



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-203-DB of 2004 (O&M)
Reserved on:-15.10.2025
Date of Decision:02.02.2026
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Shimla Singh and others

...Appellants

Vs.

State of Punjab

...Respondents

CORAM: HON’BLE MR. JUSTICE N.S.SHEKHAWAT
HON’BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Akashdeep Singh, Advocate
for the appellants.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.SHEKHAWAT, J.

1. The appellants have preferred the present appeal against the impugned judgment and order dated 17.01.2004 passed by the Court of Additional Sessions Judge, Ferozpur, whereby, they were convicted for the commission of the offences punishable under Sections 302/323/149 and 148 of IPC and each of them was sentenced as under:-

<i>U/s</i>	<i>Imprisonment</i>	<i>fine</i>	<i>Default</i>
<i>302 IPC</i>	<i>Life Imprisonment</i>	<i>Rs.2000/-</i>	<i>Two years</i>
<i>323 IPC</i>	<i>To undergo imprisonment for three months</i>	<i>---</i>	<i>---</i>
<i>148 IPC</i>	<i>To undergo imprisonment for two years</i>	<i>Rs.500/-</i>	<i>One month</i>

2. The FIR Ex.PA/2 in the present case was registered on the basis of the statement made by Arjan Singh son of Mehtab Singh and the English translation of the same has been reproduced below:-

“Statement of Arjan Singh s/o Mehtab Singh, Rai Sikh, aged about 60 years, r/o Ghurka, P.S. Saddar Fazilka:-I am a resident of village Ghurka and am an agriculturist. I have four sons. The eldest is Puren Singh, aged about 35 years, younger to him is Jangir Singh, aged about 28 years, younger to him is Hansa Singh; aged about 26 years, and youngest is Raj Singh aged about 16 years. Yesterday at about 7.30 p.m., my son Jangir Singh and his wife Kanto were planting paddy in our field and I was uprooting the saplings of the paddy nearby. My son Raj Singh was loosening the earth (Goddi) of vegetable at a distance of about 2 killas near our tubewell. There is dhani (Hamlet) of Shimla Singh s/o Harnam Singh at a distance of about 20/22 karams from our field. Sewa Singh @ Kala s/o Shimla Singh had placed heap of wheat chaff near our field. Paramjit, aged about 7 years and Girmit, aged about 5 years, daughters of my son Hansa Singh were playing near the heap of wheat chaff. While playing, they climbed on the heap of wheat chaff. Sewa Singh @ Kala who was loosening the earth of vegetable in his field nearby, started abusing the girls. Jangir Singh asked Sewa Singh as to why he was abusing the girls. Sewa Singh replied that why they were damaging his wheat chaff. On account of this, they entered into an altercation. Sewa Singh went running towards his house and brought a gandasi from there. His brother Tota Singh armed with

tringle, Deepa Singh s/o Shimla Singh armed with dang, Kulwant Singh s/o Shimla Singh armed with dang, Shimla Singh s/o Harnam Singh armed with dang and Durga Bai w/o Shimla Singh armed with spade followed him. Durga Bai raised a lalkara saying caught hold, we will teach them a lesson today for quarreling with us as they prevented them from damaging their wheat chaff. Sewa Singh @ Kala gave a blow with his gandasi from the blunt side on the head of my son Jangir Singh as a result of which he fell down on the ground. While he was lying on the ground, Tota Singh gave a blow with his tringle to him and the pointed side of the tringle hit on his right foot. While running, I came forward to rescue him. Shimla Singh gave a blow with his dang to me which hit on the shin of my left leg. In the meanwhile, my son Raj Singh came while running to rescue us, Sewa Singh Kala gave a blow with his gandasi to Raj Singh which hit on the right side of his head. Deepa Singh gave a blow with his dang on the left leg of Raj Singh and he also fell down on the ground. I and my daughter-in-law Kanto w/o Jangir Singh raised raula (alarm) of "Marta, Marta". On hearing our raula, Mahesha Singh s/o Thakar Singh, Balbir Singh s/o Baggu Singh and other persons from the neighbourhood came towards us while running. On seeing them, the accused fled away with their respective weapons. In the meanwhile, my eldest son Puran Singh also came at the spot. I and Puran Singh arranged a vehicle and brought Jangir Singh and Raj Singh here in the hospital and got admitted my sons Raj Singh, Jangir Singh and myself also in the hospital where the doctor started treatment of myself, Jangir

