



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

% Reserved on: 11<sup>th</sup> July, 2022  
Pronounced on: 8<sup>th</sup> August, 2022

+ **CRL.A. 27/2021 & CRL.M.(BAIL) 699/2022**

KAMLESH

..... Appellant  
Represented by: Mr. Krishan Kumar & Mr.  
Shivam Bedi, Advocates

versus

THE STATE

..... Respondent  
Represented by: Mr. Tarang Srivastava, APP for  
the State with Insp. Yogendra,  
P.S. Anand Parbat.  
Mr. M. A. Niyazi, Advocate for  
Complainant

+ **CRL.A. 97/2021**

SUNIL

..... Appellant  
Represented by: Mr. Sanjay Suri, Advocate

versus

STATE

..... Respondent  
Represented by: Mr. Tarang Srivastava, APP for  
the State with Insp. Yogendra,  
P.S. Anand Parbat.  
Mr. M. A. Niyazi, Advocate for  
Complainant

+ **CRL.A. 566/2020**

YOGESH @ MATRU

..... Appellant  
Represented by: Mr. S. Khan & Ms. Jayanti  
Prasad, Advocates

versus



STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Tarang Srivastava, APP for  
the State with Insp. Yogendra,  
P.S. Anand Parbat.  
Mr. M. A. Niyazi, Advocate  
for Complainant

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**CRL.A. 604/2020**

GAURAV

..... Appellant

Represented by: Mr. Ramesh Gupta, Sr. Adv.  
with Ms. Aishwarya Rao  
(DHCLSC) & Ms. Mansi Rao,  
Advocates

versus

STATE

..... Respondent

Represented by: Mr. Tarang Srivastava, APP  
for the State with Insp.  
Yogendra, P.S. Anand Parbat.  
Mr. M. A. Niyazi, Advocate  
for Complainant

+

**CRL.A. 616/2020**

LAKHMI CHAND

..... Appellant

Represented by: Mr. M A Niyazi, Advocate

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Represented by: Mr. Tarang Srivastava, APP for  
the State with Insp. Yogendra,  
P.S. Anand Parbat.  
Mr. M. A. Niyazi, Advocate  
for complainant



**CORAM:**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

1. This judgment and order shall dispose of the following appeals assailing common judgment and order passed by the learned Trial Court dated 31<sup>st</sup> August, 2020 (order of conviction) and 8<sup>th</sup> September, 2020 (order on sentencing):

- (i) Criminal Appeal 27/2021 - Kamlesh vs. State, filed on behalf of Kamlesh wife of Late Shri Suraj Mal, resident of Delhi under Section 374(2) Cr.P.C. arrayed as Accused No.3.
- (ii) Criminal Appeal 97/2021 - Sunil vs. State, filed by Sunil Kumar S/o Shri Rajinder, resident of Haryana under Section 374(2) Cr.P.C. arrayed as accused No.4.
- (iii) Criminal Appeal 566/2020 - Yogesh@Matru vs. State, filed by Yogesh S/o of Shri Surender Kumar, resident of Delhi under Section 374(2) Cr.P.C. arrayed as accused No. 1.
- (iv) Criminal Appeal 604/2020 - Gaurav vs. State, filed by Gaurav S/o Shri Krishan Kumar, resident of Delhi under Section 374(2) Cr.P.C. arrayed as accused No. 2.



(v) Criminal Appeal 616/2020 - Lakhmi Chand vs. State, filed by Lakhmi Chand S/o Late Shri Sher Singh, resident of Delhi under Section 372 proviso Cr.P.C. as father of the deceased.

2. By the said judgment and order of the learned Trial Court accused No. 1 to 4 were held guilty and convicted under Sections 304 (Part I), 308 and 325, read with Section 34 of IPC and the following sentences were passed:-

- (i) for Section 304(Part I)/34 IPC – life imprisonment,
- (ii) for Section 308/34 IPC – 7 years imprisonment,
- (iii) for Section 325/34 IPC – 5 years imprisonment.
- (iv) In addition, a fine of Rs.5,000/- for each accused in respect of each of the offences stated above and six months simple imprisonment in default of payment of fine.
- (v) Gaurav, accused No.2 was additionally sentenced to imprisonment of six months for offence under Section 323 IPC.
- (vi) Sentences awarded to the accused were to run concurrently.

3. While the four accused had filed appeals against the above mentioned impugned judgment and order for conviction and sentence, pleading and praying for acquittal, the appellant in Criminal Appeal 616/2020 prayed for setting aside the impugned judgment and order passed by the learned trial court and to modify the conviction from Section 304 (Part I)/34 IPC to Section 302/34 IPC and from Section 308/34 IPC to Section 307/34 IPC.



4. We have heard the counsel for all the appellants and the State on various dates.

5. The accused have been convicted for causing death of victim Umesh Kumar and attempting to murder victims viz. Sunil and Vikas Anand and causing simple hurt to Sanjay and Aman in furtherance of common intention on 15<sup>th</sup> August, 2013 at about 02:05 pm in *gali* in front of House No.253, Gali No.13, Mann Singh Nagar, Anand Parbat, Delhi.

6. FIR No.146/2013 was registered at PS Anand Parbat on 15.08.2013 and charge sheet was later filed against all the accused. Charges were framed for offences punishable under Sections 302, 307, 323 read with Section 34 IPC. The matter was committed for trial before the Sessions Court and upon pleading not guilty by the accused, evidence was recorded. The prosecution examined total of 29 witnesses, statement of accused under Section 313 Cr.P.C. was recorded and the accused persons examined 4 witnesses in their defence.

