



\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 10th August, 2026**Uploaded on: 10th August, 2026*

+

CRL.A. 85/2025 and CRL.M.(BAIL) 154/2025**MUKESH**

.....Appellant

Through: Mr. Dhruva Bhagat, Advocate (M)
9910599996.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Aashneet Singh, APP, (M)
9958864713
Insp. Rakesh Kumar, PS-Neb Sarai
Mob.7838236852**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE VIKAS MAHAJAN****JUDGMENT****Vikas Mahajan, J.**

1. This hearing has been done through hybrid mode.
2. The present appeal has been preferred by the Appellant under Section 415(2) BNSS, 2023 against the judgment of conviction dated 19.02.2024 and order on sentence dated 03.09.2024 passed by the Court of Additional Sessions Judge (FTC-01) (South), Saket, New Delhi arising out of FIR No.1735/2015 under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') registered at P.S. Neb Sarai, Delhi.
3. *Vide* impugned judgment dated 19.02.2024, the Appellant was convicted under Section 302 IPC for having committed the murder of



deceased Rishi Pal. *Vide* order on sentence dated 03.09.2024, the Appellant was sentenced to life imprisonment for the offence under Section 302 IPC and fine of Rs.2,000/- was also imposed.

4. The facts germane for deciding the present appeal are that the complainant/Lalit [PW-1] had let out one room to Rajesh [PW-4] to run a tailoring shop. The names of the other tailors working with Rajesh were Babita - his wife, Mukesh - Appellant herein, and one Rishipal. The Appellant and Rishipal used to stay at night in the rented room. On 13.12.2015 at about 9-9.30 pm, after hearing the screams, complainant rushed towards the room of Appellant and Rishipal and found that they were scuffling with each other just outside the gate of their room. When the complainant separated them, suddenly Rishipal fell down. The complainant took Rishipal to his room and made him lie down, when he saw blood on Rishipal's abdomen. He made a PCR call, ASI Rahees Pal [PW-8] reached at the spot. Till the arrival of police, Rishipal was conscious and he told the complainant that the Appellant had inserted some object into his abdomen. Appellant was also present at the place of incident. ASI Rahees Pal took the injured to AIIMS Trauma Centre in PCR Van and got him admitted there.

5. The FIR was initially registered under Section 307 IPC against the Appellant. Subsequently, since the injured Rishipal succumbed to his injuries, the offence was converted into one under Section 302 IPC. The appellant was arrested on 15.12.2015 at 8:00 PM.

6. After investigation, the chargesheet was filed by the police under Section 173 Cr.PC.

7. On the basis of material placed on record by the prosecution along with the chargesheet, charge was framed against the Appellant for the



offence punishable under Section 302 IPC, *vide* order dated 10.06.2016, to which the Appellant pleaded not guilty and claimed trial.

8. The prosecution examined 22 witnesses, out of which only two were public witnesses namely, PW-1 Lalit and PW-4 Rajesh. Thereafter, the statement of the Appellant was recorded under Section 313 Cr.P.C, but he did not lead any defence evidence.

9. The Trial Court upon appreciation of testimony of PW-1 Lalit recorded a finding that the deceased had suffered stab injuries with a sharp weapon during the scuffle between the Appellant and deceased Rishipal, which gives an inference that the injury on his abdomen was caused by the Appellant during the said scuffle.

10. The Trial Court further held that the deceased before his death had made a statement to PW-8 ASI Rahees Pal and PW4 Rajesh whereby he told that the Appellant had caused injury to him with a pair of scissors. The said statements of PW-8 and PW-4 were treated as dying declaration in terms of Section 32 of Indian Evidence Act, 1872.

