



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.525 OF 2020

Rohit s/o Balaji Waghmare,
Age : 22 years, Occu.: Labour,
R/o.: Harangul (Bk), Latur
District : Latur

.... APPELLANT
(Orig. Accused No.1)

VERSUS

The State of Maharashtra
Through : Police Inspector,
MIDC Latur Police Station,
Latur, District : Latur

.... RESPONDENT

....
Mr. P. P. More, Advocate for Appellant
Mr. A. V. Lavte, APP for Respondent-State

....
WITH
CRIMINAL APPEAL NO.463 OF 2020

Pawan s/o Deelip Sarwade
s/o. Late Deelip Dyanoba Sarwade,
Age : 22 years, Occu.: Student
R/o.: Harangul (Bk), Latur
District : Latur

.... APPELLANT
(Orig. Accused No.2)

VERSUS

The State of Maharashtra
Through : Police Inspector,
Investigating Officer,
MIDC Latur Police Station,
Latur, Taluka & District : Latur

.... RESPONDENT

....
Mr. A. D. Ostwal, Advocate for Appellant
Mr. A. V. Lavte, APP for Respondent-State
....

**WITH
CRIMINAL APPEAL NO.449 OF 2020**

Alim @ Mangal s/o Fattulal Sayyad,
Age : 28 years, Occu.: Driver,
R/o.: Harangul (Bk, Latur
District : Latur

.... APPELLANT
(Orig. Accused No.3)

VERSUS

The State of Maharashtra
Through : P.S.I.
MIDC Latur Police Station,
Latur, District : Latur

.... RESPONDENT

....

Mr. Prakashsingh B. Patil, Advocate for Appellant
Mr. A. V. Lavte, APP for Respondent-State

....

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

RESERVED ON : 23/09/2025

PRONOUNCED ON : 17/12/2025

JUDGMENT : (Per : Sandipkumar C. More, J.)

1. All these appeals have been filed by original accused No.1- Rohit Balaji Waghmare, accused No.2- Pawan Deelip Sarwade, and accused No.3- Alim @ Mangal s/o Fattulal Sayyad, respectively, against the common judgment and order dated 24/06/2020 passed by the learned Sessions Judge, Latur (hereinafter referred to as “the learned trial Judge”) in Sessions Case No. 26 of 2018. By the impugned judgment, all the appellants have been convicted for the

offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, "IPC") and sentenced to suffer life imprisonment and to pay a fine of Rs. 2,000/- each, with a default clause. However, the appellants have been acquitted of the charge under Section 504 read with Section 34 of the IPC.

2. According to the prosecution, the incident took place on the road from Harangul Railway Station to Harangul (Bk), in front of the pan stall of Sunil Dnyanoba Boke (PW-3), situated opposite to Akshay Beer Bar and Pravin Beer Bar. On 29/01/2018, Prameshwar Baburao Lakhadive (the deceased) had gone to Akshay Beer Bar to consume liquor. All the appellants–accused were also present in the said bar, consuming liquor on another table. An altercation then ensued between Prameshwar and the appellants–accused. Under the influence of alcohol, the appellants–accused abused and assaulted Prameshwar inside the bar. However, the owner of the bar, Sandip Bhandari (PW-7), intervened, resolved the dispute and expelled both parties from the bar at about 9.15 p.m.

Thereafter, Prameshwar went to the pan shop of Sunil Boke (PW-3), but the appellants–accused followed him. They again abused and assaulted him. The appellant–accused Pawan pushed

Prameshwar to the ground, while appellant-accused Rohit inflicted a knife blow on his left thigh. Due to this blow, Prameshwar sustained a bleeding injury and could not stand on his own. The appellants-accused then left the spot. Prameshwar borrowed the mobile phone of Sunil Boke (PW-3) and contacted his brother-in-law, Subhash Manohar Siddheshware (PW-1), who is the informant in this case. Prameshwar narrated the incident to Subhash and called him to the spot. Accordingly, Subhash (PW-1) arrived there and found Prameshwar lying in a pool of blood. With the help of Sunil Boke (PW-3) and the owner of the adjoining Pravin Bar, he initially made Prameshwar to sit on his motorcycle and started proceeding towards the Government Hospital, Latur. However, due to the severity of the injury, Prameshwar was unable to sit properly on the motorcycle and therefore Subhash (PW-1) shifted him into an autorickshaw and took him to the Government Hospital. Prameshwar was admitted to the hospital, but during treatment he succumbed to his injury at about 12.10 a.m. on 30/01/2018. On the report of Subhash (PW-1), MIDC Police Station, Latur registered Crime No.39 of 2018 against all the appellants-accused for the offences punishable under Sections 302 and 504 read with Section 34 of the IPC. The Investigating Officer carried out the investigation

and filed a charge-sheet against the appellants—accused for the aforesaid offences.