### **The Incident**

7. As per the prosecution, the incident leading to the commission of offences occurred in the afternoon of Independence Day of year 2013 i.e. 15<sup>th</sup> August, 2013 at around 2 pm. Complainant Sanjay, being father of Aman, gave Rs.100/- to him to purchase kites but while Aman was on his way in the street, the money was snatched by their neighbour Gaurav resulting in Aman returning back to his father crying and complaining. Sanjay accompanied Aman to the street downstairs where Gaurav was standing with his brother-in-law Sunil and cousin Yogesh and asked them



the reason for snatching the money from Aman. Thereupon, Gaurav along with Yogesh and Sunil started to misbehave and beat Sanjay and Aman. On hearing their cries, Sunil (real brother of Sanjay), Vikas and Umesh (cousin brothers of Sanjay) came downstairs from their neighbouring houses. Accused Kamlesh (paternal aunt of accused Gaurav and Yogesh) also reached the spot and started abusing the complainants. Accused Kamlesh caught hold of Umesh from behind whereas accused Gaurav exhorted “*sabko sabak sikha do*” (teach a lesson) to all of them. All the accused persons took out knives from their possession and started inflicting injuries on Umesh indiscriminately and also attacked Vikas and Sunil with the knives when they tried to rescue their brother Umesh. As a result, Vikas sustained injuries on his left shoulder and Sunil was stabbed on his left chest. Complainant Sanjay took injured Umesh, Vikas and Sunil to Lady Hardinge Hospital in an auto around 3:00 pm and Umesh expired during treatment at 3.50 pm.

8. In their defence, the accused raised the plea that the scuffle was actually between the complainant and some outsiders on the issue of eve teasing in which Aman was involved. On the suspicion that Gaurav had made a complaint against Aman regarding this eve teasing, Aman allegedly had beaten Gaurav with a bat and when accused Gaurav raised an alarm people gathered. In the meantime, brothers of Sanjay reached the spot with knives. Accused Sunil raised a further plea of *alibi* that he was present in his village in Sonapat, Haryana and did not visit Anand Parbat, Delhi on that day.



9. As per the post-mortem report (Ex.PW2/A), Umesh died due to haemorrhage and shock consequent upon stab wound on abdominal organ which was sufficient to cause death in ordinary course of nature and could be produced by some sharp cutting and stabbing single edged weapon. In addition, he sustained four bruises elsewhere and another stab wound on his left forearm, all injuries being *ante mortem* in nature. As per the MLC Ex.PW4/A, the stab injuries sustained by the patient Sunil on his chest was dangerous to his life and he was diagnosed as hemothorax due to the trauma and collection of blood in his pleural cavity. MLC (Ex.PW26/A) of Vikas stated that he had suffered fractured injuries on his left clavicle bone which injury was opined as being grievous.

**Submissions by the Appellants:**

10. The contentions raised by the accused in their appeals are cumulatively *inter alia* as follows:

- (i) Conviction of the accused has been based on assumptions, presumptions, conjunctions and surmises and that there are material contradictions between the charge sheet and the evidence of the prosecution.
- (ii) The area where the altercation took place was a congested and populated area and assuming many people were gathered, no one was made a witness for the prosecution.
- (iii) The police officials did not recover anything at the instance of PW10 Aman. As per PW9 Sunil, there was no evidence to



substantiate whether the recovered knife belonged to the accused or not.

- (iv) That the accused Kamlesh was also injured on her chest during altercation but was not medically examined.
- (v) There were contradictions between the medical and the ocular evidence since as per the evidence led by the prosecution, the words “*taabad todd chaaku maare*” were used by the accused during this scuffle which could have meant numerous knife injuries but there were only two injuries on the victims.
- (vi) The place of occurrence was near the house of the accused establishing that it was the family of the complainant who were the aggressors.
- (vii) No knife has been recovered from accused Sunil and Yogesh despite the accusation that they were all possessing knives on their person.
- (viii) There was no evidence that accused persons took undue advantage or acted in a cruel manner thereby attracting Exception (4) under Section 300 IPC as being premeditated, in the heat of passion, upon a sudden quarrel.
- (ix) At best in these circumstances, the influence drawn could be that fatal injury was inflicted by accused persons with the knowledge that they were likely to cause an injury which could lead to death but without any intention to cause death or to



cause such bodily injury and, therefore, would be punishable under Section 304 (Part II) of IPC.

- (x) The learned trial court having observed that if this would fall under Exception (4) under Section 300 IPC, Section 34 could not have been invoked as there would be no common element in the participation of the crime.
- (xi) The alleged exhortation attributed to accused Gaurav of “teaching a lesson” cannot be treated as an intention to cause death but could also be confined to causing simple hurt.
- (xii) The PCR call as received (Ex.PW21/A) mentioned that a lady had been hurt proving that the complainant had also used a knife and has no mention of the presence of PW3 Sanjay and PW10 Aman leading to the conclusion that they have been planted as alleged eye witnesses.
- (xiii) The recovery of the alleged knife cannot be treated as recovery under Section 27 of the Indian Evidence Act, 1872 since as per disclosure statement of the appellant he had not mentioned that he had hid it under a stone whereas the recovery was such.
- (xiv) The prosecution had not been able to prove covert/overt act of the appellants, meeting of their minds or pre-arrangement to prove common intention. At most, it could be inferred that it was a free fight where both sides received injuries during the scuffle and one of such injuries prove fatal. There was no eye witness to state that who gave the fatal blow to the deceased.



