastly it is submitted that, the Ld. Trial Court ought not to have convicted the appellant herein under Section 302 of the IPC, since it is contended that there is nothing brought on record to satisfy the ingredients of Section 302 of the IPC. No motive or intention was established to commit the alleged offence. It is further submitted that, without prejudice to the rights of the accused and while not admitting the prosecution case, even if it is assumed that the appellant did stab the deceased then such an act of the appellant is in pursuance to a sudden quarrel, which would fall under the provisions of Section 304, Part II of the IPC. In conclusion it is submitted that, the very foundational facts of the present case have not been established by the prosecution and that the entire story of



prosecution is false and concocted and the appellant has been
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falsely implicated.

Arguments made on behalf of the State:

10. *Per Contra* Mr. Ashish Dutta, Ld. Additional Public Prosecutor appearing on behalf of the state, whilst opposing the arguments made on behalf of the Appellant and supporting the judgment and order of conviction passed by the Ld. Trial Court, would submit that :-

- (i) All the Prosecution Witnesses (“PWs”) examined by the prosecution have remained firm and have withstood the test of cross examination and have thereby proved the case of prosecution beyond the pale of reasonable doubt.
- (ii) It is further submitted that the prosecution has been able to establish its case clearly and categorically; and merely because there are some discrepancies in the testimony of the PWs does not take away their clear and unequivocal deposition before the Ld. Trial Court.
- (iii) It is further submitted that, the prosecution in law is not required to procure and reproduce a parroted version of the PWs.



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- (iv) It is also argued that PW-5 and PW-14 are the star witnesses of this case, being eyewitnesses and their testimony carries the evidentiary value of ocular evidence; both have firmly deposed about the subject incident and have stood their ground during the cross examination and have further corroborated each other on all relevant and material facts. Their testimonies also clearly establish the intention and act of the appellant in committing the murder of the deceased.
- (v) The Ld. APP places reliance on various pieces of evidence to establish the homicidal nature of death, namely, the MLC conducted by Dr. Reena Ranjan, Hindu Rao Hospital (“PW-2”) bearing MLC No. 933/12 (Ex PW2/A) as well as her testimony; Death Report which mentions the nature of death to be unnatural death by violence (Ex PW-9/C) having “V” shaped deep wound on the left thigh (column 10) which appears to have been made by knife (column 12). Further reliance is placed on the Postmortem report prepared by Dr MK. Panigrahi, (Chief Medical Officer, Department Of Forensic Medicine, Hindu Rao Hospital) (“PW-3”), being PM



Report No. HRH/16/12 of the deceased. In PW 5 s

opinion on the cause of death (Ex PW 3/A) it has been stated that,

“Death of deceased is due to haemorrhage and shock consequent to injuries. All the injuries mentioned above were ante- mortem and recent in nature. External injury No. 1 could have been caused due to forceful thrust of a sharp, weapon / object and was sufficient to cause death in the ordinary course of nature. The time since death at the time of PM examination was about 14 to 15 hours approximately. My detailed report is Ex. PW 3/A bearing my signature under my seal at Point A”.

- (vi) It is further submitted that, the knife (Murder weapon) as well as bloodstained shirt were recovered from the house of the appellant in his presence as was disclosed by him. (Recovery memo Ex PW24/B). Knife (Sketch- Ex PW-17B) used in the crime was recovered from the house of the appellant in his presence as disclosed by him (Disclosure Memo- Ex PW 24/A) to the IO in the presence of PW24 on 20.02.2012. (Pointing out and seizure memo- Ex PW 17/C). PW-24 further corroborated the version of IO in this regard.



(vii) It is further submitted that, ^{NEUTRAL CITATION NO: 2022/DHC/002959} non-joining of public witness

in the recovery proceedings does not absolve the appellants from the commission of a heinous offence. Further, Sh. Indresh Kumar Mishra, (Sr. Scientific Officer (Biology), FSL, Rohini) (“**PW-10**”) stated in his testimony that he had examined the exhibits and proved the Biological Report (Ex PW-10/A) and Serological Report (Ex.PW-10/B). Human blood was found on the exhibits which included clothes, shoes, gauze, cloth pieces, earth control and the knife. Further, in the subsequent opinion regarding the weapon of offence (Ex PW3/B-1) shows that the weapon recovered at the instance of the appellant had the potential to match the wounds of the deceased, as is also approved in PW3’s testimony:-

“In my opinion, such type of injuries mentioned in the external injury No. 1 of the PMR could be possible by the knife produced by the IO for examination and similar other sharp, pointed weapon/object.”