Singh and Raj Singh. After some time, Jangir Singh died. The cause of the grudge is that my grand daughters Paramjit and Gurmit were playing on the wheat chaff of Sewa Singh. Sewa Singh had abused them. My son Jangir Singh had prevented him from abusing. Due to this grudge, the accused with their common intention have caused injuries to me, my sons Jangir Singh and Raj Singh due to which Jangir Singh has died, I am a complainant. Action may be taken. I have heard the statement which is correct.

Attested

*Sd/Karamjit Singh, LTI of Arjan Singh aforesaid.
Inspector, SHO. Steps taken by the police:-
P.S. Saddar Fazilka.
(In Punjabi Script)
1-6-2001.”*

3. After the registration of the FIR, Jangir Singh, Raj Singh and Arjan Singh were medico legally examined by the Dr. Hans Raj of Civil Hospital, Fazilka. Jangir Singh succumbed to the injuries and a *rukka* was sent to the police in this regard. Thereafter, the inquest report was prepared by the SHO concerned and he inspected the spot and a rough site plan was drawn. He also collected the blood stained earth from the spot and put it in two separate small plastic boxes. The postmortem examination on the dead body of Jangir Singh was performed by Dr. M. M. Singh, who found two antemortem injuries on his person and opined that the cause of death was due to cardiorespiratory arrest as a result of head injuries, which were sufficient to cause death in ordinary course of death. During the course of investigation, Harcharan Singh, ASI, arrested Sewa Singh,

who got recovered a *Gandasi* in pursuance of his disclosure statement. Similarly, Kulwant Singh got recovered *Dang* in the fields and Durga Bai got recovered a spade from the fields. Still further, Tota Singh and Kuldip Singh were also arrested by the police on 07.07.2001. Tota Singh got recovered a tringle, which was taken into possession by the police. After conducting the usual investigation, the *challan* was prepared against the accused for commission of the offences punishable under Sections 302, 323, 325, 148 and 149 IPC. Since the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court.

4. Vide order dated 27.09.2001, the trial Court ordered framing of charge against the appellants under Sections 148, 302/149, 324/149 and 323/149 IPC. However, the appellants pleaded that they were innocent and claimed to be tried by the trial Court.

5. To prove the charge against the appellants, the prosecution relied upon the statements of seven prosecution witnesses. The prosecution examined Khushal Singh, Patwari, as PW1, who prepared the site plan Ex.P1 of the place of the occurrence. The prosecution further examined PW2 Arjan Singh, complainant, who reiterated the version as mentioned in the FIR Ex.PA/2. He supported the case of the prosecution in totality. However, in his cross-examination, he stated that the farm house was at a distance of about 04 killas from the place of occurrence. Puran Singh and Jangir Singh were living separately from him. Their houses were situated in

the same premises. A road abuts the place from where he was removing saplings. Sewa Singh was working in his fields since 02.00 p.m. The children had gone to the heap of *Chaff* at about 03/3.30 p.m. Sewa Singh was still in his fields at that time. The heap of *Chaff* was at a distance of 4/5 karams from that place. He had stopped the children from playing there at 03.30 p.m. He had stopped the children from playing there only once and had not come to them to lodge a protest. Jangir Singh had also heard Sewa Singh stopping his children from playing there. Jangir Singh had asked Sewa Singh not to abuse children. They had exchanged words only for one or two minutes before Sewa Singh left for his house. He returned after 2/3 minutes with other accused. The accused caused injuries to them hardly for one minutes. At the time of occurrence, all of them including Jangir Singh were empty handed and the witnesses were also empty handed. None of them caused injuries to the accused.

