IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 24th DAY OF SEPTEMBER 2025

PRESENT

THE HON'BLE MR. JUSTICE S.R. KRISHNA KUMAR

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

CRIMINAL APPEAL NO.100217 OF 2022

BETWEEN

1. SHAMSHUDDIN, S/O. HAZISAB SAVANUR,
AGE ABOUT 25 YEARS,
OCC: FABRICATION WORK,
R/O. NEAR URDU SCHOOL,
SADARSOFA, OLD-HUBLI,
NOW AT: BEHIND N.A. NAGAR
MASJID OLD HUBBALLI,
HUBBALLI-580020.

2. ZUBERAHMED @ HAZI,
S/O. ABDULKHADAR JAILANI KALBURGI,
AGE ABOUT 25 YEARS,
OCC: FABRICATION WORK,
R/O. PATHAN GALLI, SADAR SOFA,
OLD-HUBLI, HUBBALLI-580020.

...APPELLANTS

(BY SRI. L.S.SULLAD, AMICUS CURIAE)

AND:

THE STATE OF KARNATAKA
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENCH AT DHARWAD, THROUGH

KASABAPETH POLICE STATION,
HUBBALLI.

….RESPONDENT

(BY SRI. M.B.GUNDAWADE, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED U/S 374 (2) OF CR.P.C., SEEKING TO CALL FOR RECORDS AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION ORDER DATED 25.03.2022 AND SENTENCE DATED 28.03.2022 PASSED BY THE V-ADDITIONAL DISTRICT AND SESSIONS JUDGE, DHARWAD, SITTING AT HUBBALLI IN S.C.NO.76/2020 FOR THE OFFENCES PUNISHABLE U/S 302 R/W 34 OF IPC, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.08.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE S.R. KRISHNA KUMAR
AND
THE HON'BLE MR. JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE S.R. KRISHNA KUMAR)

This appeal by the accused Nos.1 and 2 in S.C.76 of 2020 is directed against the impugned judgment dated 25.03.2022 passed by the V Additional District and Sessions Judge, Dharwad, sitting at Hubballi, whereby the appellants/accused Nos.1 and 2 were convicted for the offence punishable under Section 302 read with Section 34 IPC and consequently,

sentenced to undergo rigorous imprisonment for life and pay fine of Rs.75,000/- each and, on default, to undergo two years' imprisonment.

2. The material on record discloses that, on 11.03.2020, P.W.1, Mehaboobsab Ibrahimsab Bikanbai, filed a complaint at around 2.15 p.m. reporting that his son Shaabuddin Bikanbai had been murdered by appellants/accused Nos.1 and 2 at around 12.30 p.m. and requested the Police authorities to take action against the appellants for murdering his son. In pursuance of the said complaint, the police authorities registered a FIR in Crime No.12/2020 against the appellants for alleged offences punishable under Section 323, 324, 341, 120B, 302, 504 r/w Section 34 of IPC. On 12.03.2020, the appellants/accused were arrested and have been in judicial custody ever since that day. After investigation, the police authorities filed a charge sheet before the learned Magistrate who took cognizance of the offences and committed the entire case before the Sessions Court (Trial Court) since the offence punishable under Section 302 was triable exclusively by the Sessions Court. After committal, the instant case in S.C. 76/2020 was registered against the

appellants and posted before the Trial Court who came to the conclusion that there was sufficient material to frame charges against the appellant who pleaded "not guilty" and as such, the Trial Court proceeded to frame charges under which the appellants were charged with the offences punishable under Section 302 r/w 34 of IPC.

3. The respondent-prosecution examined 24 witnesses as P.W.1 to P.W.24 and documentary evidence at Exs.P.1 to P.56 and material objects at MO-1 to MO-15 were produced and marked by the prosecution. The appellants/accused contested the case and cross-examined the witnesses and their statement under Section 313 Cr.P.C. was recorded in which the accused denied the case of the prosecution and stated that the deceased was their friend and was working as a painter and while doing painting work in a bakery near Ishwar Nagar on 11.03.2020, the deceased slipped and fell on iron rods as a result of which he sustained injuries and was declared dead when he was taken to the hospital. The accused contended that since they refused to pay compensation to P.W.1, the father of the deceased, he colluded with the police authorities and filed

the instant case which was false and the appellants/accused were entitled to be acquitted.

4. The Trial Court framed the following points for consideration:

1) Whether the prosecution proved its case beyond all reasonable doubt that the accused No.1 and 2 being enraged from the act of the deceased, who stared at them on the previous night, in this regard there was a quarrel, which was pacified with the intervention of the public. For which the accused No.1 and 2 had a plan to commit murder of the deceased, in that background on 11.3.2020 at 11.00 a.m. they came to Pathangalli circle, at 12.15 p.m. even the deceased Shabuddin had also came near Pathangalli tea stall, by that time both the accused have picked up a quarrel with him. The deceased with intend to assault on them brought club from the nearby shamiyan shop. But accused No.1 and 2 held the deceased tightly. By that time both the accused with intend to commit murder also by knowing the fact that the intended injury inflicting on the deceased are sufficient to cause his death have indiscriminately stabbed all over the body and caused 15 injuries, immediately though the deceased has been shifted to the hospital for treatment, there the doctor declared him as brought dead, thus both the accused have committed the offence punishable u/Sec.302 r/w.Sec. 34 of I.P.C ?

2) What order?

5. After hearing the parties, the Trial Court proceeded to pass the impugned judgment convicting the appellants/accused for the offences punishable under Section 302 r/w Section 34 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.75,000/- each. Aggrieved by the impugned judgment, the appellants/accused are before this Court by way of the present appeal.

6. Heard Sri. L.S.Sullad, learned counsel appointed as Amicus Curiae vide order dated 14.02.2025 for the appellants/accused, and the learned Additional State Public Prosecutor for the respondent-State and perused the material on record.

7. A perusal of the material on record will indicate that the Trial Court placed reliance upon the evidence of P.W.1, father of the deceased, P.W.3, the brother of the deceased, and P.W.4, the brother-in-law of the deceased in order to come to the conclusion that the accused had committed the alleged offence of stabbing the deceased at about 12.15 p.m. on 11.03.2020; so also, the Trial Court considered the evidence of P.Ws.15 and 16, alleged independent eyewitnesses as well as

the evidence of the Investigating Officer examined as P.W.24 in order to hold that their evidence supported the case of the prosecution that the appellants-accused had murdered the deceased. Further, the Trial Court also came to the conclusion that the defence put forth by the appellants that they were not guilty of the alleged offences but the deceased who was working as a Painter had fallen down on his own on the iron rods and had expired was not substantiated by the accused persons.

8. In this context, a perusal of the impugned judgment will indicate that insofar as the accused allegedly quarrelling with the deceased with whom they earlier had a quarrel the previous day i.e., on 10.03.2020 in the evening when the deceased is said to have given a "wild look/cold stare" to the accused who once again quarrelled with the deceased the next day i.e., the date of the incident that took place at around 12.15 p.m. and that the accused stabbed the deceased, the trial Court took into account the fact that there were no mutual inconsistencies or discrepancies in the evidence of P.W.1, P.W.3, P.W.4, P.W.15 and P.W.16 so as to discredit or impeach their testimonies which were also corroborated by the other

material on record including the recovery of the murder weapons MO.6 and MO.7 from the accused persons, inquest panchanama, post-mortem report, FSL report, etc. and other material on record. Under these circumstances, the Trial Court came to be conclusion that the prosecution had proved its case beyond reasonable doubt that the accused were guilty of offences punishable under Section 302 r/w Section 34 IPC.

9. Before adverting to the aforesaid evidence, it would be necessary to refer to the other material on record; P.W.2 is the mother of the deceased and states that by the time she reached the spot along with her husband, P.W.1 (complainant) and their son P.W.3, the deceased had been killed and was lying on the ground. P.W.2 is not an eyewitness and except stating that someone showed her a video recording of the incident, her evidence cannot be relied upon in order to prove the guilt of the accused.

10. P.W.5 is a mahazar witness and not an eyewitness, while P.W.6 who is cited as an eyewitness turned hostile and did not support the case of the prosecution. So also, P.Ws.7, 8, 9, 10, 11 and 12 also turned hostile and did not support the

prosecution case. P.Ws.13, 14 and 17 are also not eyewitnesses and merely state that they heard about the quarrel and the alleged murder of the deceased and even their evidence is not sufficient to prove the guilt of the accused. P.Ws.18 to 23 are prosecution witnesses comprising of Police Officials, mahazar witnesses, doctors and FSL Officer, etc., all of whom are obviously not eyewitnesses but their evidence would indicate that the demise of the deceased was on account of an homicidal death. At any rate, a perusal of the material on record will clearly indicate that the prosecution had established that it was a case of homicidal death and the impugned judgment and decree and the findings recorded by the Trial Court in this regard are correct and proper and the same do not warrant interference by this Court in the present appeal.

11. The Trial Court placed reliance upon the eyewitness viz., P.W.1, the father of the deceased, P.W.3-brother of the deceased, P.W.4- brother-in-law of the deceased as well as P.Ws.15 and 16 – independent eyewitnesses in order to hold that the accused persons were guilty of stabbing the deceased on the date of the incident. In this context, it is pertinent to note that while P.W.1 states in his evidence that after hearing

the news about the quarrel between his son (deceased) and the accused at around 11.45 a.m. on 11.03.2020, P.W.1 immediately ran to the spot since he could not find any vehicle and witnessed the incident. P.W.1 also stated that the previous night his son (the deceased) returned home at 11.00 p.m. and informed P.W.1 about the quarrel with the accused. Similarly, P.W.3 and P.W.4 who are none other than the brother and brother-in-law of the deceased also state that they received information about the quarrel and rushed to the spot separately at about 12.00 noon by motorcycle and witnessed the incident. So also, P.W.15 and 16 state that they were sitting in the tea stall at the time of the incident which occurred just outside the said tea stall.