(viii) Further, reliance is placed on crime team report (Ex PW 22/A) prepared by S.I. Satish Kumar (“**PW-22**”) as well as his testimony.



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- (ix) In refutation of the submission regarding the conversion of conviction from Section 302 to Section 304 of the IPC, the learned APP for the State has vehemently opposed the conversion of conviction from Section 302 IPC to Section 304 IPC. It is submitted that the appellant had intended to cause the injury which resulted in death of Rajesh @ Pappi. The said injury was sufficient to cause death in ordinary course of nature and therefore, the appellant has rightly been convicted. The learned APP further submitted that the said injury was neither accidental nor unintentional and the same is apparent from the fact that the appellant was armed with a knife and the deceased was unarmed.
- (x) In conclusion, it is submitted that the findings of the Ld. Trial Court require no interference. It is asseverated that even in a case of a single injury resulting in death, the accused can be convicted under the provision of Section 302 of the IPC. It is further submitted that, from the above evidence, including both documentary and scientific, as surfaced by the prosecution, the case has



been proved beyond any reasonable doubt since it forms

the complete chain of events against the appellant.

ANALYSIS AND RATIO:

11. Upon a careful consideration of the rival submissions made by learned senior counsel for the Appellant and the learned APP for the state, the following evidentiary aspects come forth as noteworthy:

11.1 **Witness statements:** The prosecution has presented ocular evidence, in other words, eye-witness testimonies which state that the appellant committed the murder, who had not been cited at first but appeared before the Ld. Trial Court pursuant to applications under the provision of Section 311 Cr.P.C., as also depositions made in court, which speak to the appellant's guilt.

11.2 **Forensic Evidence:** There is evidence by way of the weapon of offence (knife), recovered upon the appellant's disclosure statement at his instance, and further corroboration by way of medical report of the chemical analyst (PW-10) stating that the said knife had rusty brown stains and the clothes of the deceased victim as well as that of the appellant bore brown stains, which indicates that said knife was used to cause deathly injury upon the deceased.



11.3 **Medical Evidence:** There is evidence derived from the post-mortem report dated 20.02.2012 relating to the cause of death and the time of death and other such factors, which correlate with the above-referred witness statements and forensic evidence.

12. The above evidentiary aspects are dealt-with hereinafter.

13. Insofar as witness statements are concerned, the following statements are of critical significance.

(i) Smt. Promila (“**PW-5**”) is stated to be an eyewitness to the incident, who correctly identified the appellant in court. She also identified the knife (weapon of offence) when shown. On the other hand, the Ld. Senior Advocate on behalf of the appellant contends that PW-5 is a planted witness and has falsely implicated the appellant at the behest of police, being the mother of a Beat Constable in P.S. Sabzi Mandi. In her testimony she stated as follows:

“Deceased Rajesh @ Pappi was residing in the same gali where I am residing. Accused Anil who is facing trial in the present case is also residing in the same gali. On **19.02.2012**, at about **8:45 pm**, I had gone to the market to purchase some articles as my children used to go to school in the morning. When I was returning from the market, I saw three persons namely Anil, deceased Rajesh @ Pappi and I do not know the name of the third person. I noticed that accused Anil Kumar of terrorizing deceased Rajesh @ Pappi with the knife. When I came near to them, **I saw that accused Anil**



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inflicted a knife blow on the lower portion of stomach. Rajesh@Pappi was crying that he should not kill him as he is having small children. I saw blood was coming in large quantity from the stomach of RaJesh@Pappi. He fell down on the ground. I got perplexed and went ahead. Hue and Cry was raised in the gali. When I reached buy house, I Started feeling giddiness. My children threw water on my face and I regained my consciousness. I narrated the whole incident to my children, but I could not tell about the incident to anyone in the neighbourhood due to terror. On 21.02.2012, I went to PS Subzi Mandi and gave my statement to Police about the abovesaid incident seen by me. On 23.02.2012, I gave my statement before the Ld. MM in the Court.”

