

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

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Reserved on: 5th January, 2023

Decided on: 17th January, 2023

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CRL.A. 1126/2018

KULDEEP SINGH

..... Appellant

Represented by: Ms. Sairica Raju, *amicus curiae* with Ms. Ankeeta Appanna, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr. Prithu Garg, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the judgment of learned Trial Court dated 17th August, 2018 whereby the appellant was convicted for murder of his brother Rajender Singh (“deceased”) by stabbing him with a knife; and the order on sentence dated 28th August, 2018, whereby the appellant was directed to undergo imprisonment for life along with fine of ₹10,000/- in default whereof, simple imprisonment for six months for offence punishable under Section 302 of Indian Penal Code, 1860 (“IPC”).

2. In nutshell, brief facts of the case are that on 28th August, 2013, Sanjay Kumar (PW-15) made a PCR call at number 100 and informed that the tenant of a room at the house No. F-178, Laxmi Park, Nihal Vihar had went away after locking the room and that blood was coming out from the said room. The said information was recorded vide DD No.27A which was

marked to SI Sugriv (PW-23). SI Sugriv alongwith Ct. Jai Kishore reached the spot and found foul smell emanating from the room as also blood coming out from underneath the door of the said room. Thereafter, the lock of the door was broken with a brick. Inside the room, one bed was found lying and clothes were found lying on the side. On removing the clothes, dead body of one *sardar* was found lying. The crime team was called to the spot and in the meanwhile, Insp./IO Pramendra Singh (PW-28) also reached the spot. The dead body was sent to the mortuary at SGM Hospital at Mangolpuri. *Rukka* (Ex. PW-23/A) was prepared pursuant to which, FIR No.294/2013, dated 23rd August, 2013, under Section 302 IPC at Police Station Nihal Vihar, West (Ex. PW-5/A) was registered. On 24th August, 2013, the dead body was sent for postmortem examination, and was identified as Rajender Singh @ Vicky by the mother Smt. Kartar Kaur (PW-10) and one Narender Kumar (PW-8). After postmortem examination, the body was handed over to the mother Smt. Kartar Kaur (PW-10).

3. Dr. Manoj Dhingra (PW-16) alongwith Dr. Manish Wadhwan conducted the postmortem examination on the body of the deceased and tendered his report Ex. PW-16/A and opined :

1. *Stabbed wound 2 x 0.6cm x ?, wedge shape, obliquely placed on front of midline chest 5cm below sterna & 14cm from left nipple : with one angle acute and other rounded. On exploration, underlying skin, s/c tissues, muscles cleanly cut injury track running backwards downwards with extensive blood extravasations passing b/w three and four left ribs piercing anterior wall of heart. About 1.5 lt. of fluid and clotted blood in chest cavity. Injury is pericardial cavity deep.*

Time since death: *Approx. 3 days.*

Opinion: *The cause of death is hemorrhagic shock due to hard injury, all injuries are ante-mortem in nature. Injury I is sufficient to cause death in ordinary course of nature. All injuries are caused by sharp, single edged weapon.*

4. On the basis of a secret information, the appellant was apprehended at Ganda Nala, Nihal Vihar and pursuant to interrogation, he was arrested vide arrest memo Ex.PW-8/A and his disclosure statement (Ex.PW-18/D) was recorded and recoveries were effected. Thereafter, upon completion of investigation, charge-sheet was filed against the appellant and the appellant was charged for offence punishable under Section 302 IPC. To establish its case, prosecution examined 28 witnesses.

5. Learned counsel for the appellant assails the impugned judgment on the ground that the alleged weapon of offence was discovered from the roof of the toilet at the first floor of H. No. F-178, which was easily accessible to many people including Sanjay Kumar (PW-15) as also the other inhabitants of the said house. The alleged incident took place on 21st August, 2013 and the said knife was recovered on 25th August, 2013, during which period the place of recovery of the knife i.e. the toilet was accessible to multiple persons and hence, it cannot be said that the knife was recovered from a place exclusively within the knowledge and possession of the appellant. Reliance was placed on the decision in 1988 Supp. SCC 526 Makhan Singh v. State of Punjab. The knife being present at a place easily accessible by several persons, the possibility of tampering cannot be ruled out. Furthermore, before sending the knife for FSL examination, the knife was sent to Dr. Manoj Dhingra (PW-16), for his opinion and therefore, the possibility of contamination of the said knife cannot be ruled out. It was