11. Accordingly, on the basis of the testimonies of PW-1 as well as statements of PW-8 and PW-4, it was held that the Appellant had caused injuries to deceased Rishipal. Further, relying on the post-mortem report, the Trial Court held that the said injury was sufficient to cause death in the ordinary course of nature. Therefore, it was found that the requisites for the offence under Section 300(3) IPC have been established by the prosecution. The Trial Court also observed that the absence of motive or the previous animosity between the Appellant and the deceased are of no consequences. Accordingly, the Appellant was held guilty for the offence under Section 302 IPC. The relevant paras from the Trial Court judgment are set out



hereinbelow:

*“27. Ld. counsel for the accused had tried to assail the testimony of the said witness on the ground that as per the cross examination of PW1 Lalit, he had never seen any prior quarrel between the accused and deceased Rishipal and had also deposed that there was no animosity between them. It had also been asserted that accused did not try to flee away from the spot after the incident and therefore, cannot be said to have a culpable mind. Be that as it may, PW1 Lalit had categorically deposed that on the day of the incident, he had seen a fight between accused Mukesh and the deceased. No other explanation had been offered on behalf of the accused and no cogent evidence had been led on his behalf to prove that any other person apart from him was present at the time of incident, who could have inflicted the said injury. Moreover, PW1 Lalit had arrived at a particular time when there was scuffling going on between both of them and he had seen accused Mukesh and deceased Rishipal entangled with each other and when he separated them, deceased Rishipal fell down on the ground and he saw blood on his abdomen. **Thus, as a natural concomitant, it leads to an inference that the injury on his abdomen was caused by accused Mukesh during the said scuffle.***

*28. In fact, the PM report No. TC-743/15 dated 15.12.2015 of deceased Rishi pal i.e. Ex. PW21/A shows that there were antemortem injuries present on his body which were mentioned as follows: **"Surgical stitched wound measuring 3 cm is present obliquely 6 cm from umbilicus in 4 o'clock position in left Iliac region of abdomen"**. As per the opinion on the said PM report, it had been categorically stated that the cause of death of the deceased was 'hemorrhagic shock due to stab injury to abdomen which was sufficient to cause death in ordinary course of nature' and that the said injury had been caused with a sharp*



weapon.

xxx

xxx

xxx

31. Having said that, the contention raised by Ld. defence counsel that there was no previous enmity between the accused and the deceased holds no water and is immaterial in light of the '**Actus Reus**' on the part of the accused established by the abovementioned prosecution witnesses.

32. Ld. defence counsel had also tried to assail the testimony of PW4 Rajesh on the ground that as per the said testimony of PW4 Rajesh, the deceased had informed him that accused Mukesh had inflicted injuries on his abdomen, however, it was argued that the same cannot tantamount to a dying declaration within the meaning of section 32(1) Indian Evidence Act. It had been further argued that as per the testimony of PW1 Lalit, both deceased Rishipal and accused Mukesh were intoxicated at that time and therefore, it cannot be said that deceased Rishipal was "in a fit state of mind" to make a dying declaration.

xxx

xxx

xxx

35. Be that as it may, perusal of the testimony of PW8 ASI Rahees Pal shows that he had also stated that deceased had told him that accused Mukesh had caused injuries to him with a pair of scissors. In fact, in his cross-examination he had specifically stated that he remained with the deceased for about 1 hour prior to his death and that the deceased talked to him at the spot and also on the way to the hospital. He had also testified that deceased had told him that accused Mukesh was also working with him and was a native of his village. As per his testimony, the deceased had also informed him that he was working as a tailor at F-120, Khanpur, where accused Mukesh was also working and that they used to reside in the same factory. Thus, from the said testimony of PW8 ASI Rahees Pal, it is apparent that the deceased had made all the statements voluntarily and was not under any kind of influence or



was in a fit state of mind to make the said statement to the said witness. Conspicuously, the deceased had made the said statement to not only one witness i.e. PW8 ASI Rahees Pat but also PW4 Rajesh. Thus, it cannot be said that the deceased was ranting, without any basis or without being oriented, to more than one witness about the fact that he had been stabbed, by accused Mukesh. Therefore, there is no merit in the said contention raised by Ld. counsel for accused persons.

