

CRA-D-1214-2022

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-1214-2022 (O&M)
Reserved on :- 06.12.2023
Pronounced on :- 22.12.2023**

Joga Singh

....Appellant

VERSUS

State of Punjab

....Respondent

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Varinder Singh Rana, Advocate for the appellant.

Ms. Monika Jalota, Sr. DAG Punjab.

SUDEEPTI SHARMA, J.

1. The present appeal has been preferred by appellant – Joga Singh against the judgment dated 25.07.2018 and order of conviction dated 27.07.2018 passed by the learned Sessions Judge, Kapurthala, vide which he has been convicted under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year.

2. The brief facts of the case are that on 10.10.2014, Inspector/ SHO Surinder Singh alongwith other police officials, was present at Adda Nangal Lubana, in connection with patrolling and Nakabandi, in official vehicle No. PB-09-G-9752 being driven by HC Rupinder Singh. Complainant Kewal Singh son of Manga Ram, resident of village Maqsudpur, P.S Begowal, District Kapurthala went there and suffered a statement before the police to the effect that he is

working as mechanic and has his cycle repair shop in village Maqsudpur near the shop of Joga Singh, who is doing the work of Barber. On 10.10.2014 at about 10.30 A.M, his nephew Sukhwinder Singh @ Mani son of Jagdish Chand, resident of Maqsudpura had gone to get his hair cut from the said barber. After ten minutes he heard noise and he rushed to the shop of Joga Singh, where Mukesh Kumar also came present and they saw that Joga Singh barber was inflicting injuries with scissors on the chest of Sukhwinder Singh and on receiving the blow, he fell down and when they came forward to his rescue, he breathed his last. Leaving Mukesh Kumar at the spot, he went to the police station, but the police met on the way. He prayed for taking action in the matter. On the basis of this information, case was registered under section 302 of IPC against Joga Singh/appellant.

3. After investigation finding prima facie case for the offence punishable under Section 302 IPC, charge was framed against the appellant/accused by the learned Sessions Judge, Kapurthala, to which he pleaded not guilty and claimed trial.

4. In order to prove the allegations of the charge, 10 witnesses were examined.

5. The Trial Court upon appreciation of oral and documentary evidence on record took a view that the case was one of murder punishable under Section 302 IPC and held that prosecution was able to prove its case against accused – Joga Singh, beyond any shadow of reasonable doubt under Section 302 IPC. Further order of sentence of rigorous imprisonment for life and fine to the tune of Rs.20,000/- and in default of payment of fine to undergo one year rigorous

imprisonment was imposed upon the accused Joga. The present appeal has been filed by accused – Joga Singh/appellant assailing the judgment dated 25.07.2018 and order of sentence dated 27.07.2018 passed by the learned Sessions Judge, Kapurthala.

6. **SUBMISSIONS MADE ON BEHALF OF THE APPELLANT**

- i) That the Court below had side tracked the oral as well as documentary evidence while passing the impugned judgment and order.
- ii) That Trial Court did not consider the fact that PW-6 Kewal Singh s/o Manga Ram and PW-7 Mukesh Kumar s/o Jagdish Chand s/o Manga Ram, are interested witnesses being related to the deceased and their evidence cannot be relied upon.
- iii) That PW-6 Kewal Singh is a real uncle (chacha) of deceased whereas PW-7 Mukesh Kumar admittedly the real brother of the deceased.
- iv) Though this argument was not taken in the grounds of appeal filed by the appellant, but during the course of arguments, learned counsel for the appellant has argued that the offence, if any, committed is not an offence of murder, but culpable homicide not amounting to murder.

Therefore, he prays that the judgment dated 25.07.2018 and order of conviction dated 27.07.2018 be set aside and appeal be allowed.

7. **SUBMISSIONS MADE ON BEHALF OF THE STATE**

Per contra, learned State counsel argued on the lines of judgment passed by the learned Sessions Judge, Kapurthala and submitted that the appellant has rightly been convicted for the offence punishable under Section 302 IPC.

8. For proper analysis of the present case, relevant evidence of the witnesses as well as documentary evidence is reproduced as under:-

PW-6 on SA Kewal Singh son of Manga Ram son of Safi Ram, aged about 42 years, Cycle Repair shop, resident of Village Maqsoodpur, Tehsil Bholath District Kapurthala.

Stated that I am running a cycle repair shop in village Maqsoodpur which is situated on Bholath Road. Adjoining my shop, is the shop of Joga present accused who is running a barber shop about two years prior to the occurrence. These shops are on rent. On 10.10.2014 at about 10:30 A.M., my nephew Sukhwinder Singh @ Mani had gone to the shop of Joga for getting his hair cut. After about ten minutes I heard noise from the shop of Joga, upon which I alongwith my nephew Mukesh Kumar went towards the shop of Joga accused. When we reached there then we saw present accused Joga and Sukhwinder Singh @ Mani were having heated exchanges. In the meantime my father Manga Ram also came there. Accused Joga was armed with a scissors and he gave scissors blow on the left side of chest of Sukhwinder Singh @ Mani, as a result of which said Mani fell down. We tried to lift him but

Sukhwinder Singh @ Mani died there immediately. I left my nephew Mukesh Kumar and my father Manga Ram at the spot and proceeded towards the police station to inform the police. On the way at village Nangal Lubana SHO Surinder Singh met me and I made statement [EX.PA](#) to the SHO which was read over to me and bears my signature at point A. Thereafter on the same day, I made supplementary statement to the police in which I got recorded that the motive behind the occurrence that Sukhwinder Singh @ Mani and Joga were quarreling on account that Sukhwinder Singh @ Mani was saying that he was to only pay Rs.30/- for hair cutting, whereas accused Joga was demanded more money from him due to which Joga inflicted scissors blow on the person of Sukhwinder Singh @ Mani which proved fatal.

(At this stage, Ld.PP for State has submitted that case property i.e. scissors has not been produced by the concerned police station and requested for deferring the further examination in chief of this witness. Request is allowed and further examination in chief of this witness is deferred.)

