



\$~12 & 13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25th August, 2026

Uploaded on: 25th August, 2026

+ **CRL.A. 1635/2025 and CRL.M.A. 35500/2025**

SADDAM @ ATAUR REHMAN IN JUDICIAL
CUSTODY

.....Appellant

Through: Mr. Chatanya Siddharth and Mr.
Kartikey Chaudhary, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav & Mr. Lalit Luthra,
Advs.
SI Shiv Dayal Kumar.

+ **CRL.A. 255/2026 and CRL.M.(BAIL) 533/2026**

MOHD UBESH ALIAS SHAHRUKH

.....Appellant

Through: Mr. Chatanya Siddharth and Mr.
Kartikey Chaudhary, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav & Mr. Lalit Luthra,
Advs.
SI Shiv Dayal Kumar.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. This hearing has been done through hybrid mode.
2. These two appeals have been preferred by the Appellants - Saddam @ Ataur Rehman and Mohd. Ubesh alias Shahrukh under Section 415(2) of



BNSS, 2023 assailing the impugned judgment dated 19.07.2025 whereby the Appellants were convicted for offences under Section 302/34 IPC. *Vide* order on sentence dated 06.08.2025, both the appellants were sentenced to undergo rigorous imprisonment for life for the offence under Section 302 IPC and to pay fine of Rs.10,000/-.

3. The case of the prosecution in brief is that on 28.02.2019 at around 00:42 AM, at House No.180, Gali No.3, Munga Nagar, Delhi within the jurisdiction of P.S. Dayalpur, the Appellant - Saddam alias Aatur Rehman caught hold of deceased Smt. Hamidan and the Appellant - Mohd. Ubesh alias Shahrukh, gave beatings to the deceased with a wooden *danda* having pointed edge on one side whereas the mother of the Appellant - Mohd. Ubesh alias Shahrukh namely, Salma gave slaps to deceased Hamidan with an intention to kill, as a result of which she sustained injuries.

4. The injured was taken to GTB Hospital on the same day where she remained under treatment for about seven (07) days and died on 07.03.2019. After investigation, chargesheet was filed and the charges were framed on 29.07.2019 against the Appellants under Section 302/34 of IPC.

5. The co-accused Salma could not be arrested as she had absconded. The Appellants pleaded not guilty and claimed trial. The prosecution led evidence and examined 16 witnesses, whereafter the statements of the Appellants were recorded under Section 313 CrPC. They did not, however, lead any defence evidence.

6. The Id. Trial Court, on the basis of the evidence on record, convicted the Appellants under Sections 302/34 IPC based on the testimony of PW1 Shahzad who deposed that the injuries were inflicted on the deceased by the two Appellants and one Salma, and such injuries were opined by doctor to be



antemortem in nature and sufficient to cause of death in ordinary course of nature. The relevant extract from the Trial Court judgment reads as under:

“75. It is, further contended that PW1 stated in his examination in chief that his grand mother was beaten with sharp object, while in cross examination, it is mentioned that his grand mother was killed by sharp edged pointed danda. Whereas it is mentioned in his Section 161 Cr.P.C. statement that a nukili cheez was used.

76. However, there is no material inconsistency in his statement. PW 1 stated in examination in chief that sharp object was used and it is clarified in cross examination that it was a sharp edged danda. A danda can be sharp edged from a side, hence there is no inconsistency in his statement.

77. It is contended that PW 1 in his cross examination claimed to have made the the PCR call from his mobile no. 9871XX8706, but DD entry No. 4A shows the call was made by someone else from mobile number 9650XX7858. However, it is an immaterial inconsistency. A PCR call was made which is duly proved and thereafter police reached at the spot which is established by way of testimony of public and police witnesses.

78. It is contended and is also mentioned in written submissions also that accused was arrested in a kalandra initially under Section 107/151 of Cr.P.C. but this kalandra is suppressed in the present charge sheet. However, if a kalandra was made, it is separate proceeding and has nothing to do with the present case.

79. As per the post mortem report, the cause of death is Septicemic shock consequent upon antemortem injury to head as a result of blunt force impact and as per subsequent opinion, it was opined by doctor that injuries are antemortem in nature and sufficient to cause of death in ordinary course of nature.



