

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.416 of 2022

Arising Out of PS. Case No.-25 Year-2009 Thana- TARARI District- Bhojpur

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1. Bishal Sharma @ Vishal Sharma, Son of Late Jagat Sharma, R/O- Vill- Barkagaon, P.S- Tarari, Dist.- Bhojpur
 2. Sunil Sharma, Son of Bishal Sharma, R/O- Vill- Barkagaon, P.S- Tarari, Dist.- Bhojpur
 3. Arjun Sharma, Son of Bishal Sharma, R/O- Vill- Barkagaon, P.S- Tarari, Dist.- Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Kiran Kumari, Advocate Mr. Md.Imteyaz Ahmad, Advocate Mr. Ritwik Thakur, Advocate Mrs. Vaishnavi Singh, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP
For the Informant	:	Mr. Aditya Narayan Singh, Advocate Mr. Dharmesh Kumar Srivastava, Advocate Mr. Ajay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 05-10-2023

It has been reported that the appellant No. 2, Sunil Sharma died during the pendency of this appeal and accordingly this appeal to the extent it relates to appellant No. 2, Sunil Sharma, abates.

2. This appeal has been preferred by the appellant



under Section 374(2) of the Code of Criminal Procedure, putting to challenge a judgment of conviction dated 24.03.2022 and an order of sentence dated 28.03.2022, passed by learned 14th Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 206 of 2010, arising out of Tarari P.S. Case No. 25 of 2009, whereby the appellants have been convicted and sentenced as under:-

Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Bishal Sharma @ Vishal Sharma	Section 302/34 of the IPC	Imprisonment for life	50,000/-	R.I. for seven months
Arjun Sharma	Section 302/34 of the IPC	Imprisonment for life	50,000/-	R.I. for seven months

3. *Fardbeyan* of the deceased Sukhi Lal Sharma, recorded by a Police Officer, Manasidh Topno (PW-9) on 18.05.2019 at 2:15 PM at Primary Health Centre, Tarari in the District of Bhojpur, is the basis for registration of Tarari P.S. Case No. 25 of 2009 disclosing commission of the offences punishable under Sections 341, 323, 325, 307, 504, 506 read with 34 of the Indian Penal Code. As the informant died on the very next day i.e. 19.05.2009, Section 302 of the Indian Penal Code came to be added under the orders of the court below.

4. It is evident on plain reading of the *fardbeyan* of the deceased that the appellant No. 1 Bishal Sharma @ Vishal



Sharma is the full brother of the deceased and appellant No. 3 is the son of appellant No. 1. Appellant No. 2, who died and has been convicted by the trial court, was also the son of appellant No. 1. As per the *fardbeyan*, the appellants were seen constructing house over the land which had fallen in the share of the deceased. The appellants had removed the tiles from the roof of the house for constructing their house, which was objected to by the deceased, whereupon the appellant No. 1 and his sons started abusing him. In the meanwhile, appellant No. 3 handed over an iron rod to appellant No. 1, who is said to have assaulted the deceased in his leg with the iron rod. Appellant No. 3 gave a blow with an iron rod in the head of the deceased. His leg got fractured and he sustained injuries in his head. He also made allegation against Sunil Sharma (since deceased) and Amardip Sharma (also one of the sons of appellant No. 1, a juvenile) of having assaulted him after he had sustained the aforesaid injuries. The deceased is also said to have disclosed in his *fardbeyan* that when his son Chandradeep Sharma (PW-5) came in his rescue, co-accused Amardeep Sharma had assaulted him with *lathi*.

5. Upon completion of investigation, a chargesheet was submitted against all the four persons named in the FIR on



30.06.2009. Cognizance was taken of the offences punishable under Sections 341, 323, 302/34 of the Indian Penal Code and the case was committed to the Court of Sessions.

6. It is noteworthy that, in the meanwhile, co-accused Amardip Sharma was declared juvenile and accordingly his case was referred to the Juvenile Justice Board.

7. The charges were thus framed against the three accused persons who are the appellants herein, one of whom has died, as has been noted above. As the appellants denied the charge and claimed to be tried, they were put to trial.

8. At the trial, the prosecution examined altogether nine witnesses including the two doctors (PW-6) and (PW-7). The son of the deceased deposed as PW-5 claiming to be an eye witness. The nephew of the deceased Shaturdhan Sharma (PW-3) also supported the prosecution's case. PW-1, PW-2 and PW-4 are the co-villagers and from their depositions it appears that they had carried the deceased to hospital on a cot after the occurrence had taken place. PW- 8 is also a co-villager, who is a hearsay witness. It may be mentioned that whereas the postmortem was conducted by Dr. Vinod Kumar (PW-6), PW 7 Dr. Vinod Pratap Singh had examined PW- 5, who, according to the prosecution's case, also had sustained injuries. PW-7



deposed that no mark of external injury was found on the person of Chandradeep Sharma (PW-5).

