



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.304 OF 2006

Abid Khan alias Baba s/o Majeed Khan Pathan,
aged about 23 years, occupation – labourer,
r/o village – Undri within Police Station
Amdapur, tahsil Chikhli, district Buldhana. **Appellant.**

:: VERSUS ::

The State of Maharashtra,
through Police Station Officer Amdapur,
district Buldhana. **Respondent.**

**Shri Aadil Anwar, Counsel and Mrs.Poonam Moon,
Advocate for the Appellant.**

**Shri Nikhil Joshi, Additional Public Prosecutor for the
State.**

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 22/09/2025

PRONOUNCED ON : 06/10/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellant (accused) has
challenged judgment and order dated 16.5.2006 passed

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by learned Additional Sessions Judge, Buldana (learned Judge of the trial court), in Sessions Trial No.79/2003.

2. By the said judgment impugned in the appeal, the accused is convicted for offence punishable under Section 302 of the IPC and sentenced to undergo imprisonment for life and to pay fine Rs.500/-, in default, to undergo rigorous imprisonment for three months.

3. Facts of the prosecution case in a nutshell are as under:

Santosh Sudhakar Tayade (the deceased) was auto-rickshaw driver. On 26.4.2003, at about 5:30 to 6:00 pm, there was altercation of words between him and the accused on account of act of the accused while shaking tobacco. The dust entered into the eyes of the deceased. During altercation of the words, the deceased was assaulted by the accused due to which he fell down,

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sustained injuries and succumbed to the injuries. As per the allegations, the accused assaulted the deceased by fists and kick blows. On the basis the said report, the police registered the crime against the accused and other two co-accused.

4. After registration of the crime, wheels of investigation started rotating. During the investigation, the investigating officer has drawn inquest panchanama, spot panchanama, seized clothes of the deceased as well as the accused, collected postmortem notes, forwarded incriminating articles to Chemical Analyzer, and after completion of the investigation, submitted chargesheet against the accused.

5. As the offence under Section 302 of the IPC was exclusively triable by the court of sessions, learned Magistrate committed the case to the Sessions Court. The

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Sessions Court framed charge vide Exh.13. The accused pleaded not guilty and claimed to be tried.

6. In support of the prosecution case, the prosecution examined in all 8 witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Suresh Bhaurao Nikalje, informant and eyewitness,	21
2	Gajanan Vishwanath Tonde, eyewitness,	24
3	Dr.Uddhay Nathuji Deokar, Medical Officer,	28
4	Eknath Kisan Gandhe, eyewitness,	29
5	Sahebrao Ramdhan Ingle, Police Head Constable,	32
6	Dr.Ganesh Baliram Rathod,	33
7	Shyam Murlidhar Yadav, eyewitness, and	36
8	Dattu Deoram Palve, Investigating Officer.	39

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7. Besides the oral evidence, the prosecution placed reliance on the report Exh.22, FIR Exh.23, postmortem notes Exh.34, inquest panchanama Exh.40, spot panchanama Exh.42, requisition to CA Exh.44, and CA Report Exh.45.

8. On the basis of the above evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt. All incriminating evidence is put to the accused in order to obtain his explanation regarding evidence appearing against him by recording his statement under Section 313 of the CrPC.

9. Learned Judge of the trial court appreciated the evidence and held that the accused has caused death of the deceased and thereby held him guilty of the offence under Section 302 of the IPC and sentenced him as the aforesaid.

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10. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused on the ground that the entire evidence reflects that during sudden fight and sudden quarrel, the deceased sustained injuries and succumbed to the injuries. There was no intention to cause death of the deceased. The subsequent act of the accused was not taken into consideration. The act of the accused covers under Exception-4 to Section 300 of the IPC and, therefore, the judgment impugned deserves to be quashed and set aside.

11. Heard learned counsel Shri Aadil Anwar for the accused and learned Additional Public Prosecutor Shri Nikhil Joshi for the State. With their able assistance, I have gone through the entire material record and evidence adduced during the trial.

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12. Learned counsel for the accused submitted that the entire evidence of eyewitnesses, especially PW1 Suresh Nikalje, PW2 Gajanan Tonde, PW4 Eknath Gandhe, and PW7 Shyam Yadav, is consistent to show that during sudden fight and sudden quarrel, the alleged incident has occurred and there was a scuffle between the deceased and the accused and during that scuffle, the deceased sustained injuries. Thus, the incident covers under Exception-4 to Section 300 of the IPC. There was no intention to cause death of the deceased. Only knowledge is attributable to the accused. In view of that, at the most, the offence falls under Section 304-II of the IPC. In view of that, the appeal deserves to be allowed and the sentence imposed upon the accused be reduced.

