

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Arun Tanti**  
Vs.  
**The State of Bihar**

Criminal Appeal (DB) No. 299 of 2017

**16 April, 2025**

(Hon'ble Mr. Justice Mohit Kumar Shah and Hon'ble Mr. Justice Shailendra Singh)

**Issue for Consideration**

- Whether the conviction of the appellant under Section 302 read with Section 34 IPC was sustainable based on the evidentiary record.
- Whether the conviction should be altered to Section 304 Part II IPC in light of lack of premeditation and the nature of the act.

**Headnotes**

Prosecution has succeeded in proving the commission of the alleged occurrence as well as the alleged act of the appellant. (Para 27)

However, the alleged occurrence does not appear to have been committed with premeditation and took place in the spur of the moment. - Appellant inflicted only single blow on the deceased and he did not assault the deceased repeatedly despite the victim having fallen on the ground. - Before commission of the alleged occurrence, the accused had not made any preparation. - There was no previous enmity between the appellant and the deceased. - There was no intention to cause death. (Para 27)

There are sufficient evidences, particularly, the ocular evidence of the prosecution witnesses which gets corroboration from the medical evidence, to substantiate and prove the alleged act of the appellant, however, court is not persuaded to affirm the appellant's conviction for the charged offence under Section 302 read with 34 of IPC and for the reasons mentioned above, Court converts his conviction into the offence of culpable homicide not amounting to murder punishable under Section 304 Part-II of IPC and as the appellant has already served fourteen years in jail which is more than the prescribed maximum punishment of imprisonment for the

said offence, so, he is directed to be released forthwith if his custody is not required in any other case. (Para 27)

### Case Law Cited

*Appabhai v. State of Gujarat*, (1988) Supp SCC 241

### List of Acts

Indian Penal Code, 1860: Sections 302, 304 Part II, 34

### List of Keywords

Culpable Homicide ; Section 304 Part II ; Reduction of Sentence ; Spontaneous Incident ; Khanti Blow ; Postmortem Corroboration ; Eyewitness Testimony ; Rural Homicide ; No Premeditation ; Familial Witness

### Case Arising From

Judgment and order dated 18.01.2017 and 19.01.2017 passed by 5th Additional Sessions Judge, Munger in Sessions Trial No. 614/2011 arising out of Kharagpur P.S. Case No. 83/2011

### Appearances for Parties

For the Petitioner: Mr. Dhananjay Kumar Singh, Advocate ; Mr. Jyoti Ranjan Jha, Advocate ; Ms. Shrishti Rani, Advocate

For the Respondents: Ms. Shashi Bala Verma, APP

Headnotes prepared by Reporter: Amit Kumar Mallick, advocate

### Judgment/Order of the Hon'ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.299 of 2017**

Arising Out of PS. Case No.-83 Year-2011 Thana- Kharagpur District- Munger

Arun Tanti, Son of Late Fagu Tanti, Resident of Village- Teghra, P.S.-  
Kharagpur, District- Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

<b>Appearance :</b>		
For the Appellant/s	:	Mr. Dhananjay Kumar Singh, Advocate Mr. Jyoti Ranjan Jha, Advocate Mr. Shrishti Rani, Advocate
For the State	:	Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH  
and  
HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)**

**Date : 16-04-2025**

Heard Mr. Dhananjay Kumar Singh, learned counsel  
appearing for the appellant and Ms. Shashi Bala Verma, learned  
Additional Public Prosecutor appearing for the State.

2. The present criminal appeal has been filed against the  
judgment dated 18.01.2017 and order dated 19.01.2017 passed by  
the court of learned 5<sup>th</sup> Additional Sessions Judge, Munger in  
connection with Sessions Trial Case No. 614/2011 arising out of  
Kharagpur P.S. Case No. 83/2011 whereby and whereunder the  
learned trial court convicted the sole appellant for the offence  
under Section 302 read with Section 34 of the Indian Penal Code



(in short 'IPC') and sentenced him to undergo simple imprisonment for life along with a fine of Rs. 5,000/-. In the event of non-payment of fine, the appellant has been ordered to undergo simple imprisonment for one month.