12. Though learned counsel for the appellant attempted to contend that there are certain discrepancies and inconsistencies in the evidence of P.Ws.1, 3, 4, 15 and 16 as regards the occurrence of the incident, in our considered opinion that the evidence of the aforesaid five witnesses is consistent with the allegations made by the prosecution that the accused had stabbed the deceased by using the murder weapons. A perusal of the evidence of these five witnesses is

sufficient to come to the conclusion that the Trial Court was fully justified in holding that the accused had stabbed the deceased at around 12-12.30 p.m. on 11.03.2020 thereby resulting in his demise. The said findings recorded by the Trial Court are as under:

> *55. In this case PW-1, PW-3, PW-4, PW-15 and PW-16 have categorically deposed that on 11.3.2020 at 12.30 noon the accused No.1 and 2 by using the knives have repeatedly stabbed on the deceased. Though learned counsel for the accused had chosen to cross examine them in quite lengthly but nothing contrary to their evidence has been elicited in their mouth to discredit their evidence. Of course learned counsel for the accused is right that PW-1, 2 and 4 are relatives. But there is no bar to disbelieve the evidence of the relative witnesses, unless their evidence discredited by way of eliciting contrary facts in their mouth. Their evidence is stands as rock, without any doubt.*
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> *56. More importantly the evidence of the PW.15 and 16 who are an independent witnesses to the incident have categorically deposed in the very same line of PW. 1, 2 and 4. More interestingly. the P.W.No.16 deposed that, due to stabbing on the deceased, his intestine had come out. Which can be seen in the Photo of the dead body took at the time*

of inquest which is got marked as Ex.P8. If at all he had not witnessed the incident, how he can be sure on the nature of a particular injury. This aspect can be even seen in the Inquest drawn by IO at Ex.P37, at Page no. 2 of the mahazar, while noting the injuries found between neck to waist, its categorically stated that, in an injury on the stomach a portion of intestine is out.

57. Apart from that PW-7 and 8 who are the owners of Pathan Tea shop where in front of their, the incident had took place. Though they are not deposed anything on the incident. But, they deposed that, they came to know on the incident of murder had took place right in front of their shop. In this regard the Police have enquired them.

58. More importantly PW-9 and 10 are the persons, who took the deceased to the KIMS hospital, in an Auto Rikshaw from the crime scene. But in their chief examination, they deposed in the line of the defence line of case, stating that the "deceased while painting fell down on the iron bar fixed to the retaining wall of a gutter near Aynger Bakery, at Ishwar Nagar. But during the cross examination PW-9 categorically admitted that on 11.3.2020 at 12.00 noon he, deceased and accused No. 1 and 2 were present Just right infront of Pathan Tea shop, Pathan galli, which is a crime scene, as per the prosecution case. Though, he has pleaded

Ignorance on the incident of assault by the accused No.1 and 2 with the knives on the deceased, but he admitted that he along with the PW-10 took the deceased to the hospital. They have been followed by the father of the deceased, also he lodging of complaint against the accused on the offence murder. When, the accused no. 1 and 2, and deceased were present till noon at Pathan Gall, then question of accused sending the deceased to painting work at Iswarnagar, self falling on a rod rod fixed at Gutter, while painting are all appears to be an imginary story of the defense, set up to encash some discrepancy found in the prosecution records. But, in fact the fact admitted by the P.W.No.9 and 10 are more natural and which is a corroboration to the case of the prosecution.

59. With regard to the motive is concerned, though it is a settled position of law is that where the case is based on eye witnesses, the motive takes back seat. However, in this case it is the prosecution case is that on the previous night of the incident, the deceased being on the influence of alcohol gave wild look towards to the accused No.1 and 2, while they sitting near Government Urdu School, which has provoked them to pick up a quarrel with the deceased. However, this has been pacified by the people who gathered therein and made them to separate being thought that you being friends, there

is no point in quarreling for a petty reason. However, this accused No.1 and 2 have took it as a challenge and have discussed to finish the deceased by calling him near Pathan galli Tea shop. This fact has been categorically deposed by the PW.3, who is the brother of the deceased. According, P.W.No.3 on the previous night, when his brother had come to home on late night, on enquiry with the deceased for the reasons, he told that the accused No.1 and 2 have picked up quarrel with him. However, PW-3 consoled his brother to sort out the issue by speaking with the accused No.1 and 2 on next day morning. For which on the date of incident of murder. P.W.No.3 by taking off to his job, he had stayed at home, but before doing something, the incident had took place. From this it is very clear that the accused No.1 and 2 had have motive to commit the murder of deceased. If at all the accused No.1 and 2 had have no motive, how would they came to Pathan galli Tea shop by having knives by each of one. In fact it is also a corroboratory piece of evidence.

60. According to the prosecution, in the incident even the accused No.2 has received some injuries to his hand. The IO had sent him to medical examination. To prove the said fact the prosecution examined the Doctor who treated the accused no. 2 as PW.22. According to the doctor, on enquiry on the history of injury. who told that, he got injury in the incident took place on 11.3.2020 at 12.30 p.m. at

Pathangalli, Old Hubballi. Though the said portion of evidence cannot be considered as substantial piece of evidence, as-the said statement is considered to be made in the custody of the police which is not admissible under Section 24, 25 and 26 of the Indian Evidence Act., But with regard to the injury, he suffered he has not offered any explanation, how he has received injury or how did he get injured. For which, it can be inferred that, the Injury might have caused, in altercation took place in the incident. Which is also piece of evidence corroborates the case of the prosecution.

61. The doctor who conducted the postmortem on the dead body of the deceased has categorically deposed that there were 15 incised injuries found on the deceased. The injury could only possible with the sharp edged object. The P.W.No. 21, who is the doctor conducted the postmortem deposed that, he himself examined M.O.5 and 6 while giving weapon opinion and stated that the injuries found on the deceased could possible to be caused with the very said objects or with the objects like them. But, categorically, rejected the suggestion of the learned Counsel for the Accused that, the injuries are not caused with an accident, and with the blunt object like, falling on the iron rods. This piece of evidence, very importance and relevant to say, the death was not caused due to the injuries received in an accident. But, this aspect of evidence, very

substantial to conclude the death of the deceased as the homicidal death, due to the stab injuries received by him. This is a substantial piece of evidence to the case of the prosecution that, the injuries are due to the stabbing by the accused alone, not caused with the self fall on the iron rods. Even, the fast of nature of injuries causes on the body, when a man accidentally falls on the iron fixed under the under construction work, are judicially noticeable. If such injuries are rigor, and unimaginary. As those causes normally would be deep injuries on the body,

62. PW-22 is an expert attached to RFSL Belagavi. According to him he has examined the bloodstained mud seized from the crime scene. The blood of the deceased, two knives, the clothes of the accused, clothes of the deceased in all 13 articles. MO No. 2 is the ashpalt with the blood stains collected from the crime scene, MO No. 5 and 6 are Knvies seized on the instance of the accused. in which in one of the knives there was a blood stain, also MO no. 7 to 9 are the clothes of the accused, MO No. 4 is the Shirt, and MO No. 10 to 13 are the pant, under wear, one pair of chappals, one wrist bangle are the articles belongs to the deceased. In all the articles, the expert found the human blood, belongs to the "B" group. It means to say the bloodstains found on the knife seized on the instance of the accused, the bloodstains on the clothes of the

accused were very much tallying with the blood group of the deceased, which is another corroboratory piece of evidence to connect the accused.

63. It is the defence of the accused is that the deceased while carrying painting work on the Iyangar Bakery, fell down on the iron bars which were vertically fixed to the retaining wall of gutter which were caused injury to his body. The iron rods were blunt and they were placed in bulky based on the size of the retaining wall. If a person fall down on such a fixed iron bars, there will be uniform type of injuries will be caused in a definite place and it cannot be here and there. Some times the iron rods may possibly fiercely entered into the body and will come over from the other side. But the doctor who conducted the postmortem of the deceased has categorically deposed that the injuries found on the deceased were all incised injuries, which could be possible only by sharp edged object. Even he has categorically deposed that the said injury could be possible from the M.O.No.5 and 6, or such type of weapons alone and even the doctor deposed that he found injuries on both the hands of deceased which could possibly causes, when he brings his hands for the defence, all these are corroboratory piece of evidence to the prosecution case is that injuries were caused with the sharp edged object 1.e. knife.

64. Another important piece of evidence available in this case to support the prosecution is that after arresting the accused they have been brought to the police station, interrogated on the incident who admitted the commission of offence and at that time they gave disclosure statement by disclosing the place where they hidden the knives. Accordingly, they lead the panchas and police officers to the burial ground of Mavanur village and they have seized by drawing the mahazar. This aspect has been categorically deposed by the PW.5 and even the I.O. It means to say the M.0.5 and 6 are the weapons used for commission of the offence by the accused.

65. It is the case of the defence is that there is no such incident as alleged by the prosecution was really took place. In fact the accused No.1 and 2 who used to offer painting job to the deceased on 11.3.2020 at morning by calling the deceased have had sent him to Iyenger Bakery, at Ishwar Nagar, for painting work. But wherein he by falling on the iron bars fixed to the retaining wall of a gutter got injured, though it is the PW-9 and 10 have shifted him to the hospital he died. But, the father of the deceased, despite knowing the fact of death of his was accidental. but demanded for the compensation from the accused No.1 and 2 on the ground that as the deceased sent his son to carry out the painting work, as his met with an accident, while carrying out

the work of the accused. Thus, its the duty of the accused pay the compensation, thus they are liable to pay him the compensation. In this regard, the father of the deceased taken up subject matter with the Jamaat, who are the community heads before whom the accused expressed their inability to pay any compensation as they are poor. Annoying, from it with intend to implicate the accused No.1 and 2 in a false case lodged a false complaint alleging that this accused No.1 and 2 have committed murder of his son. The Police being in hand in glow with the complainant have created the facts, documents, witnesses and filed the charge sheet and most of the witnesses have deposed by supporting the prosecution case.

66. But, the defense of the accused is a bleak, which is not probable, and appears to be a cooked up story, for the reasons that, in this case, firstly PW.1 to 4. 15 and 16 have categorically deposed the place of incident and also cause for the incident, for the death of deceased. According to the prosecution, the incident was taken place at 12.30 noon. Immediately after the incident the injured has been shifted to the hospital. If the prosecution witnesses deposed during the trial are considered approximately 30 minutes time would require to reach KIMS hospital from the place of incident. By taking the deceased they might have reached to the

KIMS hospital at 1.00 p.m. here and there. The doctor has to examine the condition of the patient. After examining him they declared him as brought dead. This aspect has been undisputedly proved by the prosecution.