13. In support of his contentions, learned counsel for the accused placed reliance on **Ankush Shivaji Gaikwad vs. State of Maharashtra, reported in (2013)6 SCC 770.**

14. Learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that the evidence on record shows that the accused has extended his act by assaulting the deceased though he fell down on the ground, which is sufficient to show his intention to cause the death of the deceased. The case does not cover under Section 304-II of the IPC, but it is culpable homicide amounting to murder and, therefore, the appeal being devoid of merits is liable to be dismissed.

15. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on **Narayan Yadav vs. State of Chhattisgarh**, reported in **AIR 2025 SC 3805**, and **Anbazhagan vs. State** represented by the Inspector of Police, reported in **2023 Cri.L.J. 3979**.

16. As regards the homicidal death of the deceased is concerned, the material evidence adduced by the

prosecution is the evidence of Medical Officer PW3 Dr.Uddhay Deokar, who has initially, immediately after the incident, examined the deceased. As per his evidence, the incident took place at about 5:00 to 6:00 pm. He was in the hospital. The deceased was brought to his hospital. On examining him, it revealed to him that he has convulsions and, therefore, he advised to him to Khamgaon or Buldhana.

17. Another witness, examined by the prosecution, is PW6 Dr.Ganesh Rathod, who conducted the postmortem examination on the dead body of the deceased. As per his evidence, on 27.4.2023, he was working as Medical Officer at General Hospital, Buldhana. On that day, he performed autopsy on the dead body of the deceased. On external examination, has not found any external injury. On internal examination, he found following injuries:

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- i) abdomen cavity was found containing blood of about 1/4th liter;
- ii) mesentry of large intestine was having laceration 3 x 3 cm, and
- iii) laceration of posterior lobe of liver right side 2 x 2 cm.

According to him, the cause of death is due to shock due to injury to liver. Accordingly, he prepared postmortem report, which is at Exh.34. He further stated that if a forceful blow of kick is given to abdomen, such type of injury to liver can be possible.

His cross examination shows that there was no external injury on the body of the deceased. The police have not made any query to him in respect of the death of the deceased. The death of the deceased might have occurred within 12-14 hours before starting of the postmortem examination. He further admitted that if a

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person falls on any blunt object, such type of injury to liver may be possible.

Thus, an attempt was made that deceased has sustained injuries due to the fall.

18. Now, it is well settled that evidence of Medical Officer is not only an opinion evidence but also his evidence is in the nature of direct evidence as he had an opportunity to see injuries on the persons of the deceased.

19. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Hon'ble Apex Court in the case of **Smt.Nagindra Bala Mitraand vs. Sunil Chandra Roy and another, reported at 1960 SCR (3) 1** wherein the Hon'ble Apex Court observed that "the value of a medical witness is not merely a check upon the testimony of eyewitnesses;

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it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person.”

Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

20. The Hon’ble Apex Court in the case of **Anuj Singh @ Ramanuj Singh @ Seth Singh vs. The State of**

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Bihar, reported in 2022 Live Law (SC) 402 dealt with the evidentiary value of the medical evidence and observed that the evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has been reiterated by this court that the medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged.

21. Thus, the prosecution evidence, as far as the evidence of PW6 Dr.Ganesh Rathod is concerned, sufficiently shows that the prosecution has succeeded in proving that the death of the deceased is homicidal one.

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22. To prove the charge against the accused, that the accused has caused the death of the deceased, the prosecution mainly relied upon the direct evidence in the nature of evidence of eyewitness i.e. PW1 Suresh Nikalje, PW2 Gajanan Tonde, PW4 Eknath Gandhe, and PW7 Shyam Yadav. The evidence of these witnesses consistently shows that they are auto-rickshaw drivers on the day of the incident i.e. on 26.4.2023. The deceased as well as these eyewitnesses were present near Undri S.T.Bus Stand. The deceased, PW1 Suresh Nikalje, and Bandu were sitting in the auto-rickshaws of PW4 Eknath Gandhe. PW2 Gajanan Tonde, PW4 Eknath Gandhe, and PW7 Shyam Yadav were standing near the said auto-rickshaw. At that time, the accused came there and was rubbing the tobacco on the palm of his hand. He came near the auto-rickshaw of PW4 Eknath Gandhe and while shaking the tobacco, dust entered into the eyes of the