contended that despite the appellant being allegedly apprehended at a busy road, no independent person was made a witness, thereby creating a doubt on the arrest. It was further contended on behalf of the appellant that in a case of circumstantial evidence, motive assumes utmost importance, however, the same has not been proved by the prosecution, rather as per the prosecution witnesses, there was no dispute between the brothers. There is nothing on record to show as to why would the appellant murder his own brother and in this regard reliance was placed on the decision in (2009) 9 SCC 152 Pannayar v. State of Tamil Nadu. It was further contended that there was no investigation with respect to the persons who were in possession of the extra set of keys of the lock of the room where the dead body was found. It was submitted that the locks usually come with multiple keys and anybody with an extra set of keys i.e. either neighbors or landlord or any other person could have committed the crime. Even otherwise, the key allegedly recovered from the appellant, could not open the lock which was broken, which again dents the prosecution case. Furthermore, no positive evidence was brought on record to establish how the electronic appliances i.e. T.V., Cooler, Washing Machine and Fridge were brought out from the rented premises and pledged with Hari Shankar (PW-7) by the appellant. There is nothing on record to show that the appellant was actually present at the house from 21st August, 2013 onwards. The prosecution neither brought on record, the mobile tower location of the appellant for the relevant period between 21st August to 25th August, 2013, nor positively established the place where the appellant was actually present on the alleged date of incident i.e. on 21st August, 2013. Thus, in the light of the missing and weak links in the case of the prosecution, the impugned judgment be set aside, and the

appellant be acquitted. Reliance was placed on the decisions reported as (1952) 2 SCC 71 Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh, (1984) 4 SCC 116 Sharad Birdhichand Sarda vs. State of Maharashtra and 2022 SCC OnLine SC 1449 Munikrishna @ Krishna etc. v. State by Ulsoor PS. In alternative, it was submitted that the post mortem report records infliction of only one injury, and thus, at best, an offence punishable under Section 304 IPC would be made out, and accordingly, the appellant be released on the period undergone.

6. Per contra, learned APP for the State contended that the impugned judgment is based on appreciation of facts and evidences of the case and thus, the impugned judgment be upheld and the present appeal be dismissed. It was contended that a room on the first floor of H. No. F-178 was given on rent to Smt. Kartar Kaur (PW-10) and her two sons i.e. the deceased and the appellant, and this fact was proved by the testimonies of Bhagwat Prashad (PW-2), Narender Kumar (PW-8) and Sanjay Kumar (PW-15). On 23rd August, 2013, at about 3:00-3:15 PM, Sanjay (PW-15) went to the first floor and noticed foul smell emanating and blood coming out from the said tenanted room, which was locked at that time, upon which he made a PCR call, which fact was corroborated by the CDR of mobile No.8860641047 (Ex. PW-12/C) in the name of PW-15. Both PW-2 and PW-8 identified the appellant in the Court. Mother of the appellant (PW-10) clearly deposed that she could not find any clue about the appellant upon her return. It was further submitted that the blood-stained knife used for committing the murder was recovered from the roof of the bathroom at the first floor at the instance of the appellant, which was duly seized by the I.O. and as per the DNA report (Ex. PW-26/C), the DNA profile generated from the said knife was found to

match with that of the deceased. As per the subsequent opinion of the postmortem doctor (Ex. PW-16/B), the injury on the deceased was opined to be possible with the weapon examined. The appellant in his disclosure statement (PW-18/D) also disclosed that he had mortgaged the household articles belonging to his mother i.e. one old fridge, cooler, television and washing machine. One card of Balaji Finance (Ex. PW-1/A), four receipts of Aditya Enterprise (Ex. PW-1/B-E), hand written receipt of the appellant alongwith his thumb impression (Ex. PW-7/A) were all seized upon the appellant's pointing out vide seizure memo (Ex. PW-7/B), and this fact was confirmed from the testimony of Veerpal (PW-1), who testified that he had issued the above mentioned finance card and receipts in lieu of payment received by him from Kartar Kaur (PW-10). The said television, washing machine, fridge and cooler were seized vide seizure memo Ex. PW-7/C and the same was proved by Hari Shankar (PW-7) in his testimony before the Court. Even Kartar Kaur (PW-10) in her deposition categorically stated that when she returned to her room, she found the aforesaid articles missing. The hand written receipts of the appellant were sent to the handwriting expert and on examining the said hand written receipts and the specimen handwriting of the appellant, it was opined that the two handwritings were same (Ex. PW-25/A). It was further submitted that the appellant did not examine any witness in his defence and had simply denied all the circumstances put to him without offering any explanation whatsoever, which is another important circumstance in the chain of circumstances against him.

