



2026:CGHC:18929-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2216 of 2025

Ashwani Tiwari S/o Late Sohan Tiwari Aged About 19 Years R/o Santoshi Chowk,
Kushalpur, Near Durga Pan Palace P.S. Puranibasti Raipur District Raipur (C.G.)
--- Appellant(s)

versus

State Of Chhattisgarh Through Station House Officer Puranibasti Raipur District
Raipur (C.G.)
--- Respondent(s)

CRA No. 247 of 2026

Jitendra Sen @ Gajni S/o Santosh Sen Aged About 19 Years R/o Bazar Chowk,
Kushalpur, P.S. Purani Basti, Raipur, Distt. Raipur, Chhattisgarh.
---Appellant(s)

Versus

State Of Chhattisgarh Through The Incharge, P.S. Purani Basti, Raipur, Distt. Raipur,
Chhattisgarh.
---Respondent(s)

(Cause-title taken from Case Information System)

For Respective Appellants	: Shri Varun Sharma, and Shri Satya Prakash Verma, Advocates
For Respondent/State	: Ms Vaishali Mahilang, GA

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Justice Ravindra Kumar Agrawal
Judgment on Board

Per Ravindra Kumar Agrawal, J.
24.04.2026

Heard Shri Varun Sharma, and Shri Satya Prakash Verma, learned counsel for the respective appellants. Also heard Ms Vaishali Mahilang, learned Government Advocate appearing for the State.

1. CRA- 2216 of 2025 is listed for consideration on IA -1 of 2025 whereas CRA- 247 of 2026 is listed for consideration on IA - 3 of 2026, which are applications for suspension of sentence and grant of bail to the respective appellants. Since appellant- Ashwani Tiwari (for short, ‘Ashwani’) is in jail since 17.07.2025 and appellant- Jitendra Sen @ Gajni (for short, ‘Jitendra’) is in jail since 16.09.2019, considering the detention period of the appellants, with the consent of the parties both these appeals are being heard together and decided finally.

2. Both these appeals are arising out of same incident, same session trial and a common judgment, therefore, they are being heard and decided together.

3. These two appeals have been filed by the respective appellants against the judgment of conviction and order of sentence dated 17.07.2025 passed by the learned 3rd Additional Sessions Judge , Raipur in Sessions Case-272 of 2019, whereby appellants have been convicted and sentenced in the following manner with default stipulation and with a direction to run the sentences concurrently.

Appellant- Ashwani Tiwari in CRA-2216 of 2025

Conviction	Sentence
Under Section 302/34 IPC	RI for life and to pay fine of Rs.1,000/-

Appellant- Jitendra Sen @ Gajni in CRA-247 of 2026

Conviction	Sentence
Under Section 302/34 IPC	RI for life and to pay fine of Rs.1,000/-
Under Section 25(1-b)(B) of the Arms Act	RI for 2 years and to pay fine of Rs.500/-
Under Section 27 of the Arms Act	RI for 5 years and to pay fine of Rs.500/-

4. Brief facts of the case are that on 13.09.2019 in the night at the time of Lord Ganesha immersion, in the procession, appellant- Jitendra was flirting the ladies who were present over there. PW2- Yuvraj slapped him and protected the ladies from his flirting and send him away from the place. When the procession came to Tiranga Chowk, both the appellants along with one juvenile in conflict with law came there and started assaulting the witness the PW2 Yuvraj. The incident was intervened by one Yogendra @ Golu Nayak (since the deceased), on which the appellant Jitendra took a knife which he kept with him and made a knife blow on his abdomen and thereafter they ran away from the spot. The deceased was immediately taken to the nearest hospital and thereafter, he was shifted to the City 24 Hospital, where he declared dead. Doctor sent merg intimation to Moudhapara, where unnumbered merg Ex.P1 was recorded on 14.09.2019 at about 10.10hrs. The unnumbered merg intimation was sent to the jurisdictional Police, Purana Basti Raipur, where numbered merg intimation Ex.P15 was recorded. The inquest Ex.P3 of the dead body of the deceased was prepared in presence of the witnesses and the dead body was sent for its postmortem to the Dr.Ambedkar Memorial Hospital, Raipur. Dr.M.Nirala