- (xv) The knife that was recovered at the behest of accused Gaurav was not blood stained and no forensic analysis had been conducted on the same.
- (xvi) As per the Supreme Court in *Shahjahan Ali & Ors. v. State of Maharashtra* (2017) 4 SCC (Cri) 675 conviction under Section 302 was converted to that under Section 304 (II) IPC and limited to the sentence already undergone.
- (xvii) A host of judgments were relied upon by the appellants in their written submissions and in their pleadings in support of their contentions, which are listed as under:
- a) *Krishnamurthy v. State of Karnataka* MANU/SC/0248/2022
  - b) *Amiruddin vs. State (Delhi Admn.)* MANU/SC/1313/2019
  - c) *Bhagirath vs. The State of Madhya Pradesh* MANU/SC/1208/2018
  - d) *Matadin vs. State of Maharashtra* MANU/SC/0477/1998
  - e) *A. Shankar v. State of Karnataka* (2011) 6 SCC 279
  - f) *Stalin v. State*, (2020) 9 SCC 524 *Mathai v. State of Kerala*, (2005) 3 SCC 260
  - g) *Virsa Singh v. State of Punjab*, 1958 SCR 1495
  - h) *Ramesh Vithalrao Thakre v. State of Maharashtra*, (2009) 17 SCC 438
  - i) *Heera Lal v. State Govt. of NCT*, 2014 SCC OnLine Del 7126



- j) *Trimbak v. State of M.P., AIR 1954 SC 39*
- k) *Pradeep v. State (NCT of Delhi), 2018 SCC OnLine Del 11704*
- l) *Chhotu Kumar v. State (NCT of Delhi), 2021 SCC OnLine Del 3533*
- m) *Dharampal v. State, 2011 SCC OnLine Del 3123*
- n) *Shahajan Ali v. State of Maharashtra, (2017) 13 SCC 481*
- o) *Sunil Khergade v. State of Maharashtra, (2016) 15 SCC 773*
- p) *Jagtar Singh v. State of Punjab, (1983) 2 SCC 342*
- q) *Girija Shankar v. State of U.P., (2004) 3 SCC 793*
- r) *Mohan Singh v. State of Punjab, AIR 1963 SC 174*
- s) *Surinder Kumar v. Union Territory, Chandigarh 1989(2)SCC 217*
- t) *Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770*
- u) *Madhavan & Ors v. the State of Tamil Nadu (2017) 15 SCC 582*
- v) *Dashrath v. State Of M.P. in CrL.A No. 76/2008*
- w) *Shyam v. State of Delhi, 2019 SCC OnLine Del 9187*

11. The learned senior counsel for accused No.2 (Gaurav) additionally submitted as under:

- (i) Only one injury was the fatal injury and it was not known who had caused it.



- (ii) Only one knife was recovered at the instance of accused No. 2 Gaurav from a public place and it reportedly had darkish material on it but no forensic examination was conducted. Two witnesses saw knife in the hands of other accused Yogesh and not Gaurav, therefore, it could not be proven that the knife recovered from Gaurav was used in the murder.
- (iii) Even if the accused were carrying knives but it was not for this particular purpose of killing the deceased. The injury inflicted should be the injury intended.
- (iv) The main act of delivering any fatal blow has not been attributed to the others and, therefore, a case under Section 34 cannot be sustained.
- (v) There were no proven previous criminal antecedents of the accused which go against the accused and extent of their conviction.
- (vi) There was no evidence of any previous enmity between the appellants and the victims.
- (vii) The injury caused to Kamlesh during the fight was not rebutted. In fact, PW-3 does not talk of Kamlesh at all in his testimony and there is a later improvement in the testimony of PW-10.
- (viii) The fatal injury was caused through the 7<sup>th</sup> and 8<sup>th</sup> rib damaging the liver. The nature and specificity of the injury could not have been intended in a street fight. Therefore, relying on Hon'ble Supreme Court's decision in *Virsa Singh*, the intention was clearly not to inflict that particular injury.



- (ix) Appellant Sunil was arrested after two months and the rest of the appellants were arrested immediately. Sunil presented a plea of alibi which has not been examined.
- (x) PW-18 was the recovery constable who recovered the knife from Yogesh and later stated that it was Gaurav and that she could not identify the knife.

In light of *inter alia* the above contentions, the appellant's plea as advanced by their Counsels was that conviction under Section 304 (Part I) was extremely harsh in the circumstances and they were already in custody for eight years.

**Submissions by the Father of the Deceased:**

12. In the appeal by the father of deceased under the proviso to Section 372 Cr.P.C., the following contentions have been raised by the appellant:-

- (i) The facts and circumstances of the case warrant a conviction under Section 302 IPC for the murder of victim Umesh and the learned Trial Court was in error in mitigating it to Section 304 (Part I) IPC.
- (ii) Despite having returned findings under Section 300 (Thirdly) IPC, the learned Trial Court was in error in slotting it under Exception (4) of Section 300 IPC.
- (iii) To bring a case under Exception (4) of Section 300 IPC, all ingredients as articulated in *Pappu v. State of M.P.* (2006) 7



SCC 391 ought to be made out, which have not been in the facts of this case.

- (iv) There was no provocation from the complainants of the deceased. In fact the aggression was purely by the accused. The situation in question cannot be covered under Exception (4) to Section 300 IPC since it was not provoked by the victim-complainants. The knives were already therewith the appellants and they were pre-weaponized.
- (v) The contrary hypothesis suggested by the accused that the scuffle started on account of eve teasing by Aman, followed by accosting by Gaurav and Aman having beaten Gaurav with a bat is completely fabricated since no such injuries were received by Gaurav and no medical examination was ever conducted.
- (vi) The suggestions of previous enmity were given by the defence in the cross-examination of PW3 Sanjay and PW5 Vikas, therefore, suggesting that there was premeditation on this account.
- (vii) The deposition by PW2 Dr. Mukta Rani on the nature of injuries was that they were sufficient to cause death and, therefore, Section 300 (Thirdly) applies. The pulse of the deceased was found to be very weak as per PW-1 the doctor who recorded the MLC and examined the deceased and he further stated that the *omentum* was protruding and therefore



the fatal injury was severe and grave. As per PW-28 and PW-8, the injuries to Sunil were also grievous injuries.