7. Having heard both the parties and perusing the record, the following evidence emerges.

8. Sanjay Kumar @ Sanjay (PW-15) stated that the H. No. F-178, Laxmi Park, Nihal Vihar was owned by his mother and that his grandfather Bhagat Prashad used to look after the said house and used to collect rent from the tenants. He stated that on 23rd August, 2013, he went inside the said house and about 3:00-3:15 PM, found foul smell emanating from one locked room of the house. Upon enquiry from his grandfather, his grandfather told him that one lady and her two sons used to reside in that room and that the said lady had gone to Punjab about 20-25 days ago. He then made a call to the PCR at number 100 and the police officials upon reaching the spot, broke open the lock with the help of a brick and thereafter, dead body of one *sardar* underneath the clothes in the said room was found. Thereafter, he was declared hostile and in his cross-examination, he stated that he did not visit inside the spot from where the dead body was found and that no samples were collected in his presence.

9. Bhagwat Prashad (PW-2) stated that H.No.178 was owned by the wife of his son and that he was residing at the ground floor of the said house. He identified the appellant in the Court and stated that in the month of August, 2013, (he did not remember the date as being illiterate) the appellant was sitting in the stairs and was smoking *bidi*. Thereafter, he went to the house of the other son at Laxmi Park and on returning, he did not find the appellant there. He asked his grandson Sanjay about the appellant, but he was unaware. Thereafter, Sanjay went upstairs at the first floor for answering nature's call, when Sanjay noticed foul smell at the first floor and blood coming out from underneath the door. Sanjay then disclosed this fact to him, on which, he asked Sanjay to call at number 100. Thereafter, he was declared hostile and in his cross-examination, he stated that there was only one toilet

at the first floor and that is why Sanjay had gone to the first floor for urination. He also stated that he had never seen any quarrel between the deceased and the appellant.

10. Narender Kumar (PW-8) stated that H.No.178 belongs to his wife and that the second floor of the said house was given on rent to Kartar Kaur who was residing there with her two sons. He stated that on 24th August, 2013, he went to SGM Hospital alongwith Kartar Kaur and identified the dead body of the deceased. In his cross-examination, he stated that there was no dispute between the appellant and the deceased.

11. Kartar Kaur (PW-10) identified the appellant in the Court and stated that the appellant was her elder son and deceased, the younger son. She was residing with both her sons at H.No.F-178, Laxmi Park, Nihal Vihar on rent. She stated that 12-13 days prior to 13th July, 2013, she had gone to Punjab for some works leaving behind her sons at the said house. She stated that on 23rd August, 2013, she received a phone call from police official that dead body of a Sikh person was found lying inside the rented room, upon which, she came back to Delhi. On coming back, she found that her fridge, cooler, T.V. and washing machine were missing and she did not find any clue about the appellant as well. On 24th August, 2013, she alongwith the police officials reached SGM Hospital at Mangolpuri, where she identified the body of her son/deceased Rajender @ Vicky, and after the postmortem, the dead body was handed over to her. She also identified the articles missing from her house i.e. T.V., fridge, washing machine and cooler. In her cross-examination, she stated that she came back to Delhi after two days of receiving the information from the police.

12. Veerpal (PW-1) stated that he was running an electronics shop at Nihal Vihar and that he identified the card of Balaji Enterprise and four receipts of Aditya Enterprise as issued by him. He stated that the said receipts were issued in lieu of the payment received by him pertaining to the loan amount given to Smt. Kartar Kaur as she had purchased fridge from his shop on installments.