*RO & AC
Dated :22.07.2015*

*(R.S.Rai)
Sessions Judge, Kapurthala*

PW-6 on SA Kewal Singh son of Manga Ram son of Safi Ram, aged about 42 years, Cycle Repair shop, resident of Villlage Maqsoodpur, Tehsil Bholath District Kapurthala recalled for further examination in chief.

At this stage a sealed parcel EX.P1 bearing seal of Forensic Science Laboratory has been produced in the Court. At the request of Ld.PP for State the same is allowed to be opened. On opening the same, a scissor is taken out. It is the same scissor with which the accused had inflicted injury on the person of Sukhwinder Singh @ Mani. The same is EX.P2.

XXXXXmn:- by Sh.Shamsher Singh, Advocate for accused.

*It is correct that there is no blood stain on the scissor at present. It is correct that some rust points are present on it. It is correct that on the scissor itself no particulars of the case have been mentioned. My shop is adjoining to the shop of accused. There is a partition cemented wall in between my shop and that of the accused. Both these shops are having separate shutters. Except the shop of accused there is no other barber shop in that vicinity. A number of people come to the shop of accused for getting their hair cut. Usually my deceased nephew used to get his hair cut from the accused. There is no rate list installed at the shop of accused. Generally the accused charges Rs.30/- for hair cutting. Sometimes from some particular customer according to the cutting of the hair he may charge extra. No fix rates have been prescribed by the accused for a particular job. **Photographs of the deceased were clicked with my***

mobile phone. My mobile phone is now in broken condition which I have brought in the Court today.

Court Observation:-

The mobile phone produced by the witness is in broken condition.

I did not take my mobile phone to the photographer to get the printout of the clicked photographs. The screen of my mobile phone broke as the same had fallen on the ground during its charging which had been placed on an iron petti. Previously, I was having a mobile phone of make LG and its screen had also broken. I did not inform the police when I made statement that the photographs of the deceased had been clicked with my mobile phone. I had gone to inform the police and when the police met me they accompanied me to the place of occurrence. I was proceeding to P.S.Begowal to inform the police but the police met on the way at Village Nangal Lubana. I had informed the police regarding the occurrence. The police recorded my statement at Village Nangal Lubana. I remained at Nangal Lubana for about an hour alongwith police to record my statement. The police recorded my statement at bus stop Nangal Lubana. People from the public were also roaming there. From Nangal Lubana the police officials and myself did not go to the police station rather all of us proceeded to the place of occurrence. The police officials were having their own govt vehicle. From Nangal Lubana I led the police party to the place of occurrence. The accused had finished the work of hair cutting of my nephew. It is correct that the hair cut of customer is performed by

*making him sit on a chair and a counter is affixed in front of the chair where the equipments used by the barber are placed. Prior to the occurrence, there was no dispute or hot exchange in between deceased and accused. Prior to the occurrence there was no dispute of any sort in between deceased and accused rather they were on good terms. It is correct that after hair cutting, some hair fall on the neck, volunteered they are cleaned by the barber with the help of powder and brush. When the accused was cutting the hair of deceased, I was not present there. The accused had already cut the hair of the deceased before the raula. I did not see whether the accused had cleaned the fallen hair on the neck of deceased. The floor of the shop of the accused is a cemented paved floor. It is wrong to suggest that floor of the house of the deceased is paved with tiles. The accused had not taken money of the labour of hair cutting from deceased in my presence. I did not search the pockets of the clothes of the deceased to ascertain as to how much money he was carrying with him. The clothes of deceased were removed from his body after the postmortem in the hospital. The police did not search the pockets of the clothes of the deceased at the place of occurrence in my presence. Sometimes I also used to get my hair cut from the accused. There was no written complaint against the accused in the police station or to the Sarpanch regarding his behaviour, **volunteered there were oral complaints regarding his rude behaviour before the sarpanch.** In my presence no person had made complaint against the accused regarding his behaviour. It is wrong to suggest that I am deposing falsely being a paternal uncle of deceased. I*

cannot say whether a person is standing up after long sitting then he becomes slightly nervous. It is wrong to suggest that deceased due to above-said reason fell on the counter placed before the chair on which he was sitting. It is also wrong to suggest that deceased suffered injuries by way of fall on the equipments lying on the counter. It is wrong to suggest that I have deposed falsely.

*RO & AC
Dated :02.09.2015*

*(R.S.Rai)
Sessions Judge, Kapurthala.*

PW-7 on SA Mukesh Kumar son of Jagdish Chand son of Manga Ram, aged about 22 years, Cycle Repair, resident of Villlage Maqsoodpur, Tehsil Bholath District Kapurthala.

Stated that I am doing the work of cycle repair alongwith my paternal uncle (Chacha) Kewal Singh in village Maqsoodpur. Adjoining to our shop, there is the shop of present accused Joga who is a barber. On 10.10.2014 at about 10:30 A.M., I alongwith my said uncle were present at the shop. At that time my brother Sukhwinder Singh @ Mani had gone to the shop of Joga for getting his hair cut. After about 10 minutes we heard noise from the shop of Joga upon which I and Kewal Singh went towards the shop of Joga. In the meantime my grandfather Manga Ram also came there. When we reached there, we saw Joga and Mani was

quarreling with each other. My brother was paying Rs.30/- to him but accused Joga was demanded more money from him. In the meantime, Joga who was armed with scissors inflicted scissors blow on the left side of the chest of my brother Sukhwinder Singh @ Mani and the said occurrence was witnessed by me, Kewal Singh and Manga Ram. Upon receipt of scissors blow, Sukhwinder Singh fell down and we tried to lift him but Sukhwinder Singh @ Mani died. Kewal Singh went to inform the police. The police came at the spot and conducted inquest proceedings. I identified the body of Sukhwinder Singh @ Mani as part of the inquest proceedings which is EX.PB. My statement EX.PB/1 as part of inquest proceedings were also recorded by the police. My statement regarding the occurrence was also recorded by the police.

(At this stage, Ld.PP for State has submitted that case property i.e. scissors has not been produced by the concerned police station and requested for deferring the further examination in chief of this witness. Request is allowed and further examination in chief of this witness is deferred.)