- (viii) They were four injured eye witnesses, namely, PW3, PW5, PW9 and PW10 viz. Sanjay, Vikas, Sunil and Aman respectively thereby providing the best evidence in favour of the incident as it occurred.
- (ix) The three knives had caused four stab injuries, two on the deceased Umesh and one each on Vikas and Sunil even though Sunil's injury was not fully an incision but had been mentioned in the MLC as grievous injury.
- (x) The examination of the weapon would reveal that it was not a normal kitchen knife but of 26 cm length with 15 cm of blade and 11 cm of handle as also the injuries corresponded to cut marks on the clothing.
- (xi) The fight was not a free for all and was triggered by a petty issue of snatching of Rs.100/- which shows that there was intent to kill in any event.
- (xii) Reliance was placed on ***Virsa Singh v. State of Punjab***, 1958 SCR 1495 Paras 8, 9 & 12, 13 particularly for bringing a case under Section 300 (Thirdly). The said decision stated that intention to cause death would not matter in those circumstances as long as there is intention to inflict bodily injury which is objectively proved and that the injury was sufficient in the ordinary course of nature to cause death.

**Submissions by the Prosecution:**

13. Submissions were advanced on behalf of the Additional Public Prosecutor which are *inter alia* as under:

- (i) The injuries which have been inflicted on the victims are not just a single injury but multiple injuries. The appellants have relied upon judgments which are of single injury.
- (ii) The injury to PW-9 as testified by the PW-8 doctor was a grievous injury and not a simple injury and, therefore, there was no question in giving the benefit of doubt to the appellants on their intent to inflict fatal blows. Even PW-5 had a fractured collarbone as a result of him being secured by one of the accused.
- (iii) There was no sudden fight which had ensued between the appellants and the victims but was provoked by the appellants who were clearly the aggressors and were also respectively armed with knives. The injury which caused the fatality was opined by the doctor as one sufficient to cause death since it was deep incision which had pierced between the ribs and seriously punctured and cause severe damage to the organs inside.
- (iv) The prosecution relied upon *inter alia* the following authorities in support of their arguments:
  - a) ***Pargan Singh v. State of Punjab***, (2014) 14 SCC 619
  - b) ***Abdul Sayeed v. State of M.P.***, (2010) 10 SCC 259



- c) *State of Haryana v. Tek Singh*, (1999) 4 SCC 682
- d) *State of M.P. v. Udaibhan*, (2016) 4 SCC 116
- e) *Dhananjay Chatterjee v. State of W.B.*, (1994) 2 SCC 220
- f) *Ravji v. State of Rajasthan*, (1996) 2 SCC 175
- g) *State of M.P. v. Munna Choubey*, (2005) 2 SCC 710

### **The Evidence:**

14. As per DD No.22A, a call was received through the PCR at 2:30 pm reporting that a man has been attacked by knife at House No.253, Gali No.13, Than Singh Nagar, New Delhi. Subsequently, *vide* DD No.23A information was received at 02:43 pm that in fact two people had been knifed. This call was received by PW-22 the PCR constable, thereafter PW-14 Constable Mahesh Kumar and PW-25 SI Kamal went to the spot and came to know that the injured had already been shifted to Lady Hardinge Hospital by the PCR. PW-14 thereafter recorded the statement of Sanjay and based on this “*Rukka*”, FIR was and registered at 18:15 hours, and the crime team was also called. The crime team member collected the blood stained earth control, the blood stained clothes of the deceased, blood in gauze and these were duly sealed.

15. On 16<sup>th</sup> August, 2013, PW-25 and PW-29 Inspector Dalbir Singh got secret information that the appellant Kamlesh was present at her house and accordingly by requisitioning a proper team Kamlesh was apprehended and was duly identified in court later by PW-29. Thereafter Yogesh and Gaurav were also apprehended from a plot at the backside of a CNG petrol pump



and were also duly identified in court later by PW-29. Pursuant to the disclosure statement, appellant Gaurav got recovered the weapon of offence i.e. knife from under stone near the boundary wall of the plot which was duly seized. Appellant Yogesh also led the police team to a pile of garbage at military road where he had thrown away the weapon of offence i.e. knife but it could not be found.

16. PW-2 (Dr. Mukta Rani), the doctor who conducted the *post mortem* on the body of the deceased Umesh testified that there were six injuries out of which four were abrasions on various parts of the body and two incised stab wounds - one over the inner-lower front of right side of the chest which had penetrated through the skin, tissue and muscle and cut through the liver, while the later incision was over the back of the left forearm. PW-2 testified that the cause of death was haemorrhage and shock consequent upon stab wound of abdominal organ via injury No.3 i.e. the stab injury which was sufficient to cause death in ordinary course of nature and could be produced by some sharp cutting and stabbing single edged weapon. PW-2 further opined that the other abrasion injuries could be produced by blunt force, weapon and object. Subsequently, after being shown the weapon of offence, PW-2 gave a subsequent opinion confirming that the two incised wounds could have been produced by the weapon examined by her. The weapon itself was about 26.5 cm knife with about 15.5 cm of blade and 11 cm of a wooden handle and about 3 cm wide and tapering down to a sharp point. PW-28, the orthopaedic doctor at the hospital on the assessment of the injury sustained by Vikas Anand opined that it was a grievous injury. All the MLCs duly recorded that the deceased Umesh and the other injured viz.



Sunil and Vikas had been got admitted at the hospital by Vikas on 15<sup>th</sup> August, 2013 at about 3:15 pm. The MLC of Sunil also recorded a stab wound on the left of the upper chest. There was no proof of any injury on Kamlesh.

17. PW-3 Sanjay, the father of the boy Aman, testified that when his son came and complained that Gaurav had snatched Rs.100/- from him, he accompanied Aman and saw that Gaurav was standing between Gali No.12 and 13 alongwith his brother-in-law Sunil and his brother Yogesh. Upon PW-3 asking Gaurav as to why he had snatched the money, all three started abusing him, upon which PW-3's cousin Umesh (the deceased) and Vikas (PW-5) came downstairs hearing the noise of the quarrel, as well as Sunil (PW-9, PW-3's brother). Scuffle ensued and all three accused took out knives and attacked them whereupon Vikas, Umesh and Sunil received injuries and the accused then ran away from the spot before somebody called the PCR. PW-3 denied the suggestion in his cross-examination that a fight took place between him and some other people and that he and his brother were found misbehaving with some girls or that his son Aman had beaten up Gaurav and, therefore, a scuffle had taken place. PW-5 Vikas narrated the same incident from the point when he came to the spot having heard the noise of the quarrel and also stated that accused Kamlesh had come and caught hold of Umesh from behind while Gaurav exhorted "*sabko sabak sikha do*" and thereupon all three accused took out knives from their possession and started inflicting injuries on Umesh indiscriminately ("*tabar tod chakuon se hamla kiya*"). When he and his brother tried to intervene and saved Umesh they were also attacked and received injuries. PW-10 Aman