80. ***In view of the above discussion, it is proved that both the accused persons in furtherance of their common intention deliberately gave beatings to deceased Hamidan who was their neighbour, with sharp object danda with the intention of causing such bodily injury as the accused knew likely to cause death of Hamidan due to her old age and hence caused her death. And both are found guilty for the offence of committing murder of deceased Hamidan.***

Conclusion:-

81. *In view of above discussion, observations and findings, accused persons Mohd. Ubesh @ Sharukh and Saddam @ Ataur Rehman are hereby convicted for offence u/s 302/34 of IPC.”*

(emphasis supplied)

7. Mr. Chatanya Siddharth, Id. counsel for the Appellants submits that in the present case, the offence under Section 302 IPC is not made out. At best or worst, the case would fall under Section 304 Part II IPC.

8. Elaborating on his submissions, he submits that from the MLC, it is evident that when the deceased was taken to the hospital, she herself gave description of the incident which shows that she was very much conscious.

9. He submits that the alleged weapon of offence used in the present case, as per the prosecution's version, is a one and a half feet wooden *danda*, which is not a dangerous weapon, therefore, there was no intention to kill.

10. He further submits that as per the post-mortem report, the cause of death is '*Septicemic Shock consequent upon ante-mortem injury to head as a result of blunt force impact*'. There were total seven injuries found on the deceased person, out of which six were either a contusion or abrasion and only injury no.2 was a sutured wound with one suture present on right forehead.



11. He submits that PW-12 Dr. Shilpa Singh, who conducted post-mortem, also stated that injury no.2 cannot be the cause of death.
12. He contends that the Appellant - Saddam @ Ataur Rehman, who was aged about 25 years at the time of the incident, is presently aged about 32 years, and as per the nominal roll, he has served a sentence of approximately 3 years, 4 Months and 22 days as on 09.01.2026. Whereas, the Appellant-Mohd. Ubesh alias Shahrukh was aged about 26 years at the time of the incident and is presently aged about 33 years, and as per the nominal roll, he has served a sentence of approximately 3 years, 8 Months and 1 day as on 27.03.2026.
13. *Per contra*, Mr. Ritesh Kumar Bahri, Id. APP for the State submits that the deceased was aged about 65 years at the time of incident and injury was inflicted on her head with the intention of causing such bodily injury as the accused knew likely to cause death of Hamidan due to her old age, which constitutes an offence of 'murder'.
14. He further submits that the Appellants calculatedly chose to attack the deceased during the midnight and the same goes on to show their criminal intent to inflict fatal injuries.
15. We have heard Id. counsel for the Appellants, as well as, Id. APP for the State and have perused the record.
16. The prosecution has examined two eye-witnesses PW-1 Shahzad and PW-4 Shahid. In so far as PW-4 is concerned the Trial Court found that as per testimony of PW-1, PW-4 had reached at the spot after accused persons had gone. It was also held that PW-4 had made improvement over his earlier statement under section 161 CrPC, and is not an eye witness. Accordingly, his statement was held to be not credible.



17. PW-1 Shahzad, who is the grandson of the deceased, is thus, the sole eye-witness. The relevant part of his testimony is reproduced herein below for the ease of reference:

“On the intervening night of 27/28 February, 2019, when I was sleeping in the room at first floor of my house, at about 12:00 night I heard noise of shouting coming from towards the roof of our house. I got up and saw that my grandmother Hamidan was not in the room and then I went on the roof of my house and saw that my grandmother was present on the roof and our neighbour Shahrukh@Uvesh was beating my grandmother with some sharp object and mother of Shahrukh was given slap blows to my grandmother and Saddam, who is son of Mausi (Khala) of Sharukh, had caught hold my grandmother at that time. On seeing the same, when I tried to intervene to save my grandmother and the aforesaid three persons, attempted to assault me, I immediately raised alarm, at which all the aforesaid three persons ran away from there. While running they were saying “aaj toh chhor diya hai agli baar jaan se maar denge”. After that my other family members had also come on the roof and thereafter we made 100 number call to police. After sometime one ambulance had come at our house and took my grandmother to hospital, at that time I had not accompanied my grandmother to the hospital. In the hospital my grandmother was remained under treatment[....]

xxxxxx by Abdul Rauf, Ld. Counsel for both the accused persons

[...] My grand mother was killed by a sharp edged pointed danda from one side and that side was made of wood itself. The danda was in the hand of accused Ubesh @ Shahrukh. The length of the danda was approximately 1½ feet. [...]



