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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 7th January, 2026

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CRL.A. 388/2002

AMAR BAHADUR

.....Appellant

Through: Mr. Tej Singh Varun – *Amicus Curiae*
along with Ms. Pooja Kumari, Adv.

versus

STATE

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav, Adv.
Mr. Nitin Rai Sharma, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. This hearing has been done through hybrid mode.
2. The present criminal appeal arises out of judgment dated 22nd January, 2002 (*hereinafter, 'the impugned judgment'*) and order of sentence dated 24th January, 2002 (*hereinafter, 'the impugned order of sentence'*), passed by the Id. Additional Sessions Judge in **Sessions Case No. 59/99** titled '**State v. Amar Bahadur**', arising from **FIR No. 357/98**, registered under Section 302 of the Indian Penal Code, 1860 (*hereinafter, 'IPC'*) at PS Keshav Puram.



3. The brief facts that are relevant for the present appeal are that an incident took place on 19th October, 1998 at M.D. Exports, C-34 Industrial Area, Lawrence Road. The said premises is a factory where several workers, including the deceased as well as the Appellant used to work. The alleged incident took place around Diwali in the year 1998. On the date of the incident, the Appellant– Amar Bahadur, along with the co-workers– Mr. Dal Bahadur, Mr. Suresh Rana, Mr. Narinder Bahadur, Mr. Ashiq Thapa, Mr. Dil Bahadur, Mr. Abdul and the deceased– Mr. Bal Bahadur were all working in the Khanni Department of the factory. In the said department, buffalo meat flesh was being removed and transported for packing. The workers were given a break from about 8 P.M. till 10:30 P.M.

4. Once they returned to work, around 11:30 P.M, certain abuses were exchanged between the Appellant and the deceased- Mr. Bal Bahadur. The said skirmish then led to a physical fight wherein the deceased had pinned the Appellant to the ground due to which in a fit of rage, the Appellant picked up a knife used for cutting meat and attacked the deceased.

5. In this attack, several wounds were inflicted upon the deceased which led to his demise. The co-workers had taken the deceased initially to one private nursing home and thereafter by the time he could be taken to Hindu Rao Hospital, he was declared dead.

6. This led to registration of **FIR No. 357/98** under section 302, IPC. The post mortem of the dead body of the deceased was then conducted and the report thereof revealed several wounds which were as under:



POST MORTEM EXAMINATION

P. M. No. HR/328/98Conducted by Dr. C.B. DabasCase FIR No. 357/98 U/s 302 IPCDate & Time 20-10-98 at 2.00 PMP.S. Keshav PuramBody brought by Ct. Ram Singh - 1633/NWName Prad BahadurAge 46 yrs Sex MaleFather's/Husband's Name Man BahadurAddress M-794 Shakti Pur T.T. Colony DelhiDate & Time of Admission 2 Brought Dead or Date & Time of Death 20-10-98 at 3.10 AMCasualty No./CR No. Cx 39743M.L.C. No. 15495/98Body identified by (1) Narender Bahadur - Son(2) Dil Bahadur - BrotherAlleged History of being stabbed during scuffle.

EXTERNAL EXAMINATION:

Clothes: White & Black checkered shirt, White Bangon, Black pants and green kurta over, and black shoes.

(1) Identification Marks (in unidentified bodies/Clothing)

(2) Height 163 cm Weight 60 kg Build Average

Condition of Body

1. Rigor Mortis Present all over 2. Post Mortem Staining Present on back part except3. Eyes Closed/Open partially open Cornea hazy Conjunctiva pale4. Natural orifices (Nose, Mouth, Ear, Vagina, Anus) Natural orifices present. Other