*RO & AC
Dated: 22.07.2015*

*(R.S.Rai)
Sessions Judge, Kapurthala.*

PW-7 on SA Mukesh Kumar son of Jagdish Chand son of Manga Ram, aged about 22 years, Cycle Repair, resident of Villlage Maqsoodpur, Tehsil Bholath District Kapurthala recalled for further examination in chief.

Today I have seen the scissor EX.P2 in the Court today. It is the same scissor with which the accused had inflicted injury on the person of Sukhwinder Singh @ Mani.

XXXXXmn:- by Sh.Shamsher Singh, Advocate for accused.

About 4-5 houses intervene my house and the shop of the accused. I was not called by anybody but I was working at the adjoining shop of my uncle. My deceased brother was not working at the cycle shop and working independently. When we heard raula from the shop of accused my uncle and myself immediately rushed there. The accused had finished the work of hair cut of my deceased brother before our reaching. When we reached there accused was having heating exchanges with my deceased brother and he inflicted scissor blow on his person in our presence. It is wrong to suggest that no heated exchanges took place between accused and deceased in my presence. It is also wrong to suggest that accused did not inflict any scissor injury on the person of my deceased brother in my presence. My paternal uncle had gone to inform the police but I do not know whether he had gone to the police station or not. I did not inform the sarpanch or any other respectable of the village regarding the occurrence. A number of people had gathered-at-the place of occurrence. It is correct that there is only one barber shop of the accused

*in the vicinity. There is a common boundary wall in between the shop of accused and shop of my paternal uncle. On the alleged day of occurrence, It was Friday i.e. 10.10.2014. Prior to the occurrence, there was no rift between the deceased and accused including me. Rather we were living in a friendly atmosphere. No rate list was displayed by the accused at his shop. I do not know how much the accused charged for a normal hair cutting. I got my hair cut from the accused only about 1-2 times. My deceased brother was unmarried. He was younger to me. I am also unmarried. My deceased brother was not drug addict. It is wrong to suggest that my brother was drug addict. The police did not conduct the search of the clothes of my deceased brother in my presence. My statement was recorded by the police at the place of occurrence on two occasions. The police obtained my signatures at two places. The police did not obtain signatures on blank papers. I remained at the place of occurrence for about 1/1-½ hours. It is wrong to suggest that the accused did not have any quarrel/heated exchanges with the customers occasionally. The police did not take into possession the clothes of my deceased brother at the shop. It is also wrong to suggest that the accused is of decent nature and polite speaking person. I cannot say whether a person is standing up after long sitting then he becomes slightly nervous or not. It is wrong to suggest that deceased due to above-said nervousness fell down on the counter placed before the chair on which he was sitting. **It is also wrong to suggest that deceased suffered injuries by way of fall on the equipments lying on the***

counter. It is wrong to suggest that I have deposed falsely being brother of the deceased.

RO & AC
Dated :02.09.2015

(R.S.Rai)
Sessions Judge, Kapurthala.

**PW-9 on SA SI Mohinder Singh No.1299 JALL now posted in
P.S.Dhilwan District Kapurthala**

*On 10.10.2014, I was posted in P.S.Begowal. On that day, I was present in the police party headed by Inspector/SHO Surinder Singh (I.O.) and alongwith other police officials. We were present at the place of occurrence. From the spot, I.O. took into possession blood stained earth which was put into a dabbi plastic sealed by the I.O. with the seal of Mark "SS" and taken into possession vide memo EX.PD. From the spot, I.O. also took into possession blood stained scissor which was about 6-3/4 inches in length. Its sketch [EX.PE](#) was prepared and it was taken into possession vide memo [EX.PF](#) after putting it in a parcel sealed by the I.O. with the seal of Mark "SS". From the spot, I.O also took into **possession one shirt of victim Sukhwinder Singh and one pair of chappal**. They are put into a parcel sealed by the I.O. with the seal of Mark "SS" and taken into possession vide memo [EX.PG](#). From the spot, I.O. also took into **possession one table cover and one parna blood stained which** were put into a parcel sealed by the I.O. with mark "SS" and taken into possession vide memo [EX.PH](#). Memo EX.PD, sketch [EX.PE](#) and*

memos [EX.PF](#), [EX.PG](#) and [EX.PH](#) were witnessed by me and HC Lakhwinder Singh. My statement was recorded. On the same day, accused Joga Singh was nabbed by the L.O. in my presence. His arrest cum intimation memo EX.PI and personal search memo EX.PI/1 were prepared. Both these memos were signed by accused and witnessed by me and HC Lakhwinder Singh.

XXXXXmn:- by Sh.Shamsher Singh Advocate for accused.

My statement was recorded by the I.O. at the spot at about 02:00 P.M. All the parcels were sealed by the I.O. with the seal Mark "SS" in my presence. I do not remember who scribed the documents EX.PD to [EX.PH](#). It is correct that whether the same were written by the I.O. or some other police officials. Volunteered I do not remember. I do not remember whether I used my pen or the pen of the subscriber to sign the above-said documents. It is wrong to suggest that I was not present at the spot. It is also wrong to suggest that no recoveries were effected in my presence. It is also wrong to suggest that I.O. conducted the proceedings in police station and obtained my signatures lateron. It is also wrong to suggest that I have deposed falsely.

RO & AC
Dated 11.01.2016

(R.S.Rai)
Sessions Judge, Kapurthala.

DW-1 on SA Gurmeet Singh son of Bahadur Singh son of Kushal Singh, aged about 56 years, Agriculturist, resident of Village Jug Sub Tehsil Dhilwan District Kapurthala

I know accused Joga personally who is bonafide resident of my village. I remained as member panchayat of my village for the period of 15 years and my brother remained Sarpanch of my village for the period of about 15 years. Accused Joga never consumed any sort of liquor or any other drug. He is running a barber shop at Maqsoodpur which is at a distance of about 3-4 kilometers from my village. I alongwith some respectables of the village reached at the place of occurrence. When we reached there, a number of people had gathered and they were discussing that deceased was a found of liquor and intoxicant and in the state of intoxication, he had fallen over the dressing table of the shop of accused and resulting he received injury.

XXXXXmn: on behalf of Ld.PP for State.