(ii) Ms. Jaya (“PW -14”), wife of the deceased Late Sh.

Rajesh), in her testimony she stated as follows:

- a. “On 19.02.2012, I along with my family consisting my husband Late Sh. Rajesh Kumar and three children were residing on the first floor of the aforesaid house. At about 8.30/8.45 p.m. when I was going to cook food, in the meanwhile, I heard some noises coming from the gali of some quarrel. I immediately came down from the aforesaid floor and when I reached in gali Chakki Wali Gali that at the corner of gali; my late husband was lying in injured condition and the accused present in the Court today, namely, Anil was running with knife. When I reached near my husband, I found him having injury on his left thigh and blood was oozing out. He was in unconscious stage. On seeing the condition of ray husband, I became perplexed. My husband was shifted to the Hospital and later on, he died, I also came to know that the knife blow on the person of my



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husband was given by accused Anil present in the Court today and he caused his murder.”

14. With respect to forensic evidence and other testimonies, the following evidence is noteworthy:

- (i) Knife (Sketch at Ex. PW-17B) used for the commission of the offence was recovered from the house of the appellant in his presence as was disclosed by him vide disclosure memo Ex. PW-24/A to the IO, in the presence of PW-24 on 20.02.2012. PW24 corroborated the version given by the IO in this regard. A blood-stained shirt was also recovered from the house of the appellant at his instance vide recovery memo Ex. PW-24/B.
- (ii) The IO stated in his testimony that he prepared a site plan (Ex. PW-26/B) at the instance of the complainant. He further testified that the complainant and PW7 handed over their bloodstained clothes to him which were sealed and taken into possession (Ex. PW-4/B and PW-4/C, respectively). The IO further stated that he had seized blood from the corner of Chakki Wali Gali as well as from Shastri Gali near H. No. 442, Kabir Basti, through a gauze, blood-stained earth, earth control cream colour pant (one leg of which was smeared with blood and other



leg was missing), ^{NEUTRAL CITATION NO: 2022/DHC/002959} one pair of blood-stained canvas shoes and took the same into possession vide seizure memo Ex. PW4/E and Ex. PW4/F, respectively.

- (iii) Sh. Indresh Kumar Mishra (Sr. Scientific Officer (Biology), FSL, Rohini) ("PW-10") stated in his testimony that he had examined the exhibits and prepared the Biological Report (Ex. PW-10/A) and the Serological Report (Ex. PW-10/B). Human blood was found on the exhibits which included the clothes, shoes, gauze cloth pieces, earth control and the knife recovered from the appellant, PWs and the earth at the crime scene as well as the weapon of offence.
- (iv) S.I. Satish Kumar (Incharge, Crime Team, North District, Delhi) prepared the mobile crime team report (Ex. PW-22/A) and stated in his testimony as follows:

"On receipt of a call, I along with Ct. Inderjeet Photographer (PW15, Pg 37), Finger Print Expert Ct. Chetak and driver reached outside H. No. 398, Gali Chakki Wali near to H. No. 391 and we found blood spots outside H. No. 398. When we further proceeded in Gali Shashtri wali and also noticed blood outside H. No. 443. It was revealed that the injured has already been taken to the hospital. SI Veersen (PW24, Pg 59-62) along with a Constable also found present there. We also noticed one pair of shoes and a half pant of cream color was lying outside H. No. 443. Ct. Inderjeet had taken the



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photographs of the spot. I prepared my report which, is Ex, PW 22/A (Pg 183) bearing my signatures at point A and handed over the same to SI Veersen.”

15. The medical evidence as is necessary for the adjudication of the present matter is reproduced hereunder:

- i. Dr. Reena Ranjan (Senior Resident, Hindu Rao Hospital, Delhi) (“PW-2”) proved the MLC of the deceased. PW-2 testified as follows:

“On 19.02.2012, I was posted as Casualty Medical Officer at Hindu Rao Hospital, Delhi. On that day, patient Rajesh @ pappi S/o Prem Chand, aged about 40 years, Male was brought in the casualty vide MLC No. 933/12 which is Ex. PW-2/A and he was referred to me for examination. **I examined and found no signs life. Pupils were fixed and dilated, and EGG showed straight line. There was a deep wound over left thigh. I declared him brought dead at 9.20 p.m.** Ex. PW-2/A which bears my signature at point A.”