5. External Injuries

- ① Abrasion 2.5 x 0.9 cm, over cheek
- ② Incised wound 3.5 x 0.5 cm over back of middle finger, proximal phalanx
- ③ Incised wound 3 x 0.4 cm over back of little finger, distal phalanx
- ④ Incised wound 1.3 x 0.4 cm over palm of right hand, hypotenuse area
- ⑤ Incised wound 5 x 2 cm over palm of hand, a central area
- ⑥ Superficial Incised wound 4 x 0.7 cm over side back of chest over scapula
- ⑦ Superficial Incised wound, horizontally placed 2 x 0.3 cm, over side back of neck just below hair line. Outer angle is rounded & inner angle is acute.
- ⑧ Stab wound, J shaped, placed vertically over back of neck in middle and slightly to over side, 2 cm outer to injury no 5 overlying the hairline & occipital region of scalp. Vertical line, measure 3 x 1.5 cm, with upper angle rounded & edges clean cut; the lower limb of the wound measures 1.2 x 0.5 cm, and outer angle being acute. The wound is gaping & blood is oozing out of the wound. The hair also cut at the same plane.



7. Charges were then framed in the matter before the sessions court *vide* order on charge dated 6th August, 1999 and thereafter, 21 prosecution witnesses were examined during the course of trial. The summary of evidence and details of witnesses is set out in the impugned judgement as under:

“3. Prosecution in support of its case, in all, have examined 21 witnesses, PW1 conducted the post mortem on the body of the deceased and the post mortem report is Ex. PW1/A. The application for post mortem is Ex. PW1/B and brief facts supplied by document vide Ex. PW1/C and inquest report is Ex. PW1/D1 to D:

PW2 has proved the scaled site plan which Ex. PW2/A.

PW3 has proved the MLC No. 15517/98 of patient Amar Bahadur which is Ex. PW3/A.

PW4 has proved the DD no.3A copy of which is Ex. PW4/A. He has also proved the FIR copy of which is Ex. PW4/B.

PW5 took four parcels along with sample seal to FSL, Malvia Nagar vide RC no.95/21 and deposited the same.

PW6, PW7, PW10, PW14 are the alleged eye witnesses of the occurrence who have supported the case of the prosecution on all material particulars. PW16 who is another eye witness has not supported the case of the prosecution.

PW8 has proved the MLC of deceased Bal Bahadur which is EX, PW8/A.

PW9 identified the dead body of Bal Bahadur and his statement is Ex. PW9/A and he received the dead body vide memo Ex. PW9/B.

PW11 is constable Ranbir Singh who accompanied SI Raj Singh on receipt of DD No.23A. In his presence the knife Ex. P-1 was seized vide memo Ex. PW11/A,



PW12 Ct. Sher Singh and PW18 Ct. Rakesh were left by SI Raj Singh at the spot and in their presence sketch of the knife was prepared which is Ex. PW6/B. Blood was lifted from the spot and taken in police possession vide memo Ex. PW12/B.

PW13, Dr. Ramesh Chander Garg has deposed that about three years back, on the night of the festival of Dewali, one injured who looked to be of Nepali origin, was brought by two other Nepali who was having multiple injuries on his body and blood was oozing out. He advised to take him to some government hospital.

PW15, Anant Lal who was working as Manager in the said factory, has produced Attendance Register which was seized vide memo Ex. PW15/A and the copy of Page No.38 is Ex. PW15/B.

PW17 delivered the copies of the FIR at the residences of Senior Officers and to the Ilaka Magistrate at his residence.

PW19 is SI Raj Singh who on receipt of DD No.23A which is Ex. PW4/A reached the spot. He then, took the injured Bal Bahadur to Hindu Rao Hospital where he was declared dead and the MLC is Ex. PW8/A. He recorded the statement of Dal Bahadur on which he made his endorsement in rukka which is collectively Ex. PW6/A and sent the same for registration of the case. He seized the knife Ex. P-1 by converting it into a pulanda sealed with the seal of PK and taken in police possession vide memo Ex. PW11/A. He seized the blood sample, vide memo Ex. PW12/A.

He also recorded the statement of the accused Ex. PW19/A,

PW20 is the IO of the case who recorded the statement of the witnesses and after completing the necessary investigation filed the challan against the accused.



PW21, HC Kanwar Singh has deposed that on 20.10.98 inspector Pradeep Kumar deposited four parcels sealed with the seal of PK which he deposited in Malkhana vide Entry no.1886, copy of which is Ex. PW21/A. He further deposed that on 16.12.98 the said four parcels with the said seal were sent to FSL, Malvia Nagar through Ct, Jagat pal.”