**3.** The substance of the prosecution story appearing from the FIR is as follows:-

As per the informant, Rupesh Kumar Tanti (examined as P.W.4) on 17.04.2011 at about 8:00 P.M., the accused persons Arun Kumar Tanti (the appellant), Leeladhar Tanti, Sanjay Tanti and Gajendra Tanti firstly started abusing his father Bansidhar Tanti, the victim, (hereinafter referred to as 'deceased') and when the victim objected to the said abusing then all the accused entered into his house and thereafter, the appellant inflicted a *Khanti* blow on the back of the informant's father (deceased) and co-accused assaulted the deceased with lathi resulting in death of the informant's father. As per the informant, the reason of the occurrence was that all the four accused had abused the deceased one week before the commission of the alleged occurrence and at the time of earlier abusing, all of them wanted to assault the deceased but anyhow the villagers intervened due to which on that day no further incident of *marpit* took place but at that time all the accused threatened to kill the deceased and due to this enmity, the



appellant and co-accused equipped with *khanti* and *lathi* entered into his house and killed his father.

4. The informant submitted a written application (Ext. 2) at Kharagpur Police Station describing the aforesaid prosecution story and the said written information was scribed by one namely, Munna Tanti. On that basis, the formal FIR bearing Kharagpur P.S. Case No. 83 of 2011 was registered on 17.04.2011 at 22:30 hrs which set the criminal law in motion and the investigation was started.

5. After the completion of investigation, the investigating officer chargesheeted the appellant for the offence under Section 302/34 of IPC and the investigation was kept pending against the co-accused persons who were named in the FIR.

6. The learned magistrate took cognizance of the same offence for which the appellant was chargesheeted and finding the alleged offence (under Section 302 of IPC) triable by the court of Sessions committed the case of the appellant to the court of Sessions for trial vide order dated 05.09.2011.

7. The appellant stood charged for the offence under Section 302 read with Section 34 of IPC and the same was read



over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried for the charged offence.

8. During the trial the prosecution examined the following witnesses:-

Sl. No.	Name	Relevancy
P.W.1	Salgam Kumari	Claimed herself as an eye-witness, the daughter of the deceased
P.W.2	Parwati Devi	Claimed herself as an eye-witness, the daughter-in-law of the deceased
P.W.3	Suresh Tanti	Full brother of the deceased and claimed himself as an eye-witness
P.W.4	Rupesh Tanti	The informant, son of the deceased, claimed himself as an eye-witness
P.W.5	Marsalan Aiyend	Investigating Officer
P.W.6	Pankaj Kumar	A relative of the deceased and claimed himself as an eye-witness
P.W.7	Vilash Tanti	Hearsay witness
P.W.8	Bhusan Tanti	Hearsay witness
P.W.9	Dr. Shushil Kumar Jha	Doctor who conducted the postmortem examination
P.W.10	Rajesh Kumar	A police official (constable) who proved the inquest report

In documentary evidence the prosecution proved the following documents and got them marked as exhibits which are as under:-

Ext.-1	The entire written contents of the FIR and the signature of the informant.
Ext.-2	The endorsement and the signature on the written application
Ext.-3	Postmortem Report
Ext.-4	Inquest Report

9. After the completion of prosecution’s evidence appellant’s statement was recorded by the trial court in which he denied all the main circumstances appearing against him from the



prosecution's evidences and he claimed himself to be innocent and mainly took the defence that he was falsely implicated in the alleged occurrence.

