IN THE HIGH COURT OF JUDICATURE AT PATNA

Rakesh Singh

v.

The State of Bihar

Criminal Appeal (DB) No. 1215 of 2016

27 June 2025

(Hon'ble Mr. Justice Mohit Kumar Shah & Hon'ble Smt. Justice Soni Shrivastava)

Issue for Consideration

Whether the conviction of the appellant under Section 302 IPC for causing the death of the deceased with a dagger was legally sustainable in the absence of recovery of the weapon, non-examination of the Investigating Officer, and presence of minor discrepancies in the eyewitness accounts.

Headnotes

Indian Penal Code – Section 302 – Murder – Eyewitness Testimony – Medical Corroboration – Minor Contradictions
Prosecution case based on eyewitness accounts of father and brother of deceased, and independent witness – Evidence supported by medical findings showing fatal chest injuries caused by sharp weapon – Minor discrepancies and delay in FIR immaterial.
Held: Conviction sustainable; eyewitness and medical evidence consistent. [Paras 26–30]

Criminal Law – Non-Examination of Investigating Officer – Effect
Though the IO was not examined, no prejudice was demonstrated by the defence – Other witnesses consistent and trustworthy – Conviction not vitiated solely due to IO's absence.
Held: Non-examination of IO not fatal in absence of prejudice. [Para 30]

Evidence Act, 1872 – Section 134 – Number of Witnesses – Sufficiency of Sole Reliable Testimony

Court reiterated that quality of evidence matters, not quantity – Credible evidence of even one witness sufficient to sustain conviction. **Held:** Conviction valid on strength of coherent and consistent testimony. [Para 29]

Indian Penal Code – Sections 302 vs 304 Part II – Exception 4 to Section 300 – Applicability – Premeditation and Brutality

Repeated stab injuries with sharp weapon by accused on unarmed victim – No grave or sudden provocation – Brutal and deliberate act; Exception 4 to Section 300 not applicable. **Held:**Conviction under Section 302 upheld; Exception 4 excluded. [Paras 33–35]

Appreciation of Evidence – Contradictions – Delay – Motive – Hostile Witnesses

Non-examination of some witnesses and hostility of others do not demolish the case – Core prosecution witnesses consistent and corroborated by medical evidence – FIR delay explained and motive present. **Held:**Trial court's assessment justified; conviction affirmed. [Paras 27–32]

Case Law Cited

Rammi v. State of M.P., **(1999) 8 SCC 649** – minor discrepancies immaterial – relied on; State of U.P. v. Krishna Master, **(2010) 12 SCC 324** – credibility of witnesses – followed; Bhagchandra v. State of M.P., **(2021) 18 SCC 274** – oral evidence and medical report corroboration – applied; Solanki Chimanbhai Ukabhai v. State of Gujarat, **AIR 1983 SC 484** – oral vs medical evidence – applied; Amar Singh v. State (NCT of Delhi), **(2020) 19 SCC 165** – value of single testimony – relied on; Dalip Singh v. State of Punjab, **AIR 1953 SC 364** – testimony of close relatives – followed; Behari Prasad v. State of Bihar, **(1996) 2 SCC 317** – IO non-examination not fatal – relied on; Babu v. State of Tamil Nadu, **(2013) 4 SCC 448** – Exception 4 to Section 300 – not applicable in brutal cases – applied; Bhagwan Munjaji Pawade v. State of Maharashtra, (**1978) 3 SCC**

330 – sudden fight and premeditation – applied; Kunhimuhammed v. State of Kerala, **2024 SCC OnLine SC 3618** – reiterated principle of undue advantage and cruelty – applied

List of Acts

Indian Penal Code, 1860– Sections 302, 304 Part II, Section 300 Exception 4; **Code of Criminal Procedure, 1973**– Sections 164, 313, 374; **Indian Evidence Act, 1872**– Sections 134, 3

List of Keywords

Dagger attack, Eyewitness testimony, Medical corroboration, Non-examination of IO, Hostile witnesses, Section 302 IPC, Sudden quarrel, Exception 4 to Section 300, Quality vs quantity of evidence, Postmortem injuries, Premeditation, FIR delay, Minor contradictions.

Case Arising From

Judgment of conviction dated **20.09.2016** and order of sentence dated **26.09.2016** passed in **Sessions Trial No. 66 of 1997**, arising out of **Chapra Muffasil P.S. Case No. 191 of 1995**, convicting the appellant under Section 302 IPC.

Appearance for Parties

For the Appellant:Mr. Sanjeev Kumar Mishra, Sr. Advocate; Mr. Narendra Kumar, Advocate

For the State: Ms. Shashi Bala Verma, APP

Headnote Prepared by Reporter:- Ms. Akanksha Malviya, Advocate

Judgement/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 1215 of 2016

Arising Out of PS. Case No.-191 Year-1995 Thana- CHAPRA MUFFASIL District- Saran

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Rakesh Singh son of Ram Prawesh Singh, resident of Gamhariya, P.S.- Jalalpur, District- Chapra, Saran (Bihar).

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance:

For the Appellant : Mr. Sanjeev Kumar Mishra, Senior Advocate
Mr. Narendra Kumar, Advocate

For the Respondent : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 27.06.2025

The present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") has been preferred against the judgment of conviction and the order of sentence dated 20.09.2016 and 26.09.2016 respectively, passed in Sessions Trial No.66 of 1997 (arising out of Chapra Muffasil P.S. Case No.191 of 1995) by the learned Court of 2nd Additional District and Sessions Judge, Saran, Chapra (hereinafter referred to as the "learned Trial Judge"). By the said judgment of conviction dated 20.09.2016, the appellant has been convicted under Section 302 of the Indian Penal Code (hereinafter referred to as the "IPC") and has been sentenced to

undergo imprisonment for life with fine of Rs.50,000/- 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 09.07.1995 at 02:00 a.m., the *fardbeyan* of the informant, namely Surendra Prasad Sah was recorded by the ASI of Jalalpur Police Station, namely Mr. G. S. Chaubey. In his *fardbeyan,* Surendra Prasad Sah (hereinafter referred to as the "informant") has stated that on 08.07.1995, day-Saturday, at about 06:00 p.m. in the evening, Ashok Singh, Manoj Singh and Rakesh Singh (appellant) had arrived at the betel shop of the informant and had plucked Tiranga (*Gutkha*) hanging at the shop, which was objected to by the elder brother of the informant, namely Ram Mangal Prasad (deceased), whereupon Ashok Singh had ordered to pull out the deceased from the shop and kill him, whereafter Manoj Singh and Rakesh Singh (appellant) had caught hold of the elder brother of the informant and had pulled him out from inside the shop, whereupon they had said as to how he dared to ask for money from them. The informant has further stated that Manoj Singh had then caught hold of his brother from behind and then, Rakesh Singh (appellant) had taken out a dagger from his pocket and had given a dagger blow on the chest of his brother

as also had turned the dagger, whereafter Rakesh Singh had inflicted a second dagger blow on the chest of his brother and had again turned the knife, whereupon the informant had raised an alarm and when he came out of the shop, he saw that co-villagers, namely Ram Dayal Chaudhary (PW-7), Moti Chand Sah (PW-1), Hulas Ram (PW-4) and Din Dayal Ram (PW-2) had arrived there, who were present nearby. Thereafter, all the accused persons had pushed the brother of the informant on the ground in front of the shop and had also chased them to assault them, whereupon they had started running away, however several co-villagers had arrived there, leading to the accused persons fleeing away. It is further stated by the informant that he then saw his brother soaked in blood as also he was wriggling in pain and had died instantly since lot of blood had flown out. The informant has further stated that it is his belief that the accused persons, with the intention of killing his brother had pulled him out of the shop and inflicted dagger blow on his chest. The informant had signed the *fardbeyan* upon the same having been read over to him and he having understand the same, in presence of witness, namely Dilip Kumar, who had also signed the said *fardbeyan*.