8. The witnesses proved the inquest report, the site plan, the MLC, as also the DD Nos., etc. Four eye witnesses i.e. PW-6, PW-7, PW-10, PW-14 and PW-16 were also examined and all of them supported the case of the prosecution.

9. However, the relevant statements from the deposition of PW-6– Dhat Bahadur would show that the deceased and the Appellant had started fighting and there was a physical altercation between them, leading to exchange of abusive language as well. The deposition of PW-6– Dhat Bahadur is set out below:

“PW-6

Dhat Bahadur son of Sh. Sita Ram, 24 years, r/o-M-455, Shakurpur, Delhi,.

On SA

On 19.10.98 I was residing at M-494, Shakurpur. I was working at Ahanni Deptt. at ND Export situated at, C-34, Laweranoe Road, Industrial Area. The accused Amar Bahadur present in court was also working in the same deptt within the same factory. The deceased Bal Bahadur was also working with us in the same factory. Suresh Rana, Narender, Ashiq Thapa Dhan Bahadur, Amar Bahadur and Bal Bahadur were also working with us in the same factory in the said deptt. We used to handle the meat of he - Buffeloow in which the factory was dealing its packing, fridging etc. When



on 19.10.98 we were on duty in our shift which started from 6 p.m. we left for dinner at 8 p.m. to our residence. Ordinarily we used to return after return at 9 p.m. but on 19.10.98 as it was a Diwali festival day, our supervisor has relaxed our time for dinner so as to celebrate the Diwali and he permitted us to return back at 10 or 10.30 p.m. Accordingly we returned to the factory after dinner at about 10.30 p.m..

At about 11.15 p.m. the deceased Bal Bahadur and the accused; started fighting and there was an altercation between them , exchange of abuses. The deceased Bal Bahadur pushed the accused on the ground on which accused Amar Bahadur became angry and picked up a knife of meat cutting used in the factory and when he was about to give a blow of the same on the deceased Bal Bahadur, the deceased Bal Bahadur, caught hold of the knife. The accused snatched the knife due to which deceased Bal Bahadur fell down and back was up and the accused Amar Bahadur gave him two knife blows at the back of his neck. The accused tried to escape from the spot but we all the same persons over powered the accused alongwith the knife. Thereafter the deceased Bal Bahadur was removed to a Nursing Home in a three wheeler at Trinagar. The nursing home refused to take him and deceased Bal Bahadur expired there.

I gave a call from the nursing home to my factory to send a vehicle. Accordingly a tempo of make TATA came from the company to the nursing home. Deceased Bal Bahadur was laid down in the said vehicle and was taken to the factory. Police had arrived at the factory. The police advised to take him to HR hospital. Accordingly deceased Bal Bahadur was taken in that vehicle to Hindu Rao Hospital. The doctor declared him dead at the HR Hospital. Police recorded my statement at the hospital which was signed by me and



the same is Ex.PW6/A which was earlier mark A and the same is signed by me at point A on the back side. I can identify the knife if shown to me.

(At this stage one sealed parcel with the seal of FSI, Delhi is opened). The knife is blood stained and the same is Ex.P1 which the witness identifies as the same used by the accused while causing injuries to deceased Bal Bahadur. The deceased after falling down first time on the ground tried to save himself by rushing away but he could rush to a small distance when he was again made to fall on the ground by the accused, xxxxxxxxxxxxxxxx by the accused.

(Deferred at the request of accused)”

Similar testimony has also been given by the other eye witnesses as well.

9. Further, the statement of the Appellant under Section 313, Cr.P.C. was also recorded in which he had denied the allegations against him. One of the relevant statements made by the Appellant u/s 313, Cr.P.C. is as under :

“Q. Have you anything else to say ?

Ans. I am innocent and I have been falsely implicated in this case. On the day at the time of incident I was not present at the place of occurrence, later on I was arrested from my house and have been falsely implicated in this case.”