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deceased. On that count, there was altercation of the words between them. They abused each other. The deceased assaulted the accused by fists blows and, therefore, the accused pulled the leg of the deceased. At the relevant time, part portion of the body of the deceased remained in auto-rickshaw and part body came outside. Thereafter, the deceased fell down from the auto-rickshaw and again there was scuffle between them. The accused assaulted him by fists and kick blows, due to which the deceased was having giddiness and he fell on the ground and became unconscious. Immediately, the deceased was taken to hospital of PW3 Dr.Uddhay Deokar at Undri, but the said doctor advised to take him to the hospital at Khamgaon. On the way, the deceased died and, therefore, they took him first to his house and informed his parents and, thereafter, they approached the police station and

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PW1 Suresh Nikalje lodged the report, which is at Exh.22 and FIR is at Exh.23.

23. The cross examination of informant and eyewitness PW1 Suresh Nikalje shows that there were various shops in front of the spot of the incident where the alleged incident has taken place. Some minor omissions are also brought on record. He further admitted that the said incident has occurred all of a sudden. He knows the accused since 2-3 years prior to the incident and knew the deceased as he is of his village. There was no previous enmity between the accused and the deceased.

Thus, his cross examination shows that whatever happened was due to sudden fight and sudden quarrel on account of rubbing tobacco and entering dust of tobacco into the eyes of the deceased and, therefore, the quarrel started.

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24. Eyewitness PW2 Gajanan Tonde, has narrated the similar incident. The said witness stated that when they were chit-chatting, the accused has shaken tobacco and dust entered into the eyes of the deceased, on which there was a quarrel between them and during the scuffle between them, the accused assaulted the deceased by kicks and fist blows. The deceased was immediately taken to hospital of PW3 Dr.Uddhay Deokar at Undri, but the said doctor advised to take him to the hospital at Khamgaon and when there were proceeding, the death of the deceased occurred.

His cross examination also shows that the alleged incident has occurred on account of the hot exchange of words as the dust entered into the eyes of the deceased.

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Thus, his evidence also shows that during sudden fight and sudden quarrel, there was scuffle between the accused and the deceased and the accused assaulted the deceased and the deceased sustained injuries.

25. The evidence of eyewitness PW4 Eknath Gandhe is also on the similar line. His cross examination also shows that there was no previous enmity between the deceased and the accused. On the contrary, they both are auto drivers and, therefore, having friendship.

26. Thus, the evidence of eyewitness PW4 Eknath Gandhe and PW7 Shyam Yadav also shows that there was neither enmity between the deceased and the accused nor there was any previous dispute between them. However, their evidence shows that the alleged incident has taken place while rubbing the tobacco on palm by the accused

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and dust entered into the eyes of the deceased and, therefore, quarrel started. During the quarrel, they both assaulted each other and during the assault, the deceased sustained injuries and succumbed to the injuries.

PW7 Shyam Yadav has also admitted that prior to the incident, there was never any quarrel between the deceased and the accused and there was no enmity between them.

27. Besides the evidence of eyewitnesses, the medical evidence is already discussed, which shows that the death of the deceased is homicidal one.

28. Police Constable PW5 Sahebrao Ingle, registered the crime on the basis of report filed by informant and eyewitness PW1 Suresh Nikalje and initial investigation was also carried out by him. His evidence is formal in nature. The minor omissions are proved

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through the evidence of Police Constable PW5 Sahebrao Ingle.

29. Investigating Officer PW8 Dattu Deoram Palve, has narrated about the investigation carried out by him. The sum and substance of his evidence is that during investigation, he visited the alleged spot of the incident, drawn spot and inquest panchanamas, collected incriminating articles and forwarded the same to CA. He also admitted that during the investigation, it revealed to him that there was no previous enmity between the accused and the deceased.

Thus, the evidence of the investigating officer also shows that the alleged incident has taken place between the deceased and the accused in a sudden fight and sudden quarrel during the hot exchange of words between them.