36. Thus, the said statements made by the deceased were infact, his dying declaration in terms of section 32 Indian Evidence Act, 1872 and are relevant to bring home the guilt of the accused.

xxx

xxx

xxx

38. Ld. counsel for the accused had further argued that there was no pre-meditation on the part of the accused and a fight may have occurred on the spur of the moment. Be that as it may, no evidence had been led to that effect on behalf of the accused that there was no pre-meditation on the part of the accused or there was no previous animosity between them."

xxx

xxx

xxx

39. As per the postmortem report Ex. PW 2 1/A dated 15.12.2015 of the deceased, the injuries were present on the body of the deceased, which were sufficient in the ordinary course of nature to cause death. The fact that the accused had caused the said injuries to deceased Rishi pal had also been duly established by the aforesaid prosecution witnesses as aforementioned. Thus, the aforesaid ingredients requisite for the offence u/s 300(3) IPC, had been objectively established by the prosecution and the motive of the accused or previous animosity between the deceased and injured are of no consequence thereof.

(emphasis supplied)



12. Mr. Dhruva Bhagat, Id. Counsel for the Appellant has confined his submission only to the aspect that under the facts and circumstances of the present case, the offence committed by the Appellant does not attract the offence of murder punishable under Section 302 IPC, rather the same falls within the ambit of culpable homicide not amounting to murder punishable under Section 304 Part II IPC.

13. Referring to the testimony of the sole eye-witness i.e. PW-1 Lalit, he submits that the Appellant and deceased were residing together and they had never been seen quarrelling earlier and further there was no animosity between them.

14. He submits that the Appellant was not having culpable mind inasmuch as the Appellant did not flee away from the spot. Both the Appellant and deceased were under intoxication when the scuffle took place between them. He contends that the circumstances suggest that there was no pre-meditation and that the incident happened on spur of the moment.

15. *Per contra*, Mr. Aashneet Singh, Id. Counsel for the State defends the impugned judgment.

16. He submits that a sharp edged weapon was used by the Appellant to give injury to the deceased on his vital part and the said injury has been found to be sufficient in the ordinary course of nature to cause death, therefore, the offence of murder under Section 300 is clearly made out.

17. We have considered the rival contentions of the learned Counsel for the Appellant and the learned APP for the State, and have examined the judgment of the Trial Court, as well as the material available in the Trial Court Record.



18. The Trial Court has convicted the Appellant under Clause (3) of Section 300 IPC.

19. The case of the prosecution is based on the testimony of the sole eye witness PW-1 Lalit. Since the criminal liability to be fastened on the Appellant hinges on the testimony of PW-1, therefore, the same is reproduced herein below for the ease of reference:

“13.10.2016

PW-1

Lalit, s/o. Late Sh. Sanjeev Kumar, aged 20 years, r/o. F-120, Khanpur, New Delhi - occupation - Student on SA

*I have passed 12th class last year from open school. I know Rajesh as he is our tenant. The said Rajesh used to run tailoring shop in a room situated in our house. We had let the said room to him on rent. Last year, three more persons were also working with said Rajesh as tailor. The name of other tailors working under the said Rajesh were Babita, his wife, Mukesh and one Rishipal. **The said Mukesh and Rishipal used to stay in night in the same room in which they used to work as tailor along with Rajesh.** On 13.12.2015, at about 9-9.30 pm, I came to my house after attending a marriage. While I was going upstairs. **I heard the screams from the room of Mukesh and Rishipal. After hearing the screams, I came down and saw that Mukesh and Rishipal were scuffling with each other just outside the gate of their room. I separated them. When I separated them, suddenly Rishipal fell down and I took him in the room where I lay him down. Both persons Mukesh and Rishipal were under the influence of liquor.***

