

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 541 of 2017

Arising Out of PS. Case No.-38 Year-2012 Thana- BARURAJ District- Muzaffarpur

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Md. Jamshed Alam Son of Md. Samiullah, resident of Village and P.S. Baruraj, District- Muzaffarpur.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Distinction murder (Section 302 IPC) and culpable homicide not amounting to murder (Section 304 Part-II IPC)- The court found that though the accused acted with knowledge that his act was likely to cause death, there was no premeditation or intention to kill. Accordingly, the conviction under Section 302 IPC was modified to Section 304 Part-II IPC, and the life imprisonment sentence was converted to 10 years of rigorous imprisonment. The judgment also discusses the evidentiary value of contradictions in witness statements, medical evidence, and postmortem reports, emphasizing that material discrepancies can render testimony unreliable.

- *Criminal Procedure Code, 1973 – Section 374(2) – Scope of Appellate Review - The appellate court re-evaluated witness testimonies, medical reports, and physical evidence to determine whether the conviction under Section 302 IPC was sustainable. - In appellate review under Section 374(2) CrPC, courts must examine whether the trial court correctly appreciated evidence and applied the law. (Para 26- 28).*
- *Medical Evidence vs. Ocular Evidence – Role in Determining Guilt- The postmortem report showed only one external injury on the skull, but internal examination found fractured ribs and internal hemorrhaging. (Para 23).*
- *Indian Penal Code, 1860 – Section 302 and Section 304 Part-II – Murder vs. Culpable Homicide - The accused was originally convicted under Section 302 IPC but the High Court modified the conviction to Section 304*

Part-II IPC after determining that: - The act was not premeditated - The accused inflicted only one fatal blow, indicating an absence of intent to kill - The accused had knowledge that his act was likely to cause death, which brings the case within the ambit of Section 304 Part-II IPC (Para 29). Held, The sentence of life imprisonment replaced with 10 years of rigorous imprisonment. (Para 30).

(Case cited:- Camilo Vaz v. State of Goa [(2000) 9 SCC 1], Rampal Singh v. State of U.P. [(2012) 8 SCC 289], Anbazhagan v. State [2023 SCC OnLine SC 857] , [Rampal Singh vs. State of U.P., reported in (2012) 8 SCC 289; Ankush Shivaji Gaikwad vs. State of Maharashtra, reported in (2013) 6 SCC 770; Chenda vs. State of Chhattisgarh, reported in (2013) 12 SCC 110; Surain Singh vs. State of Punjab, reported in (2017) 5 SCC 796; Velthepu Srinivas vs. State of Telangana, reported in 2024 SCC OnLine SC 107].

- *Indian Evidence Act, 1872 – Credibility of Witnesses – Contradictions in Testimonies - The eyewitnesses (PW-1 and PW-4) provided consistent testimonies regarding the accused's assault on the deceased with a bamboo stick, leading to her death. - However, PW-6 and PW-8's testimonies were disregarded due to contradictions between their statements before the police under Section 161 CrPC and their depositions before the Court – Held, while minor inconsistencies do not affect prosecution, major contradictions regarding material facts can render testimony unreliable.*
- *The medical evidence corroborated the eye-witness accounts, strengthening the prosecution's case – Held, When medical reports align with credible witness testimonies, the court may uphold the prosecution's case, despite minor inconsistencies.*

(Para 26 - 28).

- *Sentencing Principles – Degree of Culpability in Homicide Case - The court analyzed the mens rea (intention and knowledge) behind the accused's actions, finding that the lack of repeated blows and premeditation suggested culpable homicide, not murder.*

(Para 29).

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Md. Jamshed Alam Son of Md. Samiullah, resident of Village and P.S. Baruraj, District- Muzaffarpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance:

For the Appellant/s : Mr. Hari Kishore Thakur, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE NANI TAGIA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 06.03.2025

The aforesaid appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against the judgment of conviction and the order of sentence dated 09.03.2017 and 10.03.2017 respectively, passed in Sessions Trial No.160 of 2013 (arising out of Baruraj P.S. Case No.38 of 2012) by the learned Court of 7th Additional Sessions Judge, Muzaffarpur (hereinafter referred to as “learned Trial Judge”). By the said judgment dated 09.03.2017, the learned Trial Judge has convicted the appellant for commission of offence under Section 302 of the Indian Penal Code (hereinafter referred to as the “IPC”) and vide order dated 10.03.2017 he has been sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/- and in default



thereof, the appellant has been directed to undergo further rigorous imprisonment for one year.