3. On the basis of the said *fardbeyan* of the informant, a

formal FIR bearing Chapra Muffasil P.S. Case No.191 of 1995 was registered under Section 302/34 of the IPC against Ashok Singh, Manoj Singh and Rakesh Singh (appellant) on 09.07.1995 at 11:30 a.m. After investigation and finding the case to be true qua the appellant and one Manoj Singh, charge-sheet was submitted by the police on 07.02.1996 under Section 302/34 of the IPC, however, Ashok Singh was not sent up for trial. The learned Magistrate had then taken cognizance vide order dated 19.02.1996 qua Manoj Singh and Rakesh Singh (appellant), however, the final form pertaining to Ashok Singh was accepted. The case was committed to the court of sessions on 28.01.1997, whereafter it was numbered as Sessions Trial No. 66 of 1997. The learned Trial Court had then framed charges under Section 302/34 of the IPC on 08.06.2001 against Manoj Singh and Rakesh Singh (appellant) to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, the prosecution had examined 11 witnesses. PW-1 Moti Chand Sah, PW-2 Din Dayal Ram, PW-4 Hulash Ram, PW-5 Rudal Singh and PW-8 Dharamnath Manjhi, though are independent witnesses, but have been declared hostile. PW-3 Sudarshan Sah, PW-6 Surendra Prasad Sah (Informant) and PW-7 Ram Dayal Chaudhary are stated to

be eye witnesses. PW-9 Dr. Ram Iqbal Prasad is the doctor, who had conducted the postmortem examination of the dead body of the deceased-Ram Mangal Prasad, while PW-10 Suresh Kumar and PW-11 Sravan Kr. Singh are advocate clerks, who have proved the formal FIR, the inquest report and the seizure list of blood-soaked mud as is depicted in the case-diary.

5. Sri Sanjeev Kumar Mishra, the learned Senior Counsel appearing for the appellant, assisted by Mr. Narendra Kumar, Advocate has submitted that the documents exhibited during the course of trial should be original, however in the present case only photocopy of the postmortem report has been exhibited, hence the same is not required to be looked into. In this regard, reference has been made to a judgment rendered by the Hon'ble Apex Court, in the case of ***Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi),*** reported in (2010) 6 SCC 1, para nos. 170 to 172 whereof are reproduced herein below:-

> *"170. It was pointed out by the State that the said report of Rup Singh is inadmissible in law since it is a photocopy and, therefore, does not fall within the purview of a report in terms of Section 293 of the Code. In other words, in terms of the relevant provisions of the Evidence Act unless the original document is placed for the scrutiny of the court, no reliance can be placed on the photocopy without leading proper secondary evidence in*

this regard. In any case, both Section 293 and Section 294 of the Code which dispense with formal proof of documents under certain circumstances make it abundantly clear that the documents sought to be relied upon must be the originals.

171. Assuming for the sake of the argument, though not admitting, that the said report of Rup Singh i.e. Ext. PW 89-DB is admissible even though a photocopy has been placed on record and even though nowhere has it come in evidence that the same i.e. the photocopy has been compared and scrutinised with the original by the court and then placed on record, the same still loses all credence in the light of the fact that a perusal of the forwarding letter and report would show that there seems to have been some tampering with the said documents since the sequence of numbering of the parcels as between the forwarding letter and the report has been changed by somebody which fact remains unexplained as, therefore, casts a further doubt on the genuineness of the said report. The report itself with regard to Query 3 shows that "it appears that the two cartridge cases C-1 and C-2 have been fired by two different weapons". This opinion of the expert was vague and on the basis of said opinion no credence can be lent to the fact adverted to by the defence that there were two persons who fired two different shots from two different weapons. Moreover, the said report is oddly silent on Query 7 of the forwarding letter wherein it was specifically asked about the various markings on the live cartridge and the bullet empties.

172. The stand of the defence that to opine whether the two cartridge cases are from the same weapon or not the pistol is not required, and the pistol is only required when the opinion is sought whether they are from that particular weapon or not, cannot be accepted. It is well settled that when pressure is built inside the cartridge case, which results in the pushing out of the bullet from the barrel, there is difference in the marks to the extent that it may be either clear or unclear and flattened or deepened thus no opinion can be rendered on account of this dissimilarity in the absence of the weapon of offence and test firing. Further once the report of Rup Singh is rendered inadmissible the two gun theory of the defence becomes wholly inadmissible and what remains is that the two empties found at the spot are .22" bore cartridges, that the live bullet found in Tata Safari is a .22" cartridge and that the gun belonging to the appellant is a .22" bore pistol which was used for the commission of the crime of murder of Jessica Lal."

6. The learned Senior Counsel for the appellant has further submitted that the statement made by the witnesses under Section 164 Cr.P.C. cannot be looked into for the purposes of holding the appellant guilty of the offences alleged. He has contended that non-examination of the Investigating Officer has proved to be fatal to the case of the prosecution and has caused grave prejudice to the defence. In this regard, it has been submitted that since there are serious contradictions in the

evidence of witnesses, especially the independent witness, i.e. PW-7 Ram Dayal Chaudhary, examination of Investigation Officer assumes significance. Reference has been made to paragraph no.2 of the evidence of PW-7 to submit that PW-7 has deposed therein that he had seen that a shopkeeper had been killed. He has also stated that the accused had fired gunshot and had run away, apart from stating that assault was made on the chest by a dagger and Rakesh Singh had assaulted and fled away. Reference has also been made to paragraph no.4 of the deposition of PW-7 to submit that PW-7 has stated therein that 100 persons were present there since the shop in question was situated in a market place. Reference has next been made to paragraph no.5 of the deposition of PW-7 to submit that at the time when the murder of the deceased had taken place, none of his family members were present there. Attention has also been drawn to paragraph no.38 of the deposition of PW-6 Surendra Prasad Sah (Informant) to submit that he has stated therein that at the time of occurrence, he had not been assaulted and the quarrel was parted by Tarkeshwar Sah, Dilip Kumar, Raj Kishore and Ashok Chaudhary, however none of the said persons have been examined, hence the prosecution has deliberately withheld the independent witnesses in order to

suppress the actual facts and circumstances of the case. It is submitted that it is the duty of the prosecution to bring material witnesses for examination, however in the present case, even the Investigating Officer has been withheld and the entire evidence would show that same is full of discrepancy and doubt. In this regard, reference has been made to a judgment rendered by the Ld. Division Bench of this Court, in the case of ***Rajendra Yadav & Ors. vs. State of Bihar***, reported in 1998 (2) PLJR 434.