18. A perusal of the MLC–Ex.PW6/A shows that the patient herself narrated the history of physical assault at around 1:35 AM on 28th February, 2019, which establishes that she was fully conscious. Further, upon clinical examination of the patient, following injuries were observed:

- 1. Lacerated wound on right eyebrow of size 2x0.5 cm.*
- 2. Lacerated wound on upper lip of size 1x0.5 cm.*
- 3. Abrasion on forehead.*
- 4. Puncture wound at nose.*
- 5. Sweeling on occipital region.*

19. After the death of the deceased, PW-12 Dr. Shilpa Singh conducted the post-mortem of the deceased and the post-mortem report is Ex.PW12/A. On examination, the following external injuries were noted, which were ante-mortem in nature:

- “1. Contusion, Yellowish in colour of size 8 cm x 5 cm present on right side of neck, touching lower lobe of right ear and is 3 cm away from midline.*
- 2. Sutured wound with 1 suture in situ present on the right forehead, touching right eye brow, outer aspect and is 3.5 cm away from midline.***
- 3. Dark brown scabbed abrasion present on the right upper lip of size 2 cm x 1 cm and is 0.5 cm away from midline on remaining scars, pink coloured base seen.*
- 4. Contusion, yellowish in colour of size 12 cm x 7 cm present on left side of face on forehead and is 1 cm away from midline.*
- 5. Contusion, yellowish in colour of size 5 cm x 4 cm present on left side of chin 0.5 cm away from midline and touching the left side of mandible.*



6. *Dark brown scabbed abrasion present on the right side of forehead, of size 1 cm x 0.5 cm, is 3cm above right eyebrow and 4 cm away from midline.*

7. *Contusion, yellowish in colour of size 2 cm x 2 cm present at the base of frenulum in mouth, at right lower lip, inner aspect. Frenulum – Intact”*

(emphasis supplied)

20. Besides that, the post-mortem report also records the cause of death as – ‘*septicemic shock consequent upon ante-mortem injury to head as result of blunt force impact*’.

21. For the purposes of the present case, the cross-examination of PW-12 Dr. Shilpa Singh also assumes relevance, inasmuch as she testified that there was no punctured wound found on the dead body of the deceased which could have been caused by a pointed weapon. As regards, injury no.2, the sutured wound, she stated that the same cannot be the cause of death. The relevant part of her testimony reads thus:

“[...]

*I received inquest papers at 2:00PM. I had not discussed with the IO regarding the case. It is possible to receive the same injuries due to fall from stairs. **It is correct that in the present case, there is no punctured wound which had been caused by a pointed weapon.** Vol. Injury No.2 mentioned in external injuries is a suture wound and its nature of injury cannot be commented upon. **Injury no.2 cannot be cause of death.**”*

(emphasis supplied)

22. The only contention which has been put forth by the learned counsel for the Appellants, on the basis of the evidence on record is that the present is not a case of ‘murder’, rather it would be a case of culpable homicide not



amounting to murder which would fall under the gamut of Sections 299 and 304 Part II of IPC. To appreciate the said submission, it would be apposite to refer to the relevant part of Section 299 as well as Section 300 which are reproduced as under:

“299. Culpable homicide.—

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

xxx

xxx

xxx

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

Explanation 2.— Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.— The causing of the death of child in the mother’s womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.”

300. Murder.—

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.— If it is done 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—

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

XXXX

XXXX

XXXX

Exception 1

....

Exception5 [...]"

23. Section 299 defines ‘culpable homicide’ while section 300 defines ‘murder’. All ‘murder’ is ‘culpable homicide’ but vice versa is not true. In ***Sitaram Kuchhbedia v. Vimal Rana and Ors. (2026) SCC Online SC 293***, the Supreme Court has observed that the question whether the evidence disclosed by the proved facts is “murder” or “culpable homicide not amounting to murder” should be approached in a structured manner comprising in the following three stages:

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.”

24. Clearly, the Exceptions can be applied only after it has been found that the accused is guilty of murder within the meaning of any of the four clauses of Section 300 IPC.

25. Therefore, the first exercise to be undertaken is to ascertain as to whether the prosecution has been able to prove that the case comes within the ambit of any of the four clauses of Section 300 IPC.