9. Apart from the oral evidence of the prosecution’s witnesses, the prosecution also brought on record following documentary evidence to support the charge:-

Sl. No.	Exhibit No.	Details of exhibit
1	Exhibit-1	Signature of the informant on the <i>fardbeyan</i>
2	Exhibit-2	Postmortem report
3	Exhibit-3	Injury report
4	Exhibit-4	Signature of the informant on the <i>fardbeyan</i>
5.	Exhibit-5	Formal FIR
6.	Exhibit-6	Chargesheet

10. A defence witness (DW 1) Rajeshwar Sharma was also examined on behalf of the defence at the trial to make out a case of alibi in respect of appellants No. 1 and 3. According to him, at the time of occurrence they were working in a shop at Transport Nagar, Patna.

11. After closure of the prosecution’s evidence, the persons facing trial were questioned under Section 313 of the CrPC so as to give them an opportunity to explain the incriminating circumstances emerging against them based on the evidence led by the prosecution at the trial. The appellants denied the circumstances in response to the questions put to



them.

12. The trial court, after having appreciated the evidence adduced at the trial, has reached a conclusion that the appellants were guilty of commission of murder of the deceased Sukhi Lal Sharma and the charge against them stood proved beyond shadow of all reasonable doubts. After having held them guilty of the offence punishable under Section 302/34 of the Indian Penal Code by the impugned judgment dated 24.03.2022, the trial court sentenced them to imprisonment and fine as has been noted at the outset.

13. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants has argued that there is only one eye-witness to the occurrence i.e. PW-5, according to the prosecution. He submits that the *fardbeyan* of the informant cannot be treated to be a dying declaration for the reason that there is no cogent evidence to establish that he was in a fit state of mental and physical health to make such statement. He has further submitted that PW-5 does not appear to be an eye-witness for the reason that he was not one amongst those who had taken the deceased to the hospital. Further, though in the *fardbeyan*, which is the basis for registration of the FIR, it is specifically mentioned that co-accused Amardeep Sharma, son



of appellant No. 1 had assaulted Chandradeep Sharma (PW-5), the son of the deceased, no injury on the person of PW-5 was found upon examination by a doctor, as is evident from the deposition of PW-7. He has submitted that though PWs 1, 2, 3 and 4 have deposed at the trial that when the deceased was being carried from the village to the hospital after having sustained injuries he was talking to one of his friends on mobile phone explaining the manner in which the occurrence had taken place but the said mobile phone used by the deceased was not handed over to the police nor the same was seized otherwise. He contends that these witnesses do not appear to be trustworthy on the point of the deceased talking on phone while being taken to the hospital for treatment in injured condition, describing the manner in which the occurrence had taken place. He has also argued that no other family member of the deceased was examined at the trial.

14. Taking a line of least resistance, Mr. Thakur has submitted that even if the prosecution's story, as narrated by the deceased in his *fardbeyan* and the evidence of the prosecution's witnesses, are taken to be true, the act of these appellants may constitute an offence punishable under part II Section 304 of the Indian Penal Code and not Section 302 of the Indian Penal



Code. He has submitted that it is evident from the *fardbeyan* itself as well as the evidence of the witnesses that the occurrence had taken place at the spur of the moment and there was no intention of these appellants to kill the deceased.

15. He has placed reliance on a Supreme Court's decision in case of *Anbazhagan vs. State (AIR 2023 Supreme Court 3660)* to contend that in no case the charge of commission of murder within the meaning of Section 300 of the Indian Penal Code is proved against these appellants and at the best charge of offence punishable under part II of Section 304 of the Indian Penal Code can be said to be made out.

16. Ms. Sashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State has submitted that in the present case, the statement of the deceased should be treated to be a dying declaration keeping in mind the proximity of time between the occurrence and his death coupled with the fact that the prosecution's witnesses have categorically deposed that the deceased was in such state of mind that he could explain the circumstance in which the occurrence had taken place and he was being taken to hospital from the place of occurrence. She contends that the evidence of co-villagers, namely, PW-1, PW-2 and PW-4 appear to be natural and trustworthy. PW-3 has also



supported the prosecution's case that the deceased was in such mental and physical condition that he could describe the manner in which the occurrence had taken place. She submits that solely because no certificate was obtained from the doctor or any person attending the deceased in the hospital, this Court may not decline to consider the statement of the deceased as dying declaration. She has submitted that the fact that appellant No. 3 gave the deceased a blow with an iron rod to his head suggests two things; firstly, he had knowledge that injury caused by such assault would cause death and secondly, it was with an intention to kill him. Since both the components i.e. knowledge and intention to kill has been proved at the trial, the trial court has rightly held the appellants guilty of culpable homicide amounting to murder within the meaning of Section 300 of the Indian Penal Code punishable under Section 302 thereof.