7. The learned Senior Counsel for the appellant, on the issue of non-examination of the Investigating Officer having caused prejudice to the appellant, has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Munna Lal vs. State of Utter Pradesh and its analogous case***, reported in AIR 2023 SC 634, paragraph nos. 28 and 42 whereof are reproduced herein below:-

> *"28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into 'settled principles of law'. These are: (a). Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not*

the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction. (b). Generally speaking, oral testimony may be classified into three categories, viz.:(i) Wholly reliable;(ii) Wholly unreliable;(iii) Neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence. (c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version. (d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal. (e). Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.

42. Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal

obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position in law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, this Court has examined the evidence led by the prosecution threadbare and refrained from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken by him. The endeavour of this Court has been to reach the root of the matter by analysing and assessing the evidence on record and to ascertain whether the appellants were duly found to be guilty as well as to ensure that the guilty does not escape the rigours of law. The disturbing features in the process of investigation, since noticed, have not weighed in the Court's mind to give the benefit of doubt to the appellants but on proper evaluation of the various facts and circumstances, it has transpired that there were reasons for which PW-2 might have falsely implicated the appellants and also that PW-3 was not a wholly reliable witness. There is a fair degree of uncertainty in the prosecution story and the courts below appear to have somewhat been influenced by the oral testimony of PW-2 and PW-3, without taking into consideration the effect of the other attending circumstances, thereby warranting interference."

8. It is also submitted by the learned Senior Counsel for the appellant that the cause for the dispute/quarrel/fighting which had taken place, was trivial in nature, inasmuch as it is alleged that on account of Tiranga (*Gutkha*) having been plucked by the appellant and the deceased having asked to pay for it, the appellant had killed the deceased (elder brother of the informant), however it is beyond comprehension that such a trivial issue would have led to killing of a person. It is stated that the actual cause of the incident in question is yet to be ascertained apart from the fact that the weapon used in the incident has also not been recovered. It is contended that neither any sort of intention on the part of the appellant nor any motive to give effect to the alleged occurrence has stood proved during the course of trial. Alternatively, it is submitted that the incident had taken place at the spur of the movement and the accused persons including the appellant had not arrived at the place of occurrence with any premeditated mind to commit the murder of the deceased, hence the present case would not fall within the purview of Section 302 of the I.P.C., rather it could at best attract the provision of Section 304 Part II of the I.P.C., in absence of any intention to cause the death of the deceased.

9. *Per contra*, the learned APP for the State, Ms. Shashi

Bala Verma has submitted that the evidence of the prosecution would show that there is no discrepancy in their evidence, they have deposed consistently, more particularly PW-3, PW-6 and PW-7, who are eye witnesses to the said occurrence. It is submitted that earlier also, a dispute had taken place in between the parties as is apparent from the evidence of PW-6, who in paragraph no.9 of his deposition, has stated that earlier also he had asked for money for gram, however, the accused had assaulted him by fists. Reference has also been made to paragraph no.37 of the evidence of PW-6 to submit that he has stated that two days before the date of present occurrence, quarrel had taken place with Rakesh (appellant), however, no quarrel had taken place with the deceased. The learned APP for the State has further submitted by referring to paragraph no. 40 of the evidence of PW-6 that the appellant had given repeated dagger blows on his elder brother. It has also been submitted by the learned APP for the State by referring to the order dated 31.07.2012 passed by the learned Trial Court that the doctor has proved the original postmortem report and the records would bear it out that the original postmortem report has been exhibited.

10. Beside hearing the learned counsel for the parties, we

have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it would be necessary to cursorily discuss the evidence.

11. PW-1 Moti Chand Sah, PW-2 Din Dayal Ram, PW-4 Hulash Ram, PW-5 Rudal Singh and PW-8 Dharmnath Manjhi have been declared hostile, hence we do not find it significant to discuss the evidence of the said witnesses, nonetheless we would like to point out that as far as PW-5 Rudal Singh is concerned, he has stated in paragraph no.6 of his cross-examination (conducted by the defence) that the place where Ram Mangal Prasad was assaulted, at that time his brother Surendra Prasad Sah (PW-6) and his father Sudarshan Sah (PW-3) were not present and had arrived after an hour.

12. PW-3 Sudarshan Sah is the father of the informant as also father of the deceased. PW-3 has stated in his deposition that the occurrence dates back to the year 1995 at about 06:00 p.m. in the evening and the day was Saturday. He has stated that the occurrence had taken place on 08.07.1995. On the day of occurrence, son of PW-3, namely Ram Mangal Prasad was sitting at his shop and he was also present there. The shop is made of wood. In the said shop, Paan (betel), Kirana (grocery), Tiranga (Gutkha) etc. used to be sold. PW-3 has further stated

that his second son's name is Surendra Prasad Sah and he used to sell fried gram. PW-3 has next stated that the accused persons, namely Rakesh Singh (appellant), Manoj Singh and Ashok Singh had arrived at the shop and had asked for Tiranga which was given to him, whereafter Rakesh Singh (appellant) had himself plucked a sachet of Tiranga and when money was asked, Ashok Singh had exhorted to pull him out of the shop and kill him, whereupon Rakesh Singh (appellant) and Manoj Singh had pulled him out of the shop, leading to him having fallen down on the ground and then Rakesh Singh (appellant) took out a dagger and gave first dagger blow on the deceased which hit his right hand finger. Thereafter, Rakesh Singh had inflicted second dagger blow on the chest of the deceased and turned the dagger, whereafter he had fallen down and blood started oozing out and he died instantly, while PW-3 was standing there. As far as identification of the accused standing in the dock is concerned, PW-1 had stated that he wants to see the witnesses from a close distance, whereafter he had gone near the accused persons and recognized Manoj Singh and Rakesh Singh (appellant). Upon being asked by the Court, he stated that he can also recognize the third accused person.