I never went inside the shop of accused Joga on that day. I had seen the police at the scene of the crime. At that time, I did not tell the police officials regarding the above-said fact. After the gap of 2-3 days, I alongwith father of accused, Tehal Singh and Manjit Singh went to the office of DSP Bholath and told him that the people were talking that deceased had fallen on the dressing table of accused of his own under the influence of liquor. It is wrong to suggest that deceased was not a addicted to liquor and drugs. It is also wrong to suggest that he had not fallen

voluntarily in the dressing table of the shop of the accused. It is also wrong to suggest that deceased died due to scissor blow inflicted on his person by the accused. I am not a summoned witness. It is wrong to suggest that I have deposed falsely.

RO & AC
Dated: 16.08.2016

(R.S.Rai)
Sessions Judge, Kapurthala

**PW-2 on SA Dr. Jaskaran Singh now posted as a Senior Resident
Pediatrics, Govt. Medical College Amritsar.**

*On 10.10.2014, I was posted as Medical Officer in Civil Hospital Kapurthala. On that day. I conducted the postmortem on the dead body of Sukhwinder Singh son of Late Jagdish Chand age 20 years Male, resident of Muksudpur Begowal. Dead body was brought by HC Rupinder Singh and HC Sukhwinder Singh of P.S.Begowal and the dead body was identified by Mukesh Kumar brother of deceased and Manga Ram son of Shaff grander father of deceased. Dead body was received in mortuary on 10.10.2014 at 03:30 P.M. Date of death as per police papers was 10.10.2014 at 10:45 A.M. and postmortem was conducted on same day at 04:30 P.M. As per information furnished by the police, **Sukhwinder Singh died due to injury on his left side of chest. It was a body of 5 feet 10 inch male wearing black colour trouser and black colour underwear. No rigor mortis was present. Un-clotted blood was present in both nostrils and***

mouth. Mouth pharynx and oesophagus filled with blood. On postmortem, I found the following injury on the body of deceased:

- 1. A stab wound present in the left upper to middle region 3cm above the left nipple measuring 2 cm x 5 cm incised. Underline muscle hematoma measuring 20 cm x 25 cm was present with stab wound in lung was also present at apex. Free blood present in the pleural cavity. Free blood present in the mediastinal cavity. Stab wound on the anterior mediastinum. Underline heart was normal with no stab wound.*

The cause of death in this case in my opinion is cardiac tamponade due to blood in mediastinum which is sufficient to cause death in ordinary course of nature. After postmortem the dead body alongwith its belongings and copy of postmortem report and police papers Nos.1 to 22 were HC Rupinder Singh. I have brought the original postmortem report today in the Court and EX.P2 is the carbon copy of the same which is prepared in same course of nature as original is prepared. EX.P2/1 is the pictorial diagram showing seats of injuries on the dead body of deceased Sukhwinder Singh. The original postmortem register seen and return to the witness and EX.P2 and EX.P2/1 is the correct carbon copy of the same which bears my signatures.

XXXXXmn:- by Ld.defence Counsel Sh.Shamsher Singh.

It is wrong to suggest that deceased had not died due to cardiac arrest. It is wrong to suggest that I have given false report at the behest of legal heirs of deceased.

RO & AC
Dated:
10.04.2015

(R.S.Rai)
Sessions Judge, Kapurthala.

FORENSIC SCIENCE LABORATORY PUNJAB SAS NAGAR

(Admissible U/s 293 Cr.P.C. as amended in 1978)

Report No. : 822/2014/FSL/Pb/Bio./Exam, dated: 19/11/2014

Forwarding Authority: The Senior Superintendent of Police, Kapurthala.

Reference No. : 71556 dated 12.11.2014.

*Case Reference : FIR No.72 dated 10.10.2014 U/S 302 IPC, PS
Begowal.*

Date of Receipt : 14.11.2014.

Mode of Receipt : HC Gurdev Singh, No. 1060/KPT.

*Articles Received : Four sealed parcels which were marked A, B, C
and D in the laboratory and each sealed with
one seal of 'SS'. The seals were found intact and
tallied with the specimen seal*

Parcel "A" contained : Scissors alleged to be stained with blood.

*Parcel 'B' contained : The following exhibits alleged to be stained with
blood:*

1. Pyjama marked B-1 in the laboratory.

2. Underwear marked B-2 in the laboratory.

Parcel 'C' contained : Soil alleged to be stained with blood.

Parcel 'D' contained : The following exhibits alleged to be stained with blood:

1. Table cloth marked D-1 in the laboratory.

2. Parna marked D-2 in the laboratory.

RESULT OF EXAMINATION

The exhibits contained in the parcels A. B. C and D are stained with human blood.

*Examined by
Dr. (Mrs.) Seema Sharda,
Deputy Director,
Forensic Science Laboratory
Punjab, SAS NAGAR*

Translation of Ex. PF

P.S. Begowal

District Kapurthala.

Case FIR No. 72 Dated 10.10.2014 U/s. 302 IPC, PS. Begowal Kapurthala.

State Versus: Joga Singh s/o Balwinder Singh r/o Village Jaggan PS Subhanpur Kapurthala.

Recovery memo of blood stained scissor

In the presence of following witness place of occurrence in village Maqsoodpur one scissor recovered inside the shop of Joga. The length of scissor 4 inch and the length of Header 2, to 4 inch and

prepared a separated parcel be prepared with a seal impression with SS and taken into Police possession attested by the following witness.

Witness:-

*1 SI Mohinder Singh No.1219KPT
PS Begowal. Sd/-in Punjabi*

*2 HC Lakhwinder Singh 1269
PS. Begowal Sd/- In English*

*Sd/-In English,
Insp./SHO,
PS Begowal, Kapurthala
Dated: 10.10.2014*

Translation of Ex.PG

P.S.Begowal

District Kapurthala.

Case FIR No. 72 Dated 10.10.2014 U/s. 302 IPC, PS. Begowal Kapurthala.

State Versus: Joga Singh s/o Balwinder Singh r/o Village Jaggan PS Subhanpur Kapurthala.

Recovery memo of One Shirt, One Pair Scissors. One Chaple

*In the presence of following witness place of occurrence recovered a
One shirt of yellow colour Sukhwinder Singh @ Mani, One kanchi Chapel*

prepared a separated parcel be prepared with a seal impression with SS and taken into Police possession attested by the following witness.