2. The short facts of the case are that on 08.06.2012 at about 12.00 hours in the afternoon, the *fardbeyan* of the informant, namely, Md. Ramjan was recorded by the Sub-Inspector of Police. In the *fardbeyan*, the informant has stated that on 08.06.2012 at about 11.00 a.m. in the morning, he along with his deceased-wife Julekha Khatoon was sitting at the door of his house when Md. Jamshed Alam (Appellant) had arrived there and told his wife to come along with him since he had to talk with her, whereafter his deceased-wife Julekha Khatoon had gone with Md. Jamshed (Appellant) to his house. After the wife of the informant had gone for some distance, he heard his wife raising an alarm, whereafter he had immediately gone there and saw that his wife Julekha Khatoon was being assaulted by Md. Jamshed (Appellant), Md. Shamshad, Md. Khurshid, Kaishar Khatoon and Habiban Khatoon by fists, slaps and legs. The informant has further stated that he had then intervened and stopped the quarrel in between them and taken his wife Julekha Khatoon to the police station, however when they had reached at Sahdeo Chowk at about 11:30 a.m., Md. Jamshed Alam (Appellant) came running and then he had assaulted Julekha



Khatoon with bamboo stick on her head and neck, whereupon Julekha Khatoon became injured and fell down on the ground and then the informant had taken his wife Julekha Khatoon in an injured condition on a tempo for treatment to Primary Health Centre, Motipur, however, on the way she died. The informant has next stated that he had then taken his deceased-wife Julekha Khatoon to the police station on the same tempo where his statement was recorded. The informant has stated that the motive for the occurrence is that the sister of Md. Jamshed Alam (Appellant), namely Khushboo had run away with the son of the informant and had solemnized marriage in the Court. The informant has also stated that the aforesaid accused persons had assaulted his wife Julekha Khatoon by fists and slaps and then Jamshed Alam (Appellant) had assaulted on the head and neck of his wife with an intention to kill her.

3. On the basis of the said *fardbeyan* of the informant, a formal FIR bearing Baruraj P.S. Case No.38 of 2012 was registered under Section 302/34 of the IPC by the Officer-in-charge, Baruraj Police Station against Md. Jamshed Alam (Appellant), Md. Shamsad Alam, Md. Khurshid, Kaishar Khatoon and Habiban Khatoon. After investigation and finding the case to be true qua the appellant, the police had submitted



charge sheet on 15.11.2012 under Sections 341, 323, 504 and 302/34 of the IPC. Thereafter, the learned Trial Court had taken cognizance against the appellant on 23.11.2012 under Sections 341, 323, 504 and 302/34 of the IPC. The case was then committed to the Court of Sessions and was numbered as Sessions Trial No.160 of 2013. The learned Trial Court had framed charges against the appellant on 04.04.2013 under Sections 341/34, 504, 323/34 and 302/34 of the IPC against the appellant to which he pleaded not guilty and claimed to be tried.

4. During the course of trial, 14 witnesses have been examined on behalf of the prosecution. PW-1 Md. Ramjan is the informant and husband of the deceased. PW-4 Md. Mumtaj is the nephew of the deceased. PW-6 Shamina Khatoon is the sister-in-law of the informant. PW-8 Md. Qurban Ali is the brother-in-law of the deceased. As far as PW-2 Qayum, PW-3 Md. Shamshad Alam, PW-12 Badruddin and PW-13 Sanjay Ram are concerned, they are hearsay witnesses. PW-5 Umesh Kumar is a formal witness, who has identified his signature on the seizure list. PW-7 Md. Sami Akhtar is a witness to the inquest report. PW-9 Md. Kasim and PW-10 Saraswati Devi have deposed on behalf of the prosecution. PW-11 Chandrika Ram is the Investigating Officer of the present case, while PW-



14 Dr. Pramod Kumar is the doctor who had conducted postmortem on the dead body of the deceased- Julekha Khatoon.

5. The learned counsel for the appellant, Mr. Hari Kishore Thakur has submitted that most of the witnesses are hearsay witnesses and those witnesses who claim to be eye-witnesses are inconsistent and major contradictions can be found in their deposition. It is further submitted that only one blow was given on the head of the deceased and as far as the allegation of inflicting bamboo stick blow on the neck of the deceased is concerned, the same does not stand corroborated from the medical evidence, i.e. the postmortem report. It is thus submitted that the incident was not premeditated and it had taken place on account of continued provocation emanating out of two reasons, firstly the water from the hand pump situated in the premises of the informant used to flow into the field of the appellant and secondly, the son of the informant had fled away with the sister of the appellant and solemnized marriage. It is further submitted that though in the postmortem report, three ribs have been found to be fractured, however, none of the witnesses have stated that any assault was made on the chest/ ribs of the deceased. Finally, it is submitted that though the present case is a case for acquittal, however, even otherwise the



appellant was not having any intention to kill the deceased in view of the fact that he had not repeatedly assaulted the deceased on her head, thus alternatively, it is submitted that the present case would fall within the ambit of Section 304 Part-II of the IPC.

6. *Per contra*, the learned APP for the State, Mr. Dilip Kumar Sinha has submitted that the witnesses are consistent in their testimony. It is next submitted that as far as PW-1, PW-4, PW-6 and PW-8 are concerned, they are eye-witnesses to the aforesaid occurrence and have deposed consistently to the effect that Jamshed (Appellant) had assaulted Julekha Khatoon (deceased) with bamboo stick on her head and neck resulting in her death. It is also submitted that the occurrence in question fully stands corroborated from the medical evidence. Lastly, the learned APP for the State has submitted that the learned Trial Judge has passed the impugned judgment of conviction and the order of sentence by considering the materials on record and the same is a reasoned order, thus, the present appeal is fit to be dismissed.

7. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it is necessary to



cursorily discuss the evidence.