17. We have perused the impugned judgment and the order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties as noted above.

18. What is evident from the depositions of the witnesses at the trial, which is an uncontroverted position as would appear from the *fardbeyan* of the deceased also that the



deceased and the appellants are coparceners. It is the case of the prosecution that appellant No. 1 and his sons were seen removing tiles from the roof of a house which, according to the informant/ deceased, had fallen in his share. The appellant No. 1 and his sons were engaged in construction of a house over the said land which was not acceptable to the deceased and accordingly he had raised objection, reacting to which the appellant No. 1 and his sons had started abusing him. Both the parties entered into some kind of altercation. From the *fardbeyan* itself, it appears that appellant No. 3 is said to have handed over to appellant No. 1 an iron rod. This goes to suggest that appellant No. 1 was unarmed when the altercation between him and the deceased had taken place. It was apparently in course of that altercation, which had taken place at the spur of the moment, that appellant No. 1 is said to have given a blow with an iron rod to the head of the deceased. There is no evidence that appellant No. 1 repeated the blow though he had the opportunity to do so.

19. The Doctor (PW-6) has proved the following injuries on the person of the deceased :

" External : Rigor mortis present in both upper and lower extremity, mouth semi open

(i) A L.W. 3"X ½" X ½ " over parietal bone area & blood clots with fracture of parietal



bone on lt. side.

(ii) A L.W. 2" X 1" X bony deep over vertex & blood clots meninges lacerated

(iii) A L.W. 2" X 1" X muscle deep over rt upper arm on lateral mid position

(iv) A L.W. 1"X ½" X ½ " over rt. leg below the anterior upper portion

(v) A L.W. 3" X 1" X bony deep over left side leg & bony fracture of tibia & fibula

Internal : On dissection Skull – Vault of skull fractured at lt. parietal bone area. Brain & meninges lacerated, vertex bone fractured.

On dissection of chest : Bony cage of chest intact : Both lungs intact & pale. Both corner of heart empty.

On dissection of abdomen : All viscera liver spleen & kidney intact & pale. Stomach contains 203 semi-digested food material, urinary bladder contains 103 urine.

Cause of death : Due to above noted injury leading to haemorrhage & shock & death, which is caused by hard & blunt substance.

Time elapsed since death 3-36 hours."

20. From the depositions of the prosecution's witnesses, it can be easily seen that PW-5 is the only eye-witness to the occurrence. He deposed that the deceased was assaulted by appellant No. 3 with an iron rod in his head.

21. We have carefully gone through the evidence of PW-5. We do not find any evidence in his deposition to the effect that the blow given by appellant No. 3 in the head of the deceased was repeated. The injury said to have been caused in the head of the deceased has been found to have been caused by



hard and blunt substance in the postmortem report.

22. In our view, on close scrutiny of the evidence of the prosecution's witnesses and the medical evidence it cannot be denied that an occurrence had taken place in which the deceased had sustained injuries caused by these appellants in the background of the circumstance, as has been noted above. The question, which falls for consideration before this Court in the present case, is as to whether the act of the appellants will fall under Section 300 of the IPC punishable under Section 302 thereof or it is a culpable homicide not amounting to murder falling within either of the exceptions under Section 300 of the IPC. Section 300 of the IPC defines “murder” as a culpable homicide if the act by which death is caused is done with the intention of causing death. There are three other circumstances where culpable homicide can be termed as “murder” within the meaning of Section 300 of the Indian Penal Code. Section 300 of the Indian Penal Code, however, opens with the following words “**except in the cases hereinafter excepted**”. There are altogether 5 exceptions carved out under Section 300 of the Indian Penal Code. The first and the fourth exceptions are relevant to the present matter and are being reproduced hereinbelow:-

“... *Exception 1.- When culpable homicide is not*



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

The above exception is subject to the following provisos:-

First.- *That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

Secondly.- *That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

Thirdly.- *That the provocation is not given by anything done in the lawful exercise of the right of private defence.*

X X X X

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

23. On consideration of the depositions of the prosecution's witnesses on record, it can be easily inferred that there was no premeditation prior to commission of the acts by these appellants. It was in the background of some property dispute between the deceased's family and that of these appellants over a piece of land in connection with construction of house. The deceased was claiming his share over the land



which the appellants intended to use for construction of house. The occurrence had taken place at the spur of the moment, apparently in the hit of passion upon a sudden quarrel between the appellants on the one side and the deceased and his son (PW-5) on the other. It cannot be stated, based on the evidence of PW-5, that the appellants had taken any undue advantage of the situation in the absence of any evidence that there was any repetition of blow. If the prosecution's case is taken to be true, the appellants had the opportunity to repeat the blow on the person of the deceased. They cannot be said to have taken any undue advantage or acted in a cruel or unusual manner intended to kill the deceased.