Witness:-

*1 SI Mohinder Singh No.1219KPT
PS Begowal. Sd/-in Punjabi*

*2 HC Lakhwinder Singh 1269
PS. Begowal Sd/- In English*

*Sd/-In English,
Insp./SHO,
PS Begowal, Kapurthala
Dated: 10.10.2014*

Statement of accused under section 313 Cr.P.C. without oath:

Joga Singh son of Balwinder Singh son of Mehnga Ram, aged 24 years, Barber, resident of village Jagga, P.S.Subhanpur, District Kapurthala

Q. It is in evidence against you that Kewal Singh was running a cycle repair shop in village Maqsoodpur which is situated on Bholath Road. Adjoining his shop, there is your shop where you are running a barber shop about two years prior to the occurrence. These shops were on rent. What you want to say ?

A. It is correct.

Q. It is further in evidence against you that on 10.10.2014 at about 10:30 A.M., Sukhwinder Singh @ Mani nephew of PW Kewal Singh had gone to your for getting his hair cut. After about ten minutes PW Kewal Singh heard noise from your shop, upon which he alongwith his nephew Mukesh Kumar went towards your shop. When they reached there, they saw you accused Joga and Sukhwinder Singh @ Mani were having heated exchanges. In the meantime father of Kewal Singh namely Manga Ram also came there. At that time you accused Joga were armed with a scissors and you gave scissors blow on the left side of chest of Sukhwinder Singh @ Mani, as a result of which said Mani fell down. What you want to say?

A- It is incorrect.

Q- It is further in evidence against you that PWs Kewal Singh and Mukesh Kumar tried to lift Sukhwinder Singh but Sukhwinder Singh @ Mani died there immediately. PW Kewal Singh left his nephew Mukesh Kumar and his father Manga Ram at the spot and proceeded towards the police station to inform the police. On the way at village Nangal Lubana SHO Surinder Singh met him and Kewal Singh made statement EX PA to the SHO which was read over to him and he signed the same at point A. What you want to say?

A- It is incorrect.

Q It is further in evidence against you that thereafter on the same day, PW Kewal Singh made supplementary statement to the police in which he got recorded that the motive behind the occurrence was that Sukhwinder Singh @ Mani and you accused Joga were quarreling on account that Sukhwinder Singh @ Mani was saying that he was to only pay Rs. 30/- for hair cutting, whereas you accused Joga was demanding more money from him due to which you accused Joga inflicted scissors blow on the person of Sukhwinder Singh @ Mani which proved fatal.. What you want to say?

A It is incorrect.

Q:- It is further in evidence against you that on 10.10.2014. Inspector Surinder Singh SHO (LO.) alongwith other police officials were present in connection with Nakabandi at Adda Nangal Lubana where Kewal Singh complainant accompanied by his father met the I.O. there. Kewal Singh got his statement recorded with I.O. which is [EX.PA](#). The same was read over to him and after admitting it to be correct, Kewal Singh put his signature at point A. 10. attested the same vide [EX.PA/1](#) and made endorsement [EX.PA/2](#) and sent ruqa to the police station through PHG Tarlok Singh on which basis FIR [EX.PA/3](#) was registered in the police station by SI Kanwaljit Singh. The special reports of this case were delivered to the Illaqa

Magistrate by PW Constable Gurmit Singh. What you want to say about it?

A- It is incorrect.

Q- It is further in evidence against you that LO. alongwith complainant went to the place of occurrence situated in Village Maqsoodpur and he inspected the same. The body of Sukwinder Singh was lying in your barber shop. I.O. conducted inquest proceedings EX.PB in respect of the deceased Sukhwinder Singh. The body was identified by Mukesh Kumar and Manga Ram. L.O. recorded statement EX.PB/1 and EX.PB/2 of Mukesh Kumar and Manga Ram respectively as part of the inquest proceedings What you want to say about it?

A It is incorrect.

Q-: It is further in evidence against you that from the spot, I.O. took into possession blood stained earth which was put into a plastic dubbi and its parcel was prepared. The same was sealed by LO. with seal of Mark "SS" and it was taken into possession vide memo EX.PD. From the spot, I.O. also took into possession one blood stained scissor which was about 6- 4 inches in length. Its sketch [EX.PE](#) was prepared and it was taken into possession vide memo [EX.PF](#) after putting it in a parcel which was sealed by IO. with the seal of Mark "SS" From the spot, L.O. also took into possession one shirt and one pair of chappals of victim Sukhwinder Singh. They

were put in a parcel sealed by I.O. with seal of Mark "SS" and taken into possession vide memo [EX.PG](#). From the spot, I.O. also took into possession one table cover and one parna blood stained which were put in a parcel sealed by LO. with seal of Mark "SS" and taken into possession vide memo [EX.PH](#). Memo EX.PD, sketch [EX.PE](#) and memos [EX.PF](#), [EX.PG](#) and [EX.PH](#) were witnessed by SI Mohinder Singh and HC Lakhwinder Singh. What you want to say about it?

A. It is incorrect.

Q- It is further in evidence against you that I.O. prepared rough site plan EX.PJ of the place of occurrence with correct marginal notes. I.O. scribed application [EX.PK](#) addressed to SMO Civil Hospital Kapurthala for conducting postmortem on the dead body of Sukhwinder Singh and the body alongwith relevant papers were handed over to HC Sukhwinder Singh and HC Rupinder Singh. I.O. recorded statements of all the concerned witnesses. During investigation, I.O. got scaled site plan from PW Baljinder Singh Ex.P1. What you want to say about it?

A- It is incorrect.

Q- It is further in evidence against you that on 10.10.2014 Dr.Jaskaran Singh conducted the post mortem examination of the

dead body of Sukhwinder Singh and he has produced in evidence copy of the postmortem report Ex.P2 and pictorial diagram Ex.P2/1 and declared cause of death of Sukhwinder Singh as cardiac temponade due to blood in mediastinum which was sufficient to cause death. After postmortem the body alongwith its belongings was handed over to PW HC Sukhwinder Singh who produced the same before I.O. and the clothes of deceased were taken into possession vide memo Ex. PC after putting them in a sealed parcel bearing seal mark-SS. What you want to say about it?