8. PW-1 Md. Ramjan is the informant of the present case and the husband of the deceased-Julekha Khatoon. He has stated in his deposition that deceased-Julekha Khatoon is his wife and the incident dates back to one year at about 11.00 a.m. in the morning, when he was sitting at the door of his house along with his wife and then Jamshed Alam (Appellant) had arrived there and told his wife that his mother was calling her, whereafter his wife had gone with Jamshed along with a child, namely Rakibul Islam, however after some time, the said child came back crying and told PW-1 that those people were assaulting mother, whereupon PW-1 went to the place of occurrence and saw that the head of his wife had been broken. On being asked, wife of PW-1 disclosed that Habiban Khatoon, Kesar Khatoon, Jamshed Alam, Son of Samimulla, namely Nanki had assaulted her. Thereafter, PW-1 had accompanied his wife and while he was bringing her to his house and had reached at Sahdeo Chowk near a tea stall, Jamshed Alam had arrived there and assaulted his wife by bamboo stick on her head and neck, whereafter she fell down. PW-1 has also stated that he had then lifted his wife on his shoulder and taken her to his house, whereafter he had gone to the police station along with his wife



where Jamshed was sitting, however upon seeing him he ran away and then he had laid his wife at the police station. PW-1 has next stated that when he had taken his wife to the police station she was breathing, however seeing her condition, the staff of the police station told him to take his wife to the hospital immediately, whereafter he had taken his wife to the hospital, however at the hospital the doctor declared his wife to have been brought dead. PW-1 had then brought his wife to the police station where he had again seen Jamshed Alam sitting there. PW-1 has also stated that earlier talks used to take place in between his son and sister of Jamshed and he used to catch hold of the letters being exchanged between them, whereafter he had turned his son out of his house and then his son had not returned back for 2½-3 years. PW-1 has also stated that on account of the said dispute, the present incident has taken place. PW-1 had recognized the appellant standing in the dock.

9. In cross-examination, PW-1 has stated that at the time of occurrence, his elder son was not present. PW-1 has stated that he does not remember as to whether FIR was read over to him and as to whether on the day of the incident, enquiry was made by the police from him. In cross-examination, PW-1 has stated that he had told the police that Jamshed Alam (Appellant) had



arrived at his house and asked his wife to accompany him since his mother was calling him, whereafter a nine-year-old child, namely Rakibul Islam had accompanied his wife, however after sometime he had returned crying and had told him that those people were assaulting his mother, whereupon he had gone to the place of occurrence, where he saw that his wife had been assaulted and she was crying. PW-1 has also stated that at Sahdeo Chowk, although there are 3-4 tea stalls and 10-12 shops, but he had disclosed the names of Parmanand Sah, Vishwanath Sah and Bhuneshwar Sah, since he did not remember the name of other shop owners. PW-1 has stated that he had informed the police. PW-1 has next stated in his cross-examination that the water used to flow from his tap towards the field of Jamshed Alam which used to be opposed by Jamshed Alam. PW-1 has also stated in his cross-examination that his wife had walked from the house of accused persons to Sahdeo Chowk on foot where he had made her sit at the shop of Vishwanath Sah and then he saw that at a distance of about 10 stick length (one stick length being equal to about 10 feet), on the rear Jamshed had reached near his wife, however his wife did not try to run away and kept sitting there. PW-1 has stated that Jamshed had hit his wife twice at Sahdeo Chowk,



whereafter his wife became unconscious and then he had lifted his wife on his shoulder and taken her to the police station. He has also stated in his cross-examination that his wife had told him that Habiban Khatoon, Kesar Khatoon, Jamshed Alam and son of Samimullah, namely, Nanki had assaulted her.

10. PW-2 Qayum is a cycle mechanic and he has stated in his deposition that the occurrence dates back to about one year at 11:30 hours in the morning while he was working at his shop situated at Boring Chowk when he was informed by a person passing by on a motorcycle that Jamshed (Appellant), Khurshid, Samshad, Kesar and Habiban are assaulting wife of Ramjan (informant) namely Julekha Khatoon. He has also stated that after the said occurrence when Ramjan and his wife were going to the police station, Jamshed had assaulted Julekha Khatoon by bamboo stick at Sahdeo Chowk, leading to Julekha falling down and becoming unconscious. PW-2 has further stated that he heard that while Ramjan was taking his wife to the hospital, she died on the way. PW-2 has also stated that after the incident, he had gone to the police station where he had seen the dead body being loaded on a tempo. He has next stated that the police had prepared a seizure list of bamboo stick over which he had made his signature which he has identified and the same has been



marked as Exhibit-2. PW-2 had recognized the appellant standing in the dock. In his cross-examination, PW-2 has stated that his house is situated at a distance of half kilometer from Sahdeo Chowk. PW-2 has also stated in his cross-examination that he had got information about the incident from the person travelling on the motorcycle. PW-2 has stated that the bamboo stick was deposited in the police station by Ramjan.