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30. Learned counsel for the accused vehemently submitted that there was neither intention nor the accused was having knowledge that this act would cause the death of the deceased and, therefore, no offence is made out against the accused. Alternatively, he submitted that even if it is accepted that the accused has caused the death of the deceased, as the deceased was assaulted by him, there was no premeditation, no weapon is used by the accused, but during scuffle, some injuries are caused to the deceased and the death of the deceased is caused and, therefore, the act of the accused covers under the culpable homicide not amounting to murder. In support of his contentions, he placed reliance on **Ankush Shivaji Gaikwad vs. State of Maharashtra** *supra* wherein the Hon'ble Apex Court held that whether the act of accused would cover under murder or culpable homicide not amounting to murder. The nature of injury, weapons used,

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and part of body on which injury was inflicted are some of the considerations which required to be taken into consideration.

31. On the contrary, learned Additional Public Prosecutor for the State submitted that the act of the accused does not cover under Exception-4 to Section 300 of the IPC as he has extended the act and acted in an unusual manner and assaulted the deceased after he fell down. Therefore, Exception-4 to Section 300 of the IPC is not applicable. In support of his contentions, he placed reliance on the decision in the case of **Narayan Yadav vs. State of Chhattisgarh** *supra* wherein the Hon'ble Apex Court held that Section 300 Exception-4 of the IPC applies when death occurs without premeditation in a sudden fight due to sudden quarrel in hit of passion, provided offender did not take undue advantage or act in a cruel or unusual manner. Exception-4 concerns mutual exchange

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of blows of provocation where both parties are partially to blame. He further placed reliance on **Anbazhagan vs. State represented by the Inspector of Police *supra*** wherein the Hon'ble Apex Court has considered this aspect and held that there is fine difference between the two parts of Section 304 of the IPC. 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.

32. Admittedly, scuffle took place between the accused and the deceased while rubbing tobacco on palm by the accused and dust entered eyes of the deceased and on that count, there was hot exchange of words between them in presence of PW1 Suresh Nikalje, PW2 Gajanan Tonde, PW4 Eknath Gandhe, and PW7 Shyam Yadav. The

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evidence of these witnesses shows that there was no previous enmity between the deceased and the accused. They were friends. There was no previous quarrel or there was no premeditation on the part of the accused or the accused has not extended his act either by assaulting the deceased by any weapon and, therefore, the case covers under Section 304 of the IPC.

33. Admittedly, three injuries are found on the person of the deceased i.e. internal injuries. Admittedly, the deceased has not sustained any external injuries in the said incident. The injuries sustained are on the abdomen cavity i.e. on large intestine, which resulted into injury to liver and death of the deceased is caused.

34. Whether offence is culpable homicide or murder, it can be seen that the offence of culpable homicide does not provide any punishment.

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35. The culpable homicide is defined in Section 299 of the Indian Penal Code and it is genus. Whereas, the murder defined in Section 300 of the Indian Penal Code and it is specie. Under Section 299 of the Indian Penal Code, whoever causes death with an intention or knowledge specified in that section, commits offence of culpable homicide. However, since culpable homicide is only genus, it includes two forms; one is a graver offence which amounts to 'murder' and lesser one which does not amount to 'murder'. It can be seen that, therefore, though the offence of culpable homicide is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the Indian Penal Code. In view of this scheme, therefore, every act of homicide falls

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within the definition of culpable homicide under Section 299 of the Indian Penal Code. Section 300 of the Indian Penal Code on the one hand mentions that a homicide is murder. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and what are circumstances in which it was done, (2) if it is established that the offence is culpable homicide, but it does not fall within the definition of murder and if it falls under any of exceptions to that section, the offence is punishable under Section 304 of the Indian Penal Code. Once, it is held that the offence falls under Section 304 of the Indian Penal Code, the

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punishment differs, depending upon whether the death is caused with an intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the Indian Penal Code, otherwise, the offence falls under Part-II of Section 304 of the Indian Penal Code.

36. As far as the intention to cause death is concerned, it can be gathered generally from a combination of a few or a several circumstances like nature of the weapon used, whether the weapon was carried by the accused persons or was picked up from the spot, whether the blow is aimed at the vital part of the body, the amount of force employed in causing injury, whether the act was in course of sudden quarrel or sudden fight, whether the incident occurs by chance, or whether there was any premeditation, whether there was any prior enmity or the deceased was the stranger, whether there

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was any grave or sudden provocation, or whether the incident was in the hit of passion.