13. In his cross-examination, PW-3 has stated that the police

had recorded his statement. He has stated that at the time of occurrence, several persons numbering 25-30 in all had arrived at the place of occurrence and out of them, he can only state the name of three persons. PW-3 has further stated that though 25-30 persons had arrived there, but he cannot say as to whether they were of the same village or not. He has also stated that the place of occurrence is situated at Gamaria village. He has next stated that after the occurrence had taken place, several persons of Gamharia village arrived there, including Pancham Sah, Moti Chand Sah (PW-1), Din Dayal Chamar and Ram Dayal Choudhary (PW-7). He has stated that he cannot state the name of other persons, who had arrived there. In paragraph no.11 of his cross-examination, PW-3 has stated that he has not stated before the police that a quarrel with fists had taken place in between his son Surendra and Rakesh (appellant) before the present occurrence. He has further stated that the land on which the shop is situated belongs to Ram Dayal Choudhary (PW-7). In paragraph no.14 of his cross-examination, PW-3 has stated that 300-400 villagers had arrived at the place of occurrence, after the occurrence had taken place, however he did not talk with any of them. In paragraph no.15 of his cross-examination, PW-3 has stated that when the accused persons had pulled Ram

Mangal out of his shop, 2-4 people were present there, including his son Surendra (PW-6), Dharamnath Rai (PW-8) , Chaukidar, Ram Dayal Chaudhary (PW-7), Din Dayal Ram (PW-2) and Hulas Ram (PW-4), however no other person was present at that time. In paragraph no.16 of his cross-examination, PW-3 has stated that his son was assaulted on the southern side of the shop at about a hand's distance and the person who had assaulted him was standing towards the southern side of Ram Mangal. He has also stated that Ram Mangal was assaulted resulting in him falling down flat on the ground. In paragraph no.17 of his cross-examination, PW-3 has stated that after being assaulted, his son had fallen down, whereafter he was assaulted thrice and at the time of being assaulted, the deceased was not standing but he was pulled & assaulted. In para no.19 of his cross-examination, PW-3 has stated that the police had come in the night itself, however he does not remember as to whether he was present there or not. He has next stated that his statement was recorded by the police in the night, after the occurrence had taken place.

14. PW-6 Surendra Prasad Sah (Informant) is the brother of the deceased and he has stated in his evidence that the occurrence dates back to 08.07.1995 at about 06:00 p.m. in the evening when he along with his brother Ram Mangal Prasad

Sah were at their betel shop. Rakesh Singh (appellant), Manoj Singh and Ashok Singh had arrived at the shop and plucked a Tiranga Gutkha, whereafter his brother Ram Mangal had asked for money but Ashok Singh abused him and said as to how he was asking for money, whereupon he had exhorted others to pull him out of the shop and assault him. Thereafter, Manoj Singh and Rakesh Singh (appellant) had pulled out Ram Mangal from the shop while Rakesh Singh had taken out a knife from his back, whereafter Manoj Singh had caught hold of both the hands of Ram Mangal and then Rakesh Singh had inflicted a knife blow on the chest of Ram Mangal and inserted the same inside as also he had inflicted second knife blow on the chest of Ram Mangal and turned it inside, whereupon third knife blow was inflicted on the hand of Ram Mangal. PW-6 has further stated that his brother was soaked with blood and had fallen down and in the meantime four persons, namely Ram Dayal Chaudhary (PW-7), Machchan Sah, Din Dayal Ram (PW-2) and Dilip Kumar had arrived there but his brother, who was wriggling had died. The accused persons had then chased PW-6, while he had raised an alarm, leading to 20-25 people of the village having arrived there resulting in the accused persons fleeing away. The police personnel had then arrived and

recorded the statement of PW-6 which was read over to him and upon understanding the same, he had made his signature over the same which he has identified and the same has been marked as Exhibit-3. P.W.-6 has also stated that seizure list of blood-soaked mud and clothes, which were seized, was also made. P.W.-6 has stated that he had given his statement before the learned Magistrate in the Court over which he had made his signature which has been marked as Exhibit-4. In para no.9 of his deposition, PW-6 has stated that earlier also when he had demanded money for gram, he was assaulted by fists. PW-6 had recognized Rakesh Singh and Manoj Singh standing in the dock.

15. In paragraph no.13 of his cross-examination, PW-6 has stated that after the incident had taken place, the villagers had gone to the police station and the chaukidar of the village had also gone to the police station but he cannot state his name. He had not met the chaukidar and he cannot say as to when the chaukidar had come to his shop, however he has stated that the villagers had told him that the chaukidar had gone to inform the police. In paragraph no.14 of his cross-examination, PW-6 has stated that after the occurrence had taken place, he had not met the chaukidar for the entire night although he was present at the place of occurrence during the entire night and along with him

several persons, including 50-60 people of Gamharia village were also present there. He has stated that out of the said persons, he can state the name of four villagers, namely Ram Dayal Chaudhary (PW-7), Moti Chand Sah (PW-2), Din Dayal Ram and Dilip Kumar Chaudhary and moreover, his father was also present there. He has also stated that the Officer-in-charge had arrived at 01:00-02:00 a.m. in the night along with other police personnel and at that time no person from his village had come there. In paragraph no.16 of his cross-examination, PW-6 has stated that the Officer-in-charge had recorded his statement firstly at about 02:00 a.m. in the night. In paragraph no.26 of his cross-examination, PW-6 has stated that in the shop, he used to sell soap, surf, Tiranga gutkha (which was hanging in the shop), *paan* (betel) along with biscuit and toffee. He has also stated that inside the shop, no article had been disturbed and the shop has not been dismantled, however the articles of the shop were scattered outside the shop on the southern side. PW-6 has stated in his cross-examination that the accused persons had stayed at his shop for about 10 minutes and when they had come, no customer was present there.

16. In paragraph no.30 of his cross-examination, PW-6 has stated that as soon as the accused persons arrived at the shop,

they had broken the sachet of Tiranga and after his brother had been assaulted, they had stayed there for five minutes, during which period, four persons had arrived there but he has then stated that the said four persons were already present there. It is also stated that during the course of the said five minutes, people from village totaling 50-60 in all had arrived there but he cannot state their names. In paragraph no.31 of his cross-examination, PW-6 has stated that at the time when accused persons had plucked Tiranga, he was inside the shop and when Ram Mangal was assaulted, he was outside the shop.

17. In paragraph no.34 of his cross-examination, PW-6 has stated that there were three injuries on the body of Ram Mangal, while two injuries were in between the middle of the chest, the third injury was on the wrist of right hand. There was only one injury on the wrist. He has also stated that one hole had formed near the chest on the cloth which his brother was wearing. He has next stated that his brother was wearing shirt in which hole had been made at two places. In para no.36 of his cross-examination, PW-6 has stated that his brother Ram Mangal was assaulted while he was standing and after he was assaulted, he fell down on the ground, however, thereafter he was not assaulted. In paragraph no.37 of his cross-examination,

PW-6 has stated that quarrel had taken place in between him and Rakesh Singh (appellant) two days earlier to the present occurrence, however no quarrel had taken place in between the accused persons and Ram Mangal. He has also stated that Ram Mangal had neither assaulted nor abused any of the accused persons. In paragraph no.39 of his cross-examination, PW-6 has stated that Ram Mangal had no enmity with anyone from before.