11. PW-3 Md. Shamshad Alam has stated in his deposition that the incident dates back to one year while he was working in his village and then he heard that Jamshed (Appellant) had assaulted Julekha Khatoon and had fled away. He has stated that Jamshed had assaulted Julekha Khatoon at Sahdeo Chowk but he does not know about any other person having assaulted Julekha Khatoon. He has also stated that he heard that Ramjan was taking his wife in an unconscious state to the hospital, however she died on the way. PW-3 has next stated that after hearing about the incident, he had gone to the house of Julekha Khatoon but he did not find anyone there, whereafter he had gone to the police station where the police was preparing documents and there he had seen one bamboo stick, which was laced with blood and documents were prepared with regard to the same which he has identified and the same has been marked



as Exhibit-2/1. PW-3 had recognized the appellant standing in the dock. PW-3 has stated in his cross-examination that he had gone for his work at about 09.00 a.m. in the morning, however he came to know about the incident at 02:00-02:30 p.m. and the paper regarding bamboo stick was prepared at about 03:00 p.m.

12. PW-4 Md. Mumtaj is the nephew of deceased-Julekha Khatoon and he has stated in his deposition that the occurrence dates back to one year at about 11:00 hours in the morning when he was going to Motipur and had stopped at Sahdeo Chowk to eat betel (*paan*) and then he saw that his aunt Julekha Khatoon was sitting at the shop of Vishwanath for drinking water and in the meantime Jamshed (Appellant) had arrived there and had assaulted her with bamboo stick on her neck and temporal region leading to her becoming unconscious, whereafter his uncle had lifted her on his shoulder and taken her to the police station from where she was taken to the doctor for treatment on a tempo but since she died on the way, she was brought back to the police station. He has stated that he had not seen the occurrence which had taken place at the house. He has also recognized the appellant standing in the dock. PW-4 has next stated in his cross-examination that when he looked towards the shop of Vishwanath Sah, three people were sitting there and his



aunt was sitting outside the shop beneath a hut. PW-4 has also stated that Jamshed had arrived at the shop after five minutes of his aunt sitting there. PW-4 has stated in his cross-examination that Jamshed assaulted Julekha Khatoon by going inside the shop. PW-4 has next stated that at the time when Jamshed had assaulted Julekha Khatoon nobody was present there, however upon alarm being raised some people had arrived there and tried to catch Jamshed, however Jamshed fled towards the police station after throwing the bamboo stick and thereafter, Jamshed disappeared and went to the police station. In his cross-examination, PW-4 has stated that in front of his house, field of Jamshed is situated and he keeps goats and hens and sometimes his goat goes into the field of Jamshed and starts grazing the crops leading to Jamshed becoming angry and entering into a quarrel with him. PW-4 has also stated in his cross-examination that he had not disclosed before the police official that at the time Julekha Khatoon was sitting at the shop of Vishwanath Sah and drinking water Jamshed had hit on her head and neck by bamboo stick, however he had disclosed before the police that after his aunt had fallen down, his uncle had lifted her on his shoulder and had taken her to the police station.

13. PW-5 Umesh Kumar has stated in his deposition that the



occurrence dates back to about one year when he was going to Sahdeo Chowk to buy medicine and there he found that many people had gathered, whereafter he had stopped his cycle and had seen that a police officer was preparing seizure list, on which he had also made his signature, which he has identified and the same has been marked as Exhibit-3. In cross-examination, PW-5 has stated that no medicine shop is situated at Sahdeo Chowk.

14. PW-6 Shamina Khatoon is sister-in-law of the informant and she has stated in her deposition that the occurrence dates back to one year at about 11:00 a.m. in the morning when she along with Julekha Khatoon (deceased) had returned to their house after plucking *moong* and then Jamshed Alam (Appellant) had come to call Julekha Khatoon and had taken her away, whereafter she heard *hulla* (alarm), and then she went running to the place of occurrence where she found that Jamshed, Khurshid, Samsher, Kesar, Habiban were assaulting Julekha Khatoon as also the head of Julekha Khatoon had been broken, whereafter Ramjan Ali (informant) had taken her to the police station. PW-6 has further stated that when Ramjan had lifted Julekha and was going to the house for bringing children then Jamshed had arrived there and had assaulted Julekha Khatoon



with bamboo stick on neck and over the ear leading to Julekha Khatoon falling down, whereafter Jamshed ran away after throwing the bamboo stick. PW-6 has also stated that Ramjan had then taken Julekha Khatoon to the police station and they had also accompanied them, however at the police station the Officer-in-charge told them to take Julekha Khatoon to hospital. She has next stated that Julekha Khatoon was then taken to the hospital on a tempo, however she died on the way, thus she was brought back to the police station. PW-6 had recognized the appellant standing in the dock. PW-6 has stated in her cross-examination that her statement was recorded by the police officer and she had not stated earlier that at the time of occurrence she had gone from the place of occurrence to her house and when she had returned back, she had seen that Julekha Khatoon had died. PW-6 has also stated that she had not disclosed before the police officials that Jamshed Alam had assaulted Julekha Khatoon at Sahdeo Chowk and killed her. PW-6 has next stated in her cross-examination that she had not disclosed before the police officer that Jamshed Alam had called Julekha Khatoon and taken her to his house where he along with Khurshid and other family members had assaulted Julekha Khatoon with fists and slaps and then Julekha's husband had



gone to the house of Jamshed and intervened, whereafter he had taken the deceased to the police station. PW-6 has also stated that when Julekha Khatoon had gone to the house of Jamshed, she had also gone from behind and had seen that blood was oozing out from middle of the head of Julekha Khatoon. PW-6 has also stated in her cross-examination that her statement was recorded at the police station.