**10.** The appellant did not give any oral or documentary evidence in his defence.

**11.** While convicting the appellant for the offence under Section 302 read with Section 34 of IPC, the learned trial court placed reliance upon all the prosecution witnesses particularly P.W.1, P.W.2, P.W.3, P.W.4 (informant) and P.W.6 and also deemed the evidence of other prosecution witnesses i.e. P.W.7 and P.W.8 to be supportive to the prosecution story and also placed reliance upon P.W.9 who proved the postmortem report and his medical evidence was considered by the trial court as corroborative to the time, manner of occurrence as described in the FIR and mainly to the instrument which was allegedly used by the appellant in assaulting the deceased and accordingly, the learned trial court found and concluded the alleged act of the appellant to be come in the purview of culpable homicide amounting to murder.

**Submissions by appellant's counsel:-**

**12.** Mr. Dhananjay Kumar Singh, learned counsel appearing for the appellant has argued that there is material contradiction in the evidence of the prosecution witnesses with



regard to the alleged place of occurrence, where the occurrence is said to have taken place as per the FIR and except the investigating officer and the doctor, all other witnesses belong to the family of the deceased, so, no independent witness was produced and examined by the prosecution despite several persons having gathered at the alleged place of occurrence just after the commission of the occurrence as per the prosecution's witnesses. It has been further argued that as per the prosecution story, the appellant is alleged to have inflicted single *khanti* blow on the back of the deceased but he is not alleged to have inflicted repeated blows by the same instrument which shows that the appellant had no intention to kill the deceased if the prosecution story is believed and further, the prosecution story goes to show that initially the accused including the appellant started abusing the victim (deceased) and when the said abusing was objected by the deceased then the accused persons including the appellant entered into the house of the deceased and assaulted him which is sufficient to indicate that the alleged occurrence was not pre-planned rather the same took place in the spur of moment, so, in such a situation, the trial court's conclusion as to holding the appellant guilty for the offence of culpable homicide amounting to murder punishable under Section 302 of IPC, is completely wrong





and is against the provisions of Section 304 of IPC. Learned counsel lastly submits that in the present time, the appellant is about 77 year old and he is a serious patient of renal disease, therefore, he needs immediate care of his family members otherwise he will not survive and the appellant's disease was also brought into the knowledge of the trial court at the time of hearing on sentence.

**Submissions by respondent's counsel:-**

13. On the other hand, Ms. Shashi Bala Verma, learned APP appearing for the State submits that the alleged occurrence was committed in a planned manner as firstly the accused including the appellant abused the victim and thereafter, entered into his house and then badly assaulted him by using *khanti* and *lathi* and several blows by the *lathis* were inflicted by the co-accused and the appellant caused fatal injury on the vital part of the body of the deceased by using *khanti* which comes in the purview of a fatal instrument/weapon, if the same is used in assaulting a person. The medical evidence is fully corroborative to the allegation levelled against the appellant and the main ingredients of the offence of murder are clearly attracted in this matter in view of the nature of the allegation and the learned trial court has rightly convicted the appellant for the offence of murder



with the aid of Section 34 of IPC and there is no need to interfere in the same.

**14.** We have heard both the sides, perused the evidences available on the record of the trial court including the statement of the accused and also taken into consideration the submissions advanced by both the sides.

**15.** The main important facts which are relevant to the alleged offence of murder emerging from the FIR are that firstly, the accused including the appellant abused the deceased, secondly, when the deceased objected to the said abusing then the accused including the appellant entered into the house of the deceased, thirdly, the appellant inflicted a *khanti* blow on the back of the deceased and fourthly, other accused assaulted the deceased by *lathi*. So far as, the motive of the accused including that of the appellant to commit the alleged occurrence resulting in death of the deceased is concerned, as per the informant, one week before the alleged occurrence all the accused including the appellant had abused the deceased without any reason and wanted to assault him at that time but on account of intervention of the villagers, the quarrel relating to that incident did not further escalate but at that time, the accused including the appellant threatened to kill the deceased.