- ii. The Death Report (Ex. PW-9/C) of the deceased declared the death of the deceased victim as unnatural death by violence having a “V” shaped deep wound on the left thigh (column 10 of Ex. PW-9/C) which appears to have been made by a knife (column 12 of Ex. PW-9/C).
- iii. Dr. M.K.Panigrahi, CMO, Hindu Rao Hospital (PW-3) conducted the postmortem of the deceased and stated in his testimony as follows,

“On 20.02.2012, at 11.20 am, I had conducted the postmortem on the dead body of deceased Rajesh @Puppi S/o Late Sh. Prem Chand, Aged about 40 years male vide PM Report No. HRH/16/12 in the abovesaid case.



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External Examination:

Stab wound of size 5.5 cm X 2 cm, crescent-shaped, placed on the anterior aspect of the left thigh and is situated at about 72 cm above the heel of the left foot, 25 cm above the left knee joint and 23 cm below the left anterior superior iliac spine. The margins of the wound were clean cut. The angle of the medial end of the wound appears rounded and the angle of the lateral end appears acute and superficial. No fresh bleeding was present.

Internal Examination:

Examination of the external injury - the medial part of the **crescent shaped wound is deep and establishes a track which passes deep into the tissues and measures about 3.2cm in length and 12cm deep**. The lower and lateral part of the wound is superficial shallow and muscle deep only. The track of the wound on its medial aspect passes through the muscles on the medial aspect of left thigh medial to the left femur bone and ends at the ischium of left pelvis. Within the track, the femoral vein, femoral artery and other vessels and nerves were found completely cut. The track of the wound measures about 12 cm long. The direction of the wound track was from below upwards, backwards and from lateral to medial.

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OPINION: -

Death of deceased is due to **haemorrhage and shock consequent to injuries**. All the injuries mentioned above were ante- mortem and recent in nature. **External injury No. 1 could have been caused due to forceful thrust of a sharp, weapon / object and was sufficient to cause death in the ordinary course of nature**. The time since death at the time of PM examination was about 14 to 15 hours approximately. My detailed report is Ex. PW 3/A bearing my signature under my seal at Point A.....”

Discussion on Law:



16. It would be beneficial at this juncture to briefly examine the position of law on the following aspects, which are germane to a decision in the present matter:

- a. Whether PW-5 (Mother of a Beat Constable at the concerned Police Station) and PW-14 (Wife of the deceased) are interested witnesses?
- b. Whether the discovery of the weapon of offence at the instance of the appellant is rendered inadmissible in view of Section 25, 26 and 27 of the Evidence Act?
- c. Whether in the facts and circumstances of the case, the conviction and sentence imposed upon the appellant ought to be under the provision of Section 304 Part II of the IPC?

17. The decision of the Hon'ble Supreme Court in **Ganapathi v. The State of Tamil Nadu** reported as **(2008) 16 SCC 529** succinctly articulates the nature and characterisation of interested witnesses and when such evidence may form the basis of conviction, in the following paragraphs:

“13. Related is not equivalent to interested. A witness may be called interested only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the



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circumstances of a case cannot be said to be interested [See: State of Rajasthan Vs. Smt. Kalki and Anr. (1981) 2 SCC 752].

14. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. **When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible.** Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made [See : Maranadu and Anr. Vs. State by Inspector of Police, Tamil Nadu]”

18. A Co-ordinate Bench of this court in the decision of **Nadeem and Ors. v. The State (Govt. of NCT Delhi)** upheld the conviction built *inter-alia* on the testimonies of alleged interested witness, it was observed as follows:

“22. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the crime is natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. **There is a clear distinction in law between a related witness and an interested witness.** The Honble Supreme Court of India in **Md. Rojali Ali v. The State of Assam** reported as AIR 2019 SC 1128 held as under:

“10. As regards the contention that all the eye-witnesses are close relatives of the deceased, **it is by now well-settled that a related witness cannot be said to be an interested witness merely by virtue of being a relative of the victim.** This Court has elucidated the difference between interested and related witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in



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seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused.”