PW15 conducted the postmortem of dead body of the deceased and gave his report Ex.P13. While conducting the postmortem, doctor noticed one stab injury present on left side upper quadrant of abdomen 4 x 1.5cm, intestines exposed outside from stab injury. He also noticed puncture wound on the left side of the large intestine 2.5 x 1cm. He opined cause of the death was due to hemorrhagic shock as a result of stab injury, nature of death was homicidal and the injuries were antemortem in nature, caused by hard, sharp and pointed object, sufficient to cause death. Spot map Ex.P4 was prepared by the police and Ex.P5 was prepared by the patwari. Blood stained clothes of the deceased have been seized vide seizure memo Ex.P6. Blood stained and plain soil have been seized from the spot vide seizure memo Ex.P17. FIR Ex.P23 was registered against Jitendra, Ashwani and Juvenile in conflict with law for the offence under section 302/34 of the IPC. Appellants were arrested on 16.09.2019 and their memorandum statements were recorded vide Ex.P18. Based on the memorandum statement of appellant-Jitendra, one steel knife has been seized vide seizure memo Ex.P19 and his shirt and jeans have been seized vide seizure memo Ex.P20. Knife seized from the appellant- Jitendra has been sent for its query report to the doctor who gave his report vide Ex.P14, wherein he opined that injuries found on the body of deceased could have been caused by the said knife. For confirmation of blood on the knife and clothes, it has been referred for its chemical examination from the FSL, Raipur. Blood stained and plain soil, T-shirt, banian, jeans and underwear of the deceased and Trouser, T-shirt and knife seized from the appellant Jitendra were sent for their chemical examination to the FSL Raipur from where its report

Ex.P.25 was received and as per the FSL report, blood was found on blood stained soil, T-shirt and Banian of the deceased and T-shirt of the appellant-Jitendra.

5. Statements of the witnesses under section 161 CrPC have been recorded and after completion of usual investigation, charge-sheet was filed against the appellants Jitendra and Ashwani before the learned Additional Chief Judicial Magistrate for the offence under Section 302/34 and Section 25 / 27 of the Arms Act. The third accused being juvenile in conflict with law, separate charge-sheet was filed for him before the Juvenile Justice Board, Raipur.

6. Case was committed to the court of learned Sessions Judge, Raipur, from where it has been transferred to the learned trial court for its trial. The learned trial court framed charge against appellant Jitendra for the offence under Section 302 / 34 IPC and Section 25 (1-b)(B)/ 27 of the Arms Act. The charge against appellant-Ashwani has been framed under Section 302/34 of IPC. The accused persons / appellants denied the charge and claimed trial.

7. In order to prove the charge against the appellants, prosecution has examined as many as 20 witnesses. Statement of the accused persons under Section 313 CrPC have also been recorded in which they denied the circumstances appearing against them, pleaded innocence and submitted that they have been falsely implicated in the offence.

8. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial court has convicted and sentenced the

appellants as mentioned in the earlier part of the judgment, hence these appeals by the appellants.

9. Learned counsel appearing for the appellant-Ashwani (CRA 2216 of 2025) would submit that prosecution has failed to prove its case beyond reasonable doubt against the appellant that he caused any injury to the deceased. From the postmortem report Ex.P13, only one stab injury was found on the body of the deceased which was caused by the co-accused Jitendra and there is no allegation that appellant-Ashwani also assaulted the deceased. It is not the case of the prosecution that the accused persons have predetermination to commit murder of the deceased. Incident was occurred in a spur of moment while the immersion procession of Lord Ganesha was proceeded and some hot talk occurred between the persons who present there. All of a sudden co-accused Jitendra took out his knife and gave a knife blow on the abdomen of the deceased. There is absolutely no evidence of their meeting of minds or pre-determination. He would further submit that in absence of any positive evidence with respect to sharing common intention appellant-Ashwani cannot be convicted for the alleged offence. Therefore, appeal of the appellant-Ashwani may be allowed and he may be acquitted from the charge.

10. Learned counsel for the appellant- Jitendra would submit that there are material omissions and contradictions in the evidence of prosecution witnesses with respect to allegation against this appellant. It was a crowded procession and in the hot talk between the persons deceased fell down on a sharp edged object which was lying there on the road and received injury.