15. PW-7 Md. Sami Akhtar has stated in his deposition that the occurrence dates back to one year at about 02:00 hours in the day time when he saw that some people were going towards the police station and then he came to know that Jamshed and his family members have assaulted and killed the wife of Ramjan. He has also stated that he had then gone to the police station where he saw the dead body of the wife of Ramjan and also saw blood oozing out of the body of the deceased. PW-7 has next stated that at the police station, the police officials were preparing documents and they had also prepared the inquest report over which he had also put his signature which he has identified and the same has been marked as Exhibit-4. P.W.7 has also identified the signature of Md. Kasim which was made by him before P.W.7 over the inquest report, which has been marked as Exhibit-4/1. He had also recognized the appellant



standing in the dock. PW-7 has further stated in his cross-examination that he had put his signature on the inquest report at the police station at 02:30-03:00 pm.

16. PW-8 Md. Qurban Ali is the brother-in-law of the deceased-Julekha Khatoon as also the brother of the informant-Ramjan and he has stated in his deposition that the occurrence dates back to one year at about 11:00 a.m. in the morning. His house is situated adjacent to the house of the deceased. PW-8 has next stated that at the time of occurrence, Jamshed (Appellant) had come to the house of Julekha Khatoon to call her and had told her that his mother was calling her, whereafter Julekha Khatoon had gone with Jamshed to his house and then Jamshed along with his family members had assaulted Julekha Khatoon with fists and slaps. Thereafter, Ramjan (informant) and PW-8 had gone to the house of Jamshed and had seen that Jamshed, Khurshid, Samshad, Habiban and Kesar were assaulting Julekha Khatoon by fists and slaps, whereafter they had taken Julekha Khatoon to the police station, however on the way Jamshed had hit Julekha Khatoon by a brick, leading to blood oozing out, which had fallen on her clothes but did not fall on the ground. PW-8 has also stated that thereafter, Julekha Khatoon had sat at Sahdeo Chowk and had told her husband to



bring the children otherwise they would also be assaulted, however as soon as Ramjan had stood for bringing the children, Jamshed had hit Julekha with bamboo stick on her neck and temporal region leading to Julekha falling down on the ground and then Jamshed had fled away, whereafter husband of Julekha Khatoon had lifted her on his shoulder and taken her to the police station, however there the police official had told them to take her to the doctor and when they were taking her to the doctor on a tempo, she died on the way. PW-8 had recognized the appellant standing in the dock. In his cross-examination, PW-8 has stated that his sister-in-law did not fall at the house of Jamshed after being assaulted, however blood was oozing out from her head and she had gone walking to Sahdeo Chowk. PW-8 has also stated in his cross-examination that at Sahdeo Chowk, Jamshed had assaulted his sister-in-law by bamboo stick on her neck and temporal region. PW-8 has further stated in his cross-examination that he had disclosed before the police officer that at the time of occurrence he was at his house when Jamshed had come to call Julekha and had told her that his mother was calling her, whereafter his sister-in-law had gone to the house of Jamshed where Jamshed and his family members had assaulted his sister-in-law with fists and slaps, whereupon he and his



brother had gone to the house of Jamshed and had taken Julekha towards the police station but on the way Jamshed had hit Julekha by brick on her head and temporal region, leading to blood having fallen on the ground and then they had taken Julekha to the police station where the police officials had told them to take her to a doctor, nonetheless while they were taking Julekha to the doctor, she died on the way.

17. PW-9 Md. Kasim has stated in his deposition that the occurrence dates back to about one year at 02:00 hours in the afternoon when he was at his home and then he heard that Jamshed (Appellant) had assaulted wife of Roja (Ramjan-informant) and thereafter she had died. Upon knowing about the incident, PW-9 is stated to have gone to the police station where the police official was making a document on which he had put his signature. P.W.9 has identified the carbon copy of the said document which has been marked as Exhibit-4/1. PW-9 had recognized Jamshed. In cross-examination, PW-9 has stated that he runs a tailoring shop and the police station is at a distance of half kilometer where he had reached at about 02:00 hours in the afternoon. He has also stated that he had not read the paper on which he had signed but the police official had read over the same to him.



18. PW-10 Saraswati Devi has stated in her deposition that *hulla* (alarm) was raised at Sahdeo Chowk at her tea stall when she was inside and then she came outside, whereafter she saw that wife of Roja uncle was lying there and blood was oozing out from her head. Thereafter, the injured was taken to the police station, however she had died when she was taken to the Doctor. PW-10 has further stated that the police official had arrived there and collected the mud, soaked with blood, whereafter document was prepared with regard to the same on which she had put her thumb impression. PW-10 has further stated that she had not seen as to who had assaulted Julekha Khatoon (deceased). In such view of the matter, PW-10 was declared hostile, however, she was cross-examined by the learned A.P.P. and in her cross-examination, she has stated that it is not correct that she has stated that Jamshed Alam was chasing Julekha Khatoon and when he had reached near Julekha Khatoon, he had assaulted her by bamboo stick, whereafter she fell and became unconscious.