**Consideration and Analysis:-**

16. Though, the FIR of an offence has limited evidentiary value and is not considered a substantive piece of evidence on its own, however, it can be used to corroborate or contradict the informant's statement and three factors mainly affect its evidentiary value. First, prompt filing of the FIR. Second, containing the important facts of the incident and third, alignment with other evidences. In every criminal matter, the FIR goes to show the prosecution story and the case of the prosecution generally surrounds the important facts and circumstances emerging from the FIR which are relevant to the alleged offences. In the present matter, the alleged occurrence is said to have taken place on 17.04.2011 in the night at about 8:00 p.m. and the FIR of the occurrence was lodged by filing a written application (Ext.-2), on that basis, the formal FIR was registered on the same day at 22:30 Hrs (10:30 p.m.) which shows that the FIR in the present matter was lodged promptly by the informant and there was no considerable gap in between the commission of the alleged occurrence and lodging of the FIR which rules out any possibility of fabrication of a story by the informant, so, the FIR of the present matter can be deemed to be credible.



**17.** Now, we shall discuss the evidence of the main prosecution witnesses to find out the truthfulness of the above important facts which are relevant to constitute the alleged occurrence and also to find out whether the prosecution story as described in the FIR is reliable and whether the prosecution succeeded to prove it beyond reasonable doubt or not. As according to the prosecution story, the main part of the alleged occurrence took place inside the house of the deceased, so, the evidence of P.W.1, daughter of the deceased, P.W.2, Parwati Devi, daughter-in-law of the deceased, P.W.3, Suresh Tanti, full brother of the deceased and P.W.4, Rupesh Kumar Tanti, son of the deceased can be deemed to be the most important part of the ocular evidence as their presence at the alleged place of occurrence can be deemed to be natural and further, all of them claimed themselves to have seen the commission of the alleged occurrence, so, the case of the prosecution mainly depends upon their evidences.

**18.** P.W.1, Salgam Kumari, daughter of the deceased, stated in her examination-in-chief that the alleged occurrence took place in the night at 8:00 p.m., at that time, she was inside her home along with the wife of her brother and her father was in the courtyard of her house and then the appellant and other accused



came in the courtyard and started abusing and at that time the appellant was having a *khanti* with him and other accused were having *lathi* with them. She further stated that the appellant assaulted her father (deceased) by using *khanti* and other accused assaulted the victim with *lathi*, then she started weeping then the villagers namely, Bhusan Tanti, Binda Tanti, Suresh Tanti, Pankaj Tanti and some others came, upon seeing them, the accused fled away. She further stated in the examination-in-chief that she identified the accused in the vapour light which was on the road side. Regarding these stated facts, the witness was cross-examined at length and she stated in the cross-examination that she told the *Daroga Ji* (police officer) that the appellant assaulted the deceased with *khanti* and other accused assaulted him with *lathi* and upon hearing her cry, the villagers came and gathered and also told about the source of light. As per this witness, the alleged occurrence took place outside her house and some blood from the body of the victim fell on the earth and victim's clothes became wet with blood. This witness stated in her cross-examination that the co-accused inflicted three *lathi* blows on the back and head of the deceased and due to these blows, her father (victim) fell down but thereafter, no *khanti* blow was inflicted upon him. She further stated that prior to the alleged occurrence, there was no enmity



between her family and the appellant Arun Kumar Tanti. In this way, regarding the manner of occurrence, the witness remained consistent and also revealed the source of light by which she was able to identify the accused including the appellant and also supported the instrument/weapon which was allegedly used by the appellant in assaulting the deceased and from her evidence, it is clearly evident that the appellant inflicted only one *khanti* blow on the deceased and there was no previous enmity between the deceased and the appellant. Regarding the main allegations, the evidence of this witness is fully corroborative to the prosecution story, though, regarding the alleged place of occurrence as well as presence of one Urmila Devi as being an accomplice with other co-accused her evidence seems to be contradictory to some extent. As far as the place of occurrence is concerned, it will be discussed later after appreciating the evidences of other material witnesses, however, in respect of other important facts, the evidence of this witness appears to be credible and trustworthy.