Since it was the dispute arose earlier on the same occasion when the witness PW2 Yuvraj slapped the accused-Jitendra, he was being implicated in the offence that he gave knife blow on the body of the deceased. He would further submit that the incident occurred in a heat of passion and all of a sudden. Appellant-Jitendra has not taken any undue advantage and has not acted in cruel or unusual manner. There was no intention to cause death of the deceased and act of the appellant- Jitendra, if any, does not travel beyond the scope of 304 of the IPC and therefore, he may be acquitted from the alleged offence, or in alternative, his conviction may be altered to one under Section 304 Part-II of the IPC and his sentence may be reduced for the period already undergone by him as he is in jail since 16.09.2019 and has completed more than 6 years of the sentence.

11. On the other hand learned counsel appearing for the state opposes submission made by the learned counsel for the appellants and submitted that but for minor omissions and contradictions, evidence of the prosecution witnesses is reliable and sufficient to hold guilty of the appellant in the offence in question. There are number of eye witnesses who deposed that both these accused persons started assaulting the deceased and in that event appellant-Jitendra gave a knife blow on the victim by which he received injuries on his body and ultimately died. Since both the accused persons came together and raised quarrel with PW2 Yuvraj and deceased while intervening in the said quarrel, he was assaulted by the appellants. The knife blow was given with such an intensity that his intestines were perforated and came out from injured part of the body. Therefore, there is

sufficient and overwhelming evidence against the appellants to convict them for the alleged offence which is rightly been done by the learned trial court and their appeals are liable to be dismissed.

12. We have heard learned counsel for the parties and perused record of the trial court.

13. The first question for consideration would be whether the deceased died homicidal death under unnatural circumstances, or not.

14. In order to determine the aforesaid issue, prosecution has relied upon the evidence of witnesses to the inquest- PW2 Yuvraj, PW3 Dinesh, PW18 Kishore Kumar, who have stated in their evidence that they saw injuries on the body of the deceased and his clothes were pooled with blood. PW2 and PW3 were the eye witnesses to the incident, who clearly deposed that on a stab wound, caused by the appellants, the deceased received injuries on his abdomen and his intestines came out from the injured part of the body. They took him to the hospital where he died.

15. Prosecution has also relied upon PW15-Dr.M.Nirala, who conducted postmortem on the dead body of the deceased. He stated in his evidence that on 14.09.2019 he conducted the postmortem of the deceased-Yogendra @ Golu Nayak, and found one stab wound on left side upper quadrant of abdomen. Intestines exposed from stab injury and on internal examination large intestine was also punctured. He opined that cause of death was due to hemorrhagic shock as a result of stab injury and injuries are antemortem in nature, caused by hard, and pointed sharp object, sufficient to cause

death and nature of death was homicidal. He proved the postmortem report Ex.P30 and also proved the query report Ex.P14 by which he opined that the injury found on the dead body of the deceased would have been caused by the knife which has been sent to him for its query report.

In his cross-examination he admitted that while conducting postmortem he found that the deceased was under intoxication of liquor. He also found alcoholic fluid in his intestines. However, the defense could not elicit any material so that nature of death or cause of death could be disbelieved that he has not died due to the injuries but he died from any other reason.

16. PW16 Dr.Naveen Singh, is an Orthopedic doctor, working in Shivam Hospital, Kushalpur. When he received information about the incident, he rushed to the hospital and considering the seriousness of the injuries of the deceased, he shifted him to the City 24 Hospital, Badaipara, Raipur by his own car and thus the injuries found on the body of the deceased are also supported by this witness, who shifted him to the City 24 Hospital.

17. Thus, the prosecution is able to prove that the death of the deceased is homicidal in nature due to injuries caused to him and learned trial court has rightly considered nature of injuries and cause of death of the deceased which are not required to be interfered with.

18. Now, the question for consideration would be whether the appellants herein are the perpetrators of the crime in question or not.