23. Thus, in our considered view, both PW-4 and PW-6 cannot be characterised as interested witnesses simply because they happen to be related to the deceased victim. Their testimony is credible and inspires confidence as they were witnesses to the commission of the offence being present at the time it was perpetrated..”

19. In view of the above quoted decisions of the Hon’ble Supreme Court and in our considered view, the ocular evidence in the form of eye-witness testimonies of PW-5 and PW-14 cannot be characterised as interested as neither of the witnesses were to derive any benefit in lieu of their testimonies. Further in view of the decision in **Ganpathi** (Supra), the Hon’ble Court has observed that the party has to establish the allegation of interestedness before the court. In the present matter, the Ld. senior counsel has not brought any material on record to establish the interested nature of PW-5 and PW-14, and mere reiteration that the witnesses have falsely implicated the appellant, does not sustain.

20. The contentions raised by the appellant against the testimony of PW-5 were adequately addressed by the Ld. Trial Court. The relevant portion of the impugned judgment is reproduced hereunder:



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“34. The contentions of, Ld. counsel for accused was that the testimony of eye-witness / PW-5 Smt. Promila was recorded after 2 days of the incident as there was unjustified delay in recording the statement of a material witness reliance on the deposition of such a witness was wholly unsaid. It was also alleged that PW-5 falsely implicated accused at the behest of the police.

35. It was also argued by defence counsel that PW-5/ Smt. Promila had been resiled from her previous statement and was cross-examined by the Addl. PP which further makes her deposition unreliable because as a result of cross-examination of PW-5 by prosecution testimony stood discredited. It was noted that that purpose of cross-examination is only to contradict a witness but to see whether the witness reverses to the earlier statement, as such the testimony of a hostile witness need not discarded in toto but the same can be accepted to the extent it is found to be dependable on a careful scrutiny thereof. In this regard, it has been held in Sat Paul Vs Delhi Administration 7976/SC 727 as under:-

"It is a wrong assumption that the only purpose of cross examination of his own witness by a party is not contended on the witness being declared hostile or entire evidence being discarded", that the entire testimony of such witness could not be discarded and reliance on any part of statement of such a witness by both parties were permissible.

"The position is that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony."



36. Thus, in a criminal prosecution when a witness is cross examined and contradicted with the leave of the court by the party calling him his entire evidence need not be discarded. It is for the court to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or part of his testimony could be relied upon.

37. It is pertinent to note the facts elicited in the cross-examination of PW-5 by Ld. Addl. PP. PW-5 admitted that she had stated before the police that she had seen accused who is handicapped chasing deceased with a knife and stabbing deceased (near the penis) and later on she came to know deceased died in the hospital. She also stated that only after accused was arrested she dared to go to PS to give statement to the police. Thus on reading and considering the evidence of PW-5 as a whole with due caution and care I find that her credit has not been shaken and her testimony is credit-worthy and could be acted upon. It is to be noted that PW-5 had corroborated the version given in her statement to the police.

38. It is also to be noted that PW-5 stated in her examination-in-chief that she witnessed the incident while returning home after purchasing some articles. PW-5 stated in her cross-examination that the place of incident was 5 minutes walking distance from her house. That accused was also residing near the place of incident. Nothing was elicited in the cross-examination of PW-5 to show that had inimically deposed against accused or was an interested witness. As PW-5 was residing near the place of incident and she was returning home she was a natural witness. PW-5 had offered cogent, and acceptable explanation regarding her remaining silent for 2 days before reporting the matter to the police. Her deposition that she was scared of accused and thus did not reveal about the incident, to the police and neighbors and only after accused was arrested she. went to the police, is believable. Ld. counsel further contended that PW-5 stated in



her cross-examination that she came to know about the arrest of accused on the night of incident itself. In my view the deposition of PW-5 that she was scared of the accused could not be said to be unbelievable as she may have apprehended danger to herself and her family. For the sake of repetition it is stated PW-5 deposed in her cross-examination by Ld. Addl. PP that after coming to know that accused was arrested, she went to the police and gave her statement. It is to be noted that evidence of a witness recorded at a late stage must be received with a pinch of salt, as delay defeats justice. Each case has to be considered on its own facts. After going through the evidence of PW-5 she was found to be a trustworthy witness. Thus in my view PW-5 had given explanation for delay in informing the police about the incident. Thus in my view there was no reason for PW-5 to concoct a different version that what actually took place. Moreover, the version of PW-5 is also corroborated by the medical evidence as PW-3 Dr. M.K. Panigrahi, the autopsy surgeon who conducted the postmortem on the body of deceased found stab injury was found on his left thigh caused by forceful thrust of sharp weapon and was sufficient to cause death in the ordinary course of nature. Thus as the evidence of PW-5 was corroborated by the evidence of PW-3 the irresistible conclusion is that the fatal injury was inflicted on deceased with a sharp object/knife.