10. The impugned judgment has been passed after considering the evidence which has been tendered by all the witnesses. However, no evidence has been led by the Appellant in this matter. On the basis of the all the evidence which was recorded, the Trial Court came to the following conclusions:



- i. The Court rejected the plea that the testimony of the eye-witnesses is not worth placing reliance on;
- ii. The Court also rejected the plea that the testimony of PW-10–Narinder Bahadur, being the son of the deceased, is not reliable, as he was not present at the place of incidence and had, in fact, visited only the hospital where the deceased was taken.
- iii. Insofar as the other witnesses, *i.e.* PW-6, PW-7 & PW-14 are concerned, the Trial Court came to the conclusion that there are no contradictions or improvements in their testimonies. The relevant paragraphs read as under:

*“8. On the other hand, it has been submitted by Ld. APP that all the public witnesses examined by the prosecution belong to one community, one race and one country, nothing has been brought on record that there was any previous enmity between the witnesses and the accused. He has submitted that the 'contradictions or Improvements which have been pointed out by ld. counsel for the accused in the testimony of PW6, PW7 and PW10 are neither contradictions nor Improvements. He has submitted that perception of a person differ from one another. A person may react differently in a given situation. He has submitted that the manner in which the incident had taken place has been narrated by the witnesses and there is no reason to disbelief their testimony. It has also been submitted that the accused was apprehended by the co-workers along with the weapon of offence which was seized by the police. **After giving my thoughtful consideration to the contentions of both the parties I find that both PW6 and PW7 and PW14 have categorically stated the manner in which***



the incident had taken place. All these witnesses had seen the accused inflicting the knife blows on the body of the deceased. It has also come in their evidence that after attacking the deceased with a knife the accused tried to run who was apprehended by the co-workers along with the knife Ex. P-1. I do not agree with the contentions raised by the counsel for the accused that there are any contradictions or Improvements in the testimony of these witnesses. There Is no reason to disbelieve the testimony of these witnesses.”

iv. Insofar as the alleged delay in informing the police is concerned, the same has been considered by the Trial Court, which has held that there is clear explanation as to why the police was called within a two hour gap from the occurrence of the event. Thereafter, the Trial Court has come to the conclusion on the basis of the post mortem report as under:

“15, In view of my above discussion, I am of the considered opinion that the accused committed the murder of Bal Bahadur as has come in the testimony of PW6 and PW7. Both these witnesses as well as the accused and deceased were of one community, one race and one country. There is nothing on record to show any previous enmity between the accused and the witnesses. In the statement recorded u/S 313 Cr.P.C. also no explanation has been given by the accused of having been falsely implicated.. The only statement he made is that on the day at the time of incident he was not present at the place of occurrence. This statement is falsified by the attendance register Ex. p-2 and the entry Ex.PW15/B. The prosecution has, thus, been able to prove its case against the accused beyond any



shadow of reasonable doubt, and as such I hold the accused guilty u/S 302, I.P.C. and convict him accordingly”

11. As can be seen from the above, the Court has held the Respondent guilty under Section 302, IPC and has convicted him accordingly. In terms of the impugned order of sentence, the Appellant has been awarded imprisonment for life. The impugned order of sentence reads as under:

“It has been submitted by the counsel for the accused that he is aged about 24 years of age. He has clean antecedents and is not a previous convict. There is also no criminal record of the accused. He has submitted that it does not fall in the category of Rarest of rare cases and as such minimum punishment prescribed u/S 302 IPC be awarded to him.

On the other hand, Ld. APP has opposed the same.

From the record I find that this case does not fall in the category of Rarest of Rare cases and as such the accused is ordered to undergo imprisonment for life and to pay a fine of Rs.2000/- and in case of default to further go RI for three months.”

12. The appeal against the impugned judgment was filed on behalf of the Appellant and notice was issued on 14th May, 2002. On the said date, the appeal itself was admitted. *Vide* order dated 13th May, 2004, the predecessor bench had granted suspension of sentence during the pendency of the appeal in the following terms:

“By this application, appellant-Amar Bahadur prays for suspension of sentence and grant of bail till the disposal of the appeal.

We have heard learned counsel for the parties.



Having regard to the fact that the appellant has already undergone more than five years of sentence and his appeal is not likely to be taken up for disposal in the near future, we suspend the sentence awarded to him in sessions case No.59/99, arising out of FIR No.357/98, till the disposal of the appeal, subject to appellant's furnishing personal bond in the sum of Rs. 10,000/- with two sureties in the like amount, out of which one shall be a local surety, to the satisfaction of the trial Court/Duty Magistrate.