37. By applying these parameters, if the evidence on record in the present case is assessed, admittedly, no weapon is used in the said incident. The injuries sustained by the deceased was on the abdominal portion i.e. liver and the death is caused. Admittedly, the accused has not acted in a cruel manner. Whatever happened was in a sudden fight and in a sudden quarrel. The evidence of these witnesses shows that hot exchange of words started as while rubbing the tobacco on palm by the accused and dust entered into the eyes of the deceased and it was the deceased who started assaulting the accused and, therefore, the accused has assaulted the deceased in which the blow was given on his abdomen which proved to be fatal and resulted into his death.

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38. Admittedly, intention can be gathered from the circumstances as the injury caused by the deceased is on the liver. It can be said that there was a knowledge for the accused that this act may cause death of the deceased and, therefore, the case of the accused covers under Exception-4 to Section 300 of the IPC.

39. A sudden fight and a sudden quarrel is to be seen from the circumstances.

40. Admittedly, there was a quarrel between the accused and the deceased on account of rubbing of tobacco on palm by the accused and entering dust of tobacco into the eyes of the deceased.

41. The said Exception-4 deals with the case of the prosecution. Exception-4 to Section 300 of the Indian Penal Code deals only if there is heat of passion and the person acts while losing his self control. It deals

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with cases in which a blow may have been struck or some provocation given in the origin of the dispute. A sudden fight implies a mutual provocation. The help of the said Exception-4 can be invoked if the death is caused without premeditation, in a sudden fight without the offender having taken undue advantage or acted in a cruel or unusual manner etc..

42. In the present case, the facts on record show that there was a sudden quarrel with no premeditation. The injury sustained by the deceased was on abdominal portion and no weapon was used by the accused. The accused has not taken any undue advantage or acted in a cruel manner.

43. The culpable homicide is defined in Section 299 of the Indian Penal Code. Whereas, the murder is defined in Section 300 of the Indian Penal Code. The every act of

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homicide falls within the definition of culpable homicide in Section 299 of the Indian Penal Code. As per Section 300 of the Indian Penal Code, homicide is murder, however there are five exceptions and in those exceptions if the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code and, therefore, it has to be seen whether there was intention or knowledge with which the act was done.

44. Admittedly, in the present case, the quarrel took place on a simple reason as the dust of tobacco entered into the eyes of the deceased. Therefore, there was hot exchange of words between the deceased and the accused and the deceased started assaulting the accused and, therefore, the accused assaulted the deceased and blow

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was given on abdominal portion of the deceased, which proved to be fatal, resulted into death of the deceased.

45. The law is settled that while appreciating the evidence of witnesses, though witnesses have exaggerated their versions, the same are not sufficient to discard their entire evidence. The cumulative effect of the evidence shows that in a sudden fight and a sudden quarrel, the accused gave fists and kick blows on the person of the deceased, which resulted into his death.

46. From the above all circumstances, irresistible conclusion can be drawn that there was no intention on the part of the accused to cause death of the deceased, but, admittedly, he was having knowledge that his act would result into death of the deceased and, therefore, the act of the accused falls under Section 304-II of the IPC.

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47. In view of the above discussion, the appeal deserves to be allowed partly and the judgment and order impugned convicting the accused under Section 302 of the IPC and sentencing him to undergo imprisonment for life and to pay fine Rs.500/-, in default, to undergo rigorous imprisonment for three months, is to be modified by sentencing the accused to undergo rigorous imprisonment for 10 years and to pay fine Rs.500, in default, to undergo rigorous imprisonment for 3 months for offence under Section 304-II of the IPC. Hence, we pass following order:

ORDER

(1) The Criminal Appeal is **Allowed Partly**.

(2) The judgment and order dated 16.5.2006 passed by learned Additional Sessions Judge, Buldana in Sessions Trial No.79/2003 is modified.

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(3) The accused is held to be guilty for offence under Section 304-II of the IPC and he is sentenced to undergo rigorous imprisonment for 10 years.

(4) The fine amount is maintained.

(5) The Bail Bonds of the accused stand cancelled.

(6) Appellant/accused is entitled for set off under Section 428 of the Code of Criminal Procedure for which he was undertrial.

(7) The appellant/accused is already in jail under committal warrant. He has to undergo the sentence as aforestated.

(8) The order of this Court and Judgment be communicated to the Superintendent Central Prison, Nagpur.

Appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)