24. In our view, the present case falls under Exception 4 of Section 300 of the IPC as the homicide in the present case appears to have been committed without premeditation in a sudden fight in the hit of passion upon a sudden quarrel.

25. The next question which would arise for the present is as to whether the act will fall under the first part or the second part of Section 304 of the Indian Penal Code. It would be useful to reproduce Section 304 of the Indian Penal Code which reads as under:-

“304. Punishment for culpable homicide not amounting to murder.-- Whoever commits



culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death. or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

26. The distinction between Part-I and Part-II of Section 304 of the Indian Penal Code can be easily discerned on close reading of the aforesaid provision. For constitution of an offence punishable under Part-I of Section 304 of the Indian Penal Code, the prosecution is required to prove that the act by which the death was caused was with the intention of causing death or of causing such bodily injury as is likely to cause death. “Intention” of causing death or “of causing such bodily injury as is likely to cause death” is to be essentially proved by the prosecution to bring home a case under Part-I of Section 304 of the Indian Penal Code. Part II excludes the element “intention” to cause death or to cause bodily injury as is likely to cause



death. We, in the facts and circumstances of the case emerging from the evidence of the witnesses are of the considered view that it cannot be said that the prosecution could establish beyond all reasonable doubts that the appellant Dinesh Singh had any intention to cause death.

27. In such view of the matter, in our considered opinion, the conviction of appellant No. 3 deserves to be modified to conviction for an offence punishable under Section 304 Part II of the Indian Penal Code instead of Section 302 thereof.

28. The Supreme Court in its recent decision in case of **Anbzhagan** (supra) has clearly laid down the distinction between Section 302, 304 Part I and 304 Part II of the IPC. In case of **Anbzhagan** (supra), the appellant owned agricultural land, whereas the deceased was also an agriculturist having his own agricultural land adjacent to that of the appellant. There was some dispute in relation to the pathway leading to agricultural land of the appellant of that case. Some dispute had arisen resulting into quarrel between the parties and after altercation between the parties, the appellant had picked up a hoe and inflicted a single blow on the head of the deceased as a result of which the deceased had fallen unconscious and later



died. The Supreme Court after having noticed various judicial pronouncements has laid down in paragraph 60 as under :-

"60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to



murder, falling within Part I of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death



is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the



question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or



unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC."

29. Applying the said principle laid down by the Supreme Court and clear language of Sections 299, 300 and 304 of the IPC, we are of the considered view that in the present case the blow said to have been given by appellant No. 3 cannot be said to have been given with an intent to kill the deceased. Based on the evidence adduced at the trial, in our opinion, the present case, as against appellant No. 3, falls under Part II of Section 304 of the IPC instead of Section 302 thereof. Accordingly, the conviction of appellant No. 3 stands modified to conviction under Section 304 Part II of the IPC.

30. As regards appellant No. 1, the evidence against him is that he had assaulted the deceased with iron rod in his leg causing injuries. His conviction under Section 302 of the IPC is not at all justified, rather falls under Section 325 of the IPC. The ingredients of Section 325 of the IPC i.e. voluntarily causing grievous hurt can be said to have been proved at the trial against him. Accordingly, the conviction of appellant No. 1 is modified to conviction of the offence punishable under Section 325 of the IPC.

31. The impugned judgment of conviction dated



24.03.2022 stands modified accordingly.

32. Next comes the question of sentence after having held the appellant No. 3 guilty of the offence punishable under Section 304 Part II of the IPC and appellant No. 1 of the offence punishable under Section 325 of the IPC. It is evident from the records that appellant No. 3 has remained in custody from 08.06.2009 to 03.07.2013 (four years and 25 days) before conviction and after conviction from 24.03.2022 till 05.10.2023 (one year six months and 11 days). The appellant No. 1 has remained in custody from 08.06.2009 to 15.03.2010 (nine months) and from the date of conviction i.e. 24.03.2022 till 05.10.2023 (one year six months and 11 days). We need to keep in mind that the evidence against appellant No. 1 is to the effect that he had assaulted the deceased with an iron rod in his leg.

33. Considering the overall facts and circumstances, we consider it proper, in the interest of justice, to impose sentence of imprisonment for the period which the appellants have already undergone with a direction to them to pay a fine of Rs. 50,000/- each and in default of payment of fine to undergo rigorous imprisonment for three months. It is further clarified that the amount of fine shall be given to the dependents of the deceased Sukhi Lal Sharma by way of compensation under



Section 357 of the Indian Penal Code.

34. This appeal is partly allowed accordingly.

35. The appellants No. 1 and 3 are in jail custody. Let them be released forthwith in the light of the present judgment, if they are not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Rajesh/Nirmal

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.11.2023
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