



2025:DHC:10853



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21st August, 2025

Pronounced on: 02nd December, 2025

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CRL.M.C. 4970/2018

SH. RAJESH CHAUHAN

S/o. Late Shri Babu Kharak

R/o. House No. 107,

Village Sungarpur,

P.S. Alipur, Delhi, India

.....Petitioner

Through: Mr. Lohit Ganguly, Mr. Ajay Kumar
and Ms. Reeta Puniya, Advocates.

versus

1. STATE

Through Standing Counsel

2. RAJPAL

S/o Sh. Chander

3. BRAHAM PRAKASH

S/o Birbal

4. HARI PRAKASH

S/o Birbal

5. ASHOK

S/o Birbal

6. BRAHAM SINGH

S/o Rajbal

All R/o V&Po Sungarpur, P.O.

Mandola,

Distt. Ghaziabad, Uttar

Pradesh.



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.....Respondents
Through: Mr. Utkarsh, APP for the State with
SI Sandeep, PS: Alipur.
Mr. Lohit Ganguly, Mr. Ajay Kumar
and Ms. Reeta Puniya, Advocates for
R-2 and R-3.

+ **CRL.REV.P. 811/2018, CRL.M.A. 32378/2018**

1. **RAJPAL**
S/o Sh. Chander
2. **BRAHAM PRAKASH**
S/o Birbal
3. **HARI PRAKASH**
S/o Birbal
4. **ASHOK**
S/o Birbal
5. **BRAHAM SINGH**
S/o Rajbal

All R/o V&Po Sungarpur, P.O.
Mandola,
Distt. Ghaziabad, Uttar
Pradesh.

.....Petitioners
Through: Mr. Lohit Ganguly, Mr. Ajay Kumar
and Ms. Reeta Puniya, Advocates.

versus

THE STATE (GNCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Sandeep, PS: Alipur.



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CRL.REV.P. 926/2018**STATE**

Through DCP District Rohini

.....Petitioner

Through: Mr. Utkarsh, APP for the State with
SI Sandeep, PS: Alipur.

versus

1. RAJPAL

S/o Sh. Chander

2. HARI PRAKASH

S/o Birbal

3. ASHOK

S/o Birbal

4. BRAHAM PRAKASH

S/o Birbal

5. BRAHAM SINGH

S/o Rajbal

All R/o V&Po Sungarpur, P.O.
Mandola,
Distt. Ghaziabad, Uttar
Pradesh.

.....Respondents

Through: Mr. Lohit Ganguly, Mr. Ajay Kumar
and Ms. Reeta Puniya, Advocates.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**



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1. The aforesaid ***Criminal M.C. 4970/2018*** and ***Criminal Revision Petition 926/2018*** have been filed by the *Complainant Sh. Rajesh Chauhan* and by the *State* respectively, while ***Criminal Revision Petition No. 811/2018*** has been filed by the accused persons to challenge Order on Charge dated 26.07.2018 whereby the *Ld. ASJ* has directed *framing of charges under Sections 341/323/304/120B* (hereinafter referred to as “*IPC*”) against *Rajpal, Hari Prakash, Braham Prakash, Ashok and Braham Singh*.

2. ***Briefly stated***, FIR No. 0036/2017 was registered on the statement of Complainant Rajesh Kumar, who stated that on 30.01.2017, at about 8:30 PM, he returned from the plot to his house, when Hari Prakash caught hold of him and gave him fists blows. In the meanwhile, *Braham Prakash s/o Birbal, Ashok s/o Birbal and Rajpal s/o Chander*, also came and threatened that “*jaan se maar do bachne na paye*”. In the meanwhile, his father *Babu Khadak Singh* on hearing the noise, came out of the house on which Braham Prakash and Ashok caught hold of him, while Hari Prakash and Rajpal caught hold of his father and gave fists and leg blows on stomach and below. As his father tried to get himself released, all the four Accused with an intent to kill his father, gave fist blows and slaps because of which he fell and was unable to get up. He immediately took his father to Max Hospital, Shalimar Bagh, where he was *declared dead*.

3. On his complaint, FIR No. 36/2017 was registered under Sections 302/341/323/34 IPC. After investigation, the Chargesheet was accordingly filed.