18. PW-7 Ram Dayal Chaudhary has stated in his deposition that the occurrence dates back to 7-8 years and the occurrence had taken place near his house in the market in the evening when it had become dark. He has further stated that he saw that a shopkeeper had been killed. Rakesh Singh (appellant) had killed the shopkeeper by firing gun-shot and then he had fled away. Knife was inserted in the chest. Rakesh Singh had assaulted the deceased, whereafter he had fled away. PW-7, upon being asked to recognize the accused, he had gone near Rakesh Singh and recognized him. He has also stated that since past 14-15 years, he has difficulty with his vision. He has stated that at the time of occurrence, he was drinking tea at the shop adjacent to the shop of the deceased, which is situated in the market. 100 people were present there but he cannot state the

name of the persons present there. In paragraph no.5 of his examination-in-chief, PW-7 has stated that he does not remember as to whether other persons had arrived there after the killing had taken place. He has also stated that at the time of occurrence, Moti Chand Sah (PW-1) was present there, who was drinking tea along with him, however, no family member of the shopkeeper, who had been killed was present there.

19. PW-9 Dr. Ram Iqbal Prasad is the doctor, who had conducted postmortem examination of the dead body of the deceased, Ram Mangal Prasad. He has stated in his evidence that on 09.07.1995, he was posted as Medical Officer, Sadar Hospital, Chapra & on that date, at 1:15 p.m., he had conducted the postmortem examination of the dead body of the deceased and found the following ante-mortem injuries on his body:-

> *"(i) One incised penetrating wound just below mid sternum region approx. 2" x ½" x chest cavity deep.*
>
> *(ii) One incised penetrating wound over lower part of sternum on right side approx. 1"x ½" x chest cavity deep.*
>
> *(iii) Two incised wounds on right wrist, one approx. 1" x ½" x ¼" on lateral side near radial styloid and another approx. 1½" x ½" x ¼" approx. 1" above the 1st one.*

The findings of PW-9, on dissection of chest cavity, are as follows:-

"The chest cavity was full of dark fluid blood. There was punctured wound in the right ventricle and leading to left ventricle 1" in length and ¼" in breadth. The sternum was cut in the line of injury No.(i). All other viscera were found intact."

20. PW-9 has opined that the death has been caused due to hemorrhage and shock and injury to vital organ heart as a result of the above-mentioned injuries, which were caused by sharp cutting weapon. PW-9 has identified the postmortem report, which he has stated is in his writing and bears his signature and the same has been marked as Exhibit-5. In cross-examination, PW-9 has stated that he had found four injuries on the person of the deceased, which were impact of four blows. He has also stated that the deceased was not known to him from before.

21. PW-10 Suresh Kumar is an advocate clerk, who has identified the writing and signature of Sri Ganga Sagar Chaubey who was posted on 09.07.1995 as Assistant Sub-Inspector of Police at Jalalpur Police Station. He has stated that *fardbeyan* is in his writing and bears his signature which he has identified and the same has been marked earlier as Exhibit-3. PW-10 has also stated that he recognizes the writing and signature of Sri Bisheshwar Prasad, Sub-Inspector of Police, who was posted at Chapra Muffasil Police Station on 09.07.1995. He has stated

that the formal FIR is in his writing and bears his signature which he has identified and the same has been marked as Exhibit-6. In cross-examination, PW-10 has stated that he cannot say as to whether Bisheshwar Prasad is still in job and whether he is alive or not. PW-10 has stated that he had never worked with him and he is not a hand writing expert.

22. PW-11 Shravan Kumar Singh is also an advocate clerk and he has stated in his evidence that on 09.07.1995, the Officer-in-charge of Jalalpur Police Station was one Ganga Sagar Chaubey, whose writing and signature, he recognizes. He has further stated that the inquest report of the deceased Ram Mangal Prasad has been written in paragraph no.2 of the case-diary in the writing of Ganga Sagar Chaubey, which has been marked as Exhibit-6 (with protest). P.W.-11 has stated that the seizure list of blood-soaked mud, which has been mentioned in paragraph no.6 of the case-diary is in the writing of the then Officer-in-charge, Ganga Sagar Chaubey and the same has been marked as Exhibit-7 (with protest). In cross-examination, PW-11 has stated that he is not a finger print expert, he had no occasion to work with Ganga Sagar Chaubey and both the exhibits were not prepared before him. He has also stated that he does not know as to who were the witnesses to the exhibits and

who had made seizure. PW-11 has stated that the said documents were not prepared before him.

23. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellant on 17.12.2012 under Section 313 of the Cr.P.C. for enabling him to personally explain the circumstances appearing in the evidence against him, however he stated that he would give in writing.

24. 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.

25. 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 Senior Counsel for the appellant as well as the learned APP for the State.

26. The first and foremost aspect, which is required to be adjudged is as to whether any ocular evidence is available on record to prove the guilt of the aforesaid appellant for the offences with which he has been charged. The prosecution has led the evidence of PW-3 Sudarshan Sah, PW-6 Surendra Prasad

Sah (informant) and PW-7 Ram Dayal Chaudhary (independent witness), apart from PW-9 Dr. Ram Iqbal Prasad, PW-10 Suresh Kumar and PW-11 Shravan Kumar Singh to prove the guilt of the appellant and based on the same the learned Trial Judge has convicted the appellant whereas on the contrary, the appellant has primarily taken the defence that there are serious contradictions in the evidence of the witnesses, the Investigating Officer of the present case has not been examined which has caused grave prejudice to the defence, the weapon used in the incident has not been recovered, only photocopy of the postmortem report has been exhibited, hence the same cannot be looked into and moreover, no motive has been established. In this regard, upon perusal of the evidence of PW-3 Sudarshan Sah, PW-6 Surendra Prasad Sah and PW-7 Ram Dayal Chaudhary, we do not find any serious contradiction in their evidence. It is a well settled law that minor omissions or variations or infirmities in the evidence are never considered to be fatal and the same cannot be a ground for rejection of evidence in its entirety and the same also do not affect the credibility of the witnesses account inasmuch as minor discrepancies in eye witnesses' testimony are natural, while a completely flawless testimony may indicate tutoring. Reference

in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Rammi vs. State of M.P.*****,** reported in **(1999) 8 SCC 649.** Reference be also had to a judgment rendered by the Hon'ble Apex Court in the case of ***State of U.P. vs. Krishna Master & ors.*****,** reported in ***(2010) 12 SCC 324,*** paragraph no.15 whereof is reproduced herein below:-