67. In the mean time the I.O. PW.24 deposed that. He has got the wireless message on the incident of assault on a boy by the two persons with the knives at 12.45. by knowing the fact that, such an incident has been taken place at Pathan galli he deputed his staff to preserve the evidence of the crime. He has reached to the KIMS hospital to know the condition of the injured. He came to know injured was already dead and his body was kept in mortuary. On examination of dead body at mortury, he found there were several stab injuries on his body. He returned to the police station. At 2.00 p.m. the complainant in this case came to the Police Station and submitted his oral information on the incident, which has been reduced into writing, registered the case. If the chronological list of incident and their time are considered, there is no time available to create the facts as alleged by the defence. There is no opportunity to fabricate the facts of accident death into a story into a brutal murder by two persons, that too in a thickly populated public place.

68. Apart from that according to the defence, the incident of self fall by the deceased had took place in a public place, theycould have examined the owner of the Bakery, to whom they placed the service of the deceased for his disposal. Apart from that, if at all any incident had been taken place by self fall on the iron rods fixed to the gutter in the pulbic place, it is the negligence on the part of the responsible local authorities. In that event the petitioner by taking up case before the competent authority, still had an opportunity to claim the compensation for their tortuous liability. But in any way it cannot be believed the story of the defense. As there is no materials to substantiate their defense. Except some minor and negligible discrepancy, which are bound to happen, during the course of collection material by the 10. As he has to start his process with the Zero to Hundred, to made out his case against the accused.

69. Apart from that the investigation agency is an independent body, in every case, it cannot be put false blame on the institution. There may be instances where the Agency, either It would not have acted impartially or shown its prudence. For some such incident, the enormous work done by the investigation agency cannot be over looked. It is the State Agency consisting of a trained officer. If at all the false case has been lodged against the accused. what is the enmity between the accused and

Investigation Agency. to fix the innocent persons in a false case. If at all such a false complaint has been lodged against them, they are represented by a learned Counsel from the date of first production to until winding of Trial. They could have taken, legal recourse call the evidence in support of their case. Otherwise, they could have elicited the facts in the mouth of the Prosecution witnesses. In this case, the P.W.No.1,3 and 4, 15 and 16 are working class. Its difficult to say. they are more intelligent and having materials to build up the case turn the self fall into a brutal murder case. Even, it assume for the sake of discussion that, the P.W.No.1,3,4,15 and 16 are deposing the evidence in the line of fabricated facts. But, they can only say on the fact of assault on the deceased, but they cannot create the scene with the every minute circumstances, normally would present in a live case of murder. In that event, they are easy prey during the cross Examination. The emotions in the case of murder and in the case of accidental death are different. P.W.No.1 during evidence, cries by seeing the photo of his son took at the time of conducting the inquest. See the demeanor, the complains that, there are offers from the relatives of the accused to settle the Issue by taking money. P.W.No.3 narrates that, the accused were stabbing on his brother, as if they are chopping the tender co-co nut with the sickle. P.W.No.16 says that, in the incident intestine of the deceased had come out.

These are only affirms the case of the prosecution very strongly.

70. The whole concept of the criminal justice system is to protect the innocent persons, and convict only the guilty. For which there are various safe guards under the law. Which are favors mainly to protect the innocent man, from the false prosecution. That too avoid the might of any person in power or Agency vested with the Authority. In the entire case the defence has made out no grounds, What was the enmity between the investigation agency, to fix them in a false case. Thus, I hold it clearly that, the case of the prosecution is clear as that of a crystal. Any number of doubt, and discrepancy, they are not even created the minimum doubt, to suspect the case of the prosecution. As the evidence of the prosecution witnesses, who witnessed the incident are firm like rock, and they are confident, even in intensive and quite lengthy cross examination, not even single instances has been elicited to discredit their evidence or to doubt their character.

71. The defence made strategic attempt to encash some discrepancy found in the prosecution evidence. For example in Ex.P.53 the place of incident was mentioned as Ishwar Nagar, Katagar oni, Hubballi. On that basis they are claiming that the place of incident is Ishwar Nagar as contended

by them and it is by an accident. But, in the very same document the history of incident was shown as assault. Not as self fall or accident. This information has been furnished by the PW-9. As discussed earlier though, P.W.No.9 in his chief examination had supported the defence version, but during the cross examination when learned Public Prosecutor suggested his contradictions by referring the statements given u/Sec.161 Cr.P.C before the Police, he has admitted most of the suggestions as true and more over mere on the mention of Ishwar Nagar in Ex.P.53 alone, the entire case of the prosecution cannot be doubted.

72. With regard to M.O.4 a shirt of the deceased which was produced by the complainant with the 1.0. which was seized by it by drawing a mahazar. But it was produced before the 1.0. after five days of the incident. The complainant in his evidence deposed that the colour of the said shirt was Jamoon colour but M.O.4 is in a dark blue or black in colour type of shirt. Secondly the complainant deposed that the shirt was handed over to him at the time of postmortem examination by the Doctor, which has been kept with him and produced before the I.O. But the doctor who conducted the post mortem examination has been examined as PW-20 who deposed that at the time of postmortem there was no shirt on the dead body of the deceased and he had not at all handed over the

M.O.4 to the complainant. According, to the defence in the accidental place itself, the PW-9 and 10 have removed the shirt of the deceased and thrown in the spot itself. But FMOVADas been created to this case. But, in this aspect, indeed there is some lack of connection, with regard to handing over the shirt of the deceased to the complainant, in particularly who handed over it to him and when. Let us examine the evidence of P.W.No. 1 on the color of the shirt at MO 4, he deposes that by seeing the MO No.4, its a Jamoon colour. That's his understanding on the colour. Even, well fried jamoon looks like little blacky colour, that might be his imagination. With regard, to who handed over the said clothes to the complainant is concerned, if the evidence is of the prosecution witness, even the P.W.No. 9 and 10, who are not supported the prosecution is read, they are very firm that, at the time of admitting the deceased into the Hospital, deceased's father was present. Further, the doctor have examined the deceased initially, by that time to examine the deceased, the doctor who examining may be removed the clothes and handed over to the complainant. Further, its very much sure that, at the time of postmortem there was no shirt on the dead body. If the Ex.P5 to 11 photos are perused, which are taken while conducting the inquest on the dead body. There was no shirt on it. Only jeans pant, underwear, metal ring in hand, chappals in the both

the leg can be seen. Thus, its the P.W.No.20 the doctor who conducted the post mortem is obviously right that, at the time of conducting PM, there was no shirt on the dead body, and he was not person, who handed over the MO No.4 to the complainant. But, mere on the ground of some missing link in it cannot be said that M.O.4 was not at all the shirt of the deceased and it was created. In fact if the M.O.4 is seen, there were cuts here and there and full of dried stains found on it and more over this will not go to the root of the prosecution. On that ground also the prosecution case cannot be doubted.

73. Another point raised by the defence is that if at all the M.0.5 and 6 knives have been used for commission of offence the whole knife become bloodstained and it cannot be here and there. More over in one of the knife, the expert could not found the bloodstains which shows M.O.5 and 6 might have fixed to this case.

74. As per the evidence of the Prosecution, the knives were seized almost two days after the incident. But the M.Os. even detected only on the disclosure statement given by the accused. The place is burial ground at Mavanur Village, which is an isolated place where normally people cannot visit. The hiding of a weapon in that remote area will only known to the person who did it. Admittedly, the panch at PW.5 categorically deposed that they lead

the 1.0. and panchas to the place where they hidden the knives. Mere not finding bloodstains on one knife cannot be a ground to doubt the case of the prosecution. There may be a chances of washing the knife, before placing it and kept there itself. It is a not natural conduct of an human being that, after using the weapon, or committing of the offence, he do all possible act to destroy the evidence of the crime. There may be chances that, before hiding it in a remote place, one might have washed it. Even this aspect will not come to the rescue of the defence.

75. Another important point raised by the defence is that the accused and deceased were friends. Admittedly prior to the incident there were no quarrels between them and there were no incidents took place provoking them commit the offence of murder. Without any reasons and motive the friends wont commit the murder of their own friend. Thus, there is no motive. Thus, the question of committing of offence of murder by the accused does not arise.

76. But this court has already discussed on the said point. It is the PW.1 and 3 have categorically deposed that on the previous night of the Incident, when the deceased came to home very late, on enquiry itself he had disclosed there was an altercation between him and his friends the accused. That is the reason the PW.3 on the next day morning

remained at home to sort out the dispute between the deceased and accused, but before making any such efforts by the P.W.No. 3, he lost his brother which is an unfortunate incident. A life of an young boy was over for a pity reasons. Thus, the contention of the defence that there was no motive behind the commission of offence cannot be accepted. From this I proceed to hold that the prosecution has proved its case beyond all reasonable doubt that accused No.1 and 2 herein to take the revenge for staring at them by the deceased by giving wild look, also picked up a quarrel on the previous night, have planned to finish the deceased. Accordingly, on 11.3.2020 at 12.30 noon by taking an advantage that the deceased was at Pathan Galli, near Pathan Tea shop picked up a quarrel, and indiscriminately stabbed all over the body with knives in a broad day light by knowing the fact that the injuries which are going to inflict on the deceased are sufficient to cause his death. Despite taking the injured to the hospital, it was not useful as the doctors declared him as brought dead. On that ground, I answer point No. 1 in affirmative.

13. Upon reconsideration, re-evaluation and re-appreciation of the entire material on record, we are of the considered opinion that the said findings recorded by the Trial Court that the death of deceased was on account of the

accused stabbing him cannot be said to suffer from any illegality or infirmity nor can the same be said to be capricious or perverse or contrary to the facts or law warranting interference of this Court in the present appeal.

14. The next question that arises for consideration in the present appeal is as to whether the accused are guilty of committing the offence of murder under Section 300 of IPC punishable under Section 302 IPC or as to whether they are guilty of committing the offence of culpable homicide not amounting to murder as contemplated under Section 299 r/w exceptions No.1 and 4 to Section 300 IPC punishable under Section 304 Part I or Part II of IPC. In the instant case, the material on record including the evidence of the eye witnesses viz., P.W.1, 3, 4, 15 and 16 as well as the evidence of P.W.13 and 17 are categorical and consistent with the fact that the accused and the deceased were sitting inside a tea shop at Patan Galli when a fight/quarrel/scuffle broke out between them and all of them being friends quarrelled and argued with each other leading to the accused stabbing the deceased. In fact, the evidence also reveals that before the accused stabbed the deceased, the deceased attempted to hit them with a

wooden club and there were heated arguments and quarrel between them before the stabbing took place.