**19.** P.W.2, Parwati Devi, stated in the examination-in-chief that the alleged occurrence took place in the night at about 8:00 p.m. and at that time, she was inside her home with her sister-in-law (P.W.1) and her father-in-law, Bansidhar, (deceased) was asleep in the courtyard and then the appellant and other accused



entered into her house and started abusing. She further stated that her father-in-law, the victim, was dragged out from the courtyard by the accused then she and her other family members raised a *hulla* but in the meantime, the appellant assaulted her father-in-law with *khanti* and other accused assaulted him with *lathi* and after that the accused fled away upon seeing the people coming towards the place of occurrence. She further stated in the examination-in-chief that her husband (informant) rushed the victim to Kharagpur Hospital but on the way her father-in-law (victim) died. The witness further deposed in the cross-examination that she told the *Daroga Ji* (police officer) in her statement that the appellant, Arun Tanti, assaulted her father-in-law with *khanti*. She denied the defence's suggestion that she did not state the *factum* of identification of the accused in the vapour light. She further stated that all the incident of *marpit* took place on the road and a large quantity of blood from the body of the victim fell on the earth and the same was showed to the police officer. She further stated that the accused surrounded her father-in-law and inflicted 5 to 6 lathi blows on him due to which the victim fell down and thereafter, 3 to 4 more lathi blows were also inflicted on him by the accused. She further stated that there was no previous enmity between the appellant and her family. Though regarding the number of blows



by co-accused by using lathi, the witness exaggerated the prosecution's allegation which is mainly against the co-accused but in respect of the allegation appearing against the appellant, she remained consistent and regarding the role of appellant as well as the instrument which was allegedly used by him in assaulting the deceased, she remained consistent to the prosecution story and in this regard, her evidence appears to be trustworthy.

**20.** P.W.3, Suresh Tanti, stated in the examination-in-chief that the alleged occurrence took place in the evening and at that time he was taking meal then her brother came and told him that there was *hulla* near the house of the deceased, whereafter he went there and saw the appellant assaulting the deceased on his back with *khanti*, whereupon other accused persons namely, Sanjay Tanti, Gajendra Tanti and Leeladhar Tanti had also assaulted the deceased with *lathi*. Thereafter, the victim was rushed to the hospital but on the way, he died. As per this witness, the accused firstly started abusing the victim which was opposed by the victim. In the cross-examination, he has stated that he is real brother of the deceased and his house is situated in front of the victim's house and there is a gap of only 20 to 25 hands in between both the houses. He further deposed that he heard *hulla* at 7:00 p.m. and within five minutes after hearing *hulla*, he reached at the





place of occurrence and before him, the incident of abusing took place and the appellant and co-accused, Sanjay Tanti, were abusing and the incident of *marpit* took place on the road near the door of victim's house and the road was not *pucca*. He further deposed in the cross-examination that the appellant inflicted only one *khanti* blow on the victim and the first blow on the body of the victim was inflicted by using the said instrument *khanti* and thereafter, other blows by using *lathi* were inflicted upon him and there was bleeding from the mouth, nose and body of the victim. He further stated that the vest (*baniyan*) of the deceased became soaked with blood and some blood also fell on a *bitta* area (small area) of ground at the time of the alleged occurrence. He further stated that the police came next day in the morning after the commission of the alleged occurrence and investigated the place of occurrence.

Though the witness revealed his house being separate from victim's house during the relevant time of the alleged occurrence but also revealed that his house was situated at a distance of 20 to 25 hands away from the house of the victim and he claimed to have heard *hulla* which was raised when the accused started abusing the victim and upon being informed about the said *hulla*, he immediately rushed to the place of occurrence and saw the commission of the alleged *marpit*. Regarding the main important



facts of the occurrence, his evidence appears to be reliable particularly, with regard to the allegation levelled against the appellant and he has remained consistent regarding the instrument which was allegedly used by the appellant in assaulting the deceased and also with regard to the manner of occurrence including the role of other accused in assaulting the deceased.