A- It is incorrect.

Q- It is further in evidence against you that I.O. deposited the case property with MHC Davinder Pal on 10.10.2014. The parcels containing scissor, blood stained clothes of deceased, blood stained earth and table cloth and parna were carried to the Forensic Science Laboratory on 14.11.2014 by HC Gurdev Singh. They were examined by the laboratory and as per report of the laboratory the contents of the parcels were found stained with human blood. The report of F.S.L. has been produced in evidence as Ex.PZ. What you want to say about it?

A- It is incorrect.

Q- It is further in evidence against you that on 10.10.2014, I.O. arrested you accused Joga in this case. Your arrest-cum- intimation memo EX.P1 and personal search memo Ex.PI/1 were prepared. These memos were witnessed by SI Mohinder Singh and HC Lakhwinder Singh. What you want to say about it?

A- It is incorrect.

Q- It is further in evidence against you that the case property has been produced in the court. The parcel of scissor is Ex.P1 and scissor is Ex.P2/MO-1. The sealed parcel bearing seal of laboratory containing blood stained earth is MO2 and when opened in the court it contained blood stained earth. The sealed parcel bearing seal of laboratory containing the clothes of deceased and when opened in the court it contained one pajama MO4 and one underwear MOS. The sealed parcel bearing seal of laboratory containing the table cloth and parna is M06 and when opened one table cloth MO7 and one parna MO8 are taken out. The sealed parcel bearing containing one shirt and one pair of chappals of victim bearing seal impression of I.O. is MO9 and when opened it contained one shirt MO10 and one one pair of chappals MO11. What you want to say about it?

A- It is incorrect.

Q Why the PWs depose against you and why the present case has been registered against you?

A: The PWs depose falsely and the case is also false.

Q: Do you want to say anything else?

A I am innocent and have been falsely involved in this case.

Q: Do you want to lead defence?

A: Yes, sir.

RO & AC
Dated: 17.02.2016

(R.S.Rai)
Sessions Judge, Kapurthala

9. Having heard, learned counsel appearing for the parties and having gone through the materials on record, only question that falls for consideration is whether the appellant herein has been rightly convicted under Section 302 IPC. Our conclusion regarding the same is as under:-

i) PW6 Kewal Singh complainant, deposed that he is running a cycle repair shop in village Maqsoodpur which is situated on Bholath Road. Adjoining to his shop, is the shop of Joga accused who is running a barber shop since two years prior to the occurrence. These shops are on rent. On 10.10.2014 at about 10:30 A.M., his nephew Sukhwinder Singh @ Mani had gone to the shop of Joga for getting his hair cut. After about ten minutes he heard noise from the shop of Joga, upon which he alongwith his nephew Mukesh Kumar went towards the shop of Joga accused. PW6 further

deposed that when they reached there then they saw accused Joga and Sukhwinder Singh @ Mani were having heated exchanges. In the meantime his father Manga Ram also came there. Accused Joga was armed with a scissors and he gave scissors blow on the left side of chest of Sukhwinder Singh @ Mani, as a result of which said Mani fell down. They tried to lift him but Sukhwinder Singh @ Mani died there immediately. He left his nephew Mukesh Kumar and his father Manga Ram at the spot and proceeded towards the police station to inform the police. On the way at village Nangal Lubana SHO Surinder Singh met him and he made statement Ex.PA to the SHO which was read over to him. Thereafter on the same day, he made supplementary statement to the police in which he got recorded that the motive behind the occurrence is that Sukhwinder Singh @ Mani and Joga were quarreling on account that Sukhwinder Singh @ Mani was saying that he was to only pay Rs.30/- for hair cutting, whereas accused Joga was demanding more money from him due to which Joga inflicted scissors blow on the person of Sukhwinder Singh @ Mani which proved fatal.

ii) PW7 Mukesh Kumar, deposed that he is doing the work of cycle repair alongwith his paternal uncle (Chacha) Kewal Singh in village Maqsoodpur. Adjoining to their shop, there is the shop of accused Joga who is a barber. On 10.10.2014 at about 10:30 A.M., he alongwith his said uncle were present at the shop. At that time brother Sukhwinder Singh @ Mani had gone to the shop of Joga for

getting his hair cut. After about 10 minutes they heard noise from the shop of Joga, upon which he and Kewal Singh went towards the shop of Joga. In the meantime his grandfather Manga Ram also came there. When they reached there, they saw Joga and Mani was quarreling with each other. PW7 further deposed that his brother was paying Rs.30/- to him but accused Joga was demanding more money from him. In the meantime, Joga who was armed with scissors inflicted scissors blow on the left side of the chest of his brother Sukhwinder Singh @ Mani and the said occurrence was witnessed by him, Kewal Singh and Manga Ram. PW7 further deposed that upon receipt of scissors blow, Sukhwinder Singh fell down and they tried to lift him but Sukhwinder Singh @ Mani died.

iii) PW10 Inspector Surinder Singh, deposed that on 10.10.2014, he was posted as Inspector/SHO P.S.Begowal. On that day, he alongwith other police officials were present in connection with Nakabandi at Adda Nangal Lubana. Kewal Singh complainant accompanied by his father met him there. Kewal Singh got his statement recorded with him which is Ex.PA. The same was read over to him and after admitting it to be correct, he put his signature at point A. He attested the same vide Ex.PA/1. He made endorsement Ex.PA/2 and sent ruqa to the police station through PHG Tarlok Singh on which basis FIR Ex.PA/3 was registered in the police station by SI Kanwaljit Singh. PW10 further deposed that thereafter he alongwith complainant went to the place of occurrence

situated in village Maqsudpur. He inspected the same. **The body of Sukwinder Singh was lying in the barber shop of Joga.** He conducted inquest proceedings Ex.PB in respect of the deceased Sukhwinder Singh. The body was identified by Mukesh Kumar and Manga Ram. He recorded statement Ex.PB/1 and Ex.PB/2 of Mukesh Kumar and Manga Ram respectively as part of the inquest proceedings. From the spot, he took into possession blood stained earth, blood stained scissor which was about 6-4 inches in length, one shirt and one pair of chappals of victim Sukhwinder Singh, one table cover and one parna blood stained which were put in a parcel sealed by him. He recorded statements of all the concerned witnesses. On the same day, the police party headed by him arrested accused Joga in this case. During investigation scaled site plan was got prepared from Baljinder Singh. During investigation, he recorded statements of all concerned witnesses at different stages of investigation. PW10 further deposed that it came into light during investigation that accused Joga was running a barber shop on rent belonging to Bhagwan Singh son of Sohan Singh.