39. Ld. counsel contended that the version of PW-5 stated in her cross-examination when accused was running towards deceased, deceased did not try to escape from which it was evident that no such incident took place, as in such case a person would try to run away but deceased did not do so. In my view the said contention cannot be given much importance as deceased may not have apprehended danger to his wife or that accused would inflict fatal injury to him. A suggestion was given to PW-5 in her cross-examination that she was a planted witness by police as her son was a BC of PS Subzi Mandi. PW-5 admitted in her, cross-examination that her son Nitin was a BC of PS Subzi Mandi. In my view the said fact is not a ground



to discredit the version of PW-5 which has been found to be trustworthy. Moreover nothing elicited in the cross-examination of PW-5 to show that she was exploited by police officials due to the antecedents of her son Nitin to depose falsely against the accused. It could therefore not be said that PW-5 had a motive to falsely implicate the accused. Moreover, nothing was also elicited in the cross-examination of PW-5 to show that accused had been a obstacle in the illegal activities of her son who was a BC of PS Subzi Mandi.'

40. The next contention of Ld. defence counsel was that from the version of PW-5 in her cross examination it was evident that the third person was involved in the incident but PW-5 did not know his name to show that someone else killed deceased. In my view the said contention was without substance as PW-5 had categorically deposed that accused had stabbed deceased."

21. Further, the argument on behalf of the appellant is that PW-14 is an interested witnesses since she is the wife of the deceased and consequently her testimony is not trustworthy. We have scrutinized her testimony. Since she was present at the time of the incident, the argument of defence that PW-14 is an interested witness, does not sustain.

22. Thus, in our considered view, PW-5 and PW-14 are not interested witnesses but are eye-witnesses to the incident and hence, their testimonies are credible and reliable.

23. The other contention raised on behalf of the appellant is that the recovery of the weapon of the offence cannot be used against the accused in view of Sections 25, 26, 27 of the Evidence Act. It is



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further contended that there was no independent witness at the time of recovery of the weapon of offence.

24. While considering the question of absence of an independent witness at the time of recovery of the weapon, it is important to look at the verdict of the Hon'ble Supreme Court in **Govindaraju v. State** reported as **(2012) 4 SCC 722**, which observed as under:

“67. We are certainly not indicating that despite all this, the statement of a police officer for recovery and other matters could not be believed and form the basis of conviction but where the statement of such witness is not reliable and does not inspire confidence, then the accused would be entitled to the benefit of doubt in accordance with law. **Mere absence of independent witness when the investigating officer recorded the statement of the accused and the article was recovered pursuant thereto, is not sufficient ground to discard the evidence of the police officer relating to recovery at the instance of the accused.** [See State (Govt. of NCT of Delhi) v. Sunil]. Similar would be a situation where the arresting officer himself if unreliable then it may be difficult for the court to accept the recovery as lawful and legally admissible. **The official acts of the police should be presumed to be regularly performed and there is no occasion for the courts to begin with initial distrust to discard such evidence.**”

25. The learned Trial Court has also carefully examined the provisions of law under the Evidence Act, and the relevant portion of the impugned judgment is as follows:

“56. It is to be noted that accused had made disclosure statement EX.PW24/A to the Investigation Officer /PW26. The disclosure statement led to discovery of the weapon of offence which was blood stained. Ld, defence counsel contended that



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the evidence regarding discovery cannot be used against the accused in view of Section 25,26,27, of the Evidence Act.

57. It would be relevant to note that Section 25 of the Evidence Act provides that no confession made by an accused to a police officer can be proved against the maker of it. Section 24 excludes confession caused by certain inducements, threats and promises. Section 25 provides: "No confession made to a police officer shall be proved as against a person accused of an offence". The terms of S. 25 are imperative. Thus, a confession made to a police officer under any circumstances is not admissible in evidence against an accused.

58. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban lifted by S. 26 relates to a confession made to a person other than a police officer. Section 27 is the form of a proviso, and partially lifts the ban imposed by Ss. 24,25 and 26. It provides that when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

59. Section 25, 26 and 27 of the Indian Evidence Act are reproduced as under:

"25 - Confession to police officer not to be proved -

"No confession made to a police officer, shall be proved as against a person accused of an offence.

"26 - Confession by accused while in custody of police not to be proved against him - "No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of the Magistrate shall be proved as against such person".

"27- How much of information received from accused may be proved-"Provided that, when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it



amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

60. Ld. counsel also contended that no independent witness was joined at the time of recovery from the house of accused as provided u/s 100 CrPC which relates to search and reads as under:-

"Section 100. Persons in charge of closed place to allow search. - (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person, executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search Under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness, the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they were respectively found shall be prepared by such officer or other persons and signed by such witnesses; but no persons witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared and a copy thereof shall be delivered to such person.



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(8) Any person who, without reasonable cause, refuses or neglects to attend any witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860)."

61. However, as regards the contention of Ld. counsel regarding the non-joining of independent witnesses it has held in State (NCT of Delhi) Vs Navjot Sandhu @Afsan Guru SCC (2005)11 SCC, there is no law that evidence of police officials with regard to search ought to be discarded. The relevant extract of the judgment's as follows: -

"There is no such inflexible proposition of law that in the absence of independent witnesses being associated with search, the seizure cannot be relied upon. In the absence of independent witnesses during seizure operations investigating officers' evidence need not always be disbelieved. Of course, closer scrutiny of evidence is what is required. Having regard to the fact situation in the present case, the police officers cannot be faulted for not going in search of the witnesses in the locality. There is no law that the evidence of police officials in regard to seizure ought to be discarded".

62. Thus the joining of independent witnesses is not mandatory but independent evidence could only probabalize the version of prosecution, but in the instant case the disclosure of relevant fact by accused led to the discovery of weapon of offence.

63. It is well settled law that in criminal trial burden of proof lies upon prosecution and that burden never shifts the nature and extent of the burden cast upon accused is also well settled the accused does not have prove his innocence beyond the reasonable doubt.

64. The fact that knife used in the crime was hidden by accused in his house was disclosed by accused to the IO in the presence of PW24/ SI Veersen on 20.02.2012. PW-24 corroborated the version of IO in this regard. The discovery was made only after accused was taken by police to his house where recovery memo EX.PW24/B was made. Thus the disclosure of a relevant fact by accused to IO preceded the discovery of knife from the disclosed spot at the instance of accused. Thus the fact disclosed by accused and the recovery was admissible against accused u/s 27 of the Evidence Act.



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65. The circumstance of recovery of weapon of offence/knife at the instance of accused shows his complicity in the offence. Moreover the report of Chemical Analyzer Ex.PW10/A and Ex.PW10/B according to which human blood was found on the knife remained unexplained by accused. **It is to be noted that human blood was also found on the clothes of accused and the cemented material and earth control seized from the spot by IO vide seizure memo Ex.PW4/E and Ex.PW4/F in the presence of complainant, PW-7 and PW-24. The complainant and PW-7 had admitted their signatures of the same.**

66. Thus from the careful analysis of entire evidence and documents, I am of the view that prosecution succeeded in proving that the accused was the perpetrator of the crime. The discovery of weapon was made only after accused made disclosure statement. **Thus, the facts disclosed by accused and the discovery made at his instance was admissible against him u/s 27 of the Evidence Act. Moreover, according to the report of chemical Analyst PW-10 the knife had rusty brown stains, the clothes of deceased and accused also bore dark brown stains. The biological and serological reports show that human blood was detected on the knife and clothes of accused. Accused had stated in his statement u/s 313 CrPC that his blood stained clothes were seized by the police and the same became blood stained when he lifted deceased with others, thereby admitting his presence at the spot.”**

26. In view of the above-quoted portion of the decision of the Hon’ble Supreme Court as well as of the impugned judgment, we are of the considered view that the contentions raised on behalf of the appellant with regard to the recovery of the weapon of offence, do not have legs to stand on.