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4. The Ld. ASJ in the Impugned Order dated 26.07.2018 observed that *prima facie* it was shown that the father had been beaten up by the four Accused, but it was observed that it was not a case under Section 300 IPC, but it was covered under Section 299 IPC, and accordingly directed the *framing of charges under Sections 341/323/304/120B IPC, even though the Chargesheet was filed under S.302 IPC* .

5. ***Criminal M.C. 4970/2018*** and ***Criminal Revision Petition 926/2018*** have been filed by the State and the Complainant, respectively, being aggrieved with the framing of charges under 304 IPC instead of Section 302 IPC.

6. ***Criminal Revision Petition No. 811/2018*** has been filed by the Accused persons by the framing of the Charges against them, and claim that Charge under S.304 IPC, is liable to be set aside.

Criminal M.C. 4970/2018 by Rajesh Chauhan, Complainant :

7. Rajesh Chauhan, the Complainant has challenged the Order on charge on the ***grounds*** that the Ld. ASJ had observed that the Accused persons had the knowledge that their act was likely to cause death of the deceased, despite which Charge has not been directed to be framed under Section 302 IPC, when in fact, it comes squarely under Clauses 1 and 2 of Section 300 IPC.

8. Furthermore, the Ld. Trial Court erred in delving deep into the aspect of intention of the Accused persons at the stage of charges, in view of the fact that there was a clear exhortation to murder the deceased, as it is a matter of trial.



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9. The reliance on the evidence of Court witness **CW1 Dr. R. P. Singh** at the stage of framing of charges, is not permitted and is contrary to Section 227 Cr.P.C. The Order to summoning the Court witness was in the nature of an Order under Section 173(8) Cr.P.C., seeking further evidence post filing of the Chargesheet, which is not permissible. The evidence of CW1 was recorded at the pre-charge stage, which is unknown to law. Furthermore, he was not the author of the medical opinion about the cause of death of the deceased and gave an opinion beyond and contrary to the record. The direct oral evidence against the Accused persons, had to be given primacy over the opinion evidence of **CW1 Dr. R. P. Singh**.

10. Reliance is placed on Rukmini Narvekar v. Vijaya Satardekar (2008) 14 SCC 1, wherein the Apex Court held that there is no scope for the Accused to produce any evidence in support of his submissions at the stage of charge. Similar observations have been made in Kewal Krishan v. Suraj Bhan AIR 1980 SC 1780, Bharat Parikh v. CBI (2008) 10 SCC 109.

11. Pre-charge evidence can only be recorded where case is instituted otherwise stand on Police Report, in terms of Section 245 Cr.P.C., which may be taken into consideration at the stage of Charge. However, in a State case, there is no such provision for recording of *pre-charge evidence*. Likewise, Section 165 Indian Evidence Act can be exercised only to discover or to obtain proper proof of relevant facts.

12. In Chandra Deo Singh v. Prakash Chandra Bose AIR 1963 SC 1430, it was observed that the Accused cannot be permitted to interfere at the stage of enquiry. In Rakesh Bisht v. CBI 2007 (1) JCC 482, it was held



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that the evidence starts only after framing of charges and no evidence can be led till that stage is reached.

13. Reliance is placed on Bishwanath Rai v. Sachhidanand Singh AIR 1971 SC 1949. In Om Prakash Berlia v. Union Trust of India and Ors. AIR 1983 Bom 1, it was held that the facts required to be proved, must be done in the way it is required to be proved. In Madholal Sindhu v. Asian Assurance Co. Ltd. and Ors. AIR 1954 Bom 305, it was observed that the contents of the documents cannot be proved without calling the concerned person. Similar observations have been made in Mr. D and Mr. S (1966) 68 Bom LR 228, Sudhir Bhuiya v. National Insurance Co. Ltd. (2005) 1 TN MAC 414 (Cal).

14. Reliance has also been placed on Amrutbhai Shambhubhai Patel v. Sumannhai Kantibhai Patel (2017) 4 SC 177, wherein it was held that the powers available under Section 173(8) of the Code, is not available with the learned Magistrate after taking cognizance on the earlier Report.

15. It is further contended that at the stage of framing of charges, the Court is not to consider the probative value of the evidence, but to consider the *prima facie* evidence which was available, without sifting and weighing the same. It is therefore, contended that the *prima facie* offence under Section 300(3) IPC was made out and accordingly, *the Charges should have been framed under Section 302 IPC and not under Section 304 IPC.*

16. It is further submitted that the nature of injury to an old man, including fracture of the ribs of the deceased, was sufficient to cause his death, and continuing to hit the deceased even after his fall, clearly proves



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the intention. Moreover, the MLC also notices the external abrasion and internal injuries on the deceased.