The learned trial Judge thereafter conducted the trial by examining 14 witnesses and ultimately convicted the appellants as mentioned above.

3. Learned counsel Mr. P. P. More, appearing for the appellant—accused Rohit, submitted that the present case is based solely on the alleged oral dying declaration, as Sandip Bhandari (PW-7) is eye-witness only to the initial incident that took place inside Akshay Beer Bar, which pertains only to an altercation between the deceased and the accused. He pointed out that though the prosecution examined the informant Subhash (PW-1); Yogesh (PW-5), the son of the deceased; and Meena (PW-6) and Shakuntala (PW-13), the sisters of the deceased, on the point of the oral dying declaration, but all these witnesses are close relatives of the deceased. Therefore, being interested witnesses, their evidence should not, by itself, form the basis of conviction.

4. Learned counsel Mr. P. P. More further submitted that while Yogesh (PW-5) stated that Prameshwar died at around midnight, Mahesh Prakash Giram (PW-4), an inquest panch, stated that

Prameshwar was already dead at 10.00 p.m. According to him, the prosecution story regarding the incident inside Akshay Beer Bar is concocted, as there was no reason for any quarrel between the deceased and the appellants–accused. He pointed out that the Medical Officer, Dr. Mahesh Ambadas Giri (PW-10), admitted in cross-examination that excessive bleeding led to the death of Prameshwar and further stated that the injury was not on a vital part of the body. Thus, the prosecution has failed to establish the guilt of appellant–accused Rohit beyond reasonable doubt. He also argued that the prosecution made no effort to obtain the CDR regarding the telephonic conversation between the deceased and Subhash Siddheshware (PW-1) immediately after the assault.

5. Learned counsel Mr. P. P. More further highlighted discrepancies in the timings mentioned by Meena (PW-6) and Shakuntala (PW-13) regarding the alleged oral dying declaration. According to Yogesh (PW-5), Meena (PW-6) and Shakuntala (PW-13), the dying declaration was made to them before the deceased was admitted to the hospital, whereas Subhash (PW-1) stated that the deceased was first admitted to the hospital and thereafter made the dying declaration. Lastly, he expressed doubts regarding the disclosure statement and the recovery panchanama, contending

that the alleged recovery was effected from an open place. He has also relied upon following judgments:

- A) *Hare Ram Yadav vs. State of Bihar, 2024 DGLS(SC) 1224;***
- B) *Laughanbhai Devjibhai Vasav vs. State of Gujrat, 2018 DGLS(SC) 438 and***
- C) *Khuman Singh vs. State of Madhya Pradesh, 2019 DGLS(SC) 1122.***

6. Learned counsel Mr. A. D. Ostwal for the appellant–accused Pawan submitted that the prosecution has not brought on record any reason for the scuffle between the deceased and the accused inside Akshay Beer Bar. Moreover, there was no prior enmity between them. In the alternative, he submitted that even if the prosecution case is accepted in its entirety, the role attributed to accused No.2 – Pawan is confined to merely pushing the deceased to the ground, which, at the most, would attract an offence under Section 323 of the IPC. He specifically pointed out that even if accused Pawan is held guilty for such an offence, he has already undergone three years of imprisonment in the present case. In these circumstances, no further sentence can be imposed on accused Pawan even if he is convicted for the act of merely pushing the deceased. He has also relied on following judgments:

- A) *Barendra Kumar Ghosh vs. Emperor, AIR 1925 Privy Council 1;***
- B) *Mahbub Shah vs. Emperor, AIR 1945 Privy Council 118;***
- C) *Shivalingappa Kallayana and others vs. State of Karnataka, AIR 1995 SC 254;***
- D) *Pandurang and others vs. State of Hyderabad, AIR 1955 SC 216;***
- E) *Kripal and others vs. State of Uttar Pradesh, AIR 1954 SC 706;***
- F) *Ramashish Yadav and others vs. State of Bihar, AIR 1999 SC 3830;***
- G) *Nirmal Singh and others vs. State, 2011 Cri.L.J. 2258;***
- H) *Idrish Bhai Daudbhai vs. State of Gujrat, AIR 2005 SC 1067;***
- I) *State of Uttar Pradesh vs. Rajvir, (2007) 15 SC 545;***
- J) *Rohtas and another vs. State of Haryana, 2020 SCC OnLine SC 1014;***
- K) *Shri Kishan and others vs. State of U. P., (1972) 2 SCC 537 &***
- L) *Chellappa vs. State, Through the Inspector of Police, (2020) 5 SCC 160 .***

7. Similarly, learned counsel for accused No.3, Alim @ Mangal, submitted that there is not a single allegation against him in the prosecution case, either regarding the incident inside Akshay Beer Bar or the incident that occurred in front of the pan stall of Sunil Boke (PW-3). He pointed out that none of the witnesses has

attributed any role to Alim @ Mangal in the incident that took place near the pan stall. Accordingly, he requested for clearcut acquittal of the appellant–accused Alim @ Mangal by pointing out that he has remained in jail for about three years without any reason.

8. On the contrary, the learned APP strongly opposed the submissions advanced on behalf of the appellant–accused by their respective learned counsel and supported the impugned judgment. According to him, the death was certainly homicidal, since the first injury that caused the death was so deep that it penetrated the urinary bladder of the deceased. Further, the Medical Officer, Mr. Mahesh Giri (PW-10), who conducted the post-mortem examination on the dead body of the deceased, confirmed that the knife recovered at the instance of accused No.1 – Rohit was capable of causing such an injury. He pointed out that after the initial incident in the bar, there was a meeting of minds among all three appellants–accused, which resulted in the assault on the deceased. The learned APP further submitted that the presence of accused Nos. 2 and 3 clearly indicates that they too acted in furtherance of their common intention and therefore the learned trial Judge rightly convicted them of the offence of murder with the aid of Section 34 of the IPC, irrespective of their individual roles in the

incident. He further pointed out that the informant Subhash (PW-1); Yogesh (PW-5), his son; Meena (PW-6), the sister of the deceased; and Shankuntala (PW-13), another sister of the deceased and the wife of the informant, have consistently deposed regarding the oral dying declaration made by the deceased, wherein he stated about the assault committed by all three appellants–accused. The learned APP also submitted that the clothes of the accused were found to be stained with human blood and the accused offered no plausible explanation as to how their clothes came were stained. He emphasized that there was no lacuna in the investigation and that the guilt of all the appellants–accused has been established beyond reasonable doubt. He therefore prayed for dismissal of all three appeals. He has also placed reliance on the following judgments:

- A) Mathu Kutty and another vs. State by Inspector of Police, Tamil Nadu, 2004 aIR SCW 7396;**
- B) Varikuppal Srinivas vs. State of A. P., AIR 2009 SC 1487;**
- C) Vijay Pal vs. State (GNCT) of Delhi, 2015 CRI.L.J. 2041 &**
- D) Ramaswami Ayyangar and others vs. State of T. N., 1976 CRI.L.J. 1563.**

9. Heard the rival submissions and also perused the entire oral and documentary evidence on record, along with the record and proceedings of the original Sessions Case.

10. On going through the entire material on record, it is evident that the prosecution case rests upon the evidence of the eye-witnesses, the witnesses before whom the deceased made an oral dying declaration, the recovery panch before whom appellant–accused Rohit made a disclosure statement and produced the murder weapon and lastly, the medical and scientific evidence. Therefore, let us now proceed to scrutinize the evidence of the prosecution witnesses.