26. Indubitably, it is not the case of prosecution that the Appellants committed the act knowingly that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, therefore, Clause (4) of Section 300 is not attracted. Such an act has been illustrated by illustration (d) to Section 300 viz., where a person without excuse fires a loaded cannon into a crowd of persons and kills one of them.

27. The Trial Court has, however, tried to bring the case within Clause (2) of Section 300 IPC by recording a finding that the accused persons gave beating *with sharp object danda with the intention of causing such bodily*



injury as the accused knew likely to cause death of Hamidan due to her old age and hence caused her death. To understand the scope and import of Clause (2) it is imperative to refer to relevant part of illustration (b) to Section 300 which alludes to the said Clause, and reads thus: A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.

27.1 As also explained by the Supreme Court in **Dayanand v. State of Haryana, (2008) 15 SCC 717**, the 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 a diseased heart and such a 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 heart as the case may be.

27.2 Considering the above illustration and the exposition, we are of the view that Clause (2) is not attracted to the case in hand, inasmuch as it is not the case of the prosecution that the deceased was suffering from any disease or was not in a sound state of health, and that such a fact was within the knowledge of the Appellants. Merely because, the deceased was aged about 65 years, in our opinion, would not be sufficient to bring the case within the ambit of the said Clause.

28. Therefore, what needs to be seen next is that whether there was an intention to cause death in terms of Clause (1) or there was an intention of causing bodily injury to the deceased and the said bodily injury was sufficient



in the ordinary course of nature to cause death to bring the case within the purview of Clause (3) of Section 300 IPC.

29. In ***Pulicherla Nagaraju v. State of AP, (2006) 11 SCC 444***, the Supreme Court elucidated the guiding factors to be borne in mind for gathering whether there was an intention to cause death. The relevant extract is reproduced hereinbelow:

*“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)

30. Now turning to the facts of the present case, we find that it has come in the testimony of PW-1 Shahzad that only the Appellant Mohd. Ubesh alias Shahrukh gave injuries to the deceased with wooden *Danda* whereas Appellants - Saddam @ Ataur Rehman had caught hold of the deceased while other accused Salma gave slaps blows. All the three assailants were carrying only one weapon, i.e., a *Danda* which was about 1½ ft. long, and which by no stretch of imagination can be characterised as a deadly weapon. Further six out of seven injuries are in the form of contusion or abrasion which appear to be simple in nature.

31. The remaining seventh injury i.e, injury no. 2 was a sutured wound with one suture present on the right forehead. Dr. Shilpa Singh (PW-12) when cross-examined failed to comment on the nature of the said injury nor the same has been described as grievous either in the MLC or in the post-mortem report. The said injury does not otherwise, fall in any of the categories as enumerated in Section 320 IPC to qualify as grievous hurt.

32. Having regard to the nature of weapon used, a single wound which is



not a grievous one, and the fact that other two assailants were empty handed, goes to show that the Appellants did not possess the intention to cause death, therefore, the applicability of Clause (1) of Section 300 IPC also stands ruled out.

33. Lastly, it needs to be determined whether the case falls in Clause (3) of Section 300 IPC. The Supreme Court in **Virsa Singh v. State of Punjab, 1958 SCC OnLine SC 37**, explained the meaning and scope of Clause (3) 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.”

(emphasis supplied)

34. From the testimony of PW-1 Shahzad it is clear that the injuries present on the body of the deceased were inflicted by the Appellants. However, there is no opinion of the Doctor in the post-mortem report or otherwise, that any one injury or all the injuries taken together on the person of the deceased were sufficient in the ordinary course of nature to cause death. As noted above, out of seven injuries present on the person of the deceased, six were either a contusion or abrasion and only injury no.2 was a sutured wound with one suture present on right forehead.

35. Neither in the MLC nor in the post-mortem report, it was opined that the injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause death, rather PW-12 Dr. Shilpa Singh, has stated that injury no.2, i.e., the suture wound with one suture present on the right forehead cannot be the cause of death. Therefore, in our opinion the finding recorded by the Trial Court that the injuries are sufficient to cause death in



ordinary course of nature, is perverse.

36. More importantly, in the post mortem report, the cause of death has been recorded as “*septicemic shock consequent upon ante-mortem injury to head as result of blunt force impact*”.