The application stands disposed of.

The order shall be communicated to the appellant, through Superintendent, Central Jail, Tihar."

13. Thereafter, on 4th March, 2005, the Court considered the plea of the Appellant and reduced the amount of the personal bail bond in the following terms:

" We have carefully perused both the aforesaid judgments. Although in the judgment of Moti Ram & others (supra), the aforesaid observations, which are extracted in the preceding paragraph, were made with reference to "little offences" yet the said observations, when read together with the observations made in the case of Hussainara Khatoon & Others (supra), in our considered opinion, would also be applicable to the facts of the present case in view of the fact situation that the appellant still continues to remain in custody for more than six long years despite an order in his favour suspending his sentence of imprisonment.

In view of the aforesaid settled position of law and in consideration of the peculiar facts and circumstances of the present case, with particular reference to his poverty due to which he is unable to avail the benefit, we modify our earlier orders by ordering that the sentence of the imprisonment of the



appellant shall remain suspended on furnishing personal bond of Rs.5,000/- with one surety of the like amount to the satisfaction of the Trial Court/Duty Magistrate. It is however, made clear that this order is passed in the facts and circumstances of the present case. It is, however, clarified that the appellant on his release in terms of this order shall report to the Police Station at Keshav Puram, Delhi every month, until further orders.

Copy of this order be sent to the SHO of the Police Station Keshav Puram, Delhi by the Registry of this Court and a copy of this order be given to the counsel for the parties. Copies be also sent to Jail for information of the Jail Authorities as well of the accused.”

14. The matter was, thereafter, listed for hearing for the first time on 26th September, 2019. Notice was issued repeatedly to the Appellant, however, despite bailable warrants being issued, he could not be traced. The repeated status reports filed thereafter would show that neither the Appellant, nor the sureties are traceable.

15. Mr. Bahri, Id. APP submits that proceedings u/s 84, BNSS, 2023, were also initiated against the Appellant for declaring him a proclaimed offender and the same are pending before the Joint Registrar.

16. It is further noted that *vide* order dated 9th August, 2023, the Court had appointed Mr. Tej Singh Varun, Advocate, as *Amicus Curiae* to defend the case of the Appellant.

17. Today, the matter has been heard at length, while the proceedings u/s 84, BNSS, 2023, are still pending before the Joint Registrar. However, considering that the incident is of 1998 and the appeal was filed in 2002, the



Court deems it appropriate to finally hear the appeal and dispose it of on merits.

18. The issue for consideration is whether the case of the Appellant has been rightly covered under Section 302 of the IPC or whether the sentence awarded to the Appellant deserves to be reduced.

19. A perusal of the evidence tendered before the Trial Court would reveal that clearly, there was no premeditated plan of the Appellant to cause any injury to the deceased or to kill him. All the witnesses have unanimously stated that there was some exchange of abuse, leading to physical altercations that took place between the Appellant and the deceased. In fact, PW-6– Dhat Bahadur, who is one of the eye-witnesses has clearly stated that it was the deceased who had firstly pinned the Appellant on the ground, due to which, in retaliation, the Appellant appeared to have picked up the knife and stabbed the deceased due to grave and sudden provocation.

20. Mr. Bahri, Id. APP has placed reliance on the decision of the Supreme Court in *Virsa Singh v. The State of Punjab 1958 AIR 465* to argue that all the necessary ingredients under Section 300, IPC, *i.e.* the intention to inflict the injury that is found to be present and the injury being sufficient in the ordinary course of nature to cause death, were fulfilled in facts of the present case.