11. Sandip Bhandari (PW-7) is the owner of Akshay Beer Bar, where the first incident of assault occurred inside the bar premises. According to his evidence, all three appellants–accused entered the bar between 8:00 p.m. and 9:00 p.m. on 29/01/2018. Thereafter, Prameshwar (the deceased) also entered the bar. Appellant–accused No.1 demanded liquor, assuring that he would make payment later and for that purpose even deposited his mobile phone with the witness. Liquor was then served to the appellants–accused, while Prameshwar, who was seated at another table, also

consumed liquor and paid for it. After some time, a quarrel ensued between the deceased Prameshwar and the appellants–accused. Consequently, Prameshwar shifted to another table near Sandip Bhandari (PW-7). Accused No.1 – Rohit then assaulted Prameshwar with a chair, but Sandip (PW-7) intervened, separated them and expelled the accused and Prameshwar from the bar. The testimony of Sandip (PW-7) has remained unshaken even in cross-examination. Thus, the evidence of Sandip (PW-7) clearly establishes that altercations took place between the appellants–accused and the deceased inside Akshay Beer Bar. His testimony is corroborated by the evidence of Ashok Navnath Mali (PW-14), who proved that a Motorola mobile phone was recovered from the custody of Sandip (PW-7) under panchnama (Exh. 51), indicating that the said phone had been handed over to him by accused No.1 while demanding liquor.

12. It is the case of the prosecution that after coming out of Akshay Beer Bar, the deceased went to the pan stall of Sunil (PW-3), where the incident occurred and it was allegedly witnessed by him. It appears that he has not supported the prosecution case regarding having actually witnessed the assault. Nevertheless, the facts that Prameshwar, in an injured condition, sought his help for

hospitalization and that the deceased used his phone to call the informant–Subhash (PW-1) from the spot of the incident, are established through this witness. In cross-examination, Sunil Boke (PW-3) also admitted that the accused persons were residents of his village, Harangul and that Prameshwar had called the informant using his mobile phone. He further admitted that with his help and with the help of the owner of Pravin Beer Bar, the injured Prameshwar was lifted and placed on a motorcycle. It is now well settled that even if a witness turns hostile, the portion of his evidence which supports the case of the prosecution is admissible, provided it is corroborated by other reliable evidence. Therefore, though the evidence of this witness, Sunil, is not sufficient to establish that all the appellants–accused caused the death of Prameshwar by assaulting him with a knife in furtherance of their common intention, it certainly establishes that the deceased sustained a knife injury and was taken to the hospital with his help.

13. Now we come to the evidence of witnesses in respect of the oral dying declaration made by the deceased as to how he sustained the injuries. For this purpose, the evidence of Subhash (PW-1), the informant; Yogesh (PW-5); Meena (PW-6); and

Shakuntala (PW-13) is vital. Admittedly, all these witnesses are close relatives of the deceased and therefore, their evidence is required to be scrutinized with great caution.

14. It is the case of the prosecution that, upon receiving information from the deceased through the phone of Sunil (PW-3), Subhash (PW-1) rushed to the spot and found the deceased in an injured condition. As per his evidence, the deceased told him how all the appellants–accused had assaulted him and that appellant–accused No.1, Rohit, stabbed him on the thigh with a knife. The evidence of Yogesh (PW-5), the son of the informant, also indicates that on the day of the incident at about 9.30 p.m., his mother informed him that the deceased had been assaulted in front of Pravin Beer Bar. He has deposed that he went to the scene of the incident along with his mother on a motorcycle and met Sunil (PW-3) there, who informed him that the deceased had been taken to the hospital. Thereafter, upon reaching the hospital, the deceased, who was his maternal uncle, narrated to him the incident, stating how the appellants–accused had abused and assaulted him initially at Akshay Bar and how accused No.1 subsequently assaulted him on his left thigh with a knife in front of the pan stall of Sunil (PW-3). Nothing material has been elicited in his cross-

examination. Likewise, Meena (PW-6), the sister of the deceased, has stated that the deceased Prameshwar told her about the assault by the appellants–accused and the stabbing inflicted by accused No.1, Rohit. Shakuntala (PW-13) has also deposed on similar lines. Though there are minor contradictions in the evidence of these witnesses, all of them are consistent on the material point that the deceased narrated the incident which took place at Akshay Bar and the subsequent assault on him by accused No.1, Rohit, with a knife. It is the case of the prosecution that accused No.1, Rohit, inflicted a knife blow on the left thigh of the deceased. Significantly, all these witnesses have consistently stated that the deceased disclosed the involvement of all three appellants–accused in causing him grievous injury.