15. The question as to whether an accused would be guilty of an offence of murder punishable under Section 302 IPC or whether he could be convicted for offence of culpable homicide not amounting to murder and punishable under Section 304 IPC has been the subject matter of various judgments of the Apex Court, this Court and other High Courts. In the case of ***Uday Singh vs. State of U.P. – (2002) 7 SCC 79***, the Apex Court held as under:

> ***"5.*** *After having concluded in the manner as aforesaid, the trial court held them guilty under Section 302 read with Section 34 IPC. The High Court, on appeal after reappraisal of the evidence, observed that the presence of contusion around the neck of the deceased Shishupal Singh is enough indication of use of force by hand and considering that the nature of injury and the pressure put by the appellant and Gainda Singh was so severe that internal bleeding had also taken place inasmuch as the hyoid bone had been fractured, and thus the intention of the appellant and Gainda Singh to cause the death of Shishupal Singh was proved beyond all reasonable doubt. The High Court concluded that the appellant and Gainda Singh had been rightly convicted under Section 302 read with Section 34 IPC.*
>
> ***6.*** *From the findings recorded by the trial court as well as the High Court, it is clear that the fight between the two*

parties started all of a sudden as a result of obstruction caused in digging of the foundation and there is no evidence to show that the accused attacked the deceased with deadly or dangerous arms (or weapons). It was only in a fight, hand to fist, that both Gainda Singh and the appellant had held the neck of the deceased, Shishupal Singh with such force as to ultimately result in strangulation and his death. It is very difficult to conceive as to how much pressure was applied either by Gainda Singh or the appellant on the deceased's neck so as to cause death. It would be reasonable to hold that the injuries were caused by the appellant on the deceased in a sudden fight where no arms (or weapons) were used and that fight took place in the heat of passion and no common intention to kill the deceased could be inferred. We cannot definitely conclude who actually inflicted the fatal injury as the evidence on record discloses that Gainda Singh and the appellant both strangled the deceased, which action is part of the sudden unarmed fight nor can we conclude that the appellant had an intention to cause death or cause such bodily injury as is likely to cause death, though we attribute to him knowledge that such act is likely to cause death. Thus the appellant and Gainda Singh are guilty of culpable homicide not amounting to murder.

7. *In the circumstances, we set aside the conviction recorded by the trial court as affirmed by the High Court under Section 302 read with Section 34 and instead convict him under Section 304 Part II and reduce the sentence to imprisonment for a period of seven years. The bail granted earlier shall stand cancelled and the appellant shall surrender before the trial court and be committed to prison to serve out the remaining part of the sentence."*

16. In the case of ***Chhidamilal vs. State of M.P.* - (2002) 9 SCC 369**, it was held as under:

> ***"5.*** *Our independent analysis of the evidence on the record shows that the appellants had formed an unlawful assembly with the object of taking forcible possession of the land and if necessary, to give beating to the complainant party to achieve their object. During this fight, Narain, belonging to the accused party received a fatal blow at the hands of Gajraj Singh, the deceased, whereafter the complainant party was assaulted and Gajraj Singh received injuries to which he later on succumbed.*
>
> ***6.*** *Looking to the manner in which the assault took place over the land, which was in the possession of the complainant party, it appears to us that the appellants did not intend to cause the murder of deceased Gajraj Singh. The offence committed by the appellants in the established facts and circumstances of the case, resulting in the death of Gajraj Singh was only culpable homicide not amounting to murder. The appellants can definitely be clothed with the knowledge that the injuries caused by them were likely to cause death or such bodily injury as was likely to cause the death of Gajraj Singh. The offence under the circumstances, would fall under Sections 304 (Part II)/149 IPC and not under Sections 302/149 IPC. We, therefore, accept these three appeals partly and hold that the offence committed by the 13 appellants is not one under Sections 302/149 IPC but one under Sections 304 (Part II)/149 IPC. So far as the offence under Section 148 IPC is concerned, that has been proved to have been committed by the appellants beyond any reasonable doubt and we maintain the conviction and sentence of the 13 appellants on that count."*

17. In the case of ***Mankeram vs. state of Haryana*** - **2003 11 SCC 238**, it was held as under:

> ***"6.*** *Having perused the material on record and considering the arguments of the parties, we are inclined to agree with the argument addressed on behalf of the appellant. There is no doubt that Suraj Mal met a homicidal death on 17-11-1993 at Sangatpura Police Outpost consequent to gunshots fired by the appellant. The question, for our consideration, is whether this action of the appellant which caused the death of Suraj Mal would amount to murder or culpable homicide not amounting to murder. It is an admitted fact that there was no enmity between the appellant and the deceased and a few days before the incident in question the appellant was promoted to the rank of Assistant Sub-Inspector of Police and he was put in charge of Sangatpura Police Station wherein the deceased was also posted as head constable. It is also the case of the prosecution itself that on the fatal day when the appellant came back from the duty to his quarters he invited the deceased to his room to have a drink which was accepted by the deceased and both of them were drinking in the room of the appellant. It is at that point of time PW 5 who happened to be the nephew of the deceased came into the room and interrupted their drinking session by asking his uncle to get up and join him for dinner which was obviously not liked by the appellant who being offended by the said interruption started abusing in a language which was not to the liking of the deceased who protested against such abuses. It is also the prosecution case that it is sequel to this interruption of PW 5, a physical fight started between the appellant and the deceased in which, of course, the appellant used his service revolver causing fatal injuries. While PW 5 states that there*

was no physical fight between the deceased and the appellant, the appellant contends that there was such physical fight in which he was sought to be strangulated by the deceased because of which he used the service revolver to protect himself. The fact that there was a physical fight between the deceased and the appellant, though not admitted by PW 5, the same cannot be denied because it has come in the evidence of PWs 6 and 9 that when they came to the spot the appellant and the deceased were grappling outside the room and they overpowered the accused and snatched the weapon. In such circumstances, we will have to examine the prosecution evidence whether the appellant had taken an undue advantage or acted in a cruel or unusual manner so as to deprive him of the benefit of Exception 4 to Section 300. As noted above, there is no motive for killing the deceased. The drinking session in the room of the appellant was by mutual consent and admittedly the fight started because of the intervention of PW 5. From these circumstances, it can be very clearly held that the incident in question took place in a sudden fight in the heat of passion. The next question, therefore, for our consideration, is whether the appellant did take an undue advantage of the said fight or acted in a cruel or unusual manner. Keeping in mind the fact that both the appellant and the deceased had consumed considerable amount of alcohol which is established from the evidence of the doctor and the service revolver being next to the place where the fight took place and was not kept there by a planned act by the appellant, it cannot be altogether ruled out that the shots were fired not with an intention of taking any undue advantage by the appellant. It is probable that in an inebriated condition the appellant used the service revolver because of the physical fight between the two. We do not think the two courts below have properly appreciated this aspect of the prosecution case when it found the appellant

guilty of murder and punished him under Section 302 IPC. Having considered the material on record, we are of the opinion that the appellant could only be found guilty of an offence punishable under Section 304 Part II.

7. *Therefore, we allow this appeal to that extent and set aside the judgment and conviction imposed by the courts below on the appellant under Section 302 IPC and alter the same to one under Section 304 Part II IPC and award a sentence of 5 years' RI. We maintain the fine of Rs 2000 imposed on the appellant by the trial court, as also the conviction and sentence awarded on the appellant for an offence punishable under Section 27 of the Arms Act. The sentence of imprisonment under both the counts shall run concurrently. The appellant shall be entitled to remission of the period of sentence already undergone. The appeal stands allowed to the extent mentioned above."*

18. In the case of ***Shankarnarayan Bhadolkar Vs. State of Maharashtra*** - **AIR 2004 SC 1966** it was held as under:

"23. *This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC culpable homicide is the 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 the generic offence, IPC practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest 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 punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

24. *The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:*

Section 299	*Section 300*
A person commits culpable homicide if the act by which the death is caused is done—	*Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done—*
INTENTION	
(a) with the intention of causing death; or	*(1) with the intention of causing death; or*
(b) with the intention of causing such bodily injury as is likely to	*(2) with the intention of causing such bodily injury as the offender*

cause death; or	*knows to be likely to cause the death of the person to whom the harm is caused; or*
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	*(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.*

25. *Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is*

sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

26. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degrees of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury … sufficient in the ordinary course of nature to cause death" mean that death will be the "most

probable" result of the injury, having regard to the ordinary course of nature.

27. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant Singh v. State of Kerala is an apt illustration of this point.

28. In Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 Cri LJ 818] Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300. Firstly, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

29. The ingredients of clause "thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows : (AIR p. 467, para 12)

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

30. The learned Judge explained the third ingredient in the following words (at AIR p. 468, para 16):

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he

intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

31. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. : (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. 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 viz. that the injury found to be present was the injury that was intended to be inflicted.

32. Thus, according to the rule laid down in Virsa Singh case, even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

33. Clause (c) of Section 299 and clause (4) of Section 300, both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons

— being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

34. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

35. The position was illuminatingly highlighted by this Court in State of A.P. v. Rayavarapu Punnayya and in Abdul Waheed Khan v. State of A.P.

36. Looking at the scenario as described by PWs 2 and 3 and evidence of ballistic report, in our considered view the offence committed by the accused is covered by Section 304 Part II.

(emphasis supplied)

19. In the case of ***Daya Nand Vs. State of Haryana*** - **2008 Cri.L.J. 2975**, it was held as under:

10. *The crucial question is as to which was the appropriate provision to be applied. In the scheme of IPC, 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 the generic offence, IPC practically recognises three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest 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 punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

(emphasis supplied)

11. *The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:*

Section 299	*Section 300*
A person commits culpable homicide if the act by which the death is caused is done—	*Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done—*

	Intention
(a) with the intention of causing death; or	*(1) with the intention of causing death; or*
(b) with the intention of causing such bodily injury as is likely to cause death; or	*(2) 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) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
	Knowledge
(c) with the knowledge that the act is likely to cause death.	*(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.*

12. *Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2).*

Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

***13**. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death was intentionally given. In clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words 'sufficient in the ordinary course of nature to cause death' have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause*

(3) of Section 300 is one of the degrees of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words 'bodily injury … sufficient in the ordinary course of nature to cause death' mean that death will be the 'most probable' result of the injury, having regard to the ordinary course of nature.

***14**. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant Singh v. State of Kerala is an apt illustration of this point.*

***15**. In Virsa Singh v. State of Punjab Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 'Thirdly'. Firstly, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and*

fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

16. *The ingredients of clause 'Thirdly' of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows :*

To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'Thirdly'.

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

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Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.'