> *"**15.** Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole."*

27. We also find from the testimony of the prosecution

witnesses, as has been discussed at length in the preceding paragraphs that they have supported the case of the prosecution and no contradictions have been elicited by the defence in their cross-examination, so as to doubt the veracity of their evidence. In fact, both the aforesaid prosecution witnesses, i.e. PW-3 Sudarshan Sah and PW-6 Surendra Prasad Sah have definitely seen the appellant having inflicted dagger/knife blows on the chest of the deceased as also on his hand, while PW-7 Ram Dayal Chaudhary (independent witness) has also stated in his evidence that the appellant has killed a shopkeeper by inserting knife. PW-9 Dr. Ram Iqbal Prasad, who had conducted the postmortem examination of the dead body of the deceased-Ram Mangal Prasad has stated in his evidence that he had conducted the postmortem examination of the dead body of the deceased on 9.7.1995 at 01:15 p.m., whereupon he had found two incised penetrating wounds on mid and lower part of sternum of 2" x 1/2" and 1" x ½", both chest cavity deep apart from two incised wounds on the right wrist and he has opined that the death has been caused due to hemorrhage, shock and injury to vital organ heart, inasmuch as on dissection he has found punctured wound in the right ventricle leading to left ventricle, as a result of the aforesaid injuries, which have been caused by sharp cutting

weapon. Thus, narrative of the prosecution case in the FIR stands fully supported by the ocular evidence led by the prosecution during trial, which has further stood corroborated by the medical evidence and the same also confirms that the injuries sustained by the deceased were sufficient to cause death. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Bhagchandra vs. the State of Madhya Pradesh***, reported in ***(2021) 18 SCC 274***. In the case of ***Solanki Chimanbhai Ukabhai vs. State of Gujarat,*** reported in ***AIR 1983 SC 484***, the Hon'ble Apex Court has held that unless the medical evidence completely rules out all possibilities of injuries taking place in the manner alleged, the testimony of the eye witnesses cannot be thrown out. As far as the present case is concerned, we find that there is no irreconcilable conflict between the oral and the medical evidence which would warrant discarding the prosecution case.

28. As regards the place of occurrence, all the aforesaid prosecution witnesses, i.e. PW-3 Sudarshan Sah, PW-6 Surendra Prasad Sah and PW-7 Ram Dayal Chaudhary have deposed that the same is the shop of the deceased/informant, i.e. PW-6.

29. Now coming to the contention raised by the learned

Senior Counsel for the appellant to the effect that there are serious contradictions in the evidence of the witnesses, especially the independent witness, i.e. PW-7 Ram Dayal Chaudhary and PW-6 Surendra Prasad Sah inasmuch as though PW-6 Surendra Prasad Sah has stated that at the time of occurrence, quarrel was separated by Tarkeshwar Sah, Dilip Kumar, Raj Kishore and Ashok Chaudhary, however none of the said persons have been examined, hence the prosecution has deliberately withheld the independent witnesses in order to suppress the actual facts and circumstances of the case. We find that the ocular evidence of PW-3 Sudarshan Sah, PW-6 Surendra Prasad Sah and PW-7 Ram Dayal Chaudhary are cogent, convincing, creditworthy and reliable as also have stood the test of cross-examination and are totally reconcilable and consistent with the medical evidence, hence there is no reason to create any doubt about guilt of the appellant in the alleged occurrence, which stands proved beyond all reasonable doubt. It is a well-settled law that a court can convict based on a single eye witness if its testimony is solely reliable as mandated under 134 of the Indian Evidence Act, 1872 which provides that no particular number of witnesses shall in any case be required for the proof of any act. Thus, the quality of evidence matters more

than quantity. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Amar Singh vs. State (NCT of Delhi)***, reported in ***(2020) 19 SCC 165***. It is equally a well settled law that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely, which is not the case here and moreover, ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. Reference in this connection be had to an old classic judgment rendered by a three-Judge Bench of the Hon'ble Apex Court in the case of ***Dalip Singh & Ors. vs. the State of Punjab,*** reported in ***AIR 1953 SC 364***.

30. As regards the contention raised by the learned Senior Counsel for the appellant to the effect that non-examination of the Investigating Officer has proved to be fatal to the case of the prosecution and has caused grave prejudice to the defence, we find that the Appellant has failed to demonstrate the prejudice caused to him, hence the same cannot in any manner effect the prosecution case. It is a well settled law that the prosecution case need not fail solely due to non-examination of the

Investigation Officer, as long as the eye-witness credibility stays intact. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Behari Prasad & Ors. vs. The State of Bihar***, reported in ***(1996) 2 SCC 317***.

31. The next argument advanced by the learned Senior Counsel for the appellant is that the document exhibited during the course of trial should be original whereas in the present case photocopy of the postmortem report has been exhibited, hence the same cannot be looked into and to the said effect reliance has been placed on a judgment rendered in the case of ***Sidhartha Vashisht*** (supra). We are of the view that the said argument advanced by the learned Senior Counsel for the appellant is only to be noted for the purpose of being rejected, since the records of the learned trial court would show that not only the original postmortem report has been exhibited but the same has also been proved by PW-9 Dr. Ram Dayal Chaudhary, who has identified the postmortem report and has stated that the same is in his writing and bears his signature. The judgment referred to by the learned Senior Counsel for the appellant in the case of ***Sidhartha Vashisht*** (supra) is clearly distinguishable in the facts and circumstances of the present case and has in-fact

been erroneously referred to by the learned Senior Counsel for the appellant, inasmuch as the same deals with a document purported to be a report under the hand of an expert, as provided for under Section 299 of the Cr.P.C.

32. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and considering the evidence, which has been brought on record to prove the allegations levelled against the appellant beyond pale of any reasonable doubt as well as considering the credibility and trustworthiness of the evidence of the prosecution, which has not been discredited during the course of cross-examination coupled with the postmortem report and for the reasons mentioned hereinabove, we find that there is no reason to create any doubt in our minds. Therefore, there is no reason to create any doubt about the guilt of the appellant of the aforesaid appeal in the alleged occurrence which stands proved beyond all reasonable doubts. Hence, having examined the materials available on record, we do not find any apparent error in the impugned judgment of conviction.

33. Now we shall take up the alternative argument raised by the learned Senior Counsel for the appellant to the effect that the incident had taken place at the spur of the moment and the

appellant had not arrived at the place of occurrence with any premeditated mind to murder the deceased, hence the present case would not fall within the purview of Section 302 of the IPC, rather it would at best attract the provisions of Section 304 Part-II of the IPC in absence of any intention to cause death of the deceased. We have given a careful consideration to the aforesaid argument raised by the learned Senior Counsel for the appellant and upon having perused the evidence on record, we find that neither there had been any grave and sudden provocation, resulting in the appellant loosing self-control nor it is a case where the act was done without the knowledge that it is likely to cause death apart from the fact that the Appellant definitely had the intention to cause death. We also find that "Exception 4" to Section 300 of the IPC will also not be applicable in the present case, which reads as follows:-

> *"Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."*

34. We find that in the present case, the appellant, who is the offender, was armed with knife and had attacked the deceased on his chest and hand brutally as also repeatedly, while the deceased was unarmed, hence the offender i.e. the appellant has definitely taken undue advantage and acted in a cruel and unusual manner

towards the deceased, who has not been proved to have been armed. Reference in this connection, be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Babu & Anr. vs. State represented by Inspector of Police, Chennai*** and one another analogous case, reported in ***(2013) 4 SCC 448***, paragraph nos. 19 to 21 are reproduced herein below:-

> ***"19.*** *We are also not convinced with the submission of the learned counsel for the appellants that this was a case which fell under Exception 4 to Section 300 IPC. Exception 4 to Section 300 IPC is quoted hereinbelow:*
>
> > *"Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."*
>
> *The language of Exception 4 to Section 300 is, thus, clear that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel provided the offender has not taken undue advantage or acted in a cruel or unusual manner. In this case, there is no evidence to show that the deceased was armed in any manner when he questioned A-1 as to why he had threatened his wife. On the other hand, the appellants were armed with knives and attacked the deceased on his head and face even after he fell down. Thus, A-1, A-2, A-3 and A-4, who were the offenders, have taken undue advantage and acted in a*

cruel and unusual manner towards the deceased who is not proved to have been armed.