iv) PW2 Dr. Jaskaran Singh, deposed that on 10.10.2014, he was posted as Medical Officer in Civil Hospital Kapurthala. On that day, he conducted the postmortem on the dead body of Sukhwinder Singh son of Jagdish Chand, aged 20 years Male, resident of Muksudpur Begowal. The dead body was identified by Mukesh Kumar brother of deceased and Manga Ram. Dead body was received in mortuary

on 10.10.2014 at 03:30 P.M. Date of death as per police papers was 10.10.2014 at 10:45 A.M. and postmortem was conducted on same day at 04:30 P.M. As per information furnished by the police, Sukhwinder Singh died due to injury on his left side of chest. It was a body of 5 feet 10 inch male wearing black colour trouser and black colour underwear. No rigor mortis was present. Un-clotted blood was present in both nostrils and mouth. Mouth pharynx and oesophagus filled with blood. On postmortem, he found the following injury on the body of deceased:

1.A stab wound present in the left upper to middle region 3cm above the left nipple measuring 2 cm x 5 cm incised. Underline muscle hematoma measuring 20 cm x 25 cm was present with stab wound in lung was also present at apex. Free blood present in the pleural cavity. Free blood present in the mediastinal cavity. Stab wound on the anterior mediastinum. Underline heart was normal with no stab wound.

PW2 further deposed that the cause of death in this case in his opinion is cardiac tamponade due to blood in mediastinum which is sufficient to cause death in ordinary course of nature.

v) In his defence evidence, accused has examined Gurmeet Singh as DW1, who deposed that he knew accused Joga, who never consumed any sort of liquor or any other drug. He was running a Barber shop at Maqsdapur, which is situated at a distance of about 3-

4 kilometers from his village. DWI further deposed that he alongwith some respectable of the village reached at the place of occurrence, where a number of people had gathered and they were discussing that deceased was a fond of liquor and intoxicant and in the state of intoxication, he had fallen over the dressing table of the shop of accused and received injuries.

vi) A perusal of statements of all the prosecution witnesses show that there is no discrepancy in their statements.

vii) So far the contention of counsel for the appellant regarding discarding evidence of being interested witnesses i.e. PW-6 Kewal Singh and PW-7 Mukesh Kumar, is concerned, the same is rejected since their presence was natural at the spot as Kewal Singh (PW-6) is running a cycle repair shop just adjoining to the shop of accused/appellant and Mukesh Kumar (PW-7) is also working with him on his cycle repair shop and their presence at the spot was due to the noise coming from the adjoining shop because of which they went to spot of occurrence. Further, if witness is related to the deceased, he would always want the real culprit to be convicted.

vii) The Hon'ble Supreme Court of India in **Dalip Singh and others Vs. State of Punjab** [1953 AIR (Supreme Court) 364] held as under:-

“25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an

observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan', AIR 1952 Supreme Court 4 at. p. 54. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so

often put forward in cases before its as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

viii) The Hon'ble Supreme Court of India in **Khurshid Ahmed Vs. State of Jammu and Kashmir** 2018 AIR (Supreme Court) 2457 held as under:-

*“24. The learned senior counsel submits that in the present case, according to the prosecution, Sajad Ahmed, father of the deceased (PW9) was the only person who was present at the scene of offence at the time of occurrence. The entire case, therefore, depends on the veracity of his evidence. PW9, being father of the deceased, the appellant-accused had naturally made the allegation that he is an interested witness and therefore his evidence is not reliable. We are not able to appreciate such contentions. This Court considered the aspect of truthfulness of an interested witness in several cases. In **Dalip Singh & Ors. v. State of Punjab, (1954) SCR 145** it is observed:*

"Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be

laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth".

25. *In Masalti v. State of U.P., (1964) 8 SCR 133* this Court observed:

"There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account.

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.

Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type.

The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice".

26. *There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the*

witnesses had reason to shield actual culprit and falsely implicate the accused [See : Harbans Kaur & Anr. v. State of Haryana, 2005 CriLJ 2199].

ix) The Hon'ble Supreme Court of India in **Karulal & Ors. Versus The State of Madhya Pradesh** 2020(4) R.C.R. (Criminal) 666 held as under:-

"18. Let us now consider the law on evidentiary value of a related witness. Commenting on the aspect, Justice Vivian Bose in Dalip Singh & Ors. v. State of Punjab AIR 1953 Supreme Court 364 rightly opined that;

"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person...."

19. It may further be noted that Babu Lal(PW11)is an unrelated witness. His testimony substantially supports the evidence of PW3 and PW12 in all material particulars. In any case, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons. In this context, it was appropriately observed by Justice H.R. Khanna in State of Uttar Pradesh v. Samman Dass (1972) 3 SCC 201

"23.....It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant....."