13. Hari Shankar (PW-7) identified the appellant in the Court and stated that the appellant came to his shop and brought one fridge, cooler, T.V. and washing machine loaded in a cycle-rickshaw to his shop and demanded ₹4,000/- in lieu of mortgage of the said articles. He provided the appellant with ₹1,000/- and the appellant asked him to provide the remaining ₹3,000/- within two-three days. The appellant gave a receipt in writing on a paper and affixed his thumb impression alongwith one card of Balaji Finance and four receipts of Aditya Enterprise to him which were kept by him alongwith the goods mentioned. He stated to have known the appellant for about two-three months prior to the incident as the appellant used to go to Gurudwara and sometimes used to purchase some sundry goods from his shop.

14. Sh. Purshotam Pathak (PW-20) deposed that he was posted as Metropolitan Magistrate (West), Tis Hazari and that on 26th August, 2013, the appellant was produced before him and his presence, his specimen handwritings S-1, S-2, S-3, S-4 and S-5 and specimen thumb impression ST-1 (Ex. PW-20/B-G) were taken by the I.O.

15. Insp. Pramendra Singh (PW-28) stated that he reached the spot vide DD No.31A (Ex. PW-24/A) where he found SI Sugriv, Ct. Jai Kishore, HC Rakesh and two public persons namely, Bhagwat Prashad and Sanjay. He inspected the spot and found one dead body inside the room in a pool of

blood and the blood had also come out from the room. On inspection, stab wound was found on the chest of the body. The body was sent to the SGM Hospital through Ct. Jai Kishore. He seized the broken lock (Ex. PW-15/A), blood (Ex. PW-15/B), blood-stained earth control (Ex. PW-23/C), earth control without blood (Ex. PW-23/B), clothes covering the dead body (Ex. PW-23/D) and one wine quarter bottle without cap (Ex. PW-23/E). He prepared the rough site plan (Ex. PW-28/A). On the next day, the postmortem was got conducted and thereafter, the dead body was handed over to Smt. Kartar Kaur. On 25th August, 2013, on the basis of the secret information, the appellant was arrested near the *Ganda Nalla* at Nihal Vihar at the instance of the informer. After interrogation, the appellant was arrested (Ex. PW-18/A) and from his personal search (Ex. PW-18/B), one key having words 'special' on one side and 'India' on the other side was recovered from his right side pocket. The disclosure statement (Ex. PW-18/D) was recorded and thereafter, the appellant got recovered one knife by which injury was inflicted on the deceased. The appellant led the police to H.No.F-178, Laxmi Park and from the roof of the toilet, got recovered one knife having blood stain, and the same was seized (Ex. PW-18/E). Furthermore, the appellant disclosed to have pledged four items i.e. washing machine make-Onida, one fridge make-Haier, one T.V. make –TLC and one cooler, to Hari Shankar and led them to Hari Shankar's shop. He seized the aforementioned articles (Ex. PW-7/C) alongwith one card issued by Balaji Finance in the name of Kartar Kaur (Ex. PW-1/A) and four receipts issued by Aditya Enterprise in the name of Kartar Kaur (Ex. PW-1/B-E) as also one handwritten document having signature and thumb impression of appellant (Ex. PW-7/A). On 26th August, 2013, the appellant was produced before the court of learned MM

where specimen handwriting and thumb impression of the appellant was taken before the court. Scaled site plan was got prepared through SI Mahesh, CDRs of Sanjay were collected and exhibits were sent through FSL. In his cross-examination, he stated that there were three rooms on the first floor of the said house and that the front of the house is on the East side, while the dead body was found in a room situated on the West side of the house and the door of the room opens on the East direction.

16. SI Sugriv (PW-23) stated that on 23rd August, 2013, he received DD No.27A upon which, he alongwith Ct. Jai Kishore reached at H.No.F-178, near C.R. Saini Public School, Nihal Vihar where the caller Sanjay Kumar met him. They went to the first floor of the said house and the room was found locked with a lock hanging on the door. Foul smell was coming from inside the room and the blood coming outside the room from underneath the door. He directed Ct. Jai Kishore to break the lock, which was so broken by a brick. He alongwith Ct. Jai Kishore and Sanjay went inside the room where one bed was lying and some clothes were lying on the side of the bed. He noticed something under the clothes and on removing the clothes, dead body of one Sardar was found lying. He noticed wound on the chest of the dead body and blood oozing out from the said wound. The head of the body was in South direction and the legs in the North direction and decomposition of the body had started. He informed the crime team and sent the body to mortuary at SGM Hospital. He prepared the *rukka* (Ex. PW-23/A) which was handed over to HC Rakesh for registration of the FIR. Further, investigation was handed over to Insp. Pramendra Singh. In his cross-examination, he stated that the caller Sanjay did not disclose the name of the assailant and the manner of the incident.