19. PW-11 Chandrika Ram is the Investigating Officer of the present case and he has stated in his deposition that on 08.06.2012 while he was posted as Officer-in-charge, Baruraj Police Station, he had left the police station at 10 a.m. for taking



part in a crime meeting. At about 11:30 a.m. information was received in the police station that an incident of murder has taken place within the jurisdiction of his police station. Thereafter, information was given to the senior police officials as also PW-11 had obtained information about the place of occurrence, whereafter he had recorded the *fardbeyan* and registered Baruraj P.S. case No.38 of 2012, dated 08.06.2012 under Section 302/34 of the IPC and had assumed the investigation of the case. PW-11 has identified the *fardbeyan* which is in the writing of Sub-Inspector Lalan Prasad Singh and the same has been marked as Exhibit-5 as also he has identified the signature made over the same which has been marked as Exhibit-5/1. PW-11 has further stated that after assuming the investigation of the present case seizure list was prepared by Lalan Prasad Singh, Sub-Inspector in his writing, which has been identified by him and has been marked as Exhibit-6. PW-11 has next stated that whatever was seized has been produced before the Court in a sealed cover, which has been marked as Material Exhibit-I. PW-11 has further stated that inquest report was also prepared by Lalan Prasad Singh in his writing, which he has identified and the same has been marked as Exhibit-7. PW-11 has stated that he along with the Deputy Superintendent



of Police and other police officials had gone to the place of occurrence where seizure list of mud, soaked with blood, was prepared which he has identified and has been marked as Exhibit-8. He has also stated that the seizure list pertaining to blood-soaked soil has been produced in the Court, which has been marked as Material Exhibit-II. PW-11 had visited first, second and third place of occurrence and has described the place of occurrence and the houses/shops situated around the same, in his deposition. PW-11 had recorded the restatement of the informant as also the statement of Samina Khatoon, Qurban Ali, Sanjay Rai, Abdul Kayum, Md. Shamshad, Sarswati Devi and Umesh Kumar as also that of the witnesses to the inquest report, namely, Sami Akhtar and Md. Kasim. PW-11 has further stated that he had received the postmortem report, Md. Jamshed (Appellant) had surrendered in the Court on 23.08.2012, whereafter he had filed charge sheet under Sections 341, 323, 504 and 302/34 of the IPC.

20. In cross-examination, PW-11 has stated that *fardbeyan* of the informant was recorded, whereafter it was read over to the informant and then he had put his thumb impression upon the same, finding the same to be correct. In paragraph No.19 of his cross-examination, PW-11 has stated that he had collected blood



and sent it for examination, however the report has not been received till date. PW-11 has also stated that witness Abdul Quayum had disclosed the name of Jamshed Alam. PW-11 has next stated in his cross-examination that witness Mumtaz had not stated before him that after his aunt had fallen down, his uncle had taken his aunt by putting her on his shoulder. PW-11 has stated in his cross-examination that witness Md. Qayum had not stated before him that Julekha Khatoon had gone running to Sahdeo Chowk and then she was assaulted there. PW-11 has also stated that Md. Mumtaz had not stated before him that after his aunt had fallen down, his uncle had put her on his shoulder and taken her away. PW-11 has also stated in his cross-examination that witness Shamina Khatoon had disclosed before him that she was doing some work at the time of occurrence and after the children had called her out, she had gone to the place of occurrence where people told her that the deceased had been killed by Jamshed at Sahdeo Chowk. PW-11 has also stated that Samina Khatoon had not stated about plucking of *moong*. PW-11 has stated in his cross-examination that witness Qurban had not stated before him that Jamshed had called Julekha Khatoon and taken her to his house where she was assaulted. PW-11 has also stated in his cross-examination that witness Md. Qurban



had not stated before him that he had rushed to the place of occurrence and had seen Jamshed, Khurshid, Samshad, Habiban and Kesar assaulting Julekha. PW-11 has further stated that witness Qurban had not stated before him that when they had gone to the police station, Samshad had picked up a brick and hit Julekha Khatoon resulting in her head being smashed leading to blood oozing out of her head. PW-11 has further stated that Qurban had stated before him that he was plucking *moong* at his field when his brother's son, aged about 4-5 years, had told him that his mother had died, whereafter he had gone to the shop of Vishwanath Sah and had seen wife of Ramjan, namely Julekha Khatoon lying on the ground. PW-11 has also stated that witness Sami Akhtar had not told him that after coming from there, he was informed by people that Jamshed and his family members had killed the wife of Ramjan.

21. PW-12 Badruddin has stated in his deposition that the occurrence dates back to one year. PW-12 has also stated that quarrel had taken place in between Jamshed and Julekha Khatoon at Sahdeo Chowk and he had heard *hulla* (alarm), however he does not know as to how Julekha Khatoon died. PW-12 has further stated that while he was going to plough the field of Kishori Rai, he did not see anyone fighting amongst



themselves. In cross-examination, PW-12 has stated that prior to recording of his present statement, his statement was not recorded by anyone.

22. PW-13 Sanjay Ram has stated in his deposition that he was not present in his village one year back, however he heard that some quarrel had taken place in between Jamshed and Julekha Khatoon and Julekha had died by falling and sustaining injuries. He has further stated that when he reached at the tea stall of Vishwanath Sah, he heard about the incident. In his cross-examination, PW- 13 has stated that he can't say as to how Julekha died.