27. As an alternate argument, the learned Senior counsel for the appellant made a plea for modification of conviction and sentencing, contending that the appellant’s conviction may be converted from a



conviction under Section 302 to that of Section 304, Part II of the IPC, and the sentence be modified accordingly.

28. The court is confronted with the question as to whether the appellant had the intention to cause death so as to attract the rigorous provision of section 302 of the IPC; or was there merely an intention to cause bodily injury, which would fall within the pale of Section 304, Part II thereof.

29. We shall first deal with the aspect of a singular blow inflicted with the knife by the appellant. The Hon'ble Supreme Court in *State of Andhra Pradesh vs. Rayavarapu Punnayya & Anr.* reported as (1976) 4 SCC 382, has set out the distinction between Section 299 and Section 300 of the IPC. While relying on the decision in *Virsa Singh vs. State of Punjab* reported as AIR 1958 SC 465, it has been held as under:

"12. 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, "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 minutiae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

XX XX XX

14. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the



offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of "probable" as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant v. State of Kerala* [AIR 1966 SC 187 4: 1966 Supp SCR 230: 1966 Cri LJ 1509.] is an apt illustration of this point.

18. In *Virsa Singh v. State of Punjab* [AIR 1958 SC 465 : 1958 SCR 1495 : 1958 Cri LJ 818.] Vivian Bose, J. speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500):

“The prosecution must prove the following facts before it can bring a case under Section 300, 'thirdly'. First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that 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 enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely



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objective and inferential and has nothing to do with the intention of the offender.”

19. Thus according to the rule laid down in Virsa Singh case of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be "murder". Illustration (c) appended to Section 300 clearly brings out this point.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general - as distinguished from a particular person or persons -being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

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



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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.

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages."

30. At this stage, it would be beneficial to briefly encapsulate the legal position that has been settled by the Apex Court in the celebrated judgement in **Virsa Singh (supra)** which is a *locus-classicus* in criminal jurisprudence, as follows:

- "a) If the subject injury is intended and is not caused by an accident or otherwise is not unintentional and the injury is sufficient in the ordinary course of nature to cause death, then the same would fall under Section 300 clause (3) and be punishable under Section 302 of IPC;
- b) If there is intent and knowledge to cause a bodily injury likely to cause death, then the same would be a case of Section 304 Part I of IPC; and
- c) If it is only a case of knowledge and not intention to cause a bodily injury likely to cause death, then the same would fall under Section 304 Part II of IPC."

31. From a perusal of the aforementioned judgment, it becomes apparent that if the intended injury is sufficient to cause death in the ordinary course of nature, the offence will fall under the category of murder. In the present set of facts, it has been established beyond reasonable doubt that the stab injury inflicted upon the person of the



victim was committed by the appellant. There also remains no shadow of doubt that this bodily injury, which has been opined as sufficient to cause death in the ordinary course of nature, was caused with the intention to cause death since the appellant was armed.

32. In view of the above quoted decision of the Hon'ble Supreme Court, we are not inclined to accept the plea for modification of the conviction or sentence. The appellant was convicted for committing the murder of the deceased victim Rajesh @ Pappi by inflicting deadly injury upon the deceased, with the intention to cause his death by stabbing him with a knife. The said knife was recovered at the instance of the appellant and human blood was also found on the said weapon. Further, in view of the above-mentioned evidence before us, in our opinion, the case of the appellant does not fall under any of the exceptions provided under Section 300 of the IPC; and therefore, the conviction of the appellant under section 302 of the IPC cannot be converted to one under Section 304, Part II of the IPC.

33. As a sequitur to the above discussion, we find ourselves in agreement with the findings returned by the Ld. Trial Court, which in our considered view, do not warrant any interference or modification.



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34. Therefore, the judgment dated 11.10.2019 and the order on sentence dated 17.10.2019 are upheld; and the present appeal is accordingly dismissed.

35. However, there shall be no order as to costs.

36. A copy of this judgment be provided to learned counsel appearing on behalf of the parties, electronically and be also uploaded on the website of this Court *forthwith*.

SIDDHARTH MRIDUL
(JUDGE)

ANUP JAIRAM BHAMBHANI
(JUDGE)

AUGUST 05, 2022

dn/ak