**21.** P.W.4, the informant and son of the deceased, stated in the examination-in-chief that he was milking his cow and then at about 8:00 p.m., the accused including the appellant entered into his house and started abusing, upon hearing the *hulla* he came and raised an alarm and then his co-villagers namely, Vilash Tanti, Bindu Tanti, Suresh Tanti, Pankaj Tanti and Bhusan Tanti also arrived. He further stated that the appellant dragged his father out of his house to the road where he inflicted *khanti* blow on his father and other co-accused (three in number) assaulted him with *lathi*, thereafter, he rushed his father to a Government Hospital on a pushcart (*thela*) but on the way his father died, then he went to the police station. He has further stated that the postmortem examination of the dead body of his father took place at Sadar Hospital, Munger and the inquest report was prepared before him upon which he put his thumb impression. He stated in the cross-examination that his location at the place where he was milking his



cow was just four steps away from the place of occurrence and when he came inside his house, he saw the accused abusing his father and upon hearing his alarm his villagers Vilash Tanti, Bindu Tanti, Suresh Tanti, Pankaj Tanti and Bhusan Tanti arrived. He further stated in his cross-examination that the accused dragged his father out on the road, whereafter the appellant assaulted his father on his back with *khanti* and then other accused assaulted him with *lathi*, whereafter, the accused fled away and the occurrence of *marpit* continued for 5 minutes. Though this witness stated that he did not intervene to save his father except raising an alarm but he explained that at the time of occurrence he had fear of being assaulted by the accused if he would have made an attempt to save the victim. He further stated in his cross-examination that the blood from the body of the victim fell on the earth and the blood stained soil was picked up by the police.

The *factum* of presence of the appellant, using of agricultural instrument *khanti* by him in assaulting the deceased, the number of accused and the means which were used by them in assaulting the deceased as well as the initial part of the occurrence relating to abusing, as it apparent from the evidence of P.W.4, is completely corroborative to the important facts emerging from the prosecution story and he also seems to be a reliable witness.



**22.** So far as the evidence of P.W.6 is concerned, he also appears to be a credible witness as his presence at the place of occurrence at the relevant time has been revealed by the informant and he has supported the case of prosecution particularly, the manner of occurrence and the alleged acts of the accused including that of the appellant. Though there is some contradiction with regard to the means which was allegedly used by the accused, Leeladhar Tanti, as he stated that the said co-accused was having *garansa* with him but regarding the appellant having used *khanti* in assaulting the victim, he remained consistent and in the cross-examination, he stated that the appellant assaulted the victim with *khanti* and inflicted one *khanti* blow on the back of the victim. He stated in the cross-examination that the deceased did not have any enmity with anyone and he denied the suggestion that he was not present at the place of occurrence during the relevant time, as such, the evidence of this witness appears to be corroborative to the prosecution story.

**23.** So far as the evidence of P.W.7 and P.W.8 is concerned, they do not appear to be eye-witnesses of the alleged occurrence as P.W.7 stated in the cross-examination that at the time of the commission of the alleged occurrence, he was present in his wheat field and he did not see the occurrence. Similarly,



P.W.8 has stated in the cross-examination that he rushed to the place of occurrence upon hearing *hulla* but he did not see anyone assaulting.

**24.** Now we come to the medical evidence given by P.W.9 who conducted the postmortem examination on the body of the deceased. He proved the postmortem report which was marked as Ext.-3. He deposed that upon examination of the dead body, he found two external injuries which are as under:-

(i) Bleeding from both nostril.

(ii) A lacerated stab wound on right side upper back of chest at T3 level of vertebrae of size 2" x 1/4" x visceral deep.