23. PW-14 Dr. Pramod Kumar is the doctor, who had conducted the postmortem on the dead body of Julekha Khatoon at 11.00 a.m. on 09.06.2012, while posted as Head of Department, Pathology Department at SKMCH, Muzaffarpur and upon conducting postmortem, he had found the following ante-mortem injuries externally:-

“Lacerated wound on occipital bone of skull-size 2” x 1” x bone deep.”

The findings of PW-14, on dissection, are as follows :-

“Left lung was lacerated and chest cavity was full of blood and blood clot. Left 4th, 5th and 6th ribs were fractured. Brain tissues were lacerated on



occipital area of skull. Occipital bone of skull was fractured. Blood and blood clots were present in and around above-mentioned injuries. All major vessels were empty. All Chambers of heart were empty. All injuries were ante-mortem in nature.”

PW-14 has stated the cause of death to be as follows:-

“Hemorrhage and shock due to above-mentioned injuries, caused by hard and blunt substance.”

PW-14 has estimated the time elapsed since death to be within 24 to 48 hours of postmortem examination. PW-14 has further stated that the postmortem report bears his signature and has been written in his writing, which he has identified and the same has been marked as Exhibit-8. In cross-examination, PW-14 has stated that there was only one injury upon the dead body externally which he saw. There was no injury upon the neck and temporal region (*kanpatti*, area above the ear). He has also stated that a person with three fractured ribs can move with difficulty.

24. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellant on 19.05.2014 under Section 313 of the Cr.P.C. for enabling him to personally explain the circumstances appearing in the evidence against him, however he claimed himself to be innocent.



25. The trial Court, upon appreciation, analysis and scrutiny of the evidence adduced at the trial, has found the aforesaid appellant guilty of the offence and has sentenced him to imprisonment and fine, as noted above, by its impugned judgment and order.

26. We have perused the impugned judgment of the learned Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the learned counsel for the appellant as well as the learned APP for the State. A bare perusal of the evidence of the prosecution reveals that on 08.06.2012 at about 11:00 a.m. in the morning, the appellant had come to the house of the informant, namely, Md. Ramjan, where he was sitting along with his wife and had asked Julekha Khatoon to come along with him to his house, whereafter wife of the informant had gone along with the appellant to his house and after sometime the informant heard his wife raising an alarm, whereupon he had immediately gone to the house of the appellant, where he saw that his wife was being assaulted by the appellant, Md. Shamshad, Md. Khurshid, Kaishar Khatoon and Habiban Khatoon by fists, slaps and legs. The informant is then stated to have intervened and stopped the quarrel, whereafter he had taken his wife Julekha Khatoon to the



police station, but on the way when they had reached at Sahdeo Chowk at about 11:30 a.m., the appellant had arrived there running and had then assaulted Julekha Khatoon with bamboo stick on her head and neck leading to her sustaining injuries and falling down on the ground and subsequently she died. PW-1 Md. Ramjan, i.e. the informant of the present case, PW-4 Md. Mumtaj, who is the nephew of the deceased, PW-6 Shamina Khatoon, who is the sister-in-law of the informant, and PW-8 Md. Qurban Ali, who is the brother-in-law of the deceased are stated to be the eye witness to the alleged occurrence. As far as PW-2 Qayum, PW-3 Md. Shamsad Alam, PW-5 Umesh Kumar, PW-7 Md. Sami Akhtar, PW-9 Md. Kasim, PW-10 Saraswati Devi, PW-12 Badruddin and PW-13 Sanjay Ram are concerned, they have admitted to have not witnessed the alleged occurrence and while some of them have claimed to have heard from others that Julekha Khatoon was assaulted by the appellant by bamboo stick leading to her death, other witnesses have stated that they do not know as to how Julekha Khatoon had died, hence the testimony of the said witnesses would not have any evidentiary value, thus the same has been excluded for the purposes of proving the guilt of the appellant.

27. As far as PW-6 Shamina Khatoon is concerned, her



statement made before the police under Section 161 Cr.P.C. was put to the Investigating Officer, i.e. PW-11 Chandrika Ram to elicit his response and the evidence of PW-11 would show that PW-6 had stated before him that at the time of occurrence, she was doing some work and after children had called out, she had gone to the place of occurrence where people had told her that the deceased has been killed by Md. Jamshed (Appellant) at Sahdeo Chowk, thus we find that defense has been able to elicit grave contradiction in the statement of PW-6 Shamina Khatoon, inasmuch as in her examination-in-chief, she is stated to be an eye witness of the alleged occurrence, however in her statement made under Section 161 Cr.P.C. before the police, she is stated to have reached the place of occurrence, after the occurrence had taken place. Similarly, PW-8 Md. Qurban Ali's evidence also suffers from grave contradiction, inasmuch as when the statement made by him under Section 161 Cr.P.C. was put to PW-11 Chandrika Ram (Investigating Officer) to elicit his response, a bare perusal of his evidence would show that he has stated that PW-8 had not stated before the police that he had rushed to the first place of occurrence and had seen the appellant and others assaulting Julekha Khatoon at the house of the appellant and on the contrary, he had stated before the police



that while he was plucking *moong* at his field, his brother's son came and told him that his mother had died, whereafter he had gone to the shop of Vishwanath Sah and had seen the wife of informant, namely Julekha Khatoon lying on the ground. Thus, we find that as far as PW-6 Shamina Khatoon and PW-8 Md. Qurban Ali are concerned, material contradictions exist in their statement, hence their testimony is not trustworthy and cannot be taken into consideration for the purpose of proving the guilt of the appellant.