6. The prosecution further examined PW3 Raj Singh, who supported the testimony of PW2 Arjan Singh/FIR Ex.PA/2. In his cross-examination, he had admitted that Arjan Singh was also in the same fields. On that day, he had gone to the fields at about 3/4 p.m. He had been working in the field for 4/5 hours when the occurrence had taken place. Jangir Singh and Kanto Bai had come to the field at about 1.00 p.m. The said children had come to the place after 3/4 hours after his arrival in the field. Sewa Singh abused the children only for 1/2 minutes. He exchanged hot words with Jangir Singh

hardly for one minute. During the occurrence, the children had come down from the heap of *Chaff* and they remained by the side of *Chaff* and none of us had gone to them to bring them to their land.

7. The prosecution further examined PW4 Dr. Hans Raj, who had examined Jangir Singh at 09.20 p.m. on 31.05.2000 and found the following injuries on his person:-

“1. A diffused swelling on the top of scalp reddish in colour on the interparietal region. Injury was kept under observation for x-ray and clinical progress.

2. An incised wound 1.5 cm x 0.5 cm x bone deep on the dorsum of right little toe. Fresh bleeding was present, Advised x-ray”.

As per him, at the time of examination, patient was semi conscious and responding the painful stimuli but not responding to verbal commands. Pupils were found to be dilated and not reacting to light. Pulse was 84 per minute. Blood pressure was 140/90 MM Hg. Chest, heart and abdomen were found to be normal. Injury No.1 was kept under observation for x-ray and clinical progress and injury No.2 was kept under observation for x-ray. He proved the MLR Ex.PB and the pictorial diagram as Ex. PB/1.

On the same day at 10.45 p.m., he medico legally examined Raj Singh son of Arjan Singh and found the following injuries on his body:-

“1. A lacerated wound 2.5 cm x 0.5 cm x bone deep on the right parietal region. Fresh bleeding was present. Advised x-ray.

2. *Abrasion 2 cm x 0.5 cm on the left leg in front in its upper half”.*

On the same day at 10.55 p.m., he also medico legally examined Arjan Singh son of Mehtab Singh and found the following injury:-

“1.A reddish contusion 4 cm x 2 cm on the front of left leg in its upper half.”

After the death of Jangir Singh, he sent a *rukka* on 01.06.2001 to the police and informed the police, in this regard.

8. PW4 Dr. Hans Raj had also medico legally examined Shimla Singh son of Harnam Singh and found the following injuries:-

“1. A lacerated wound 2 cm x 0.75 cm x bone deep running obliquely on the right side of forehead. Fresh bleeding was present. X-ray was advised, with underlying reddish contusion measuring 4 cm x 2 cm”.

As per him, injury no.1 was declared as simple in nature.

His MLR was Ex.D1 whereas the pictorial diagram showing the seats of injuries was Ex. D1/A.

At about 9.55 p.m., He also medico legally examined Jagroop Singh son of Shimla Singh and found the following injuries on his person:-

“(1) A lacerated wound 1 cm in diameter on the medial aspect of left elbow joint with reddish swelling underneath measuring 4 cm in diameter. Fresh bleeding was present. X-ray was advised.

2) Abrasion 1 cm x 0.75 cm on the dorsum of right foot.

3) A reddish contusion 5 cm x 3 cm on the back of left leg in its upper half.

4 Abrasion 2 on in diameter on the right iliac crest in front”.

Injury No.1 was kept under observation for x-ray and injuries No. 2, 3, and 4 were declared simple in nature.

On the same day at 10.00 p.m., he also medico legally examined Kala Singh alias Sewa Singh and found the following injuries.

“(1) A lacerated wound 1.25 cm x 0.25 cm x muscle deep on the back of left index finger on its proximal aspect. Fresh bleeding was present. X-ray was advised.

(2) Diffused reddish swelling on the back of left hand. X-ray was. Advised”.