testified on similar lines and confirmed that Kamlesh had abused them and secured Umesh from behind while Gaurav exhorted “*aaj inka kaam tamam kar dete hain*” and the knife attack happened immediately thereafter. While PW-3 stated that the whole episode had finished in 15 minutes, PW-5 in his testimony suggested that “*the incident took place within seconds*”. The appellants had tried to point to this inconsistency as well as the one in the description of exhortation by Gaurav in support of their case. However, considering it was a scuffle followed by a knife attack with number of people involved and the witnesses were all victims and injured, these minor deviations in a situational description may not be relevant for establishing reasonable doubt in favour of accused.

18. PW-9 Sunil, the brother of PW-3 also testified that Gaurav, Yogesh and their brother-in-law (also called Sunil) were beating PW-3 and PW-10 and when he reached his cousin Vikas and deceased Umesh had also arrived. On their intervention, Kamlesh also reached and apprehended Umesh from behind while Gaurav said that we should teach them a lesson (*sabko sabak sikhate hain*). Upon that exhortation, Yogesh, Gaurav and Sunil took out knives and inflicted knife blows on Umesh. When they tried to intervene Sunil and Yogesh came towards PW-9 and gave knife blows due to which he received injuries on the left side of his chest, pursuant to which they fled from the spot. PW-9 also identified all the accused appellants in court.

19. Appellant Sunil in his statement recorded under Section 313 Cr.P.C. stated that he had been falsely implicated in the case and was not present at Delhi at the time of the incident. In this regard, the defence led evidence of



Vinod as DW-4 (brother-in-law of Sunil) who testified that on 15<sup>th</sup> August, 2013, he was called up by the accused Sunil at his house around 12-12:30 p.m. as it was a holiday and they had food together and that he remained with Sunil till evening hours and in between they went to the chaupal to play cards as well. However, no further proof was provided by the defence to corroborate the testimony of DW-4.

20. As regards the issue whether there was enmity and therefore a motive for the appellants to have inflicted injuries on the victims and killed Umesh, a suggestion was put to PW-3 in his cross-examination by the defence counsel that “*due to the previous enmity with family of accused Gaurav, Sunil has been falsely implicated*”. Therefore, the suggestion of prior enmity by the defence counsel itself suggests that there was indeed some prior enmity which the defence wanted to use as a justification for the prosecution falsely implicating the accused.

**Analysis:**

21. On a meticulous examination of the evidence on record, the submissions by the parties, this Court finds *inter alia* that:

- (a) The whole incident of the appellants attacking the complainants with knives was witnessed by four eye witnesses viz. Sanjay, Aman, Sunil and Vikas, all four being injured and out of which Sunil and Vikas were seriously injured. This resulted in the death of Umesh the cousin brother of Sanjay. The testimonies of complainant Sanjay as PW-3, Vikas as PW-5, Sunil as PW-9



and Aman as PW-10, the four injured eye witnesses, are consistent with each other, minor contradictions notwithstanding. There is nothing which would discredit these testimonies as to the incident.

- (b) The fact that the appellants Gaurav, Sunil and Yogesh were already in the street and had accosted Aman, snatching Rs.100/- from him, which led to Aman's father Sanjay approaching them is also evident from the testimonies of the eye witnesses, which have not been discredited in their cross-examinations.
- (c) The fact that these three appellants Gaurav, Yogesh and Sunil were already standing there and later joined in by Kamlesh, while the complainant Sanjay came and was then followed by Vikas and Sunil makes it evident that it was the appellants which had orchestrated and triggered the fight and not the complainants and his family members.
- (d) The testimonies of the eye witnesses also corroborate that it was the appellants (except for Kamlesh) who were already armed with weapons and had knives on their person, which they took out in order to inflict injuries on the complainant, Vikas and Sunil and the deceased Umesh. Kamlesh even though not possessing a weapon played the critical role in securing the deceased from the back and exhorting the others to attack, by stating that the complainant and his family members should be taught a lesson.
- (e) The fight which ensued was not a "free-for-all" but was clearly triggered at the behest of the appellants by snatching Rs.100/-



from PW-10 Aman demonstrating thereby an intent to invite a fight and an opportunity to cause injury to the complainant and his family who were residing in close proximity.

- (f) The fatal injury inflicted on deceased Umesh was severe as evident from the deposition of the doctor who conducted the *post mortem* and was sufficient to cause death in ordinary course of nature. Besides the fatal injury to deceased Umesh, there were five other injuries which were reported by the doctor. Knife injuries were also sustained by Sunil (on the left of the upper chest) and on Vikas, which was, as per medical opinion, a grievous injury.
- (g) The exhortation of Gaurav was specifically reported by PW-5, PW-10 and PW-9 and despite minor differences in the exact phraseology of the exhortation, it was evident that there was a call by Gaurav to hurt and cause severe injury, even fatal (*inka kaam tama kar dete hain* and *sabak sikhate hain*).
- (h) The plea of *alibi* taken by appellant Sunil was not proven by the defence and no corroboration was offered of a mere statement by DW-4 nor were the prosecution witnesses put a suggestion in their cross-examination that they did not see Sunil since he was not there.
- (i) The alternative theory put forward by the defence that it was certain frivolous act by PW-10 Aman that had resulted in the fight was not substantiated in any manner whatsoever to form a credible testimony.



The issue, which is now to be examined, is whether in these facts and circumstances, was the learned Trial Court correct in handing down a conviction of Section 304 (Part I)/308/34 IPC or, as contended by the father of the deceased, that it ought to be under Section 302/307/34 IPC. This enquiry necessitates a review of the principles set-out by the Hon'ble Supreme Court of India in certain notable judgments.