17. SI Amrender Kumar (PW-3) stated that on 23rd August, 2013, he was posted as Incharge of the mobile crime team at West District and on reaching the spot, he found dead body of a Sikh person lying on the floor and also found two-three empty wine quarter lying near the dead body. There were injury marks on the chest of the deceased and blood was found scattered there. He stated that no chance prints were found from the articles lying at the spot.

18. Dr. Sarabjeet Singh (PW-26) conducted the DNA examination, as per which, he opined that the blood found on the knife recovered, matched with that of the deceased. In his cross-examination, he stated that none of the exhibits supplied to him pertain to the blood sample of the appellant.

19. Jitender Kumar (PW-27) deposed that on chemical examination (Ex. PW-27/A), exhibits of deceased were found to contain ethyl alcohol and blood (Ex.1C) was found to contain ethyl alcohol 191.8 mg/100 ml of blood.

20. In his statement under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), the appellant stated that his mother Kartar Kaur was residing at H.No.F-178, Laxmi Park, Nihal Vihar and that about 20-25 days before 23rd August, 2013 his mother had gone to Punjab for some work leaving behind him and the deceased. He stated that the present case was a blind case pending before the police and under the pressure of the higher official and in order to save the case, he was falsely implicated. He stated that he was innocent.

21. From the analysis of the evidence, it is evident from the testimony of Smt.Kartar Kaur that at the time of alleged incident she had gone to Punjab, leaving behind the appellant and the deceased at the tenanted room. This fact that Kartar Kaur had gone to Punjab was also confirmed by Bhagwat

Prasad (PW-2) as also by the appellant in his statement under Section 313 Cr.P.C. Further, it is evident that in the absence of Kartar Kaur, her two sons, i.e. the deceased and the appellant, were in occupation of the tenanted room. Further from the personal search of the appellant (Ex.PW-18/B), one key was recovered from his right pocket and as per the FSL report (Ex.PX) the lock recovered from the room could not be operated due to its deformed condition, however, the lever mechanism of the said lock was found operational by the said key. Thus, this sufficiently establishes that the appellant was not only in possession of the tenanted room along with the deceased but also in possession of the key of the lock on the door of the tenanted premises, where the dead body of his brother/ deceased was found.

22. Furthermore, after the offence, the appellant was not found at the tenanted room. When the police reached the spot appellant was not present. Bhagwat Prashad (PW-2) in his examination in chief only stated that he saw the appellant smoking *bidi* at the staircase on the day Sanjay (PW-15) found foul smell and blood coming from the tenanted room. He, however, was not clear of the date. But no explanation whatsoever was given by the appellant about his whereabouts during the alleged period. Even from the testimony of Kartar Kaur (PW-10) it is evident that after she returned from Punjab, she could not find the appellant. Thus, the appellant's conduct of abscondence from the rented room where he was residing is an additional link in the chain of circumstances against the appellant.

23. As per the testimony of Kartar Kaur (PW-10) certain articles from her tenanted premises were also missing i.e. the washing machine, cooler, TV and fridge. These missing articles were purchased by her from the shop of Veer Pal (PW-1) who testified about the same and identified the receipts

issued by him to Kartar Kaur. Those goods were recovered from the shop of Hari Shankar (PW-7) at the instance of the appellant after his arrest, seized by the Police and were identified by Kartar Kaur before the Court. Furthermore, Hari Shankar identified the appellant in the Court as the person who had pledged those articles with him and categorically stated that the appellant had brought those appliances with him in a cycle rickshaw and demanded ₹4000/- in lieu of the mortgage. Hari Shankar also stated that the appellant also gave a hand-written receipt to him and the said hand written receipt was proved to be in appellant's handwriting by the handwriting expert Anurag Sharma (PW-25) who tallied the writing on the said receipt with the specimen hand-writing of the appellant vide his report (Ex.PW-25/A).

24. Contention on behalf of the appellant that the knife was recovered from an open place accessible to all and thus cannot be relied upon does not find merit as the said knife was recovered from the roof of the toilet on the first floor of the said house which roof was not accessible to all. There were no stairs connecting the first floor of the house to the roof of the toilet and thus the said roof was not an area commonly accessed by the inhabitants of the house.