17. The cumulative effect of the entire event is that it is *prima facie* proved that the deceased who was an old man of 75 years old, was assaulted with an intention and knowledge to kill him, which in fact resulted in his death. The subsequent opinion of *Dr. N. K. Gunjan* was obtained by the I.O. who had opined that “*the cause of death in this case is injury to the chest precipitating failure of already compromised heart.*” The word “*precipitating*” is sufficient to disclose that the death was on account of the injuries caused by the Accused persons to the deceased.

18. There is direct oral evidence against the Accused persons which should have been given primacy over the opinion evidence of the Doctor. Reliance is placed on *Kamaljit Singh v. State of Punjab* (2003) 12 SCC 155.

19. The probative value of the evidence is not to be considered at the stage of framing of charge. Reliance is placed on *Union of India v. Prafull Kumar Samal and Another* 1979 Cri.LJ 154 wherein, the scope of Section 227 Cr.P.C. was considered and it was held that the Judge has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities and so on. It does not mean that a Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial.

20. Reliance is also placed on *Sushil Ansal v. State through CBI* and *Nirmal Singh Chopra v. State through CBI* and *Association of Victims of Uphaar Tragedy v. Sushil Ansal and Or.s* 2002 CrLJ 1369.



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21. It is further submitted that the accused persons had prior enmity with the deceased over a plot of land, which *was the motive* behind the offence. In the past as well, the Accused persons had threatened to eliminate the deceased. The acts committed by the Accused, were an act done in a pre-planned manner without any provocation. There was clear exhortation to murder the deceased.

22. Reliance was placed on Devender Kumar Singhla v. Baldev Krishan Singhla 2004 IAD (Cr.) S.C. 217, Sarvjeet Mahto v. State 2013 [6] AD Delhi 334, State of Bombay v. Purushottam 1952 Cri. L. J. 1269, and Sellamuthu Seevaigaran and Another v. Paamuthu Karuppen 1911 Cri. L. J.

23. It is thus, submitted that the impugned Order be modified and the charges under Section 302 IPC instead of under Section 304 IPC, be directed to be framed.

Criminal Revision Petition 926/2018 By the State:

24. Similar **grounds** have been reiterated by the State wherein it was stated that the statement of the Complainant Rajesh Kumar, who was the eye-witness, had given specific details of the incident and assigned specific role to each of the Accused in the murder of his father Babu Khadak Singh, has not been appreciated in the correct perspective. Furthermore, from the exhortation, the intention to murder the deceased is evident.

25. Furthermore, it has not been considered that the Accused persons were aware of the precarious health of the deceased, who was an aged person of about 75 years and was well known to the Accused persons for the last many years. The *Postmortem Report* revealed besides swelling on the Genitalia, fracture of the left and right ribs and the possibility of the fracture



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being caused due to assault and other ribs been fractured during CPR process, could not be ruled out.

26. The Ld. Trial Court has failed to appreciate that the medical evidence, which is supported by the statement of the Complainant, definitely points towards the intention to murder the deceased. *It is, therefore, prayed that the charge be modified to Section 302 IPC, instead of Section 304 IPC.*

Criminal Revision Petition No. 811/2018 by the Accused Persons:

27. The Accused persons have challenged the framing of the charges on the grounds that the Order is based on surmises and conjectures, which are against the facts. It has not been appreciated that CCTV footage, statement of the Complainant dated 01.07.2014, the Supplementary Chargesheet, revealed that the Petitioner No.2 Braham Prakash was not involved in the alleged incident. Furthermore, this is reinforced from the observation of the Ld. ASJ in paragraph 14 of the Impugned Order that from the CCTV footage, it appears that Accused Braham Prakash reached the spot after the incident. However, the ocular testimony of the complainant, who has assigned a specific role to Accused Braham Prakash, cannot be discarded at this stage. The Prosecution story thus, cannot stand on its own leg and the entire incident is falsified making it to be a concocted one.

28. The Ld. ASJ in paragraph 17 of the Impugned Order concluded that no one was seen giving beatings to the deceased Babu Khadak Singh, in the alleged incident. This conclusion has been drawn after perusing the CCTV camera footage relied upon by the Prosecution. Once, the Ld. Trial Court did not find any support of the Accused persons beating the deceased in the CCTV camera, no charges whatsoever could have been framed.