19. In this regard prosecution has examined eyewitness PW2-Yuvraj, PW3-Dinesh Dhruv, PW4-Chandan Thakur, PW5-Laxman Verma, PW6-Sunil Yadav, PW7-Lokesh Kumar Dhruv, PW9-Tekchand Sharma, and PW11-Narendra Kumar Dhruv, who were present on the spot. Presence of these witnesses cannot be doubted for the reason that the incident was occurred in a procession of Lord Ganesha and crowd was there in the procession. When we examined evidence of all these witnesses, we find no inconsistency in the evidence of those eye witnesses.

20. PW2 Yuvraj is the witness with whom initial incident was occurred and he slapped the accused appellant-Jitendra when he was flirting the ladies present in the procession. He stated in the evidence that when he slapped appellant-Jitendra who was creating nuisance in the Ganesh procession and he went off from the place. When the procession reached to Tiranga Chowk, accused-Jitendra again came there along with two other friends who are co-accused-Ashwini and Juvenile in conflict with law. They were about to assault him (PW2) but deceased-Yogendra alias Golu Nayak tried to stop them and then they started altercation with him. In that event accused Jitendra took his knife and assaulted the deceased on his abdomen by which his intestines came out from the injured part of the body. Other members of the Ganesh Samiti came there and let them flee from the place. He and his friends Dinesh Dhru took the injured to Shivam Hospital from where he was shifted to Badaipara Hospital.

21. In his detailed cross examination, defense could not extract any material to disbelieve his evidence and he firmly answered all the questions

put to him in his cross-examination and stuck in saying that appellant Jitendra gave a knife blow to the deceased. He also remained firm in saying that it was the incident arose in the immersion procession of Lord Ganesha and the accused persons were creating nuisance by flirting the ladies present in the procession. In the evidence of this witness, allegation of assault by knife is only upon Jitendra but not upon appellant Ashwani.

22. PW3-Dinesh Dhruv has stated almost the similar statement as the evidence PW2 Yuvraj Sahu stated. He too has stated in his evidence that accused-Jitendra gave knife blow to the deceased by which his intestines came out from the injured part of the body. In his cross-examination also nothing could be elicited to disbelieve his evidence that deceased has received injuries by any other reason and not by the assault made by appellant-Jitendra.

23. All the aforesaid eyewitnesses have consistently stated about the assault made by the accused-Jitendra while the appellant's act has been objected by the witnesses.

24. None of the prosecution witnesses have stated that when the appellants came on the spot, appellant-Jitendra was having knife in his hand which was known to the co-accused Ashwani, or that they came there with an intention to cause death to the deceased. Rather, consistently it has come in the evidence of the witnesses that on the first occasion when the accused Jitendra tried to create nuisance by flirting the ladies present in the procession, PW2 Yuvraj Sahu slapped him and send him away from there.

After some time, when the procession reached near Tiranga Chowk, accused-Jitendra came there with his two friends and they again started altercation. In between the period, appellant-Jitendra took knife and made assault upon the deceased. There is no evidence that they were having meeting of minds to commit murder of the deceased prior to the incident and the assault made by the accused-Jitendra was all of a sudden.

25. From the appellant-Ashwani, neither any blood-stained clothes nor weapon of offence has been seized and it is only from Jitendra, blood-stained clothes and knife have been seized. Appellant-Ashwani has been convicted for the offence under Section 302/34 IPC for sharing common intention with the co-accused Jitendra Sen @ Gajni.

26. To attract common intention with the co-accused who caused injury to the deceased, prosecution should establish prior meeting of minds and the said incident was preplanned.

27. Upon an independent appreciation of the entire evidence on record, this Court is of the considered view that the prosecution has failed to establish the existence of any shared or pre-concerted intention so as to attract the rigour of Section 34 of the Indian Penal Code. The material on record merely discloses that both accused persons had gone to the house of the deceased where a quarrel ensued; however, the fatal injury was inflicted suddenly by the co-accused, who alone produced a knife and dealt the blow. None of the eyewitnesses have deposed that the knife in the hand of co-accused Jitendra Sen @ Gajni was visible when they came to the place of