15. It is also to be noted that the learned APP has relied upon various judgments referred to hereinabove and the sum and substance of the judgments in **Mathu Kutty and Another and Varikuppall Srinivas** (*supra*) is that a dying declaration, if found to be coherent, consistent and trustworthy, can form the sole basis of conviction even in the absence of corroboration. Therefore, the evidence of all these witnesses with regard to the oral dying declaration appears to be trustworthy and reliable.

16. So far as the injury sustained by the deceased is concerned, the evidence of Dr. Mahesh Giri (PW-10) is of vital importance, as he performed the post-mortem examination on the dead body of the deceased. According to this witness, there was only one stab injury on the left thigh in the inguinal region, having one end sharp and the other blunt, directed downwards, backwards and medially, measuring 4 cm × 2 cm. He further stated that the said injury was cavity deep, with a collection of about 700 ml of blood and clots in the cavity. This witness has clearly opined that the cause of death of the deceased was hemorrhagic shock resulting from the aforesaid stab injury. Therefore, the prosecution has conclusively established that Prameshwar died a homicidal death.

17. The evidence of Gulab Yadav (PW-2), who is the panch witness to the spot panchnama and the recovery, indicates that accused Rohit made a disclosure statement and thereafter produced the knife. Though the learned counsel for the appellants objected to the said recovery on the ground that the knife was recovered from an open place and that the house contained a Muslim *peer* idol, suggesting that it was not the house of the accused's uncle, but merely on these grounds the recovery cannot be doubted, particularly when it is duly supported by the evidence

of the Investigating Officer. Further, the medical evidence led by Dr. Mahesh Giri (PW-10) also suggests that the stab injury sustained by the deceased was possible by the knife recovered at the instance of accused No.1, Rohit. The scientific evidence further supports the case of the prosecution, as human blood was found on the knife as well as on the clothes of the accused, indicating their proximity to the deceased at the time of the incident. The CA report on record has confirmed these facts. Therefore, upon an overall consideration of the evidence, we are of the opinion that there is no reason to disbelieve the oral dying declaration. Moreover, the recovery of the weapon of offence is duly established and human blood has also been found on the clothes of the appellants–accused. Thus, there appears to be no lacuna in the investigation, as contended by the learned counsel for the appellants–accused. However, the learned counsel for all the appellants–accused has raised serious doubts regarding the intention of the accused persons to commit the offence and their respective roles in the incident.

18. Learned counsel for accused No.2 vehemently argued that there was no prior enmity between the deceased and this accused and that no specific role is attributed to accused No.2, Pawan. He

further submitted that even in the second incident, the allegation against accused No.2, Pawan, is limited to the act of pushing the deceased to the ground and that it was accused No.1 who actually inflicted the knife blow. According to him, the act of pushing the deceased to the ground, at the most, would attract an offence under Section 323 of the IPC but certainly not the offence under Section 302 of the IPC in furtherance of common intention. He pointed out that except for the allegation of pushing the deceased, there is no material to show the involvement of accused No.2, Pawan, in the commission of the murder and yet he remained incarcerated for about three years despite such limited role. In support of his submissions, he heavily relied upon the judgment of the **Privy Council in Mahbub Shah v. Emperor**, wherein it has been held as follows:

“Common intention within the meaning of S. 34 implies a prearranged plan. To convict the accused an offence applying S.34 it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is no doubt difficult if not impossible to procure direct evidence to prove the intention of an individual. It has to be inferred from his act or conduct or other relevant circumstances of the case. Care must be taken not to confuse same or similar intention with common intention; the partition

which divide their bounds' is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice. The inference of common intention within the meaning of the term in S. 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case."

19. On the contrary, the learned APP also heavily relied on the judgment of the Hon'ble Apex Court in the case of **Ramaswami Ayyangar and others**, (supra), wherein following observation is made.

"Section 34 is to be read along with the preceding Section 33 which makes it clear that the 'act' spoken of in Section 34 includes a series of acts as a single act. The acts committed by different confederates in the criminal action may be different but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim or to otherwise facilitate the execution of the common design. Such a person also commits an 'act' as much as his co-participants."