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29. The Prosecution has relied upon the ocular evidence i.e. the statement of Rajesh Kumar and Ms. Santosh; CCTV camera footage covering the incident in question; and the medical evidence i.e. Postmortem and Histopathology Report of the deceased, which all do not bring forth any incriminating evidence against the accused persons.

30. Furthermore, the statement of **CWI Dr. R.P. Singh** establishes that no one had given any beatings to the deceased which he had sustained while being administered CPR, which is supported by the MLC of the deceased.

31. The **MLC of the Max Hospital** establishes that the deceased was not taken to the hospital, with the history of assault. The CCTV footage makes it abundantly clear that no one was seen beating the Accused. There is no correlation between the ocular evidence and the CCTV camera footage. The impugned Order has not considered that the CCTV camera footage of Camera No. 2 between 8:39 PM to 8:40 PM, relied by the Prosecution concludes that the deceased was seen alive and thereafter, following himself and no one was seen hitting him. The movement of his feet and other body parts were quite normal. The CCTV camera footage is conclusive evidence.

32. As per Section 65B Indian Evidence Act CCTV camera footage is primary evidence, which is most authentic. The statements of the eye-witnesses are liable to be rejected outrightly.

33. The Ld. ASJ has failed to appreciate that no weapon has been used. It would be highly improbable that five persons would conspire together for murder and would not use any weapon in the alleged incident. The facts have not been properly appreciated.



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34. There is unexplained delay on the part of the Prosecution in registration of FIR. The incident happened at about 8:20 PM while the FIR had been registered after a long gap of about two hours, for which there is no explanation.

35. There are no *ingredients of criminal conspiracy*, as defined under Section 120B IPC, made out. Mere meeting and alleged telephonic calls, are not sufficient to constitute the offence of conspiracy. Here is a case where Petitioners have been made a scapegoat because they dared to speak about true facts before the Local Commission appointed by this Court, in Civil Suit pending between the family of Petitioner No. 5 and of the Complainant.

36. The motive is clearly established as there was an ongoing dispute in regard to the properties. However, the family of the Complainant has no such disputes which relate to agricultural land. The Application as well the Appeal filed by the family of the Complainant, has already been dismissed by the Court. Against the dismissal, Complainant has preferred a Petition, which is pending in the Hon'ble High Court of Judicature at Allahabad.

37. In the dispute relating to plots situated in Delhi, the family of Complainant has claimed ownership on the basis of forged, fabricated, manipulated GPA set without its original. After forcible possession by the family of the Complainant, the family of the Petitioner No. 5 has already filed *Suit for Possession* against them. The Petitioner No. 1 to 4 have nothing to do with the alleged dispute.

38. Furthermore, it has not been appreciated that Petitioner No. 5 was not involved in this incident as he was neither present nor did he participate in the offence. There is a big gap between the meaning of “*may be*” and



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“*must be*”. The case of the Prosecution cannot be considered against the Petitioners to be within the definition of *may be*, but there should be evidence to bring it in the category of *must be*. *It is therefore, prayed that the Impugned Order directing framing of the charge, be set aside.*

39. ***The Accused persons have also filed their written statements*** wherein similar contentions, as have been raised in their respective Petitions, have been raised.

Submissions heard and record perused.

40. The ***core question*** for determination is whether from the facts and circumstances gathered from the ocular and other supporting evidence collected during investigations, *prima facie* makes out a case of *murder*, punishable under Section 302 IPC or *culpable homicide not amounting to murder*, as defined under Section 299 IPC.

41. For this, it would be pertinent to refer to the FIR, which was registered on the Complaint of Sh. Rajesh Kumar/Complainant. He had stated that on 30.01.2017 at about 08:30 PM, he was coming from the plot in front of his house, regarding which there was a dispute with Braham Singh. Meanwhile, Hari Prakash caught hold him and gave him fist blows. Thereafter, Bharam Prakash, Ashok and Rajpal started saying “*aaj in sabko jaan se maar do bachne na payen*”.