17. *The learned Judge explained the third ingredient in the following words (at page 468) :*

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.''

18. *These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh's case (supra) for the applicability of clause 'Thirdly' is now ingrained in our legal system and has become part of the rule of law. Under clause Thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. 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 viz. that the injury found to be present was the injury that was intended to be inflicted.*

19. *Thus, according to the rule laid down in Virsa Singh's case, even if the intention of the accused was*

limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

***20**. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons—being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.*

***21.** The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages."*

***22.** The position was illuminatingly highlighted by this Court in State of A.P. v. Rayavarapu Punnayya (1976) 4 SCC 382), Abdul Waheed*

Khan v. State of Andra Pradesh (2002 (7) SCC 175), Augustine Saldanha v. State of Karnataka 2003 (10) SCC 472), Thangaiya v. State of T.N. (2005 (9) SCC 650) and in Rajinder v. State of Haryana (2006 (5) SCC 425).

23. *Considering the evidence on record in the background of the principles of law, the inevitable conclusion is that the appropriate conviction would be under Section 304 Part II IPC. The conviction is accordingly altered.*

24. *Undisputedly, the accused has suffered custody of nearly 8½ years. The sentence is restricted, therefore, to the period already undergone. The appeal is allowed to that extent. The accused person be set at liberty forthwith unless required in custody in any other case.*

20. In the case of ***Saravanan Vs. State of Pondicherry - (2004) 13 SCC 238***, it was held as under:

9. *Section 34 IPC enacts that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons, is liable for that act in the same manner as if it were done by him alone. The section thus lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is found in the existence of "common intention" animating the accused leading to the doing of a criminal act in furtherance of such intention. The section is intended to meet a case in which it is difficult to distinguish between the act of individual members of a party and to prove exactly what part was played by each of them.*

It, therefore, enacts that once it is found that a criminal act has been committed by several persons in furtherance of the common intention of all, each of such persons is liable for the criminal act as if it were done by him alone. It is thus an exception to the general rule of criminal jurisprudence that it is the primary responsibility of the person who actually commits a crime and only that person can be held guilty and punished in accordance with law for his individual act.

10. *In the leading case of Barendra Kumar Ghosh v. King Emperor the appellant was charged under Section 302 read with Section 34 IPC for the murder of a Postmaster. The evidence disclosed that while the Postmaster was in the office counting the money, three persons of whom the appellant was one, fired pistols at him asking him to hand over the cash. The trial Judge directed the jury that if they were satisfied that the Postmaster was killed in furtherance of the common intention of all the three, the appellant could be held guilty of murder whether or not he had fired the fatal shot. The appellant was accordingly convicted. Being aggrieved by such conviction, the appellant approached the Privy Council. It was contended on behalf of the prisoner that he was outside the room. He was in the courtyard and was frightened. He did not participate in the crime and hence, he could not have been convicted for an offence punishable under Section 302 IPC by invoking Section 34 IPC. The contention was, however, negatived. It was held that once it is established that an act was committed in furtherance of the common intention of all, Section 34 could be attracted and all could be held liable irrespective of their individual act.*

11. *The Judicial Committee observed that the distinction between two types of offenders (i) principals in the first degree, that is, who actually commit the crime; and (ii) principals in the second degree, that is, who aid in*

commission of the crime, as found in English law has not been strictly adhered to in India. In the circumstances, according to Their Lordships, Section 34 would be attracted provided that it is proved that the criminal act was done by several persons in furtherance of the common intention of all.

12. *Dealing with the argument on behalf of the appellant that he had not fired any shot, the Judicial Committee observed that if two men tie a rope around the neck of third man and pull opposite ends of the rope till he is dead, each can be held liable for the ultimate act i.e. death of the victim. If the contention on behalf of the appellant would be upheld that each should be held liable for his act only, each can successfully contend that the prosecution had not discharged the onus inasmuch as nothing more was proved against each of them, than an attempt to kill which might or might not have succeeded. "Thus both will be acquitted of murder, and will only be convicted of an attempt, although the victim is and remains a murdered man." Referring to Sections 33, 34, 37 and 38 IPC, it was held that even if the appellant did nothing as he stood outside the door, he could be held liable. It is to be remembered that in crimes as in other things "they also serve who only stand and wait".*

13. *The principle in Barendra Kumar Ghosh had been reiterated by Indian courts including this Court in several cases. In Gurdatta Mal v. State of U.P. it was observed by this Court that Section 34 IPC contemplates the doing of an act by several persons in furtherance of common intention. The constructive liability under this provision would arise if the following two conditions are fulfilled:*

(1) There must be common intention to commit a criminal act; and

(2) There must be participation of all the persons in doing of such act in furtherance of that intention.

If these two ingredients are established, all the accused would be liable for the offence which has been committed.

14. *In Afrahim Sheikh v. State of W.B. this Court stated that no doubt a person is only responsible ordinarily for what he does and Section 38 IPC ensures that. But the law in Section 34 as also in Section 35 IPC declares that if the criminal act is the result of the common intention, then every person who did the criminal act with such intention would be responsible for the total offence irrespective of the share which he had in its perpetration.*

15. *It is thus clear that the criminal act referred to in Section 34 IPC is the result of the concerted action of more than one person if the said result was reached in furtherance of the common intention and each person must be held liable for the ultimate result as if he had done it himself.*

16. *We have, therefore, to see whether the death of deceased Nadamuni had been caused by the appellants in furtherance of a common intention to kill him. If it is so, the appellants cannot escape the liability contending that Section 34 IPC had no application as no injury had been caused by the appellants to deceased Nadamuni or they had not intended to cause death of deceased Nadamuni. As observed hereinabove and believed by the trial court as well as by the High Court, the present appellants (A-3 and A-4) came on cycle from Cuddalore Road and took up a quarrel with PW 1, PW 2 and deceased Nadamuni. Though the deceased and PW*

1 and PW 2 ignored the assault and proceeded further, the appellants chased them towards the west on Pondy-Villianur Road and took up a quarrel again. A-1 came there along with others and used violence and injuries were caused to deceased Nadamuni due to which he ultimately died. It was thus a clear case of doing of a criminal act in furtherance of the common intention. It was in the evidence of Dr. Balaraman that Injury 5 was sufficient in the ordinary course of nature to cause death. Taking into consideration the concession by the learned Public Prosecutor that the case would not be covered by Section 302 IPC, Accused 1, 3 and 4 were convicted by the trial court for an offence punishable under Section 304 Part II read with Section 34 IPC. In our opinion, by applying Section 34 IPC and convicting the appellants for an offence under Section 304 Part II read with Section 34 IPC, no error of law has been committed either by the trial court or by the High Court.

21. In the case of ***Sellappan Vs. State of Tamil Nadu*** - **2007 Cri. L.J 1442**, it was held as under:

24. *The crucial question is as to which was the appropriate provision to be applied. In the scheme of IPC culpable homicide is the 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 the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the*

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

25. *The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:*

Section 299	*Section 300*
A person commits culpable homicide if the act by which the death is caused is done—	*Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done—*
	INTENTION
(a) with the intention of causing death; or	*(1) with the intention of causing death; or*
(b) with the intention of causing such bodily injury as is likely to cause death; or	*(2) 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) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or*
	KNOWLEDGE
(c) with the knowledge that the act is likely to cause death.	*(4) with the knowledge that the act 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 acts without any excuse for incurring the risk of causing death or such injury as is mentioned above.*

26. *Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.*

27. *Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section*

300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words 'sufficient in the ordinary course of nature [to cause death]' have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of [the] degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words 'bodily injury … sufficient in the ordinary course of nature to cause death' mean that death will

be the 'most probable' result of the injury, having regard to the ordinary course of nature.

28. *For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant v. State of Kerala (AIR 1966 SC 1874) is an apt illustration of this point.*

29. *In Virsa Singh v. State of Punjab (AIR 1958 SC 465) Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 'Thirdly'. First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.*

30. *The ingredients of clause 'Thirdly' of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows :*

"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "Thirdly".

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

31. *The learned Judge explained the third ingredient in the following words (at p. 468) :*

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only

possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

32. *These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh's case for the applicability of clause 'Thirdly' is now ingrained in our legal system and has become part of the rule of law. Under clause Thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. 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 viz. that the injury found to be present was the injury that was intended to be inflicted.*

33. *Thus, according to the rule laid down in Virsa Singh's case even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.*

34. *Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons—being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.*

35. *The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each [other], that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.*

36. *The position was illuminatingly highlighted by this Court in State of Andra Pradesh v. Rayavarapu Punnayya and Anr. (1976 (4) SCC 382), Abdul Waheed Khan @ Waheed and Ors. v. State of Andra Pradesh (2002 (7) SCC 175), Augustine Saldanha v. State of Karnataka (2003 (10) SCC 472) and Thangaiya v. State of T.N. (2005 (9) SCC 650).*

37. *When the factual scenario in the case is set aside on the touchstone of principles set out above, it becomes clear that the appellant is responsible for causing the death of the deceased. However, the application of Section 304 Part II IPC would be applicable and not Section 302 IPC. The conviction is accordingly altered. Ten years' custodial sentence would meet the ends of justice. The appeal is allowed to the aforesaid extent.*

38. *Appeal is allowed to the aforesaid extent.*

Order accordingly".

22. In the case of Dharam ***Pal Vs. State of U.P.*** - **2008 Cri.L.J. 1016** it was held as under:

13. *In the light of the aforesaid discussions, let us now see whether the High Court was justified, in the facts and circumstances of the present case, to convert the offence from Sections 302/34 IPC to Section 304 Part II IPC. In this regard, we may again note the findings recorded by the High Court, as noted herein earlier, in Clauses 11 and 12. The High Court observed that the accused did not have any intention of causing the death of Rajpal nor were the injuries caused with the intention of causing such bodily injuries as the accused knew were likely to cause death. The High Court further observed that the knowledge that death was likely to be caused could be inferred as the accused gave the blow on the head. Let us now see whether the aforesaid act would warrant a punishment under Section 302 or 304*

IPC. In our view, the facts disclose that there was no premeditation and the fight resulted on drinking of water from the hand pipe after an exchange of abuses. There appeared no intention on the part of the appellants to cause the death of the deceased Rajpal. Therefore, the offence committed by the appellants, in our view, is culpable homicide not amounting to murder because, in our view, it falls within Exception 4 to Section 300 which reads as under:

"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's 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."