Thus, the learned APP submitted that accused No.2, Pawan, was in fact present at the time of the first incident which took place

inside Akshay Bar, where a quarrel had occurred between the accused persons and the deceased. It was further submitted that thereafter all the accused followed the deceased outside the bar and that accused No.2, Pawan, pushed the deceased to the ground, thereby facilitating the knife blow inflicted by accused No.1, Rohit.

However, it is important to note that there is nothing on record to show that accused No.2, Pawan, had any knowledge that accused No.1, Rohit, was in possession of a knife. Admittedly, no knife was used during the first incident inside Akshay Bar, where only an altercation took place between the accused persons and the deceased. Though it is a fact that all three accused followed the deceased to the pan stall of Sunil (PW-3), even then there is nothing on record to indicate that accused No.2, Pawan, was aware that accused No.1, Rohit, was carrying a knife. The same holds true with respect to accused No.3, Alim.

20. Accused No.3, Alim neither participated in the incident inside Akshay Bar nor performed any overt act in the subsequent incident wherein the deceased was stabbed by accused No.1, Rohit. There is absolutely no evidence against accused No.3, Alim to suggest that he acted in furtherance of the common intention with the remaining accused.

21. Admittedly, the intention to commit a crime is hidden in the mind of the accused and is often difficult to establish by direct evidence. However, such intention can be inferred from the conduct and acts of the accused persons and as held by the **Privy Council**, the necessary inference regarding common intention under Section 34 of the IPC must be drawn from the facts and circumstances of each case. From the facts and evidence brought on record in the present case, it can be gathered that accused No.3, Alim, had no role either in assaulting the deceased or in stabbing him. So far as the role of accused No.2, Pawan, is concerned, his act was limited only to pushing the deceased to the ground in front of the pan stall of PW-3. Both of them appear to be unaware of the fact that accused No.1, Rohit, was armed with a knife. Therefore, considering all these facts, accused Nos.2 and 3 cannot be held liable for the murder of the deceased. Even if accused No.2, Pawan, is presumed to be guilty of an offence under Section 323 of the IPC, he has already remained in jail for about three years in the present case. Hence, his conviction even for the said offence would be unsustainable. Consequently, the acts attributed to accused No.2, Pawan, and accused No.3, Alim, do not fall within the purview of Section 34 of the IPC so as to connect them with the murder of the deceased.

22. Therefore, it has to be examined whether accused No.1, Rohit, alone can be held responsible for committing the offence under Section 302 of the IPC. We have already held earlier that the prosecution has established the involvement of the accused in the incident. Further, the oral dying declarations made by the deceased to the witnesses have clearly established that accused No.1, Rohit, inflicted a knife blow on the left thigh of the deceased, as a result of which the deceased, Prameshwar, died. The evidence of the Medical Officer also conclusively suggests that the death of Prameshwar was due to hemorrhagic shock caused by the stab injury.

23. However, learned counsel for accused No.1, Rohit, vehemently argued that though the prosecution has established that the death of the deceased was the result of the stab injury inflicted by accused No.1, Rohit, it was a case of a single blow and there was no prior enmity between accused No.1 and the deceased. According to him, the injury was not inflicted on a vital part of the body and the death of Prameshwar occurred due to excessive bleeding. Therefore, it cannot be said that accused No.1, Rohit, had the intention to cause the death of Prameshwar; at the most, it was an act intended to cause injury. It was further submitted that accused No.1 did not have the requisite knowledge, at the time of inflicting

the injury, that such injury would result in the death of Prameshwar. Thus, according to the learned counsel, the act of accused No.1 would not fall within the ambit of Section 302 of the IPC. In the alternative, it was submitted that since accused No.1, Rohit, has been behind bars from 2018 till date, his conviction under Section 302 of the IPC deserves to be altered to one under Section 304 Part II of the IPC.

In support of his submission, learned counsel relied upon the judgment of the Hon'ble Apex Court in ***Hare Ram Yadav v. State of Bihar*** (supra), wherein it was held that when an incident occurs on account of a quarrel arising out of a trivial issue and the appellant appears to have lost self-control and assaulted the deceased with a knife in the heat of passion, the appellant would be entitled to the benefit of the exception under Section 300 of the IPC. Consequently, the conviction of the appellant can be converted from Section 302 of the IPC to Section 304 Part II of the IPC. Similar observations have been made in ***Lavghanbhai Devjibhai Vasava v. State of Gujarat*** (supra), wherein the conviction of the appellant under Section 302 of the IPC was converted to one under Section 304 Part II of the IPC. In both these cases, it was held that the incident was the result of a sudden fight without premeditation and therefore, fell under Exception 4 to Section 300 of the IPC.