xxxx

xxx

xxx

xxxx

xxxxx by Mr. Vikas Dahiya, counsel for accused



*Accused and deceased were working together in the workshop about one and half year prior to the date of incident. They used to cook food at the workshop premises itself. They used to work from 9am to 8pm. The owner Shri Rajesh and his wife namely Babita used to leave the workshop in the evening at about 7-8pm. I do not know if accused and deceased used to regularly consume liquor in the workshop after completing their work of the day but on the date of incident both were drunk. I do not know if Rishipal was habitual of gambling. Vol. But I heard so from some person. I do not know if Rishipal was under heavy debt due to his habit of gambling. Perhaps Rishipal and accused are native of same village. I am not aware if Rajesh, the owner of workshop is also native of same district where the village of accused and deceased was situated or not but he lives in Dakshinpuri. I am not aware if Rajesh and deceased Rishipal belongs to same community. It is wrong to suggest that Rajesh and deceased belong to same community. **I have never seen quarrel between accused and Rishipal prior to the date of incident. There was not any animosity between accused and deceased.** I do not know if accused and deceased were working together with their previous owner. It is wrong to suggest that both of them were working with their previous owner and that I am deliberately not telling the true facts. **Accused did not try to fled away from the spot after the incident. I do not know what was the cause of quarrel between accused and deceased but I heard that deceased was telling to the police that when he (deceased) was knocking the door, it was not opened by the accused and on this account they had a quarrel. Accused was also present at the spot at that time and he kept mum and sat in the same room calmly.** I did not hear from the public persons, who gathered at the spot about the fact of returning of accused after gambling just prior to the incident. The*



persons, who gathered at the spot after the incident were workers of nearby factories. ***I saw deceased and accused were grappling with each other. I do not know if deceased had also beaten the accused or not. It is wrong to suggest that on the date of incident Rishpal returned home while drunk and banging the door or that it was opened by the accused. It is further wrong to suggest that Rishpal (deceased) told accused that he will win the lottery tomorrow if he bet on a particular digit '2'. It is further wrong to suggest that accused had not paid any attention to this fact and asked the deceased to go to sleep as he was drunk. It is further wrong to suggest that at this Rishpal got annoyed and slapped accused 4-5 times. It is wrong to suggest that I am deposing falsely. I do not know from where accused was arrested by the police. Vol. but accused was present at the spot till the arrival of PCR. I had signed the document prepared by the police in a single go at the police station and not at different time. I do not remember on which date accused was arrested but he was arrested after 2-3 days of incident. My statement was recorded by the police twice firstly on the date of incident and secondly when I was called to the police station and signed the documents prepared by the police. It is wrong to suggest that I have deposed falsely or that I had never seen the incident.***

(emphasis supplied)

20. The Supreme Court in ***Virsa Singh v. State of Punjab, 1958 SCC OnLine SC 37***, has explained the meaning and scope of Clause (3) of Section 300 IPC in the following terms:

“14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 “thirdly”.

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

16. Secondly, the nature of the 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.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. 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."

21. As per the MLC, Ex. PW18/A, of the deceased there was only one



visible injury of stab wound 3cm x 3cm in left *iliac fossa*. The Trial Court records the doctor's finding in the post-mortem report, Ex.PW21/A, in the following terms:

*“28. In fact, the PM report No. TC-743/15 dated 15.12.2015 of deceased Rishi pal i.e. Ex. PW21/A shows that there were antemortem injuries present on his body which were mentioned as follows : **“Surgical stitched wound measuring 3 cm is present obliquely 6 cm from umbilicus in 4 o’clock position in left Iliac region of abdomen”**. As per the opinion on the said PM report, it had been categorically stated that the cause of death of the deceased was **‘hemorrhagic shock due to stab injury to abdomen which was sufficient to cause death in ordinary course of nature’** and the said injury had been caused with a sharp weapon.”*

22. As per the testimony of PW-1 Lalit, which appears to be credible, the fatal injury has been inflicted by the Appellant by inserting some object into the abdomen of the deceased. The offence weapon, i.e., scissor, was also recovered at the instance of the Appellant. The post-mortem report also records the injury present on the dead body was sufficient to cause death in the ordinary course of nature. Therefore, seen in the light of law laid down in ***Virsa Singh*** (surpa), we are of the view that the Trial Court has rightly recorded that the requisites for the offence under Clause (3) of Section 300 IPC have been established by the prosecution.