28. We find that the case of the prosecution is in two stages, inasmuch as the first place of occurrence is stated to be the house of the appellant, where Julekha Khatoon was assaulted by the appellant and others by fists, slaps and legs and the second place of occurrence is at Sahdeo Chowk near the shop of Vishwanath Sah where the appellant had assaulted the deceased- Julekha Khatoon by bamboo stick on her head and neck. As far as the first occurrence is concerned, i.e. Julekha Khatoon being assaulted at the house of the appellant by the appellant and others, we find that there is no eye witness to the said occurrence, however as far as the second place of occurrence is concerned, we find that both PW-1 Md. Ramjan (informant of the present case) and PW-4 Md. Mumtaj, who is the nephew of



the deceased are eye witness to the aforesaid occurrence and have deposed consistently with regard to the overtact engaged in by the appellant qua the deceased-wife of the informant, namely, Julekha Khatoon, which has also stood the test of cross-examination and the defense has not been able to elicit any contradiction. Both the said witnesses, PW-1 and PW-4 have consistently deposed that the wife of the informant, namely, Julekha Khatoon was assaulted by the appellant by bamboo stick on head and neck at Sahdeo Chowk leading to her sustaining injury and her subsequent death. We also find that the said occurrence also stands corroborated by the material/documentary evidence, i.e. seizure list pertaining to blood soaked/stained earth, gathered from the place of occurrence (Material Exhibit-2) and the weapon used in the offence, i.e. blood stained bamboo stick (Material Exhibit-1), apart from the postmortem report, i.e. the medical evidence available on record which though shows only one external injury in the form of lacerated wound on occipital bone of skull, however, the same also shows that upon dissection, it was found that 4th, 5th and 6th ribs of Julekha Khatoon were fractured and moreover, PW-14, i.e. Dr. Pramod Kumar, who had conducted postmortem on the dead body of the deceased, has opined that the death has been



caused on account of hemorrhage and shock due to the injuries mentioned in the postmortem report, caused by hard and blunt substance. Thus, we find that the ocular evidences of PW-1 and PW-4 are cogent, convincing, creditworthy and reliable, which have stood the test of cross-examination and moreover, we do not find that the said oral evidence of PW-1 and PW-4 is entirely irreconcilable with the medical evidence, hence there is no reason to create any doubt about the guilt of the appellant in the alleged occurrence which stands proved beyond all reasonable doubts.

29. As far as the argument of the learned counsel for the appellant to the effect that the incident was not premeditated and the appellant did not have any intention to kill the deceased since he had not repeatedly assaulted the deceased on her head, hence the present case would fall within the ambit of Section 304 Part-II of the IPC, is concerned, we find force in the said submission for the reason that firstly, the appellant had assaulted the deceased by a hard and blunt substance, secondly, only one injury has been found on the vital part of the body i.e. occipital bone of skull of the deceased and thirdly, the appellant had not repeatedly inflicted bamboo stick blow on the deceased. Hence, although we do not find any apparent error in the impugned



judgment of conviction and sentence, nonetheless considering the fact that the appellant had though engaged in overtact with the knowledge that the same is likely to cause death but we find that he did not have any intention to cause death. Thus, we have been persuaded to hold that the appellant is liable to be convicted under Section 304 Part-II of the IPC, hence the conviction of the appellant under Section 302 of the IPC and the sentence of rigorous imprisonment for life with fine of Rs.10,000/- are set aside and instead the appellant is convicted under Section 304 Part-II of the IPC and sentenced to undergo rigorous imprisonment for ten years. In this connection reference be had to the following judgments rendered by the Hon'ble Apex Court :-

(i) Camilo Vaz vs. State of Goa, reported in (2000) 9 SCC 1;

(ii) Rampal Singh vs. State of U.P., reported in (2012) 8 SCC 289;

(iii) Ankush Shivaji Gaikwad vs. State of Maharashtra, reported in (2013) 6 SCC 770;

(iv) Chenda vs. State of Chhattisgarh, reported in (2013) 12 SCC 110;

(v) Surain Singh vs. State of Punjab, reported in (2017)



5 SCC 796;

(vi) *Anbazhagan vs. State*, reported in 2023 SCC OnLine SC 857; and

(vii) *Velthepu Srinivas vs. State of Telangana*, reported in 2024 SCC OnLine SC 107.

30. In view of the fact that the appellant has now stood convicted under Section 304 Part-II of the IPC and sentenced to undergo rigorous imprisonment for ten years by the instant judgment, the appellant, who is already in custody, is directed to serve the remaining sentence.

31. Accordingly, the present appeal, i.e. Criminal Appeal (DB) No.541 of 2017, is partly allowed to the extent indicated above.

(Mohit Kumar Shah, J)

I agree.
Nani Tagia, J:

(Nani Tagia, J)

kanchan/-

AFR/NAFR	AFR
CAV DATE	19.02.2025
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