21. The settled position of law, as is clear from the principles highlighted in the judgment of *Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444*, is that the intention of the accused is a pivotal question in deciding



whether the case falls under Sections 302, 304 Part I or 304 Part II of IPC. Further, to gather the accused's intention to cause death, a perusal of the following circumstances are essential:

*“29. 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.”*

22. The settled position in law as is clear from the judgment discussed above is that if there is no premeditation, the case would get covered under Exception 4 of Section 300 IPC. This position of law is further reiterated in a judgment of the Supreme Court in ***Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770***, wherein the death was caused by an iron pipe due to exchange of hot words in a heated situation. The Supreme Court in the said judgment held that whenever there is a sudden fight without premeditation, it cannot be held to be an offence under Section 302. The relevant portion of the judgment has been extracted below:

“3. The prosecution story is that the appellant, Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (Accused 2) and Shivaji Bhivaji Gaikwad (Accused 3) were walking past the field of the deceased when a dog owned by the deceased started barking at them. Angered by the barking of the animal, the appellant is alleged to have hit the dog with the iron pipe that he was carrying in his hand. The deceased objected to the appellant beating the dog, whereupon the appellant started abusing the former and told him to keep quiet or else he too would be beaten like a dog. The exchange of hot words, it appears, led to a scuffle between the deceased and the accused persons in the course whereof, while Accused 2 and 3 beat the deceased with fist and kicks, the appellant hit the deceased with the iron pipe on the head.

xxxx



11. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons:

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27. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II IPC.

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68. In the result, we allow this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the courts below. A copy of this order be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.”



23. A similar situation was examined by the Supreme Court in ***Khuman Singh v. State of M.P., (2020) 18 SCC 763***, where a sudden quarrel over a trivial issue led to a fatal injury. In that context, the Supreme Court observed as under:

“8. The question falling for consideration is whether the appellant-accused intentionally caused the death of deceased Veer Singh? The entire incident occurred when the appellant had taken his buffaloes for grazing in the field of the deceased for which the deceased objected and drove all the buffaloes out of his field. It is in these circumstances, the appellant became furious and abused the deceased and caused injuries on his head in a sudden fight with axe. There was no premeditation for the occurrence and because of the grazing of the cattle, in a sudden fight, the occurrence had taken place.

9. The question to be considered is whether the act of the appellant-accused would fall under Exception 4 to Section 300 IPC? Exception 4 to Section 300 IPC can be invoked if death is caused : (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. In the present case, the appellant-accused and the deceased exchanged wordy abuses on which, the appellant gave the deceased blows on his head causing six head injuries. Where the occurrence took place suddenly and there was no premeditation on the part of the accused, it falls under Exception 4 to Section 300 IPC.

10. As discussed earlier, the entire incident was in a sudden fight in which the appellant-accused caused head injuries on the deceased with an axe. There was no prior deliberation or determination to fight. The



*sudden quarrel arose between the parties due to trivial issue of grazing the buffaloes of the appellant for which, the deceased raised objection. In a sudden fight, the appellant had inflicted blows on the head of the deceased with an axe which caused six head injuries. Though the weapon used by the appellant was axe and the injuries were inflicted on the vital part of the body viz. head, knowledge is attributable to the appellant-accused that the injuries are likely to cause death. **Considering the fact that the occurrence was in a sudden fight, in our view, the occurrence would fall under Exception 4 to Section 300 IPC. The conviction of the appellant-accused under Section 302 IPC is therefore to be modified as conviction under Section 304 Part II IPC.***

24. In view of the above discussion, since there was no pre-meditation to cause any hurt or eventual death, this Court is of the opinion that in the facts of the present case, the act committed by the Appellant would constitute culpable homicide not amounting to murder. Accordingly, the conviction of the Appellant is converted to Section 304 Part II of the IPC and the sentence of the Appellant is reduced to 10 years.

25. Since the sentence has now been reduced and as per the latest nominal roll on record, the Appellant has already undergone the sentence to the extent of 4 years 2 months and 16 days, and has also been on remission for 2 years 27 days, thus, upon the Appellant being traced, he shall serve the remaining portion of the sentence in terms of this order.



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26. Let the case file be transferred to the Joint Registrar for continuation of the proceedings u/s 84, BNSS, 2023 and for ensuring the Appellant's appearance for serving of the remaining sentence.

27. The appeal is disposed of in these terms. Pending applications, if any, are also disposed of.

**MADHU JAIN
JUDGE**

**PRATHIBA M. SINGH
JUDGE**

JANUARY 7, 2026/*Prg/dj/ss*