Section 304 IPC lays down the punishment for culpable homicide not amounting to murder and reads as under:

"Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause

death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."
We have already gone through the evidence and the other materials on record. From the evidence on record, we cannot find any ground to discard the finding of the High Court that it cannot be said that the accused had any intention of causing the death of Rajpal, the deceased, nor were the injuries caused with the intention of causing such bodily injuries as the accused knew were likely to cause death. Therefore, in the absence of any intention of causing the death of the deceased Rajpal, we are in agreement with the High Court that the accused must be convicted of the offence under Section 304 Part II IPC and not under Section 302 IPC.

14. *For the reasons aforesaid, we do not find any cogent reason to interfere with the judgment of the High Court converting the offence to Section 304 Part II IPC from Section 302 IPC. Accordingly, the appeal fails and is dismissed with no order as to costs.*

23. In the case of ***Anbazhagan Vs. State***, - **AIR 2023 SC 3660**, it was held as under:

"ANALYSIS

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the conviction of the appellant herein for the

offence punishable under Section 304 Part I of the IPC should be further altered to Section 304 Part II of the IPC.

18. We have given more than a fair idea as regards the genesis of the occurrence and the role attributed to the appellant herein. Dr. Karthikeyan (PW-15) was examined by the prosecution in his capacity as the Medical Officer who performed the post mortem of the deceased. In the post mortem report, the doctor has noted three injuries, (i) cut injury over 4 x 2 cm on the left eye, (ii) cut injury 4 x 3 cm on the left forehead, and (iii) 4 x 2 cm contusion around the left eye. The cause of death assigned in the post mortem report appears to be shock and haemorrhage due to head injury.

19. As the only argument canvassed before us is that the case does not travel beyond culpable homicide as the same falls within the third part of Section 299 of the IPC, the accused could only be said to have knowledge that he is likely by his act to cause death and not the intention to kill the deceased, we must explain the fine distinction between the terms 'intent' and 'knowledge'.

<u>INTENT AND KNOWLEDGE :-</u>

20. The word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man.

21. Intention, which is a state of mind, can never

be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:-

a. *The nature of the weapon used.*
b. *The place where the injuries were inflicted.*
c. *The nature of the injuries caused.*
d. *The opportunity available which the accused gets.*

22. In the case of Smt. Mathri v. State of Punjab, AIR 1964 SC 986, at page 990, Das Gupta J. has explained the concept of the word 'intent'. The relevant observations are made by referring to the observations made by Batty J. in the decision Bhagwant v. Kedari, I.L.R. 25 Bombay 202. They are as under:-

> *"The word "intent" by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired-but rather connotes the one object for which the effort is made-and thus has reference to what has been called the dominant motive, without which, the action would not have been taken."*
>
> *(Emphasis supplied)*

23. In the case of Basdev v. State of Pepsu, AIR 1956 SC 488, at page 490, the following observations have been made by Chadrasekhara Aiyar J.:-

> *"6. ... 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 had led to a certain amount of confusion."*
>
> *(Emphasis supplied)*

24. In para 9 of the judgment, at page 490, the observations made by Coleridge J. in Reg. v. Monkhouse, (1849) 4 COX CC 55(C), have been referred to. They can be referred to, with advantage at this stage, as they are very illuminating:-

> *"The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not*

put a pistol which he knew to be loaded to another's head, and ftre it off, without intending to kill him; but even there the state of mind of the party is most material to be considered. For instance, if such an act were done by a born idiot, the intent to kill could not be inferred from the act. So if the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely; was he rendered by intoxication entirely incapable of forming the intent charged?"

(Emphasis supplied)

25. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind that our 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 proper to hold that 'intent' and 'knowledge' cannot be equated with each other. They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that 'intent' and 'knowledge' are the same. 'Knowledge' will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

26. In the case In re Kudumula Mahanandi Reddi, AIR 1960 AP 141, also the distinction between 'knowledge' and 'intention' is aptly explained. It is as

under:-

"Knowledge and intention must not be confused.

17.… Every person is presumed to intend the natural and probable consequences of his act until the contrary is proved. It is therefore necessary in order to arrive at a decision, as to an offender's intention to inquire what the - natural and probable consequences of his acts would be. Once there is evidence that a deceased person, sustained injuries which were sufficient in the ordinary course of nature to cause death, the person who inflicted them could be presumed to have intended those natural and probable consequences. His offence would fall under the third head of sec. 300, I.P.C.

18.… A man's intention has to be inferred from what he does. But there are cases in which death is caused and the intention which can safely be imputed to the offender is less grave. The degree of guilt depends upon intention and the intention to be inferred must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the ordinary course of nature to cause death, but which the - offender knows is likely to cause the death. Proof of such knowledge throws light upon his intention.

19.…Under sec. 299 there need be no proof of knowledge, that the bodily injury intended was likely to cause death. Before deciding that a case of culpable homicide amounts to murder, there must be proof of intention sufficient to bring it under Sec.300. Where the injury deliberately inflicted is more than merely 'likely to cause death' but sufficient in the ordinary course of nature to cause death, the higher degree of guilt is presumed."

(Emphasis supplied)

It has been further observed therein as under:-

> *"26. …Where the evidence does not disclose that there was any intention, to cause death of the deceased but it was clear that the accused had the knowledge that their acts were likely to cause death the accused can be held guilty under the second part of sec. 304, I.P.C. The contention that in order to bring the case under the second part of sec. 304, I.P.C. it must be brought within one of the exceptions to sec 300, I.P.C. is not acceptable."*

(Emphasis supplied)

27. Thus, while defining the offence of culpable homicide and murder, the framers of the IPC laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be. The framers of the IPC designedly used the two words 'intention' and 'knowledge', and it must be taken that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where mens rea is not required in order to prove that a person had certain knowledge, he "must have been aware that certain specified harmful consequences would or could follow." (Russell on Crime, Twelfth Edition, Volume 1 at page 40).

28. This awareness is termed as knowledge. But the knowledge that specified consequences would result or could result by doing an act is not the same thing as the intention that such consequences should ensue. If an act is done by a man with the knowledge that certain consequences may follow or will follow, it does not necessarily mean that he intended such consequences and acted with such intention. Intention requires something more than a mere foresight of the consequences. It requires a purposeful doing of a thing to achieve a particular end. This we may make it clear by referring to two passages from leading text-books on the subject. Kenny in his Outlines of Criminal Law, Seventeenth Edition at page 31 has observed:-

> *"To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connexion is used to denote the state of mind o fa man who not only foresees but also desires the possible consequences of his conduct…….. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed……. Again, a man cannot intend to do a thing unless he desires to do it."*
>
> *(Emphasis supplied)*

29. Russell on Crime, Twelfth Edition, 1st Volume at page 41 has observed:-

> *"In the present analysis of the mental element in crime the word "intention" is used to denote the mental attitude of a man who has resolved to*

bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims……. Differing from intention, yet closely resembling it, there are two other attitudes ofmind, either ofwhich is sufficient to attract legal sanctions for harm resulting from action taken in obedience to its stimulus, but both of which can be denoted by the word "recklessness". In each of these the man adopts a line of conduct with the intention of thereby attaining an end which he does desire, but at the same time realises that this conduct may also produce another result which he does not desire. In this case he acts with full knowledge that he is taking the chance that this secondary result will follow. Here, again, if this secondary result is one forbidden by law, then he will be criminally responsible for it if it occurs. His precise mental attitude will be one of two kinds-(a) he would prefer that the harmful result should not occur, or (b) he is indifferent as to whether it does or does not occur."

(Emphasis supplied)

30. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of

death. Similarly, when it is said that "whoever causes death bydoing an act with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

31. Thus, in order that the requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide proved, it is necessary that any of the two specific intentions must be proved. But, even when such intention is not proved, the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his such act to cause death, that is, with the knowledge that the result of his doing his act may be such as may result in death.

32. The important question which has engaged our careful attention in this case is, whether on the facts and in the circumstances of the case we should maintain the conviction of the appellant herein for the offence under Section 304 Part I or we should further alter it to Section 304 Part II of the IPC?

SECTIONS 299 AND 300 OF THE IPC:-

33. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299, 'culpable homicide' is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act

is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted-above, it would be 'culpable homicide'. Section 300 of the IPC, however, deals with 'murder', although there is no clear definition of 'murder' in Section 300 of the IPC. As has been repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'. (see Rampal Singh v. State ofU.P., (2012) 8 SCC 289)

34. In the case of State of Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382, this Court, while clarifying the distinction between these two terms and their consequences, held as under:-

> *"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' is species. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide not amounting to murder'. For the purpose of ftxing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The ftrst is what may be called 'culpable homicide of the ftrst degree'. This is the greatest form of culpable homicide, which is deftned in Section 300 as 'murder'. The second may be termed as 'culpable*

homicide of the second degree'. This is punishable under the ftrst 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 punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part ofSection 304."

(Emphasis supplied)

35. Section 300 of the IPC proceeds with reference to Section 299 of the IPC. 'Culpable homicide' may or may not amount to 'murder', in terms of Section 300 of the IPC. When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of the IPC, while in other cases, that is, where an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC. Various judgments of this Court have dealt with the cases which fall in various classes of firstly, secondly, thirdly and fourthly, respectively, stated under Section 300 of the IPC. It would not be necessary for us to deal with that aspect of the case in any further detail.

36. The principles stated in the case of Virsa Singh v. State of Punjab, AIR 1958 SC 465, are the broad guidelines for the courts to exercise their judicial discretion while considering the cases to determine as to which particular clause of Section 300 of the IPC they fall in. This Court has time and again deliberated upon the crucial question of distinction between Sections 299 and 300 of the IPC, i.e. 'culpable homicide' and 'murder'

respectively. In Phulia Tudu v. State of Bihar, (2007) 14 SCC 588, this Court noticed that confusion may arise if the courts would lose sight of the true scope and meaning of the terms used by the legislature in these sections. This Court observed that the safest way of approach to the interpretation andapplication of these provisions seems to be to keep in focus the keywords used in the various clauses of these sections.

37. This Court in Phulia Tudu (supra) has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

Section 299	*Section 300*
A person commits culpable homicide if the act by which the death is caused is done-	*Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-*

INTENTION	
(a) with the intention of causing death; or *(b) with the intention of causing such bodily injury as is likely to cause death; or*	*(1) with the intention of causing death; or* *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) with the intention of causing bodily injury to any person and the bodily injury intended to be infiicted is suffi cient in the ordinary course of nature to cause death; or*
KNOWLEDGE	
(c) with the act is likely to cause death	*(4) with the knowledge that the act 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 mentioned above.*

38. Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is theknowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the

killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

39. Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the ruptureof the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299 of the IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily

injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 of the IPC conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury…..sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

40. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. The decision in the case of Rajwant Singh v. State of Kerala, AIR 1966 SC 1874, is an apt illustration of this point.