22. The *locus classicus* on the nuances of Section 300 (Thirdly) IPC is the decision of the Hon'ble Supreme Court in ***Virsa Singh v. State of Punjab*** (1958) SCR 1495; AIR 1958 SC 465. The appellant therein was sentenced to imprisonment for life under Section 302 IPC for murder of the victim which was caused as a result of spear thrust and doctor who had examined the injury had opined that it was sufficient to cause death in the ordinary course of nature. The learned Trial Court in that case decided that the case falls under Section 300 (Thirdly) and convicted the accused under Section 302 IPC. The High Court accepted the finding but the appellant before the Hon'ble Supreme Court stressed that an injury in a chance situation cannot amount to an offence of murder. The Hon'ble Supreme Court in ***Virsa Singh*** (*supra*) held as under:

*“10. It was argued with much circumlocution that the facts set out above do not disclose an offence of murder because the prosecution has not proved that there was an intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature. Section 300 “thirdly” was quoted:*

*“If it is done with the intention of causing bodily injury to any person and the bodily injury*



*intended to be inflicted is sufficient in the ordinary course of nature to cause death.”*

*It was said that the intention that the section requires must be related, not only to the bodily injury inflicted, but also to the clause, “and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.”*

Observing that this is a favourite argument in this type of case, the Hon’ble Supreme Court stated that it is fallacious. In a succinct and pithy analysis of Section 300 (Thirdly), the Hon’ble Supreme Court in **Virsa Singh** (*supra*) held as under:

*“13. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that “twelve good men and true” could readily appreciate and understand.*

*14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 “thirdly”.*

*15. First, it must establish, quite objectively, that a bodily injury is present.*

*16. Secondly, the nature of the injury must be proved; These are purely objective investigations.*



17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 “thirdly”. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

(emphasis added)

The Hon’ble Supreme Court further noted in Para 22 after referring to decision of Lord Goddard in **R. v. Steane** (1947) 1 ALL ER 813 as under:

“22. ...In the absence of evidence, or reasonable



*explanation, that the prisoner did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did. Once that intent is established (and no other conclusion is reasonably possible in this case, and in any case it is a question of fact), the rest is a matter for objective determination from the medical and other evidence about the nature and seriousness of the injury.”*

*(emphasis added)*

23. In ***Pappu v. State of M.P.*** (2006) 7 SCC 391 the Hon'ble Supreme Court of India dealt with an incident of fatal *lathi* blow during an altercation between the accused and the deceased for which the accused was convicted and sentenced alongwith other co-accused under Section 302 read with Section 34 IPC. The argument for the accused appellant before the Hon'ble Supreme Court was that the assault happened in the course of a sudden quarrel, there was no pre-meditation and the accused had not taken advantage or acted in a cruel manner in giving the *lathi* blow. The issue, therefore, revolved around in applicability of Exception (4) of Section 300 IPC. In this regard the Hon'ble Supreme Court held as follows:

*“13. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the*



*direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in*



*cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.*

*(emphasis added)*

Deliberating further, the Hon’ble Supreme Court stated in para 14 and 15 as under:

*“14. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors.”*

*(emphasis added)*

24. This issue of premeditation has further been deliberated upon in ***Bahadur Naik v. State of Bihar*** (2000) 9 SCC 153 where the Hon’ble Supreme Court stated in Para 3 as under:

*“3. From the evidence on record, it stands proved that there was sufficient light at the place of occurrence to identify the appellant. We are also unable to accept the contention of learned counsel for the appellant that the conviction deserves to be converted to one under Section 304 IPC either Part I or Part II thereof because there was no premeditation. The premeditation can develop on the spot as well. It all depends upon the facts and circumstances of the case. In the present case, the deceased was given 5/6 dagger-blows. In view of the evidence on record the contention for converting the sentence as aforesaid cannot be accepted.”*

*(emphasis added)*

25. In ***Sukhdev v. State of Punjab*** (2007) 15 SCC 364 the Hon’ble Supreme Court has relied upon and extracted the above stated observations



in *Pappu v. State of M.P.* (*Supra*) and concluded that Exception (4) of Section 300 IPC had no application.

26. Similarly, in *Dayal Singh v. State of Uttaranchal* (2012) 8 SCC 263 the Hon'ble Supreme Court in dealing with a fact situation where the accused gave a fatal *lathi* blow to the deceased as a result of a quarrel in the village fields, noted in Para 13 as under:

*“13. From the narration of the above facts, brought on record by the prosecution and proved in accordance with law, it is clear that there are three eyewitnesses to the occurrence. Out of them, two are injured witnesses, namely, PW 2 and PW 4. PW 2 is the son of the deceased and PW 4 is the wife. Presence of these two witnesses at the place of occurrence is normal and natural. According to PW 4, she had gone to the place of occurrence to give food to her husband and son around 12 noon, which is the normal hour for lunch in the villages. The son of the deceased had come to the field with his father to work. They were putting earth on the mend which was objected to by the accused persons who had come there with lathis and with a premeditated mind of causing harm to the deceased. Upon enquiry, the deceased informed the accused persons that the mend was a joint property of the parties. Without provocation, the accused persons thereupon started hurling abuses upon Pyara Singh and his son, and assaulted the deceased with lathis. PW 2 and PW 4 intervened to protect their father and husband respectively, but to no consequence and in the process, they suffered injuries. In the meanwhile, when the accused persons were challenged by PW 5 and Satnam Singh, who were close to the place of occurrence, they ran away. The presence of PW 2, PW 4 and PW 5 cannot be doubted. The statement made by them in the court is natural, reliable and does not suffer from any serious contradictions. Once the presence of eyewitnesses cannot be doubted and it has been established that their statement is*



reliable, there is no reason for the court to not rely upon the statement of such eyewitnesses in accepting the case of the prosecution. The accused persons had come with premeditated mind, together with common intention, to assault the deceased and all of them kept on assaulting the deceased till the time he fell on the ground and became breathless.”