37. The deceased was admitted in the hospital on 28th February, 2019 at about 1.30 AM and died 7 days later on 07.03.2019, evidently not on account of the injuries inflicted by the Appellants, rather due to the *septicemic shock*, which could possibly be on account of the infection contracted by the deceased during her stay at the hospital. In the absence of the opinion of the Doctor that the injuries inflicted to the deceased were sufficient to cause death in the ordinary course of nature, the offence under Clause (3) of Section 300 IPC is not made out.

38. Evidently, not only it is a case of an absence of the intention to cause death, but also an absence of intention to cause such bodily injury that was sufficient in the ordinary course to cause death. Therefore, under the given circumstances, the Appellants cannot be held guilty of ‘murder’, rather they could be convicted only under Section 304 IPC.

39. The classification of offence into either part of Section 304 IPC is essentially a matter of fact. This would again have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of injuries, existence of premeditated mind, the persons participating in the commission of crime and to some extent the motive for commission of the crime. The first clause of Section 304 includes only those cases in which death is intentionally caused. The offence is really “murder”, but mitigated by the presence of circumstances recognised in the Exceptions to Section 300 IPC. The second clause deals only with cases in which the



death is caused unintentionally but knowingly.¹

40. As already noted above, it is not a case where intention to kill could be attributed to the Appellants, therefore, the case would fall under Second Clause of Section 304 IPC.

41. Under similar circumstances, the Supreme Court in **Ganga Dass v. State of Haryana, 1994 Supp (1) SCC 534**, where the accused had given iron pipe single blow on the head of the deceased, who died after 18 days from the date of occurrence on account of *sceptecimia* and other complications, had altered the conviction of the Appellant therein from Section 302 IPC to Section 304 Part II IPC. The relevant portion from the said judgment reads as under:

“6. We find considerable force in this submission. As stated above the occurrence took place on November 18, 1988 and the deceased died 18 days later on December 5, 1988 due to septicaemia and other complications. The Doctor found only one injury on the head and that was due to single blow inflicted with an iron pipe not with any sharp-edged weapon. Having regard to the circumstances of the case, it is difficult to hold that the appellant intended to cause death nor it can be said that he intended to cause that particular injury. In any event the medical evidence shows that the injured deceased was operated but unfortunately some complications set in and ultimately he died because of cardiac failure etc. Under these circumstances, we set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict him under Section 304 Part II IPC and sentence him to undergo six years' RI. The sentence of fine of Rs 2000 along with default clause is confirmed. Accordingly the appeal is partly allowed.”

¹ Rampal Singh v. State of U.P., (2012) 8 SCC 289



42. In view of the above discussion, we are inclined to bring down the offence from ‘murder’ to ‘culpable homicide not amounting to murder’, punishable under Section 304 Part II IPC. Accordingly, the conviction of the Appellants under Section 302 IPC and the sentence for imprisonment for life awarded to them is set aside and they are convicted under Section 304 Part II IPC.

43. The next question which we are now confronted with is the sentence to be awarded to the Appellants. The maximum sentence that can be awarded for the offence under Section 304 Part II is 10 years, but there is no minimum sentence prescribed therefor.

44. It is noted that as on date, the Appellant Mohd. Ubesh alias Shahrukh has already undergone a sentence of 4 years and 1 month (approximately), whereas Appellant Saddam @ Ataur Rehman has served 4 years (approximately).

45. We are conscious that the punishment awarded to a criminal serves as a deterrent to those who are dispositioned to take the law into their own hands, but at the same time it should not be disproportionate to the crime. Each case comes with its own peculiarities and the sentence has to be awarded by holistically evaluating the facts of the case. An equitable balance has to be maintained between the rights of the victim or their family and the rights of the accused.

46. Insofar as the present case is concerned, having regard to the kind of weapon used i.e. 1½ wooden *danda*; the nature of injuries, which were not opined to be grievous; the cause of death i.e. septicemic shock; the clean antecedents; and satisfactory jail conduct of the Appellants, we are of the view



that the sentence already undergone by the Appellants will serve the ends of justice. Ordered accordingly.

47. It is thus, directed that the Appellants may be released forthwith, if not required in any other case.

48. Appeals are disposed of in the above terms.

49. Copy of this order to be communicated to the concerned Jail Superintendent for necessary information and compliance.

50. Order to be uploaded on the website of this Court *forthwith*.

**VIKAS MAHAJAN
JUDGE**

**PRATHIBA M. SINGH
JUDGE**

AUGUST 25, 2026/aj