Upon dissection, he found the right lung of the deceased being ruptured and fourth rib of right back was fractured. He opined the cause of death of the deceased as due to hemorrhage, shock and injury to vital organ (lung) as a result of the above-mentioned injury caused by penetrative weapon. The witness opined the time of death of the deceased within 24 hours from the time of examination. The postmortem examination was done at 2:00 p.m. on 18.04.2011 and the alleged occurrence is said to have taken place on 17.04.2011 at about 8:00 p.m. and the rigor mortis was present in the limbs of the dead body. In the light of this medical evidence, one thing is quite clear that a penetrative fatal



injury was caused on the back of the deceased and the alleged instrument used in causing the said injury went into the body of the deceased from backside damaging one of the lungs of the deceased which was the main reason of his death and the said evidence is corroborative to the use of *khanti* in assaulting the deceased as an injury in the nature of cut, puncture, laceration and even amputation can happen by an agricultural instrument like *khanti* and as per P.W.9, a lacerated stab wound on right side upper back of the chest was found which was possible by a penetrative instrument/weapon as per P.W.9. Accordingly, the medical evidence in respect of the instrument which was allegedly used by the appellant in assaulting the deceased, as well as the body part of the deceased upon which the said instrument was allegedly used by the appellant, fully corroborates the prosecution story. Furthermore, the circumstances surrounding the death of the deceased resulting due to apparent cause of death mentioned in the inquest report (Ext.-4) are also supportive to the prosecution story regarding some important facts such as an injury on the back of the deceased.

**25.** Now, we come to the evidence of I.O. who was examined as P.W.5. He deposed in the examination-in-chief that the investigation was entrusted to him on 17.04.2011 and



thereafter, he investigated the place of occurrence. As per this witness, the place of occurrence was the *dalan* of the house of the deceased. *Dalan* is considered as *verandah* or an open hall. This witness has deposed that *dalan* of the deceased was made of straw. In the examination-in-chief, this witness did not reveal any fact being against the prosecution story and he simply stated that he visited the place of occurrence, recorded the statements of the witnesses and got the direction of his superior police authority including the postmortem report of the deceased and thereafter, chargesheeted the appellant and kept the investigation pending against the co-accused. It is important to mention that all the material witnesses were cross-examined on behalf of the appellant but the investigating officer was not cross-examined as no one appeared on behalf of the appellant to cross-examine the said witness, so, the appellant cannot take the plea that he did not get a chance to test the veracity of the prosecution witnesses with regard to the material facts and circumstances by cross-examining the investigating officer in light of the previous statements of the witnesses recorded by the investigating officer during the investigation.

**26.** Now, we come to the contradiction relating to the location of alleged place of occurrence as pointed out by the



appellant's counsel. The informant (P.W.4) revealed in the FIR that the accused persons including the appellant entered into his house and thereafter, assaulted the deceased with *khanti* and *lathi*, although, he stated in the evidence before the trial court that the accused dragged his father out of his house to the road where the accused assaulted his father. Similar evidence was given by some other material witnesses and according to the investigating officer, the place of occurrence was *dalan* of the house of the deceased. The location of *dalan* in rural area is mainly considered to be situated at the outside part of the house near the main gate, so, if we take into account the statements of all material witnesses of prosecution with regard to the beginning and end of the occurrence then we do not find any vital contradiction, which is fatal to the prosecution case, as far as the location of the place of occurrence is concerned and further, the same is ignorable as the ocular evidence of the material witnesses of the prosecution in respect of the allegation levelled against the appellant and regarding the manner of occurrence appears to be reliable. Further, the medical evidence corroborates the prosecution's allegation. It is settled position of law that while appreciating the evidences undue importance must not be attached to minor discrepancy unless such discrepancy shakes the basic version of the prosecution's case or





goes into the root of the matter so as to demolish the entire prosecution story and in this regard, the observation made by the Hon'ble Apex Court in paragraph no. 13 of the judgment passed in the case of ***Appabhai vs. State of Gujarat*** reported in ***(1988) Supp SCC 241*** is important and the same is being reproduced as under:-

*“13. ... The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in *Sohrab v. State of M.P.* [*Sohrab v. State of M.P.*, (1972) 3 SCC 751 : 1972 SCC (Cri) 819] observed : (SCC p. 756, para 8)....”*



So, merely on the basis of aforesaid minor contradiction with regard to the location of place of occurrence we are not persuaded to throw out the case of the prosecution.