42. In the interim, Complainant’s father Babu Khadak Singh came out of the house. Bharam Prakash and Ashok caught hold of the Complainant while Hari Prakash and Rajpal gave fist blows on stomach and below stomach to Complainant’s father. When Complainant’s father tried to free himself, four accused with an intent to kill, slapped him and gave legs and



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fists blows. On account of beatings, he fell and was unable to get up. He was taken to Max Hospital, Shalimar Bagh, Delhi, where he was declared 'brought dead'. According to the Complainant, he died on account of blows given to him by the accused persons.

43. From the entire narrative of the Complainant and also the similar statement given by Raghunandan Singh, it is quite apparent that the father was not present at the scene of crime, when the alleged exhortation was made to kill them all. The Father of the Complainant arrived on the scene after hearing noise and he was also caught by the accused and they gave him legs and fist blows. *Prima facie, from the statements of the witnesses, it emerges that the beatings were given to the deceased.*

44. The second pertinent document collected during investigations, is the *CCTV footage*, which also somewhat corroborates the narrative as made by the Complainant and other eye-witnesses. There are some glimpses of deceased being given some kick blows and his falling on ground.

45. It cannot be overlooked that while the persons at the scene of crime, may have been able to witness the incident in its entirety, the CCTV footage is specific to certain parts and to certain areas. It is only a corroborative and supportive piece of evidence and is required to be proved during the trial; at the stage of Charge, there is no basis to conclusively hold that it is contradictory to the ocular evidence or completely exonerates the accused persons.

46. At this stage of framing of charge, this ocular evidence coupled with CCTV footage, *prima facie* establishes that the legs and fist blows were given to the deceased, which ultimately proved to be fatal.



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47. In this context, it would be pertinent to refer to the ***Post-Mortem Report***, wherein it has been noted that there were some abrasions on both right and left knees and right forearm. It is also mentioned that there were various injuries, which are as under:

“EXTERNAL INJURIES:

1. *Abrasion with brownish scab, measuring 04 x 03 cm was present on the outer aspect of right forearm, situated 01 cm below the elbow.*
2. *Reddish abrasion, measuring 02 x 1.5 cm, was present over the right knee.*
3. *Reddish abrasion, measuring 2.5 02 cm, was present over the left knee.*

INTERNAL EXAMINATION

A) Head

Scalp: On reflection, no extravasation of blood was present.

Skull: Intact and unremarkable.

Brain: Brain was softened, oedematous and congested.

B) Neck.....

C) Chest:

Wall and ribs: On reflection, extravasations of blood was present over an area of 09x04 cm on the left side of chest wall, starting 1.3 cm below the clavicle region, associated with fracture of underlying 2nd, 3rd, 4th, 5th and 6th ribs along mid-clavicular line. Extravasation of blood was present over an area of 7.3x3.9 cm on the right side of chest wall starting 02 cm below from 1st rib, associated with fracture of underlying 2nd, 3rd, 4th and 5th ribs along mid-clavicular line. Fracture of sternum over the region of junction of manubrium and body of sternum associated with surrounding contusions were present. Diaphragm was intact.

Pleural cavity: Both pleural cavities contained approximately 100 ml of frank and clotted blood.

Lungs: Both lungs were oedematous and congested. Frothy fluid mixed with blood was oozing out on cut section.

Heart: Grossly enlarged. Weight of heart: 640gm. Left ventricle was



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hypertrophied. Thickness of the left ventricle wall was 2.9 cm and right ventricle was 1.5 cm. Coronaries were gritty on cut section.

D) Abdomen....

Kidneys:

E) Pelvis: Intact and unremarkable.

F) Spinal Column: NAD. ”

48. Subsequent opinion on the basis of Post-mortem and Viscera Report, was given by *Dr. N. K. Gunjan, Sr. Resident, BJRM Hospital on 27.04.2017*, wherein it was opined that “*The cause of death in this case is injuries to the chest precipitating failure of already compromised heart*”. It shows that because of the injuries given to the deceased, his heart failed as it was already compromised. In this regard, it is pertinent to observe that the deceased was 75 years old and even beatings resulting in injuries, were sufficient to precipitate his death.

49. Much has been argued that ribs might have broken while giving him CPR, on the basis of statement of ***Dr. R. B. Singh (CW-1)***, whose evidence was recorded prior to framing of charge. As has been rightly contended, the Court *suo-moto* could not have examined a witness prior to framing of charge and therefore, his testimony cannot be considered at the stage of framing of charge.