41. The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted. Analysing clause thirdly and as to what the prosecution must prove, it was held in Virsa Singh (supra) as under:-

"15. First, it must establish, quite objectively, that a bodily injury is present;

16. Secondly, the nature ofthe injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended…

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

(Emphasis supplied)

It was further observed as under:-

"20. … If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

(Emphasis supplied)

42.Thus, it is clear that the ingredient of clause thirdly is not the intention to cause death but on the other hand the ingredient to be proved is the intention to cause the particular injury that was present. It is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances. In

Emperor v. Sardarkhan Jaridkhan, AIR 1916 Bom 191, it was observed as under:-

> *"Where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended."*
>
> *(Emphasis supplied)*

43. Commenting upon the aforesaid observation of the Bombay High Court, Justice Bose, in Virsa Singh (supra), held thus:-

> *"23. … With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."*

44. As to how the intention is to be inferred even in a case of single injury, Justice Bose further held as under:-

> *"23. … The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences is neither here nor there. The question, so far as the intention is concerned, is not whether he*

intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one oflaw. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

24. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one offact. …"

(Emphasis supplied)

45. This question was again considered in Jagrup Singh v. State of Haryana, (1981) 3 SCC 616, by a Bench of this Court consisting of Justice D.A. Desai and Justice A.P. Sen and following the ratio laid down in Virsa Singh (supra) it was held as under:-

"6. There is no justiftcation for the assertion that the giving of a solitary blow on a vital part of the

body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log ofwood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Istly or clause 3rdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."

The aforesaid decision of this Court in Jagrup Singh (supra) has been strongly relied upon by the learned senior counsel appearing for the appellant.

46. However, the learned senior counsel did not seek to rely on the observations made in para 6 referred to above in the case of Jagrup Singh (supra). The learned senior counsel relied on the observations which we shall refer to hereinafter, but after giving some factual background in the case of Jagrup Singh (supra). On the fateful evening, the marriage of one Tej Kaur was performed. Shortly thereafter, the appellant Jagrup Singh armed with a gandhala, his brothers Billaur Singh armed with a gandasa and Jarmail Singh and Waryam Singh armed with lathies emerged suddenly and made a joint assault on the deceased Chanan Singh and the three eyewitnesses, Gurdev Singh, PW 10, Sukhdev Singh, PW 11 and Makhan

Singh, PW 12. The deceased along with the three eyewitnesses was rushed to the Rural Dispensary, Rori where they were examined at 6 pm by Dr. Bishnoi, PW 3, who found that the deceased had a lacerated wound 9 cm × 11/2 cm bone deep on the right parietal region, 9 cm away from the tip of right pinna; margins of wound were red, irregular and were bleeding on touch; direction of wound was anterior-posterior. The deceased succumbed to the injuries. The Doctor who performed an autopsy on the dead body of the deceased deposed before the Trial Court that the death of the deceased was due to cerebral compression as a result of the head injury which was sufficient in the ordinary course of nature to cause death. In the background of this case, this Court held:-

> *"14. … In our judgment, the High Court having held that it was more probable that the appellant Jagrup Singh had also attended the marriage as the collateral, but something happened on the spur of the moment which resulted in the infliction ofthe injury by Jagrup Singh on the person of the deceased Chanan Singh which resulted in his death, manifestly erred in applying Clause Thirdly of Section 300 of the Code. On the ftnding that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without pre-meditation and in a sudden ftght, the case was covered by Exception 4 to Section 300. It is not suggested that the appellant had taken undue advantage of the situation or had acted in a cruel or unusual manner. Thus, all the requirements of Exception 4 are clearly met. That being so, the conviction ofthe appellant*

Jagrup Singh, under Section 302 ofthe Code cannot be sustained.

15. The result, therefore, is that the conviction of the appellant under Section 302 is altered to one under Section 304, Part II of the Indian Penal Code. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period ofseven years."

(Emphasis supplied)

We have noticed something in the aforesaid observations made by this Court which, in our opinion, creates some confusion. We have come across such observations in many other decisions of this Court over and above the case of Jagrup Singh (supra). What we are trying to highlight is that in Jagrup Singh (supra), although this Court altered the conviction from Section 302 to Section 304 Part II, it took shelter of Exception 4 to Section 300 of the IPC. The question is, was there any need for the Court to take recourse to Exception 4 to Section 300 of the IPC for the purpose of altering the conviction from Section 302 to Section 304 Part II of the IPC. We say so because there is fine difference between the two parts of Section 304 of the IPC. 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.

47. In Jawahar Lal v. State of Punjab, (1983) 4 SCC 159, also the accused hit the deceased with a knife blow in front of left side of his chest and as per the autopsy report the injuries were found sufficient in an ordinary course of nature to cause death. This Court took a view that the accused could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. The relevant paras of the said judgment is reproduced as under:

"17…….we should also not further dilate on this point in view of the decision of this Court in Jagrup Singh v. State ofHaryana : 1981 Cri LJ 1136. In that case after referring to the evidence, this Court held that the appellant gave one blow on the head of the deceased with the blunt side of the gandhala and this injury proved fatal. The Court then proceeded to examine as to the nature of the offence because the appellant in the case was convicted for an offence under Section 302. Undoubtedly, this Court said that there is no justiftcation for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. The Court then proceeded to lay down the criteria for judging the nature of the offence. It may be extracted;

The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstance attendant upon the death.

18. We may point out that decision in Jagrup Singh's Case 1981 Cri LJ 1136 was subsequently followed in Randhir Singh @ Dhire v. State of Punjab Decided on September 18, 1981 and in Kulwant Rai v. State of Punjab Decided on August 7, 1981 (Criminal Appeal No. 630 of1981).

19. Having kept this criteria under view, we are of the opinion that the offence committed by the 1st appellant would not be covered by clause Thirdly of Para 3 of Section 300 and therefore, the conviction under Section 302, I.P.C. cannot be sustained.

20. What then is the offence committed by the 1st appellant? Looking to the age ofthe 1st appellant at the time of the occurrence, the nature of the weapon used, the circumstances in which one blow was inflicted, the time of the day when the occurrence took place and the totality of other circumstances, namely, the previous trivial disputes between the parties, we are of the opinion that the 1st appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, the 1st appellant is shown to have committed an offence under Section 304, Part II of the Indian Penal Code and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years maintaining the sentence often."

48. In Camilo Vaz v. State of Goa [(2000) 9 SCC 1 : 2000 SCC (Cri) 1128] the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the trial court and the Bombay High Court convicted the appellant under Section 302 IPC. This Court, however, converted the conviction to one under Section 304 Part II IPC and observed:- (SCC p. 9, para 14)

> *"14. … When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of Section 304 IPC as in the present case."*
>
> *(Emphasis supplied)*

49. In Jai Prakash v. State (Delhi Admin.), (1991) 2 SCC 32, this Court, after an exhaustive review of various decisions, more particularly, the principles laid down in Virsa Singh's case (supra), concluded as under:-

> *"18. In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only to assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result. It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result. We may point out that we are not concerned with the intention to cause death in which case it will be a murder simplicitor unless exception is attracted. We are concerned under clause 3rdly with the intention to cause that particular injury which is a subjective inquiry and when once such intention*

is established and if the intended injury is found objectively to be sufficient in the ordinary course of nature to cause death, clause 3rdly is attracted and it would be murder, unless one of the exceptions to Section 300 is attracted. If on the other hand this ingredient of 'intention' is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that clause 3rdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC."

(Emphasis supplied)

50. In the case of Rajwant Singh (supra), after referring to the relevant clauses of Section 300 of the IPC, the following observations have been made:-

> *"10. … The mental attitude is thus made of two elements (a) causing an intentional injury and (b) which injury the offender has the foresight to know would cause death….*
>
> *11. … For the application of clause three it must ftrst be established that the injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death, one test is satisfted. Then it must be proved that there was an intention to inflict that very Injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established."*
>
> *(Emphasis supplied)*

51. In the case of Anda v. State of Rajasthan, AIR 1966 SC 148, the two relevant Sections 299 and

300 respectively are brilliantly analysed and the relevant observations are made at page 151 in para 7. Before we refer to those observations, we would refer to certain observations made earlier. They are as under:-

> *"The offence ofculpable homicide involves the doing of an act (which term includes illegal omissions) (a) with the intention ofcausing death, or (b) with the intention of causing such bodily injury as is likely to cause death or (c) with the knowledge that the act is likely to cause death. If the death is caused in any of these three circumstances, the offence of culpable homicide is said to be committed……. Intention and knowledge in the ingredients ofthe section postulate the existence ofa positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the ftrst two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death.The knowledge in the third condition contemplates knowledge of the death of the person. Sec. 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Sec. 300 begins by setting out the circumstances when culpable homicide turns out into murder which is punishable under sec. 302 and the exceptions in the same section tell us when offence is not murder but culpable homicide not amounting to murder punishable under sec. 304. Murder is an aggravated form ofculpable homicide. The existence ofone offour conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder."*
>
> *(Emphasis supplied)*

52. We will now refer to the relevant observations made in para 10 at page 151. They are as under:-

"The third clause views the matter from a general stand-point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability ofdeath in the ordinary way ofnature and when this exists and death ensues and the causing of such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but within culpable homicide not amounting to murder or something less. The illustration appended to the clause 3rdly reads:

'(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.' The sufficiency of an intentional injury to cause death in the ordinary way ofnature is the gist ofthe clause irrespective ofan intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder."

(Emphasis supplied)

53. This Court in Vineet Kumar Chauhan v. State of U.P., (2007) 14 SCC 660, noticed that theacademic distinction between 'murder' and 'culpable homicide not amounting to murder' had vividly been brought out by

this Court in State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382, where it was observed as under:-

> *"…that the safest way of approach to the interpretation and application ofSections 299 and 300 of the Code is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of sections 299 and 300 of the Code and the drawing support from the decisions of the court in Virsa Singh v. State of Punjab, (AIR 1958 SC 465 : 1958 Cri LJ 818) and Rajwant Singh v. State of Kerala, (AIR 1966 SC 1874 : 1966 Cri LJ 1509) speaking for the court, Justice RS Sarkaria, neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the court said that wherever the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it would be convenient for it to approach the problem in three stages. The question to be considered at the ftrst stage would be that the accused has done an act by doing which he has caused the death of another. Two, if such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as deftned in section 299. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder, punishable under the First or Second part of Section 304, depending respectively, on whether this second or the third clause of Section 299 is applicable. If this question is found in the positive but the cases come within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable*

under the ftrst part of Section 304 of the Code. It was, however, clarifted that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative."