23. However, the law is well settled that even if the case falls within any of the four clauses of Section 300 IPC, it could still be an offence of culpable homicide not amounting to murder, if any of the Exceptions to Section 300 IPC are attracted. Reference in this regard may be had to the decision of the Supreme Court in ***Sita Ram Kuchhbedia v. Vimal Rana &***



Ors., 2026 SCC OnLine SC 293, wherein it was observed that when the Court is confronted with a question whether an offence disclosed by the proved facts is “murder” or “culpable homicide not amounting to murder,” it would be appropriate to approach the issue in the following structured manner:

*“47. At the first stage, the Court must determine whether the accused has committed an act which has caused the death of another, that is to say, whether the case involves a homicide. If such causal connection between the act of the accused and the death is established, the enquiry then proceeds to the **second stage**, that is to say, whether the act so committed amounts to “culpable homicide” within the meaning of Section 299 IPC.*

*48. If the answer to this question is prima facie in the affirmative, the Court must then enter upon the **third stage of enquiry**, viz., whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of Section 300 IPC, which define murder. If the case does not fall within any of the four clauses of Section 300, the offence would be culpable homicide not amounting to murder, punishable under either Part I or Part II of Section 304 IPC, depending upon whether the case attracts the second or the third clause of Section 299 IPC.*

49. Even if the case falls within the four clauses of Section 300 IPC, the Court must further examine whether any of the Exceptions to Section 300 IPC are attracted. If the case is covered by any such Exception, the offence would fall back to Section 299, that is, culpable homicide not amounting to murder.”

(emphasis supplied)

24. The only controversy which thus, survives for the consideration of this Court, lies within a narrow compass, *i.e.*, whether the Appellant is



guilty of offence of murder under Section 302 IPC or it would attract any of the Exceptions to Section 300 IPC, to constitute an offence of culpable homicide not amounting to murder punishable under Section 304 IPC.

25. Section 304 IPC deals with the cases not covered by Section 302 and it divides the offence into two distinct classes, *i.e.*, (i) those in which the death is intentionally caused; and (ii) those in which death is caused unintentionally but knowingly. The cases of the first category are punishable under Section 304 Part I, whereas the cases under the second category are punishable under Section 304 Part II of the IPC.

26. The intention being the state of mind, is to be gathered from a cumulative effect of the circumstances proved on record. As laid down by the Hon'ble Supreme Court in ***Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444***, few or several of the factors in combination will be decisive for ascertaining whether there was any intention to cause death. The relevant extract from the said decision reads thus:

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to



*ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. **The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:** (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”*

(emphasis supplied)

27. The learned counsel for the appellant, on the basis of the evidence on record, has in effect, tried to bring the case within Exception 4 to Section 300 IPC, which reads as under:

300. Murder -

xxxx
xxxx

xxxx

xxxx



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.

28. Having examined the principles of law applicable to the situation like the one in hand, now we turn to the facts of the present case. A very important aspect that has come on record is that it is not a case of previous animosity as stated of PW-1, rather Appellant and deceased were staying together in the tailoring shop run by PW-4 Rajesh. In fact, they belonged to the same village as stated by PW-4.

29. From the statement of PW-1, it is also clear that at the time of the incident, both the Appellant and the deceased were under the influence of liquor. The deceased had told the police that when he was knocking on the door, the Appellant did not open the same, and this led to the scuffle in which injury was caused.

30. The offence weapon, i.e., scissors, which is stated to have been used, was, readily available at the site of the crime since both the Appellant and deceased were tailors and were staying in the tailoring shop. It is not a situation where the Appellant had specially brought any offence weapon to execute the crime, in a pre-meditated manner.