25. Further, from the post-mortem report (Ex.PW-16/A) and the subsequent opinion (Ex.PW-16/B) of the Doctor, the stab wound inflicted on the deceased was opined to be possible with the knife recovered at the instance of the appellant. Even as per the DNA report Ex.PW-26/C, the blood found on the recovered knife tallied with that of the deceased. Learned counsel for the appellant had contended that pursuant to the recovery of knife, the same was first sent to the post-mortem doctor for

subsequent opinion and thereafter to the FSL, thus the sanctity of blood on the knife was not maintained. We do not find merit in this contention as opinion of both the experts was required to be taken by the investigating officer. Further, the post-mortem doctor received the parcel containing knife in a sealed condition and after examining the same, the knife was resealed to be sent to FSL for opinion. As per the report, seals at the FSL were found intact. Hence, sanctity of the weapon of offence has not been destroyed by sending the same to the post-mortem expert in the first instance.

26. In order to attract Clause *thirdly* to Section 300 IPC, following ingredients must be established as laid down in the case of 1958 SCR 1495 Virsa Singh v. State of Punjab:

“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.”

27. Reference is also required to be made to the decision of Hon’ble Supreme Court in (1991) 2 SCC 32 Jai Prakash v. State (Delhi Admn.), wherein it was observed:

“18. In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only to assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result. It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result. We may point out that we are not concerned with the intention to cause death in which case it will be a murder simpliciter unless exception is attracted. We are concerned under Clause Thirdly with the intention to cause that particular injury which is a subjective inquiry and when once such intention is established and if the intended injury is found objectively to be sufficient in the ordinary course of nature to cause death, Clause Thirdly is attracted and it would be murder unless one of the exceptions to Section 300 is attracted. If on the other hand this ingredient of ‘intention’ is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that Clause Thirdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC.”

28. Thus, if in a case of clause *thirdly* to Section 300 IPC, where a bodily injury is established, and nature of injury is found to be sufficient to cause death, but ‘intention’ is not established or a reasonable doubt exists, then it would be reasonable to infer that clause *thirdly* is not attracted and that the accused must be attributed the ‘knowledge’ that by inflicting such a blow/

injury, he was likely to cause death and the same would be punishable under Section 304 Part-II IPC.

29. In the present case, a stab injury was inflicted on the deceased and as per the post mortem report, the same was found to be sufficient in ordinary nature to cause death. The dead body was found in a locked tenanted room which was in occupation of the appellant and the deceased, and the key of the lock was recovered from the personal search of the appellant and these facts cumulatively shifts the onus on the appellant in terms of Section 106 of the Indian Evidence Act, 1872, which the appellant failed to discharge. Thus, the fact of infliction of stab injury on the deceased can safely be attributed to the appellant. However, there is nothing on record to show that there was any previous enmity between the appellant and the deceased rather PW-2 and PW-8 have deposed to the contrary that they had never seen any quarrel/ dispute between the two brothers. Even the mother of the appellant and the deceased did not whisper anything about any dispute/ quarrel between the two brothers. Furthermore, no motive was brought on record by the prosecution and thus it can be concluded that there was no 'intention' on the part of the appellant to murder his brother/ deceased, and at best, only knowledge that the injury inflicted was likely to cause death can be attributed on the appellant. Hon'ble Supreme Court in the decision reported as (1984) 2 SCC 133 Tholan v. State of T.N., observed:

“12. It is equally not in dispute that appellant gave only one blow with a knife. Appellant had no quarrel or dispute with deceased Sampat. It is not shown that deceased Sampat had anything to do with the chit organised by K.G. Rajan. No malice has been alleged to have been entertained by the accused towards deceased Sampat. The incident occurred on the spur of the moment. It appears that the house of the