50. Ocular evidence, CCTV footage, Post-Mortem Report coupled with subsequent opinion given by *Dr. N. K. Gunjan, prima facie* establishes that while the blows were given with an intent to cause harm to the deceased, but he died on account of already compromised heart clearly, as has been rightly



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observed by the Ld. Trial Court.

51. It would be significant to reproduce S.299 and S.300 IPC, at this stage, which read as under:

Section 299- Culpable Homicide:

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1.— A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

....

52. Section 299 IPC defines *culpable homicide* and refers to causing death with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act is likely to cause death. From the Explanation 1 to Section 299 IPC, it is evident that if the deceased is labouring under a disorder, disease or bodily infirmity, and thereby the death is accelerated due to bodily injury inflicted upon him, it is a case of culpable homicide.

53. Section 300 IPC reads as under;

Section 300- Murder

Except in the cases hereinafter excepted, culpable homicide is murder —

- 1. If the act by which the death is caused is done with the intention of causing death, or*
- 2. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. or*
- 3. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is*



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sufficient in the ordinary course of nature to cause death, or

4. *If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

54. Section 300 IPC explains when culpable homicide becomes *murder*. It states that if the act is done with the intention of causing death, or causing such bodily injury that the offender knows is likely to cause death, or if the injury inflicted is sufficient in the ordinary course of nature to cause death, the offence amounts to murder, unless it falls within the specific exceptions provided in the section.

55. The Apex Court in State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382 has categorially explained the difference between “Murder” and “Culpable homicide not amounting to murder” as under;

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



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punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.”

56. The Apex court in Chunni Bai v. State of Chhattisgarh, 2025 SCC OnLine SC 955 has observed *that one of the criteria to determine, in any given case, as to whether the act amounts to “murder” or “culpable homicide not amounting to murder,” is the presence or absence of intention of the offender. If the “intention” to cause death or to cause such bodily injury as is likely to cause death or the knowledge, which obviously has to be a conscious one, that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act “without any excuse” for incurring the risk of causing death or such injury, comes out loud and clear in the case, it would be most appropriate to categorise it as a case of “murder” under Section 300 IPC in which event, penal provision of Section 302 IPC would be attracted. On the other hand, if the “intention” in causing the death or to causing such bodily injury is not so clear, the case will fall under the less stringent category of “culpable homicide not amounting to murder” as punishable under Section 304 IPC.*

57. Therefore, it is the well-settled position of law that the gravity of the offence is determined by the *intention or knowledge* with which the act was committed. Only when the intention to cause death, or the conscious knowledge that the act is so dangerous that it is likely to cause death, is clearly established, does the case fall within the ambit of murder under Section 302 IPC. In the absence of such clear intention or knowledge, the act



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is treated as culpable homicide not amounting to murder and is dealt with under Section 304 IPC.

58. In the light of the above, it can be observed that it is not a case where *the accused intended to cause death*, nor does the material on record suggest that the kicks and fist blows were delivered with such intention to cause death. The accused subjected the deceased to repeated kicks and fist blows, which ultimately resulted in his death. The incident must be viewed in the context that the deceased was of advanced age, and the injuries inflicted on him have to be assessed accordingly.

59. The *prima facie* evidence indicates that the injuries, whether individually or collectively, were not sufficient in the ordinary course of nature to cause death. In the present case, it is the case of the Complainant that his father was suffering from heart ailment about which the Accused persons had the knowledge and the kicks and blows resulted in his demise. it, therefore, is a case which comes under Explanation 1 of Section 299 IPC. In these circumstances, the case against the accused falls squarely within the ambit of culpable homicide not amounting to murder.

60. The Ld. ASJ has rightly held that the present case is covered under Section 299 IPC punishable u/s 304 IPC since the accused had the knowledge that their act could likely to cause death of the deceased due to his old age. Ld. ASJ has rightly appreciated the facts in hand, to conclude that *prima facie* offence is disclosed under Sections 304 IPC and not S.302 IPC.

61. Needless to say that if from the evidence subsequently recorded, any case for amending the charge under Section 302 IPC comes on record, Ld.



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Trial Court is at liberty to amend the same, in accordance with Law.

62. At this stage, from the evidence collected, Ld. ASJ has rightly appreciated the facts of the case and has framed the charge.

63. There is no ground for interfering with the Order on Charge dated 26.07.2018.

64. Accordingly, all there Petitions along with pending Applications are dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 02, 2025

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