31. Further, PW-1 had not seen the Appellant giving any blow to the deceased, much less with a force which in all probability would have caused a fatal injury. The injuries were suffered by the deceased during scuffle, and the same was noticed by PW-1 when he separated them. The entire incident happened in a short span of time or at the spur of the moment, in a sudden fight when both Appellant and deceased were under the influence of



liquor. It is thus, clear that there was no intention on part of the appellant to kill the deceased, nor he had committed the crime with any pre-planning or premeditation.

32. As per the MLC, Ex.18/A, there was only one injury present. Though the post-mortem report, Ex. PW21/A, mentions three injuries, it is only one stab injury that was found sufficient to cause death in the ordinary course of nature. The nature of injuries, the manner they were inflicted and the very fact that the Appellant did not flee from the scene of the crime and was available till the time the police arrived, also goes to show the appellant did not take undue advantage or acted in cruel manner.

33. The Trial Court, though adverted to the submission of Id. Counsel for the Appellant that there was no pre-meditation and the fight had occurred on the spur of the moment, but brushed the same merely on the ground that no evidence had been led by the accused in that behalf, or even to show that there was no previous animosity between them.

34. In our opinion, the Trial Court overlooked the circumstances, as noted hereinabove, which clearly goes to show the occurrence of the incident had taken place on the spur of the moment without any pre-meditation, and that there was no intention on part of the Appellant to kill the deceased.

35. The Trial Court also failed to note that it is in the testimony of PW-1 that he had never seen a quarrel between the Appellant and the deceased prior to the date of the incident, and that there was no animosity between them. Therefore, the finding of the Trial Court that there is no evidence to show that there was no previous animosity also suffers from perversity.

36. A Co-ordinate Bench of this Court in ***Sanjay Singh v. State (NCT of***



Delhi), 2026 SCC OnLine Del 4184, noting the circumstances, where two men, who were friends, were drinking together and had a fight over a trivial issue of payment for a bottle of liquor, which led to a sudden rage in a state of intoxication, leading to the Appellant therein picking up a brick that was lying outside and striking the deceased, opined that there was no intention to cause death, and accordingly, the offence under Section 302 was altered to one under Section 304 Part II of the IPC. The relevant extract from the said decision reads thus:

“45. The circumstances of the case in hand fit squarely within this well-settled principle. The two men were friends. They were drinking together. The quarrel arose without warning over something as trivial as payment for a bottle of liquor. The deceased slapped the Appellant. The Appellant, in a state of intoxication and sudden rage, picked up a brick that was lying outside and struck the deceased. There was no prior plan. The Appellant was not carrying any weapon. There was no motive to kill. There was no intention, in the legal sense of the term, to cause death, but there was knowledge, that striking a person repeatedly on the head with a brick is likely to cause death.

xxx

xxx

xxx

49. Having considered the entire evidence on record, this Court is of the view that though the Appellant had the knowledge that repeated blows with a brick on the head could likely cause death, the material on record does not establish a deliberate intention to commit murder within the meaning of Section 300 IPC. The present case would therefore fall within the ambit of Section 304 Part II IPC.

xxx

xxx

xxx

52. Accordingly, the conviction of the Appellant under Section 302 IPC is altered to one under Section



304 Part II of the IPC. *The sentence of rigorous imprisonment for life awarded by the Ld. trial court is modified and reduced to rigorous imprisonment for a period of eight years. The fine imposed by the Ld. trial court shall remain undisturbed.”*

(emphasis supplied)

37. Reference may also be had to the decision of ***Atul Thakur v. State of Himachal Pradesh, (2018) 2 SCC 496***, wherein there was sudden fight between friends who had gathered for a drink party in which appellant gave six knife blows to the deceased in the heat of passion on different parts of the his body, causing serious bodily injuries to which he succumbed, the Supreme Court held that the facts of the case warrant the invocation of Exception 4 to Section 300 IPC, as it is a case of culpable homicide not amounting to murder since it was found that there was no shred of evidence that the appellant had assaulted the deceased with an intention to cause his death, and that the act was done without the appellant taking any undue advantage or acting in a cruel manner. The Court also concluded that the number of wounds caused cannot be a decisive factor, and neither the use of a knife nor the factum of multiple injuries given by the appellant would deny him the benefit of Exception 4 to Section 300 IPC. The relevant extract from the said decision reads thus:

*“7. We have carefully considered the oral evidence adduced by the prosecution, in particular the evidence of PW 11 and PW 12 who were the eyewitnesses to the incident during which **Hitesh Thakur was assaulted by the appellant with knife causing serious bodily injuries to which he finally succumbed.** In addition to the said oral evidence, the other circumstances also point towards the complicity of the appellant in the commission of crime such as recovery of the knife at*



*his instance and the nature of injuries suffered by the deceased attributable to the assault by the same knife by the appellant. We find that the trial court has justly analysed the evidence to record a finding about the complicity of the appellant in the commission of crime. That has been affirmed by the High Court after reappraisal of the relevant evidence. We are in agreement with the view so taken by the two courts below. In other words, we are inclined to uphold the concurrent finding recorded by the courts below that the appellant caused six injuries to deceased Hitesh Thakur by attacking him with a knife on the night of 27-7-2011 in the presence of their friends (including PW 11 and PW 12) who had gathered at the house of Mukesh Thakur for celebrating a drink party arranged at the behest of Hitesh Thakur. **Further, Hitesh Thakur succumbed to the injuries caused by the appellant. Thus, it is a case of homicidal death.***

8. Notably, the evidence on record plainly establishes that a sudden fight took place between the appellant and Hitesh Thakur and in the heat of passion, the appellant assaulted Hitesh Thakur causing serious bodily injuries. There is no shred of evidence, much less even a remote suggestion that the appellant had assaulted Hitesh Thakur with an intention to cause his death. Though the High Court found the appellant guilty, it has not held that the bodily injuries caused by the appellant were with an intention to cause the death of Hitesh Thakur. The High Court overturned the finding recorded by the trial court regarding the nature of offence, principally on the ground that the appellant gave repeated knife-blows to Hitesh Thakur and Hitesh Thakur could not defend himself as he was unarmed. Thus, the appellant was found guilty of offence punishable under Section 302 IPC.

9. In other words, the controversy in these appeals boils down to the nature of offence and the sentence to



be awarded in that behalf. As aforesaid, the evidence on record, as held by the two courts below and with which finding we are in full agreement, is that the appellant gave six knife-blows to Hitesh Thakur on the fateful night to which he succumbed. Thus, it is a case of homicidal death. However, there is no evidence that the injuries inflicted by the appellant were with an intention to cause the murder of Hitesh Thakur. On the other hand, the evidence clearly establishes that the appellant assaulted Hitesh Thakur without any premeditation. The whole incident took place suddenly and, in the heat of passion a sudden quarrel started as Hitesh Thakur, while smoking, blew smoke on the face of the appellant. Resultantly, the appellant got enraged. He told him that he was senior in age and thus should not smoke in his presence much less blow the smoke towards him. Then a sudden physical fight started between them, in which the appellant, in heat of passion, gave six knife-blows to Hitesh Thakur on different parts of his body.

10. The evidence of PW 11 and PW 12 (eyewitnesses) would establish that the appellant and others including deceased Hitesh Thakur had gathered at the spot for a drink party arranged at the instance of Hitesh Thakur. They had consumed drinks when the incident took place. Soon after assaulting Hitesh Thakur by knife, when the appellant realised that Hitesh has been badly injured, he offered him water and took him to the hospital along with his other friends. He was in the hospital till Hitesh Thakur succumbed to the injuries. He had also informed the father of Hitesh on telephone and called him to the hospital. Further, when Hitesh was taken to the hospital, the doctors did not provide him immediate treatment but insisted on calling his father. This can be culled out from the evidence of PW 11 and PW 12, who were eyewitnesses and also present throughout and until the last rites of Hitesh Thakur were performed.