9. During the course of trial, Dr. M.M.Singh, from Civil Hospital, Fazilka appeared as PW5, who conducted the postmortem on the dead body of Jangir Singh on 01.06.2001 and the relevant extract of the statement has been reproduced below:-

“The length of the body was 5 feet 6 inches. It was a dead body of young adult male moderately built and moderately nourished. Rigor mortis was present on all the limbs. Postmortem staining was present on dependent parts. Eyes were closed. Mouth was semi open. The dead body was wearing Kachha. The following injuries were present on the dead body:-

1. A diffused swelling about 10 x 8 on on the top of head in the inter parietal area. On dissection underlying issues were congested. Underlying bone was fractured.

Underlying duramater was congested. Blood was present in the epidural and subdural space. Underlying brain was contused.

2. An incised wound 1.5 cm x 5 cm on the dorsum of right little top. Underlying tissues were congested.

All the other organs were healthy. In my opinion the cause of death in this case was due to cardio respiratory arrest as a result of head injury due to injury No.1 which was sufficient to cause death in ordinary course of nature. All the injuries were antemortem in nature. Probable time that elapsed between injuries and death was few minutes to few hours and between injuries and postmortem was about 12 to 24 hours. I handed over to the police stitched body and belongings. Carbon copy of postmortem report, police papers eleven sheets duly signed by me. I have brought the original postmortem report which is in my hand and bears my signatures. The correct carbon copy there is Ex.PH which was prepared in the same progress and the pictorial diagram showing the seats of injuries is Ex.PH/1. I had received police request alongwith other police papers on which Dr. V.K.Mujral, S.M.O., Civil Hospital, Fazilka had made his endorsement Ex. PJ for conducting the postmortem examination. I identify his signatures on the said endorsement”.

10. The prosecution further examined PW6 Karamjit Singh, Inspector, who had initially got the FIR registered. He also got the postmortem examination conducted from the doctors of Civil Hospital Fazilka. He prepared the rough site plan Ex.PL with correct marginal notes. He also recovered various incriminating material from the place of occurrence. He arrested Shimla Singh, Tota Singh

and Kulwant Singh and recovered Tangli from Tota Singh. After receipt of *rukka* Ex.PE, he had reached the hospital at about 1.20 a.m. He stated that Shimla Singh and Kala Singh accused had not met him in the hospital. Their medico legal reports had already been received by him alongwith *ruqa* Ex.PE. They were not admitted in the hospital, so he did not enquire about their fitness from the doctor.

11. The prosecution further examined Harcharan Singh, ASI, as PW4 who had conducted the part investigation. He interrogated Shimla Singh, Durga Bai, Sewa Singh and Kulwant Singh, accused. Sewa Singh got recovered a *Gandasi*, in pursuance of his disclosure statement. Similarly, Kulwant Singh suffered a disclosure statement and got recovered one *dang*. Even, Shimla Singh was interrogated after taking him out of the lock up, who got recovered a *dang* from his fields. Durga Bai also got recovered a spade, in pursuance of her disclosure statement. He went to the spot and recovered the various articles, which were connected with the crime. After completion of investigation, the accused were *challaned* by Karamjit Singh, SHO and he identified his signature on the police report under Section 173 Cr.P.C.

12. After the closure of the prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C. and all of them pleaded their innocence and stated that they had been falsely involved in the present case. They opted to lead evidence in their defence and examined DW1 Dr. V.K. Mujral. Dr. V.K. Mujral

stated that he had radiologically examined Jagroop Singh son of Shimla Singh and found that he had suffered a fracture of the condylar process of the humerus of the left elbow. He had also submitted the report to the Medical Officer Dr. Hans Raj, who had conducted the medico legal examination of the injured. He also conducted the radiological examination of Shimla Singh and Kala Singh and their x-ray reports were also sent to the same doctor, however, no fracture was detected in the injuries of Shimla Singh and Kala Singh.