*20. Again in a later decision of this Court in **Khurshid Ahmed v. State of Jammu and Kashmir (2018) 7 SCC 429** one of us, Justice N.V. Ramana on the issue of evidence of a related witness was justified in declaring that:*

"31. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary,

reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused (See Harbans Kaur v. State of Haryana)"

The above precedents make it amply clear that the testimony of the related witness, if found to be truthful, can be the basis of conviction and we have every reason to believe that PW3 and PW12 were immediately present at the spot and identified the accused with various deadly weapons in their hands."

x) Further in his statement under Section 313 CrPC the accused/appellant admitted that Kewal Singh was running a cycle repair shop in village Maqsoodpur which is situated on Bholath Road. Adjoining his shop, accused/appellant is running a barber shop since two years prior to the occurrence. These shops were on rent. This statement proves the prosecution version.

xi) The argument raised by the learned counsel for the appellant that the offence, if any, committed is not offence of murder, but culpable homicide not amounting to murder, is also rejected.

xii) Perusal of the evidence of Dr. Jaskaran Singh PW-2 shows that the cause of death in this case in his opinion is cardiac tamponade due to blood in mediastinum which is sufficient to cause death in ordinary course of nature.

xiii) Further, there is no discrepancy in the evidence led by the prosecution in the present case.

xiv) Weapon of the offence in this case i.e. scissors was also got recovered as per the statement suffered by the accused and it stands established that the deceased died due to injury caused by the accused.

xv) As per, PW-2 Dr. Jaskaran Singh's opinion and the post mortem report, the following injury was found on the body of deceased:

1. A stab wound present in the left upper to middle region 3cm above the left nipple measuring 2 cm x 5 cm incised. Underline muscle hematoma measuring 20 cm x 25 cm was present with stab wound in lung was also present at apex. Free blood present in the pleural cavity. Free blood present in the mediastinal cavity. Stab wound on the anterior mediastinum. Underline heart was normal with no stab wound.

xvi) The gravity of injury mentioned above proves the intention of the appellant/accused, who has knowledge that injury which he was inflicting, was sufficient to cause death.

xvii) Hon'ble Supreme Court of India in Anbazhagan Versus The State Represented By The Inspector of Police 2023 AIR (Supreme Court) 3660, has explained difference between Sections 299 and 300 IPC and held as under:-

“30. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable

be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that "whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

31. Thus, in order that the requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide proved, it is necessary that any of the two specific intentions must be proved. But, even when such intention is not proved, the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his such act to cause death, that is, with the knowledge that the result of his doing his act may be such as may result in death.

32. The important question which has engaged our careful attention in this case is, whether on the facts and in the circumstances of the case we should maintain the conviction

of the appellant herein for the offence under Section 304 Part I or we should further alter it to Section 304 Part II of the IPC?

SECTIONS 299 AND 300 OF THE IPC:-

*33. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299, 'culpable homicide' is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted-above, it would be 'culpable homicide'. Section 300 of the IPC, however, deals with repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'. (see **Rampal Singh v. State of U.P., (2012) 8 SCC 289**)*

34. In the case of *State of Andhra Pradesh v. Rayavarapu Punnayya*, (1976) 4 SCC 382, this Court, while clarifying the distinction between these two terms and their consequences, held as under:-

"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' is species. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is what may be called 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

35. Section 300 of the IPC proceeds with reference to Section 299 of the IPC. 'Culpable homicide' may or may not amount to 'murder', in terms of Section 300 of the IPC. When a

'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of the IPC, while in other cases, that is, where an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC. Various judgments of this Court have dealt with the cases which fall in various classes of firstly, secondly, thirdly and fourthly, respectively, stated under Section 300 of the IPC. It would not be necessary for us to deal with that aspect of the case in any further detail.

36. *The principles stated in the case of **Virsa Singh v. State of Punjab, AIR 1958 SC 465**, are the broad guidelines for the courts to exercise their judicial discretion while considering the cases to determine as to which particular clause of Section 300 of the IPC they fall in. This Court has time and again deliberated upon the crucial question of distinction between Sections 299 and 300 of the IPC, i.e. 'culpable homicide' and 'murder' respectively. In **Phulia Tudu v. State of Bihar, (2007) 14 SCC 588**, this Court noticed that confusion may arise if the courts would lose sight of the true scope and meaning of the terms used by the legislature in these sections. This Court observed that the safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of these sections.*

37. This Court in *Phulia Tudu (supra)* has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

Section 299	Section 300
<i>A person commits culpable homicide if the act by which the death is caused is done</i>	<i>Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done.</i>

INTENTION

<i>(a) With the intention of causing death; or</i>	<i>(1) with the intention of causing death; or</i>
<i>(b) With the intention of causing such bodily injury as is likely to cause death; or</i>	<i>(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or</i>
	<i>(3) with the intention of causing bodily injury to any person and the bodily injury</i>

	<i>intended to be inflicted is sufficient in the ordinary course of nature to cause death; or</i>
--	---

KNOWLEDGE

<i>(c) With the knowledge that the act is likely to cause death</i>	<i>(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.</i>
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38. Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of

clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

39. Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299 of the IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death

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

*40. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. The decision in the case of **Rajwant Singh v. State of Kerala, AIR 1966 SC 1874**, is an apt illustration of this point.*

*41. The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in **Virsa Singh (supra)** has throughout been*

*followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted. Analysing clause thirdly and as to what the prosecution must prove, it was held in **Virsa Singh (supra)** as under:-*

"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."

(Emphasis supplied)

It was further observed as under:-

"20. ... 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 supplied)

*42. Thus, it is clear that the ingredient of clause thirdly is not the intention to cause death but on the other hand the ingredient to be proved is the intention to cause the particular injury that was present. It is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances. In **Emperor v. Sardarkhan Jaridkhan, AIR 1916 Bom 191**, it was observed as under:-*

"Where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended."

Xxx xxx xxx xxx

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.

xvii) Hon'ble Supreme Court in *Virsa Singh Vs. State of Punjab*

1958 AIR (Supreme Court) 465 :-

"11.. This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly" would be unnecessary because the act would fall under the first part of the section, namely –

"If the act by which the death is caused is done with the intention of causing death."

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender :

"If it is done with the intention of causing bodily injury to any person."

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction : to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

12. Once that is found, the enquiry shifts to the next clause :-

"and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining –

"and the bodily injury intended to be inflicted"
is merely descriptive. All the means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference of deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

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 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.

10. After careful examination of the statements made by the witnesses and documentary evidence, we conclude that the appellant has committed offence of murder.

11. In View of the discussion made above and law laid down by the Hon'ble Apex Court, we uphold the conviction of the appellant/accused and dismissed the present appeal. In the present case, appellant is already in jail. He shall serve out the sentence, so awarded to him by the trial Court.

12. Let a copy of this judgment and order along with the LCR be transmitted to the Court with the direction to inform the appellant – Joga Singh about the fate of his appeal.

13. Pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 22, 2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No