deceased Sampat was somewhere near the house in which the organisers or at least one of them was residing. Appellant had his dispute and grievance with the organisers of the chit. It is the prosecution case that accused abused organisers of the chit. Deceased Sampat is not shown to be the organiser of the chit. Probably when the deceased Sampat told the accused not to misbehave in the presence of ladies and not to use vulgar and filthy language, the appellant retorted by questioning the authority of Sampat to ask him to leave the place. Presence of Sampat is wholly accidental. Altercation with Sampat was on the spur of the moment, even the meeting was accidental. There arose a situation in which appellant probably misguided by his own egocentric nature objected as to why Sampat should ask him to leave the place and in this background he gave one blow with a knife which landed on the right side chest of the deceased, which has proved fatal. Could the appellant be said to have committed murder? In other words, whether Part I or Part III of Section 300 IPC would be attracted in the facts of this case. Even Mr Rangam learned counsel for the State of Tamil Nadu could not very seriously contend that the appellant intended to commit murder of Sampat. His submission was that at any rate appellant, when he wielded a weapon like a knife and gave a blow on the chest, a vital part of the body, must have intended to cause that particular injury and this injury is objectively found by the medical evidence to be fatal and therefore Part III of Section 300 would be attracted. On this aspect, the decisions are legion and it is not necessary to recapitulate them here merely to cover idle parade of familiar knowledge. One can profitably refer to Jagrup Singh v. State of Haryana [(1981) 3 SCC 616 : 1981 SCC (Cri) 768 : AIR 1981 SC 1552 : 1981 Cri LJ 1136] , Randhir Singh v. State of Punjab [(1981) 4 SCC 484 : 1981 SCC (Cri) 856 : AIR 1982 SC 55] , Kulwant Rai v. State of Punjab [(1981) 4 SCC 245 : 1981 SCC (Cri) 826 : AIR 1982 SC 126] and Hari Ram v. State of Haryana [(1983) 1 SCC 193 : 1983 SCC (Cri) 159 : AIR 1983 SC 185 : 1983 Cri LJ 346] . To this list two more cases can be added : Jagtar Singh v. State of Punjab [(1983) 2 SCC 342 : 1983 SCC (Cri)

459] and Ram Sunder v. State of U.P. [Criminal Appeal No. 555/83, decided on October 24, 1983] Having regard to the ratio of each of these decisions, we are satisfied that even if Exception I is not attracted, the requisite intention cannot be attributed to the appellant. But in the circumstances herein discussed he wielded a weapon like a knife and therefore he can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. In such a situation, he would be guilty of committing an offence under Section 304 Part II of the Penal Code, 1860. Having regard to the circumstances of the case, a sentence of 5 years would be quite adequate.”

30. Further, in the decision cited as (1981) 4 SCC 245 Kulwant Rai v. State of Punjab, it was held:

“2. We have gone through the judgment of the learned Sessions Judge who has summed up the circumstances in which the offence came to be committed. The learned Judge found that the accused at the time of the offence was aged about 20 years The offence was committed without any premeditation. The learned Judge also found that there was no prior enmity. He also recorded that a short quarrel preceded the assault. All these would not have weighed with us, except the fact that only one blow was given with a dagger and the blow landed in the epigastrium area. The deceased succumbed to the injury. The learned Sessions Judge convicted the appellant for an offence under Section 302 Penal Code, 1860 and sentenced him to suffer imprisonment for life.

3. When the matter was before the High Court it was strenuously urged that in the circumstances of the case para 1 of Section 300 would not be attracted because it cannot be said that the accused had the intention to commit murder of the deceased. In fact, that is conceded. More often, a suggestion is made that the case would be covered by Para 3 of Section 300 of the Penal Code, 1860 in that not only the accused intended to inflict that particular injury but the injury intended to be inflicted was by objective medical test found to be sufficient in

the ordinary course of nature to cause death. The question is in the circumstance in which the offence came to be committed, could it ever be said that the accused intended to inflict that injury which proved to be fatal. To repeat, there was an altercation. There was no premeditation. It was something like hit and run. In such a case, Para 3 of Section 300 would not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the circumstances herein discussed, it would appear that the accused inflicted an injury which he knew to be likely to cause death and the case would accordingly fall under Section 304 Part II, Penal Code, 1860.

31. Consequently, the conviction of the appellant is modified to one from offence punishable under Section 302 IPC to one under Section 304 IPC.

32. As per the Nominal Roll dated 14th October, 2022, the appellant had undergone a period of 10 years 02 months and 16 days including remissions, and thus, the sentence of the appellant is modified to the period already undergone.

33. Appeal is accordingly disposed of.

34. Appellant is directed to be released forthwith if not required in any other case.

35. Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record, intimation to the appellant and necessary action.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JANUARY 17, 2023/ck