13. Learned counsel for the appellant vehemently argued that both the material witnesses, PW2 Arjan Singh and PW3 Raj Singh were not present at the place of the occurrence and were later on introduced by the prosecution to make their case trustworthy. In fact, both the injured had manipulated their injuries, just to show their presence at the place of the occurrence. Even, at the time of initial medical examination, they were not present in the hospital. Still further, the trial Court completely failed to appreciate that three accused, namely, Shimla Singh, Jagroop Singh and Sewa Singh @ Kala had also suffered injuries on their persons in the same alleged incident. However, the prosecution failed to explain the injuries suffered by them in the incident and it was a case of free fight between the parties. Apart from that, even the MLR were sent by the concerned doctors to the police, but admittedly no investigation was conducted by the police with regard to the version propounded by the

defence. Consequently, the investigation was unfair and partisan and the appellants were liable to be acquitted by this Court. It is also apparent that all the accused/appellants had no common intention/object to cause the death of Jangir Singh in view of the evidence on record. It is also apparent that they had not formed any unlawful assembly and even admittedly, the *gandasi* was used from its reverse side and only one blow to Jangir Singh proved fatal. Apart from that, the occurrence had taken place suddenly without any premeditation and there was no previous enmity between the parties. Moreover, it was a simple incident where small children of the complainant party had damaged the *chaff* of the accused and the fight had only taken place for hardly one minute. Consequently, the appellants are entitled to be acquitted by this Court.

14. On the other hand, learned State counsel vehemently opposed the submissions made by the learned counsel for the appellants and submitted that the trial Court had rightly convicted and sentenced the appellants. All the appellants had joined hands and came together at the spot. Even, all the appellants were armed with *gandasis*, *tringles* and *dangs* and had caused injuries not only to Jangir Singh, since deceased, but also caused injuries to PW2 Arjan Singh and PW3 Raj Singh. Even, the medical record was supporting the ocular account in the present case and there was motive behind all the appellants to commit the crime. Thus, the appeal filed by the appellants is liable to be dismissed by this Court.

15. At the outset, the group of offences affecting the human body are contained in Chapter XVI of the Indian Penal Code. Section 299 defines the offence of culpable homicide, which provides that whoever causes death by doing an act with an intention of causing death or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that it is likely by such act to cause death, commits the offence of culpable homicide. Further, Section 300 of IPC defines "murder" and as per the said provision, culpable homicide is murder, if the act is done by which the death is caused is done with the intention of causing death. Secondly, if it is done with an 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. Thirdly, if the act is done with an intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. Fourthly, 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, he commits murder when such act is committed without any excuse for incurring the risk of causing death.

16. Apart from that, certain exception to Section 300 of IPC also mentioned, when culpable homicide is not murder and the relevant extract of the said provision has been reproduced below:-

*“Exception 1. When culpable homicide is not murder.-
Culpable homicide is not murder if the offender, whilst*

deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact”.

Exception 3.-Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.-Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent”.

17. Section 302 IPC deals with the punishment for murder, whereas Section 304 IPC provides for the punishment for culpable homicide not amounting to murder. The offence under Part I as well as Part II of Section 304 IPC is punishable. The distinction between these two Parts of Section 304 IPC is required to be considered by keeping in mind the provisions of Sections 299 and 300, IPC.

18. The Hon’ble Supreme Court in the matter of *N. Ramkumar versus The State Rep. By Inspector of Police Criminal (Appeal No.2006 of 2023. D/d. 06.09.2023)* discussed in detail the distinction between two expressions, namely, “intention” and “knowledge” and held as follows:-

“15. In the case of Basdev Vs. State of Pepsu AIR 1956 SC 488 at page 490 the following observations have been made:

“Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line

between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion.”

16. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, ‘intent’ and ‘knowledge’ and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat ‘intent’ and ‘knowledge’ in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Indian Penal Code namely “intention” and “knowledge” has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved

*that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted. This Court in the case of **Pulicherla Nagaraju @ Nagaraja Reddy vs State of Andhra Pradesh**, AIR 2006 SC 3010 has observed:*

“Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was

picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

*17. This Court in the case of **Pratap Singh @ Pikki v. State of Uttarakhand** (2019) 7 SCC 424 had noticed that the deceased-victim had suffered total 11 injuries and had been convicted for offences under Section 304 Part-II/Section 34 IPC apart from other offences. It was noticed that some altercation took place and the groups entered into scuffle without any premeditation and convicted accused for the offence punishable under Section 304 Part-II/Section 34 IPC. Taking into consideration that the appellants therein were young boys and had served sentence of more than three years and five months and there was no previous enmity, persuaded this Court that the quantum of sentence is excessive and accordingly sentenced them to the period*

already undergone for the offence under Section 304 Part-II/ Section 34 IPC by observing thus:

“27. We do find substance in what being submitted by the learned counsel for the appellant and in the first place, it is to be noted that the trial Court, while awarding sentence to the appellant has not made any analysis of the relevant facts as can be discerned from the judgment (page 96–97 of the paper book) dated 12th January, 1998. Even the High Court has not considered the issue of quantum of sentence. From the factual position which emerge from the record, it is to be noticed that they were young boys having no previous enmity and were collectively sitting and watching Jagjit Singh night. On some comments made to the girls sitting in front of the deceased, some altercation took place and they entered into a scuffle and without any pre–meditation, the alleged unfortunate incident took place between two group of young boys and it is informed to this Court that the appellant has served the sentence of more than three years and five months. Taking into consideration in totality that the incident is of June 1995 and no other criminal antecedents has been brought to our notice, and taking overall view of the matter, we find force in the submission of the appellant that the quantum of sentence is excessive and deserves to be interfered by this Court.”

*18. In the case of **Deepak v. State of Uttar Pradesh reported in (2018) 8 SCC 228** it came to be noticed by this Court that incident had taken place in the heat of the moment and the assault was by a single sword blow in the rib cage was without any premeditation and incident*

had occurred at the spur of the moment, and thus inferred there was no intention to kill and as such the offence was converted from Section 302 IPC to Section 304 Part II IPC and the appellant was ordered to be released forthwith by sentencing them to the period of conviction already undergone. It was held:

“7. On consideration of the entirety of the evidence, it can safely be concluded that the occurrence took place in the heat of the moment and the assault was made without premeditation on the spur of time. The fact that the appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the appellant, coupled with the duration of the entire episode for 1½ to 2 minutes. Had there been any intention to do away with the life of the deceased, nothing prevented the appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib-cage area, knowledge that death was likely to ensue will have to be attributed to the appellant.

8. In the entirety of the evidence, the facts and circumstances of the case, we are unable to sustain the conviction of the appellant under Section 302 IPC and are satisfied that it deserves to be altered to Section 304 Part II IPC. It is ordered accordingly. Considering the period of custody undergone after his conviction, we alter the sentence to the period of custody already

undergone. The appellant may be released forthwith if not required in any other case.

9. The appeal is therefore allowed in part with the aforesaid modification of the conviction and sentence.”

19. Apart from that, the Hon’ble Apex Court in the matter of *Anbazhagan vs. The State represented by the Inspector of Police in Criminal Appeal No.2043 of 2023 (disposed of on 20.07.2023)*, again discussed the similar provisions of law and laid down the tests, which were to be adopted, while deciding the “intention” or “knowledge” on the part of the accused in doing such acts and held as follows:-

“60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: ‘A’ is bound hand and foot. ‘B’ comes and placing his revolver against the head of ‘A’, shoots ‘A’ in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of ‘B’ in shooting ‘A’ was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, ‘B’ sneaks into the bed room of his enemy ‘A’ while the latter is asleep on his bed. Taking aim at the left chest of ‘A’,

'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would

be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the

four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an

accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

20. At this juncture, we would proceed to discuss the evidence led by the prosecution in the light of the above said principles of law, which have been enunciated by the Hon'ble Supreme Court. The prosecution had examined PW2 Arjan Singh, complainant, who supported the case of the prosecution being the first informer. He clearly stated in his statement that for the last several hours, the accused as well as complainant sides were working in their