(Emphasis supplied)

54. In the case of Tholan v. State of Tamil Nadu, AIR 1984 SC 759, the accused stood in front of the house of the deceased and used filthy language against some persons who were unconnected with the deceased. The deceased came out of his house and told the accused that he should not use vulgar and filthy language in front of ladies and asked him to go away. The accused questioned the authority of the deceased to ask him to leave the place. In the ensuing altercation, the accused gave one blow with a knife which landed on the (right) chest of the deceased which proved to be fatal. This Court came to the conclusion that the accused could not be convicted under Section 302, but was guilty under Section 304 Part II. The circumstances which weighed with this Court were : (i) there was no connection between the accused and the deceased and the presence of the deceased at the time of the incident, was wholly accidental; (ii) altercation with the deceased was on the spur of the moment and the accused gave a single blow being enraged by the deceased asking him to leave the place; (iii) the requisite intention could not be attributed to the accused as there was nothing to indicate that the accused intended the blow to land on the right side of the chest which proved to be fatal.

55. In Chamru, Son of Budhwa v. State of Madhya Pradesh, AIR 1954 SC 652, in somewhat similar circumstances, where there was exchange of abuses between the two parties both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of the skull resulting in the death. In view of the fact that the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under Section 304, Part II of the IPC. In Willie (William) Slaney v. The State of Madhya Pradesh, AIR 1956 SC 116, there was, as here, a sudden quarrel leading to an exchange of abuses and in the heat of the moment a solitary blow with a hockey-stick had been given on the head. The Court held that the offence amounted to culpable homicide not amounting to murder punishable under Section 304, Part II.

56. In Kulwant Rai v. State of Punjab, (1981) 4 SCC 245, the accused, without any prior enmity or premeditation, on a short quarrel gave a single blow with a dagger which later proved to be fatal. This Court observed that since there was no premeditation, Part 3 of Section 300 of the IPC could not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the facts and circumstances of that case, the conviction of the accused was altered from

Section 302 to that under Section 304 Part II IPC and the accused was sentenced to suffer rigorous imprisonment for five years.

57. In Jagtar Singh v. State of Punjab, (1983) 2 SCC 342, the accused on the spur of the moment inflicted a knife-blow on the chest of the deceased. The injury proved to be fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. This Court observed that: (SCC p. 344, para 8):-

> *"8. … The quarrel was ofa trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. …"*
>
> *(Emphasis supplied)*

This Court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

58. In Hem Raj v. State (Delhi Admn.), 1990 Supp SCC 291, the accused inflicted single stab injury landing on the chest of the deceased. The occurrence admittedly had taken place on the spur of the moment and in heat of passion upon a sudden quarrel. According to the doctor the injury was sufficient in the ordinary course of nature to cause death. This Court observed as under: (SCC p. 295, para 14)"-

"14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without premeditation during the course ofwhich the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course ofnature was sufficient to cause death, neither clause I nor clause III of Section 300 IPC will be attracted."

(Emphasis supplied)

This Court while setting aside the conviction under Section 302 convicted the accused under Section 304 Part II and sentenced him to undergo rigorous imprisonment for seven years.

59. We may lastly refer to the decision of this Court in Pulicherla Nagaraju v. State of A.P., (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500, wherein this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed : (SCC pp. 457-58, para 29)

"29. Therefore, the court should proceed to decide the pivotal question ofintention, 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 insigniftcant 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 ofmurder 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 ofculpable 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 ofsudden quarrel or sudden ftght or free for all ftght; (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 ifso, 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."

(Emphasis supplied)

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.

61. We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not

allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

62. Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is – whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.

63. In the aforesaid view of the matter and more particularly bearing the principles of law explained aforesaid, the present appeal is partly allowed. The

conviction of the appellant under Section 304 Part I of the IPC is altered to one under Section 304 Part II of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years.

Appeal partly allowed.”

24. In the case of ***Valthepu Srinivas Vs. State of Andhra Pradesh*** - **AIR 2024 SC 1050**, it was held as under:

28. *Even though, A-3 might not have had the common intention to commit the murder, nevertheless, his participation in the assault and the wielding of the stone certainly makes him culpable for the offence that he has committed. While we acquit A-3 of the offence under Section 302 read with Section 34 of the IPC, he is liable for the offence under 304 Part II IPC. The law on Section 304 Part II has been succinctly laid down in Camilo Vaz v. State of Goa, (2000) 9 SCC 1, where it was held that:*

> *14. This section is in two parts. If analysed, the section provides for two kinds of punishment to two different situations : (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the “intention”; (2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on a vital part of the body with such force that the person hit meets his death, knowledge has to be imputed to the accused….*

29. *In the past, this Court has considered factors such as lack of medical evidence to prove whether the act/injury was individually sufficient to cause death, a single blow on head with a hammer and lack of cogent evidence of the eye-witnesses that the accused shared a common intention to commit murder as some factors to commute a sentence from Section 302 to Section 304 Part II IPC.*

30. *Returning back to the facts of the case, there is certainly no escape from coming to the conclusion that A-3 should have had the knowledge that the use of a stone to hit the head of the deceased is likely to cause death. However, as demonstrated before, the evidence is insufficient to deduce a conclusion that he shared a common intention with the other accused to commit the murder of the deceased. Considering the role that A-3 has played, we hold him guilty of the offence under Section 304 Part II IPC.*

31. *The perusal of the evidence would reveal that it is not the case of the prosecution that A-3 was along with the other accused while the deceased was dragged to the house. The deposition would reveal that after the other accused assaulted the deceased with sword, A-3 came thereafter and assaulted the deceased with stone lying there. We, therefore, find that the prosecution has not been in a position to establish that A-3 shared the common intention with the other accused to cause the murder of the deceased.*

32. *For the reasons stated above, we uphold the conviction and sentence of A-1, A-2 and A-4 under*

Section 302 read with Section 34 IPC and dismiss their Criminal Appeal No. 2852 of 2023 against the judgment of the High Court of Telangana in Criminal Appeal No. 308 of 2005 dated 26.04.2022. We acquit A-3 of the conviction and sentence under Section 302 read with Section 34 and convict him under Section 304 Part II and sentence him to undergo imprisonment for 10 years. To this extent, the appeal of A-3 is allowed by altering the conviction under Section 302 to Section 304 Part II IPC.

(emphasis supplied)

25. In the case of ***Hussain Bai Asgarali Lokhandwala Vs. State of Gujarat***, - **AIR 2024 SC 3832** it was held as under:

24. *We are in agreement with the view taken by the High Court that the entire incident had occurred in the heat of the moment and that neither party could control their anger which ultimately resulted into the fateful incident.*

25. *That being the position and since the High Court had brought down the charge from Section 304 Part I IPC to Section 304 II IPC, we feel that it would be in the interest of justice if the sentence of the appellant Hussainbhai Asgarali Lokhandwala is further modified to the period of incarceration already undergone by him while maintaining the conviction.*

26. *Much water has flown down the river by this time. The unfortunate incident leading to the loss of a precious life and sustaining of injuries by a couple of others had happened in a spur of the moment.*

> *Therefore, while concurring with the impugned judgment of the High Court dated 06.05.2016 insofar alteration of the conviction is concerned, we are of the view that the sentence imposed upon the appellant should be altered to the period of incarceration already undergone by him. That being the position, it is not necessary to delve into and elaborate upon the other contentions raised at the Bar.*
>
> ***27.*** *Consequently, Criminal Appeal No. 1691 of 2023 is partly allowed. While maintaining the conviction of the appellant Hussainbhai Asgarali Lokhandwala under Section 304 Part II IPC, his sentence is modified to the period already undergone by him. All the other criminal appeals are, however, dismissed.*

26. As stated supra, if the material on record is examined bearing in mind the principles enunciated in the aforesaid judgments, it is evident that the accused cannot be held to be guilty of the offence of murder within the meaning of Section 300 IPC. On the other hand, the accused are clearly guilty of culpable homicide not amounting to murder as contemplated in Exception 1 and/or Exception 4 to Section 300 IPC and would be punishable under Section 304 Part II IPC and sentenced appropriately.

27. Under these circumstances, we are of the view that the present appeal deserves to be partly allowed and the impugned judgment passed by the Trial Court deserves to modified by convicting and sentencing the appellant/accused persons for offence of culpable homicide not amounting to murder by invoking Section 304 Part II IPC and by issuing appropriate directions in this regard.

28. In the result, we pass the following:

ORDER

i) The appeal is partly allowed.

ii) The impugned judgment of conviction and sentence dated 25.03.2022 passed in S.C. No.76/2020 by the V Additional District and Sessions Judge, Dharwad, sitting at Hubballi, is hereby modified.

iii) The conviction and sentence of the appellants/accused for the offences punishable under Section 302 IPC is hereby set aside and the appellants are convicted for offences punishable under Section 304 Part II IPC.

iv) The appellants are sentenced to undergo rigorous imprisonment for a period of six years, and to pay fine of Rs.25,000/- each and, upon default, to undergo R.I. for a further period of one year each.

v) The entire fine amount of Rs.50,000/- is directed to be paid to P.W.1, Mehaboobsab Ibrahimsab Bikanabai, the father of the deceased.

vi) Since the appellants have been in judicial custody from 12.03.2020 onwards, both the appellants would be entitled to the benefit of set-off under Section 428 Cr.P.C.

vii) We place on record our gratitude and appreciation for the valuable assistance rendered by learned counsel Sri. L.S.Sullad, who assisted as an Amicus Curiae on our request.

viii) The High Court Legal Services Committee, High Court of Karnataka, Dharwad Bench, is directed to pay of Rs.10,000/- to Sri. L.S.Sullad, learned Amicus Curiae as a honorarium.

ix) Registry to intimate this order to the High Court Legal Services Committee, Dharwad Bench, for compliance.

Sd/-
(S.R. KRISHNA KUMAR)
JUDGE

Sd/-
(C.M. POONACHA)
JUDGE

KMS
Ct:VH