20. *Moreover, we find from the evidence of PW-7, the doctor who conducted the post mortem of the deceased on 26.01.2004 at around 12.45 hours, that he found as many as six injuries on the head and face of the deceased. These injuries are extracted hereinbelow:*

> *"Injury 1: A bruised injury in red colour admeasuring 3x2 cm on the left cheek and in 2x2 cm at the tip of the nose.*
>
> *Injury 2: An oblique incised injury 3x0.05 cm bone deep on the lower jaw.*
>
> *Injury 3: An incised injury vertical, 2x0.5 cm bone deep on th4 left side of the lower jaw.*
>
> *Injury 4: An incised injury, oblique 3x05 cm muscle deep on the lower lip on its right side.*
>
> *Injury 5: Several incised injuries crosswise and longitudinal. On opening it, it was found that the tissues on the cranium were found bruised and the bones of the skull fractured and brain smashed and visible from outside.*
>
> *Injury 6: An incised injury seen horizontally and gaping in between the eyes, 22x6 cm. on dissecting, it was found that, all the tissues, nerves and blood vessels had got cut the face was smashed and the upper jaw bone and the lower jaw bone crumbled. Both the eyes had got completely smashed and seen outside the eye-sockets. The teeth in the upper jaw and those of the*

lower jaw were broken and some fallen."

PW-7 has further stated that due to these injuries sustained on his head and face, the deceased would have died as has been expressed by him in the post mortem report Ext.P-7. Considering the nature of the injuries and, in particular, injury nos.5 and 6, we have no doubt that the common intention of A-1, A-2, A-3 and A-4 was to cause the death of the deceased. Accordingly, A-1, A-2, A-3 and A-4 (the appellants) were guilty of the offences under Section 302 read with Section 34, IPC.

21. *In the result, we find no merit in the appeals and we accordingly dismiss the same."*

35. We would also like to refer to one another judgment rendered by the Hon'ble Apex Court in the case of ***Bhagwan Munjaji Pawade vs. State of Maharashtra*****,** reported in ***(1978) 3 SCC 330*****,** paragraph nos.6 and 7 are reproduced herein below:-

"***6.*** *We do not think much can be made out of the stray observation of the High Court "that the appellant had far exceeded his right of private defence". The circumstances of the case disclose that no right of private defence, either of person or of property, had ever accrued to the appellant. The deceased was unarmed. Exception 2 can have no application. It is true that some of the conditions for the applicability of Exception 4 to Section 300 exist here, but not all. The quarrel had broken out suddenly, but there was no sudden fight between the deceased and*

the appellant. 'Fight' postulates a bilateral transaction in which blows are exchanged. The deceased was unarmed. He did not cause any injury to the appellant or his companions. Furthermore no less than three fatal injuries were inflicted by the appellant with an axe, which is a formidable weapon on the unarmed victim. Appellant, is therefore, not entitled to the benefit of Exception 4, either.

***7.** We, therefore, think that he has been rightly convicted under Section 302 of the Penal Code. The fact that the crime was unpremeditated, has been taken into account in mitigation of the sentence. We find no good ground to interfere with the conviction of the appellant."*

36. It would be apt to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Kunhimuhammed alias Kunheethu vs. State of Kerala*****,** reported in ***2024 SCC OnLine SC 3618*****,** paragraph nos.6, 8, 25.8, 25.9, 25.16, 25.17, 25.18 and 30 are reproduced herein below:-

*"**6.** We have heard Shri Nikhil Goel, learned senior counsel appearing for the appellant and Shri P.V. Dinesh, learned senior counsel appearing for the State of Kerala and perused the material on record. The submissions of Shri Goel are limited to the extent that this was not a case of premeditated pre planned murder. There was no mens rea for committing culpable homicide amounting to murder. The intention was only of assaulting with the stick but later on during the fight as the deceased overpowered the appellant and started assaulting him*

with the same stick after snatching it from the appellant, the appellant pulled out the knife from his back and stabbed the deceased and also the injured to save him. He has drawn attention to the evidence on record as also to the judgment of the Trial Court wherein specific finding was recorded to that extent by the Trial Court but despite the same, the Trial Court proceeded to record conviction under section 302 IPC and not section 304 IPC.

8. *On the other hand, Mr. P.V. Dinesh, learned senior counsel appearing for the respondent-State submitted that the Trial Court and the High Court have both dealt with this aspect of the matter and have concurrently found that this was a case of culpable homicide amounting to murder. The fact that the appellant was carrying a knife and the number of assaults made by him on the deceased as also the injury would clearly show that the intention was to commit murder.*

25.8. *The appellant's primary defence has been the absence of intent to commit murder. However, intent can be inferred from the circumstances surrounding the act, including the nature and location of the injuries inflicted, the weapon used, and the actions of the appellant during the incident. The injuries were concentrated on the vital parts of the deceased's body, such as the chest and ribs, which house critical organs like the heart and lungs. The deliberate targeting of these areas indicates a clear intent to cause harm that could lead to death. According to the testimony of the injured eyewitness, the appellant stabbed the deceased with considerable force, further*

corroborating the prosecution's argument that the injuries were inflicted intentionally or at least with the knowledge of their natural consequence. While other co-accused were reportedly armed with sticks, the appellant-accused no. 1 was in possession of a sharp knife, which was used to inflict severe injuries. The decision to carry and use such a weapon during the scuffle reflects a readiness to escalate violence beyond a mere physical altercation. Even if the appellant did not have a prior intention to murder the deceased, the circumstances demonstrate that such injuries were caused which were sufficient in the ordinary course to cause death. The deliberate act of stabbing vital parts of the body, coupled with the force used, indicates that the appellant must have been aware of the likely fatal consequences of his actions. Under the provisions of Section 300 IPC, an intention to cause such injuries that are sufficient in the ordinary course of nature to cause death qualifies as murder, and even if ingredients other than intention to cause murder are proved, mere knowledge of the result of fatal actions is enough to ascribe culpability to the accused person.

25.9. *The lower courts have also dismissed the appellant's argument that the act was not premeditated. While the attack may not have been planned in advance, intent can emerge in the heat of the moment, particularly during a violent confrontation. The appellant's decision to use a lethal weapon and the precise targeting of the victim's vital organs are sufficient to establish the requisite intent for murder or at least knowledge of the possible consequences of one's actions and to hold the*

appellant liable for death of the deceased as per clause 3 of Section 300, IPC.