24. However, in the instant case, it appears that accused No.1, Rohit, was in fact aggressive in the earlier incident which took place inside Akshay Bar and thereafter, in the second incident, he stabbed the deceased on his left thigh with a knife. The prosecution has duly established the aforesaid acts of accused No.1, Rohit, which we have also confirmed. Further, the very act of following the deceased from Akshay Bar to the place in front of the pan stall of Sunil (PW-3) itself indicates that accused No.1, Rohit, was in the mood to teach a lesson to the deceased. It is pertinent to note that the Hon'ble Apex Court, in *Lavghanbhai Devjibhai Vasava v. State of Gujarat* (supra), has referred to its earlier decision in *Dhirendra Kumar @ Dhiroo v. State of Uttarakhand*; (2015) Supreme (3) 113, wherein certain parameters have been laid down to be taken into consideration while deciding the question as to whether a case falls under Section 302 of the IPC or Section 304 of the IPC. The said parameters are as follows:

- (a) *The circumstances in which the incident took place;*
- (b) *The nature of weapon used;*
- (c) *Whether the weapon was carried or was taken from the spot;*
- (d) *Whether the assault was aimed on vital part of body;*
- (e) *The amount of the force used;*
- (f) *Whether deceased participated in the sudden fight;*

- (g) Whether there was any previous enmity;*
- (h) Whether there was any sudden provocation;*
- (i) Whether the attack was in the heat of passion ; and*
- (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.*

25. To establish an offence under Section 302 of the IPC, intention plays a vital role. Since intention is always a hidden fact, it has to be gathered from the acts performed by the accused. The intention to commit murder can be inferred from the parameters referred to herein above. In the instant case, the assault by accused No.1, Rohit, was not on a vital part of the body such as the chest, abdomen or head. On the contrary, it is a case of a single stab injury, that too on the left thigh. In normal circumstances, injury on such place would not ordinarily lead to death. Though the case may not strictly fall under the category of an act without premeditation, but considering the place of injury, it does not, in all probabilities, indicate an intention on the part of accused No.1, Rohit, to cause the death of the deceased. Had accused No.1, Rohit, possessed such an intention, there would have been multiple blows or blows on the vital parts of the body. The presence of only one injury clearly indicates that his intention was, at the most, to inflict a knife injury upon the deceased, without the knowledge

that such injury would, in the ordinary course of nature, lead to the death of the deceased. Therefore, having regard to the definition of murder under Section 300 of the IPC, we are of the considered opinion that the criminal act committed by accused No.1, Rohit, would fall under Section 304 Part II of the IPC rather than Section 302 of the IPC.

26. Therefore, in view of the facts and circumstances stated above, we are of the opinion that the learned trial court has erred in convicting appellant–accused No.2, Pawan and appellant–accused No.3, Alim, for the offence under Section 302 of the IPC read with Section 34 of the IPC. Accordingly, their respective appeals, namely **Criminal Appeal No.463 of 2020 and Criminal Appeal No.449 of 2020**, are allowed. Their convictions under Section 302 read with Section 34 of the IPC in Sessions Case No.26 of 2018 are set aside and they are acquitted of the said offence. Their bail bonds stand cancelled and the fine amount if any, paid by the appellants shall be refunded to them.

However, the culpability of appellant No.1, Rohit, is maintained. His conviction under Section 302 read with Section 34 of the IPC is, however, converted to a conviction under Section 304 Part II of the IPC.

27. Appellant–accused No.1, Rohit, has already undergone imprisonment from 30/01/2018 till date. Therefore, we are of the opinion that his sentence be reduced to the period of imprisonment already undergone. Appellant–accused No.1, Rohit, shall be released forthwith, if he is not required in connection with any other case.

28. All the appeals are accordingly disposed of.

(MEHROZ K. PATHAN, J.) (SANDIPKUMAR C. MORE, J.)