11. Taking into account the events as unfolded, it leaves no manner of doubt that the appellant had no intention to cause the death of Hitesh Thakur. The incident happened without any premeditation in a sudden fight between Hitesh Thakur and the appellant and in heat of passion the appellant inflicted six knife-blows on Hitesh Thakur. On the contrary, after realising his mistake, he immediately offered water to Hitesh Thakur and also took him to hospital and stayed there till his last rites were performed. PW 2, father of deceased Hitesh Thakur also corroborates the position that the appellant had contacted him to inform that Hitesh had been brought to the hospital in serious condition.

12. Taking overall view of the matter, the facts of the present case warrant invocation of Exception 4 to Section 300 IPC. For, it is a case of culpable homicide not amounting to murder inasmuch as the incident happened on account of sudden fight between the friends who had gathered for a drink party arranged at the behest of Hitesh Thakur. There was no premeditation and the act done by the appellant was in the heat of passion without the appellant taking any undue advantage or acted in a cruel manner. The number of wounds caused by the appellant, it is a well-established position, by itself cannot be a decisive factor. The High Court committed manifest error in being influenced by the said fact. What is relevant is that the occurrence was sudden and not premeditated and the offender acted in the heat of passion. The evidence supports the case of the appellant in this behalf. The fact that the appellant used weapon such as knife, is also not a decisive factor to attract Section 302 IPC. Neither the use of a knife in the commission of offence nor the factum of multiple injuries given by the appellant would deny the appellant of the benefit of Exception



4.

13. Dealing with a somewhat similar situation, in Surain Singh v. State of Punjab [Surain Singh v. State of Punjab, (2017) 5 SCC 796 : (2017) 3 SCC (Cri) 461] , this Court has restated the settled legal position about the purport of Exception 4 to Section 300 IPC. Even in that case, the accused had repeatedly assaulted the deceased with a kirpan and caused injuries resulting into death. After restating the legal position, the Court converted the offence to one under Section 304 Part II instead of Section 302 IPC. Following the same legal principle and keeping in mind the factual position as unfolded, the view taken by the trial court of convicting the appellant for the offence punishable under Section 304 Part II, is unexceptionable.

xxxxx

xxx

xxx

xxxxx

15. As aforesaid, the High Court overturned this finding of the trial court on the question of nature of offence, by mainly observing that the appellant had caused repeated blows with a weapon like knife, causing six serious injuries to Hitesh Thakur to which he succumbed. We are of the opinion that neither the factum of use of knife by the appellant during the assault nor the multiple blows (six) given by the appellant can be the sole basis to deny the appellant of the benefit available under Exception 4 to Section 300 IPC. The Court is obliged to take an overall view of the matter on the basis of the established facts. This principle is restated in Surain Singh case [Surain Singh v. State of Punjab, (2017) 5 SCC 796 : (2017) 3 SCC (Cri) 461] .

(emphasis supplied)

38. From the above conspectus, it clearly emerges that the present is a case which attracts Exception 4 to Section 300 IPC and warrants alteration



of the offence from Section 302 IPC to one under Section 304 Part II IPC.
Ordered accordingly.

39. A perusal of the nominal roll of the Appellant shows that he has already served 9 years 3 months 12 days in jail as on 26th March, 2025 besides earning remission of 9 months. Clearly, the Appellant has served more than 10 years of sentence.

40. The maximum punishment that can be awarded for the offence under Section 304 Part II of IPC is 10 years, which the Appellant has already served.

41. In that view of the matter, it is directed that the Appellant be released forthwith, if not required in any other case.

42. The order be sent to the concerned Jail Superintendent for necessary information and compliance.

43. Order be uploaded on website of this Court.

VIKAS MAHAJAN
JUDGE

PRATHIBA M. SINGH
JUDGE

AUGUST 10, 2026

nsa