25.16. *The third clause of Section 300, IPC defines murder as the act of causing death by causing such bodily injury as is likely to result in death in the ordinary course of nature. In the present case, the appellant's actions satisfy these criteria. The appellant was armed with a knife, which he used to inflict multiple injuries on vital organs. The fatal nature of these injuries, as confirmed by medical evidence, and the circumstances of the attack clearly point to an intent to cause death or at least an intention to inflict injuries with the knowledge that they were likely to result in death. Even if it is presumed that the appellant - accused no. 1 did not have an intention to cause such bodily injury, the act of causing injuries with knife to vital parts is reflective of the knowledge that causing such injuries is likely to cause death in the ordinary course.*

25.17. *The defence's argument that the incident was a spontaneous scuffle does not absolve the appellant of liability. While the scuffle may have triggered the attack, the appellant's use of a lethal weapon and the manner in which the injuries were inflicted elevate the act from culpable homicide to murder. Courts have consistently held that intent can be inferred from the nature and severity of injuries, as well as the choice of weapon and the manner of its use. The use of a lethal weapon and the deliberate targeting of vital parts of the body are strong indicators of such intent.*

> ***25.18.*** *In light of the evidence and the legal principles involved, the appellant's plea for leniency on the grounds of spontaneity and lack of premeditation cannot be sustained. The nature and location of the injuries inflicted, the choice of weapon, and the circumstances of the attack unequivocally establish the liability of the appellant for causing the death of Subrahmannian. The argument that the act was committed in the spur of the moment does not diminish the gravity of the offence or the appellant's culpability.*
>
> ***30.*** *After thoroughly examining the appellant's submissions and the evidence presented in the case, the Court concludes that the appeal against conviction and the request for a reduction in sentence are without merit. The findings of both the Trial Court and the High Court are well-founded and supported by compelling evidence."*

37. At this juncture, we would also like to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Singapagu Anjaiah vs. State of Andhra Pradesh,*** reported in ***(2010) 9 SCC 799***, paragraph nos. 16 to 20 whereof are reproduced herein below:-

> ***"16.*** *In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for*

causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased.

17. *Now referring to the decision of this Court in Gurmail Singh [(1982) 3 SCC 185 : 1982 SCC (Cri) 680], the same is clearly distinguishable. In the said case, on facts, it was found that the accused did not intend to cause the injury which in fact was found to have been caused and in the said background, it was held that the accused did not intend to cause death, which is not the situation here.*

18. *In Jagtar Singh [(1983) 2 SCC 342 : 1983 SCC (Cri) 459] the incident was preceded by a sudden and chance quarrel and in that background, the Court held the allegation proved to be under Section 304 Part II IPC. In Gurmukh Singh [(2009) 15 SCC 635 : (2010) 2 SCC (Cri) 711] the injury found on the deceased was only depression of skull bone and the occurrence had taken place on the spur of the moment. In the background of the aforesaid facts, infliction of a single lathi-blow was not found enough to infer the intention of the accused to cause death of the deceased. Here, as pointed out above, the three important factors enumerated above, clearly lead to the conclusion that the appellant intended to cause death.*

19. *Hence, all these decisions are clearly distinguishable.*

20. *In the present case, as pointed out above, the weapon*

used, the part of the body chosen for the assault and the intensity with which the appellant assaulted the deceased clearly go to show that he intended to cause the death of the deceased."

38. Reference be also had to a recent judgment rendered by the Hon'ble Apex Court in the case of ***Anbazhagan vs. State Represented by the Inspector of Police,*** reported in ***2023 SCC OnLine SC 857***, paragraph no.66 whereof is reproduced herein below:-

"***66.*** *Few important principles of law discernible from the aforesaid discussion may be summed up thus:—*

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate:'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the

latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of

the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the

ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing

with a charge under Section 302of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes

a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the

circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC."

39. Upon going through the principles laid down by the Hon'ble Apex Court in the case of ***Anbazhagan*** (supra) as also in the other cases referred to herein above in the preceding paragraphs and upon going through the evidence led by the prosecution, we find that the act done by the appellant, which has caused the death of the deceased, was not only with the knowledge that such act is likely to cause death, but the appellant also had the intention to cause death of the deceased inasmuch as he had inflicted repeated blows on the vital part of the deceased, i.e. in the middle of the chest by a sharp cutting weapon i.e. knife/dagger in such a manner that the same had pierced the heart. "Intent" and "Knowledge" are ingredients of Section 299 of IPC and so far as an act done by an accused, which causes death, is done with the knowledge that death is likely to be caused by such an act as also the accused had the intention to cause death, would fall within the purview of Section 300 of the IPC and such act of the accused will be a murder. In the present case, the injuries were concentrated on the vital parts of the

deceased's body, such as the chest and heart. The deliberate targeting of these areas indicates a clear intent to cause harm that could lead to death. Admittedly, the appellant had stabbed the deceased with considerable force, further corroborating the fact that the injuries were inflicted intentionally or at least with the knowledge of their natural consequence. The appellant was in possession of a knife/dagger, which was used to inflict severe injuries. The decision to carry and use such a weapon during the scuffle reflects a readiness to escalate violence beyond a mere physical altercation. Even if the appellant did not have a prior intention to murder the deceased, the circumstances demonstrate that such injuries were caused which were sufficient in the ordinary course to cause death. The deliberate act of stabbing vital parts of the body, coupled with the force used, indicates that the appellant must have been aware of the likely fatal consequences of his actions. Under the provisions of Section 300 of the IPC, an intention to cause such injuries that are sufficient in the ordinary course of nature to cause death qualifies as murder, and even if ingredients other than intention to cause murder are proved, mere knowledge of the result of fatal actions is enough to ascribe culpability to the accused person.

40. Thus, the appellant's decision to use a lethal weapon and the precise targeting of the vital parts of the body of the deceased are sufficient to establish the requisite intent for murder or at least knowledge of the possible consequences of one's actions and to hold the appellant liable for death of the deceased as per clause 3 of Section 300 of the IPC. The argument of the appellant that the incident was a spontaneous scuffle does not absolve him of his liability. While the scuffle may have triggered the attack, the appellant's use of a lethal weapon and the manner in which the injuries were inflicted elevate the act from culpable homicide to murder. Courts have consistently held that intent can be inferred from the nature and severity of injuries, as well as the choice of weapon and the manner of its use. The use of a lethal weapon and the deliberate targeting of vital parts of the body are strong indicators of such intent. Consequently, since the case of the appellant will not attract any one of the five exceptions enumerated in Section 300 of the IPC, the present case would not fall within the purview of Section 304 Part-II of the IPC.

41. From the entire conspectus of the case, considering the factual matrix as also for the reasons mentioned hereinabove in the preceding paragraphs, we do not find any merit in the

present appeal, i.e. Criminal Appeal (DB) No.1215 of 2016, hence the same stands dismissed.

(Mohit Kumar Shah, J)

I agree.

Soni Shrivastava, J:-

(Soni Shrivastava, J)

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