(emphasis added)

27. The Counsel for the appellants relied upon ***Shahajan Ali & Ors. v. State of Maharashtra & Ors.*** (2017) 13 SCC 481 where the Hon’ble Supreme Court in a fact situation of a confrontation held that:

*“...neither prior concert nor common intention to commit a murder. During the course of their business activity the accused reached the dhaba where the deceased was present. An altercation took place during the discussion they were having behind the dhaba. That led to a sudden fight during which A-1 attacked the deceased with a knife. Exception 4 to Section 300 is applicable to the facts of this case. As we are convinced that the accused are responsible for the death of Sarfaj, we are of the opinion that they are liable for conviction under Section 304 part II of the IPC...”*

However, facts of this case are distinguishable since in this situation it was a sudden fight at a *dhaba*, without any provocation and no premeditation. Furthermore, the decision of the Hon’ble Supreme Court has decided clearly on the facts of that case and after “*scrutinising the material on record*”, without having laid down any specific principle of law which would assist the appellant in any manner.

28. Mr. Ramesh Gupta, Senior Advocate appearing for accused No.2



placed reliance during his submissions on the following judgments:

- (i) In **Krishnamurthy v. State of Karnataka** MANU/SC/0248/2022 the Hon'ble Supreme Court while deciding a criminal appeal arising out of a conviction under Section 302 read with Section 34 IPC observed as under:

*“08. The underlying basic assumption or foundation in criminal law is the principle of personal culpability. A person is criminally responsible for act or transactions in which he is personally engaged or in some other way had participated. However, there are various modes and capacities in which a person can participate in a crime. He can instigate, be a facilitator or otherwise aid execution of a crime. Section 34 IPC incorporates the principle of shared intent, that is, common design between the two perpetrators, which makes the second or other participants also an equal or joint perpetrator as the main or principal perpetrator...*

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*18. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or pre-arranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be pre-arranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing*



*inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants. Further, the expression/term “criminal act” in Section 34 IPC refers to the physical act, which has been done by the co-perpetrators/participants as distinct from the effect, result or consequence. In other words, expression “criminal act” referred to in Section 34 IPC is different from “offence”. For example, if A and B strike Lathi at X, the criminal act is of striking lathis, whereas the offence committed may be of murder, culpable homicide or simple or grievous injuries. The expression “common intention” should also not be confused with “intention” or “mens rea” as an essential ingredient of several offences under the IPC. Intention may be an ingredient of an offence and this is a personal matter...”*

*(emphasis added)*

However, in the opinion of this Court, Section 34 finding is appropriate and correct since all the Appellants collectively



without exception were seeking to cause injuries to the complainant, the deceased and the family. The underscored part of the judgement cited clearly states that common intention is to be inferred from the facts and can be formed a minute before the actual act.

(ii) On the issue of nature of the injury and the intent to inflict that particular injury, reliance was placed upon ***Daulat Trimbak Shewale and Ors. v. State of Maharashtra*** MANU/SC/0460/2004 where the Hon'ble Supreme Court stated on the facts of the case which involved a fight between two groups of people that:

*“8. ...It is difficult to come to the conclusion that the appellants went and assaulted the deceased with the intention to kill him. If that was the intention there would have been many more injuries on other vital parts of the body, as also the fact that no attempt was made to kill the other two brothers of the deceased even though they were outnumbered. The fact that the appellants had sought police help also indicates that they did not intend to take the law into their own hands in the first instance. Further the fact that though many of the appellants carried axes the doctor who conducted the post mortem found only one incised wound on the forehead. This also indicates that the accused persons did not really intend to kill the deceased. At the same time, it is to be noted that the prosecution has not been able to identify who really caused Injury No. 12 which caused the death of the deceased. In such circumstances, we think it is not safe to infer that the appellants shared a common intention of causing the death of the deceased, but it would be more appropriate to hold the appellants guilty of causing grievous hurt an offence which is punishable under Section 326 IPC.”*



(iii) Similarly, reliance was also placed on *Amiruddin v. State (Delhi Admn.)* MANU/SC/1313/2019 where pursuant to an exhortation, there was only one blow which had been given to the deceased with a knife but the Hon'ble Supreme Court held that:

*“7. We are of the view that the fact that there was a single blow and no attempt was made to give another blow and there is no evidence to show that the Appellant was prevented from giving another blow indicate that his intention was not to kill the deceased.*

*8. The second aspect of the matter is whether the act of giving the blow with the knife was so imminently dangerous as to impute knowledge to the Accused that would lead to the death of the deceased. It bears repetition that one blow was given and that too at the back. It cannot be said that the blow was so imminently dangerous as to impute knowledge to the Appellant that he was committing such an act which would cause the death of the deceased.*

*9. In view of the above discussion, we are of the view that the Accused should have been held guilty of committing the offence punishable Under Section Part II of Section 304, Indian Penal Code.”*

In the opinion of this Court, these decisions do not help the appellants as there was more than one injury on the deceased and on other persons as well. Also there were clearly multiple assaults with the knives on the complainants and it was not a situation of one single unintended or accidental injury. As to who caused the specific fatal injury may not be relevant in these facts and circumstances since all the accused demonstrated a united, collective, orchestrated intent to cause injuries to the complainants.