**Conclusion:-**

27. After having discussed the evidences available on the record of the trial court and taking into account the arguments advanced by both the side, we are of the considered view that in the present matter, the prosecution has succeeded in proving the commission of the alleged occurrence as well as the alleged act of the appellant. The appellant stood charged for the offence under Section 302 read with 34 of IPC and the learned trial court convicted him for the said charged offence. In the background of the facts and circumstances of this case appearing from the prosecution's evidences, we are of the view that the alleged act of the appellant does not fall within the purview of culpable homicide amounting to murder and while arriving at this conclusion, we find some important circumstances. Firstly, the alleged occurrence of *marpit* as detailed in the FIR, does not appear to have been committed with premeditation and the same appears to have taken place in the spur of the moment on account of an incident of abusing leading to the appellant and the co-accused persons to commit *marpit* with the deceased and secondly, it is the case of the



prosecution that the appellant inflicted only single blow by *khanti* on the back of the deceased and he is not alleged to have assaulted the deceased repeatedly by using the said instrument despite the victim having fallen on the ground and the prosecution's evidences do not show that before commission of the alleged occurrence, the accused including the appellant had made some preparation. Thirdly, as per the evidence of prosecution's witnesses, there was no previous enmity between the appellant and the deceased, though, as per the FIR, an incident of abusing had taken place between the accused and the deceased and at that time, as per allegation, the accused including the appellant had threatened to kill the informant but regarding the said previous incident, none of the prosecution witnesses said anything, so, there was no strong premeditated reason on the part of the appellant to kill the deceased. In view of the alleged act of the appellant it cannot be said that he had an intention to cause death of the deceased or to cause the alleged bodily injury with intention to cause his death by said injury but it can be presumed that he had knowledge that his act of inflicting *khanti* blow on the vital part of the body of the deceased is likely to cause death of the deceased. So, in such a situation, the alleged act of the appellant comes within the purview of culpable homicide not amounting to murder under second part



of Section 304 of IPC, for which the maximum punishment of imprisonment is ten years and the present appellant has already undergone fourteen years in jail in the present time. While awarding the punishment upon the appellant for the offence under Section 302 read with 34 of IPC, the learned trial court directed the appellant to undergo simple imprisonment for life along with a fine of Rs. 5,000/- which was not proper as the life imprisonment means imprisonment for whole of remaining period of the convicted person's natural life and trial court cannot specify it as simple or rigorous as according to categories of punishments mentioned in IPC, life imprisonment is itself a separate kind of punishment. Accordingly, we hold that there are sufficient evidences, particularly, the ocular evidence of the prosecution witnesses P.W.1, P.W.2, P.W.3, P.W.4 and P.W.6 which gets corroboration from the medical evidence, to substantiate and prove the alleged act of the appellant, however, we are not persuaded to affirm the appellant's conviction for the charged offence under Section 302 read with 34 of IPC and for the reasons mentioned above, we convert his conviction into the offence of culpable homicide not amounting to murder punishable under Section 304 Part-II of IPC and as the appellant has already served fourteen years in jail which is more than the prescribed maximum



punishment of imprisonment for the said offence, so, he is directed to be released forthwith if his custody is not required in any other case.

**28.** In the result, the instant appeal stands partly allowed.

**29.** Let the judgment’s copy be sent immediately to the trial court as well as the jail authority concerned for information and needful compliance.

**30.** Let the LCR be sent back forthwith to the trial court.

**(Shailendra Singh, J)**

*I agree.*

**(Mohit Kumar Shah, J)**

**(Mohit Kumar Shah, J)**

maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.04.2025
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