respective fields. All of a sudden, the children of Hansa Singh went to the fields of the accused and started playing on the heap of Chaff. Sewa Singh accused started abusing those children. On this, Jangir Singh prevented Sewa Singh from doing so and there was exchange of hot words only for 1/2 minutes between them. Thereafter, Sewa Singh allegedly come alongwith his family members and attacked the accused. It is also an admitted fact that there was no previous enmity between the parties and the occurrence had taken place all of a sudden over a trivial issue of playing of children on the *Chaff*, which belonged to the accused. Still further, in his cross-examination, PW2 Arjan Singh admitted that Sewa Singh accused was working in his fields since 02.00 p.m., the children had gone to the heap of *Chaff* at about 3/3.30 p.m. and the occurrence had taken place at about 07/07.30 p.m. In fact, PW2 Arjan Singh further admitted that there was exchange of hot words between Sewa Singh accused and Jangir Singh (since deceased) only for 1/2 minutes and, thereafter, Sewa Singh left for his house. Even, the accused had caused injuries to the complainant side hardly for 1 minute. Even, similar stand has been made by PW3 Raj Singh, who also admitted that they had been working in their fields for the past 4/5 hours, before this occurrence had taken place. Even, the accused were also working in their fields and there was exchange of hot words with Sewa Singh over the issue of playing of children on the heap of *Chaff*.

21. From the above referred version of the prosecution, it is

apparent that the occurrence had taken place at the spur of moment and after reaching at the spot, Sewa Singh accused gave a blow from the reverse side of *Gandasi* on the head of Jangir Singh, as a result of which, he fell down. Thereafter, Tota Singh appellant gave a blow with his tringle on his right foot and the other accused also caused injuries to Arjan Singh and Raj Singh also. This clearly shows that the weapon of offence, i.e., *Dang*, *Gandasi* and tringle (*Tangli*) etc., were used in the commission of crime, which was easily available with the farmers in this part of the country. Apart from that, the occurrence had taken place after exchange of hot words between Sewa Singh appellant and Jangir Singh, since deceased, over a trivial issue. Even, as per PW2 Arjan Singh, accused had caused injuries to them hardly for one minute and apparently the sharp side of the *Gandasi* was not used. Even, the injuries suffered by PW2 Arjan Singh and PW3 Raj Singh, both injured, were superficial in nature and only one blow from the reverse side of the *Gandasa* on the head of Jangir Singh proved to be fatal in the present case. Apart from that, it is also apparent that the accused in the present case had not acted in a cruel or unusual manner and had not taken any undue advantage in any manner. Consequently, we are of the opinion that the trial Court had wrongly convicted the appellants for commission of the offence under Section 302 IPC and rather the appellants were liable to be convicted for the commission of the offence under Section 304 Part II IPC. We have come to the conclusion that the offence under Section 302 IPC is

liable to be altered under Section 304 Part II IPC and we have to advert to the order of sentence passed by the trial Court. In the present case, the FIR was registered on 1st June 2001 and apparently all the accused belong to one family and have faced the agony of trial/appeal for the last 25 years. Consequently, the sentence awarded by the trial Court is reduced to the sentence of 07 years.

22. As a consequence of the above discussion, the impugned judgment and order dated 17.04.2004 passed by the trial Court are modified to the extent that the offence in the present case is altered from Section 302 IPC to Section 304 Part II IPC and the appellants are sentenced to undergo rigorous imprisonment for a period of 07 years. The amount of fine is enhanced to Rs. 50,000/- each, which shall be deposited by the appellants within a period of 02 months from today, failing which, the appellants shall further undergo rigorous imprisonment for a period of 06 months and after recovery of the amount of fine, the concerned CJM shall disburse the said fine as compensation to the legal representatives of Jangir Singh, the deceased, against receipt and proper identification.

23. With the above modification, the appeal stands disposed off.

24. The appellants/accused are directed to surrender within 15 days from today, failing which, the CJM concerned shall issue non bailable warrants against the present appellant/accused and shall commit them to custody to serve the remaining sentence of

imprisonment.

25. All pending applications, if any, are disposed off, accordingly.
26. The case property, if any, may be dealt with as per the rules.
27. Records of the Court below be sent back.

(N.S.SHEKHAWAT)
JUDGE

(SUKHVINDER KAUR)
JUDGE

02.02.2026
amit rana

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No