(iv) On the issue of sudden fight and the applicability of Exception (4) to Section 300 IPC, reliance was placed upon ***Bhagirath v. The State of Madhya Pradesh*** MANU/SC/1208/2018 where the Hon'ble Supreme Court held that:

*“7. ...The fourth exception to Section 300 Indian Penal Code deals with death committed in sudden fight without premeditation. The sudden fight implies the absence of premeditation. Even as per the evidence of PW-6, there was a wordy quarrel and in that quarrel the Appellant inflicted farsi blow on the head of the deceased. As the injuries inflicted on the deceased in the sudden fight between the deceased and the Accused party. There was no premeditation. One injury was caused to the deceased by farsi blow on the head which indicates that the Appellant has not taken undue advantage of the deceased. The manner the occurrence and the injury inflicted on the deceased attract Exception 4 to Section 300. In the facts and circumstances of the case, the conviction of the Appellant is modified Under Section 304 Part-I Indian Penal Code and the sentence is reduced to the period already undergone.”*

(v) On the issue of exhortation, reliance was placed upon ***Matadin v. State of Maharashtra*** MANU/SC/0477/1998 where the Hon'ble Supreme Court held as under:

*“11. The courts below have not found that the language which Matadin used exhorting his fellows was used in such a tone as to exhort them to kill Ashok or to cause grievous hurt to him by using dangerous weapons or means. When the words "maro sale ko" are used it could mean "to beat" or even "to kill" a person. Though the witnesses have stated that these words were used by Matadin in abusive way but from that it could not be said that he exhorted his fellows to kill Ashok. We, therefore, set aside the conviction and sentence of Matadin under Section 302 read with Section 34*



*IPC and instead convict him under Section 324/110 IPC. It was stated before us that he has already undergone rigorous imprisonment for a period of one year and four months. We will sentence him to suffer rigorous imprisonment for the period already undergone by him and to fine.”*

In the opinion of this Court the exhortation in the facts of the instant appeals i.e. “*inka kaam tamam kar dete hain and sabak sikhate hain*” was clearly an indication to cause maximum damage and injury to the victims and it was quite possible that more than one person could have been severely and fatally injured. Thus this case would not assist the appellants. Nor would Exception (4) to Section 300 IPC apply since, there was premeditation and it was not a sudden fight but a fight invited and triggered by the accused who were already armed with sharp weapons.

(vi) The learned senior counsel also relied upon ***Virsa Singh*** (*Supra*) to state that the test was “*21. ...whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted...*”

However, in ***Virsa Singh*** (*Supra*), the Hon’ble Supreme Court after appreciating the facts stated that if there is no evidence that another kind of injury was intended as opposed to one which caused death, it can only lead to an objective analysis of the nature and seriousness of the injury. The Hon’ble Supreme Court states as under:

*“31. That is exactly the position here. No evidence or*



*explanation is given about why the appellant thrust a spear into the abdomen of the deceased with such force that it penetrated the bowels and three coils of the intestines came out of the wound and that digested food oozed out from cuts in three places. In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did. Once that intent is established (and no other conclusion is reasonably possible in this case, and in any case it is a question of fact), the rest is a matter for objective determination from the medical and other evidence about the nature and seriousness of the injury.*  
(emphasis added)

29. The issue whether an injury of the nature, that was caused in the given circumstances, would merit a conviction under Section 304 IPC or under Section 302 IPC consequent to the situation contemplated by Section 300 (Thirdly). In this regard the enunciation of law in ***Virsa Singh v. State of Punjab*** (supra) still holds the field. The Hon'ble Supreme Court has concluded by that decision that the prosecution must prove the following facts before it can bring a case under Section 300 (Thirdly):

- (i) It must establish objectively that the bodily injury is present;
- (ii) The nature of injury must be proved, purely objective investigation;
- (iii) It must be proved that there was '*an intent to inflict that particular body injury*'. It should not be that particular body injury was accidental or unintentional or that the such kind of injury was not intended;
- (iv) It must be proved that the injury that is established in point (i) is



sufficient to cause death in ordinary course of nature and this must be a purely objective exercise.

30. The Hon'ble Supreme Court clarified that once these 4 elements are established, it will not matter there was "*no intention to cause death*" or "*there was no intention to cause the injury that would cause death in ordinary course of nature*" or "*there was no knowledge that injury of that kind is likely to cause death.*" The only requirement to convict an accused for an offence under Section 300 (thirdly) would be to prove that an injury existed and the nature of the injury is such that would cause death in ordinary course of nature and that the intention was to cause that particular injury, irrespective of whether there was lack of knowledge or intent that would cause death.

31. The essence of the articulation provided by the Hon'ble Supreme Court is contained in the following sentence which forms part of the judgment: "*No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder.*"

32. It clearly transpires from the above facts and circumstances that (i) the bodily injury was present; (ii) the nature of the injury was severe causing fatality; (iii) the fatal injury was not accidental but was intended to be caused by the appellants and (iv) the fatal injury was sufficient as per medical opinion to cause death in the ordinary course of nature. All four parameters of Virsa Singh having been met in this case, this Court is also of



the opinion that Exception (4) of s.300 is not available to the defence since all four of the parameters as enunciated by the Hon'ble Supreme Court in *Pappu v. State of M.P.* do not apply in this case – the fight was not sudden since the appellants had invited the situation where they could become assailants and the premeditation was evident even if it developed at the spur of the moment or at the time between when they accosted Aman and when his father approached them to reason with them.

**Conclusion:**

33. In light of the above analysis and discussion, this Court is of the considered view that the version of the prosecution is duly supported by ocular evidence, medical reports and chain of circumstances which proves beyond reasonable doubt that the alleged crime has been committed by the appellants. This Court however accepts the plea of the father of the deceased appellant in Crl.A.616/2020 and convicts the Appellants for offence punishable under section 302 IPC instead of section 304(I) IPC as was by the learned Trial Court. All other convictions shall remain as per the learned Trial Court, judgment of the learned Trial Court and awarded sentence of imprisonment for life for the offence punishable under section 304(I) IPC, the said sentence is awarded for offence punishable under section 302/34 IPC. Sentences awarded by the learned Trial Court on other counts are maintained.

34. Crl. Appeals 27/2021, 97/2021, 566/2020 and 604/2020 are accordingly dismissed. Crl. A. 616 of 2020 is hereby allowed to the extent mentioned in the previous paragraph.



35. Copy of this order be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellants and updation of records.

**(ANISH DAYAL)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**AUGUST 8, 2022**  
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