occurrence. There is no evidence, either direct or circumstantial, to indicate that the present accused had prior knowledge of the weapon or that he acted in furtherance of any common intention to cause death. His conduct does not travel beyond mere presence at the scene, and in the absence of a prior meeting of minds or any overt act indicating participation in the assault, the essential ingredients of Section 34 IPC remain unfulfilled. Fastening constructive liability in such circumstances would amount to stretching the provision beyond its settled limits. The principles enunciated in “**Krishna Govind Patil v. State of Maharashtra**”, AIR 1963 SC 1413 clearly underscore that common intention cannot be inferred merely from presence or from a sudden and independent act of a co-accused in the absence of prior concert. Applying these settled principles, this Court finds that the prosecution has failed to prove its case beyond reasonable doubt against the present accused, who is thus entitled to the benefit of doubt.

28. In view of the evidence available on record in the present case and the evidence of the eye witnesses, there is no prior meeting of minds to commit murder of the deceased nor they came to the spot preplanned. All of a sudden in a spur of moment incident took place and assault made by Jitendra by knife. There is no allegation against appellant- Ashwani that he also intended to cause death of the deceased and there is no evidence of any common intention, yet the learned trial court has convicted appellant- Ashwani for the offence under Section 302 of the IPC with the aid of Section 34 of the IPC.

29. In the case of **Constable 907 Surendra Singh and another Vs State of Uttarakhand with Ashad Singh Negi Vs State of Uttarakhand**, (2025) 5 SCC 433, Hon'ble Supreme Court while considering the earlier decisions of the scope of applicability of Section 34 of the IPC, held in para 30 of its judgement as under:

“30.By now it is a settled principle of law that for convicting the accused with the aid of Section 34 IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of:

(i) Ezajhussain Sabdarhussain v. State of Gujarat;

(ii) Jasdeep Singh v. State of Punjab;

(iii) Gadadhar Chandra v. State of W.B.; and

(iv) Madhusudan v. State of M.P.”

30. Considering the evidence available on record and also in view of the aforesaid judgment passed by the Hon'ble Supreme Court in case of **Constable 907 Surendra Singh** (supra), we are of the considered opinion that there is no act of appellant-Ashwani which attributed to cause any injury

to the deceased and it is the appellant-Jitendra who alone is responsible for causing stab injury to the deceased, by which he died. Therefore, appellant Ashwani is entitled for “benefit of doubt” and his appeal is allowed accordingly.

31. So far as involvement of the appellant-Jitendra is concerned, his involvement and assault made by him to the deceased has been consistently deposed by the eye witnesses- PW2-Yuvraj, PW3-Dinesh Dhruv, PW4- Chandan Thakur, PW5- Laxman Verma, PW6-Sunil Yadav, PW7-Lokesh Kumar Dhruv, PW9-Tekchand Sharma and PW11-Narendra Kumar Dhruv. Therefore, involvement of the appellant-Jitendra is there in the crime in question which was further corroborated by the FSL report Ex.P25 in which blood was found on the T-shirt of this appellant for which no explanation has been offered by him in his 313 CRPC statement. The weapon of offence-knife has been seized from him as per the query report Ex.P14. The injuries found on the body of the deceased could have been caused by the appellant- Jitendra and thus his involvement has been proved by the prosecution unerringly, that he caused injuries to the deceased by which the deceased died.

32. The next question for consideration would be whether the case of appellant-Jitendra is covered within exception 4 of section 300 of the IPC *vis-à-vis* culpable homicide not amounting murder and his conviction can be converted to 304 Part-I or Part-II of the IPC as contended by the learned counsel for the appellant-Jitendra.

33. The Hon'ble Supreme Court in the case of ***Basdev Vs. State of Pepsu***¹ has made the following observations :

“Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion.”

34. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, ‘intent’ and ‘knowledge’ and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat ‘intent’ and ‘knowledge’ in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this

¹ AIR 1956 SC 488

background that the expression used in Indian Penal Code namely “intention” and “knowledge” has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted.

35. The Hon’ble Supreme Court in the matter of ***Sukhbir Singh v. State of Haryana***² has observed as under:-

“21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay

² (2002) 3 SCC 327

a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.”

36. The Supreme Court in the matter of **Gurmukh Singh v. State of Haryana**³ has laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of the IPC, which state as under :-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under :

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without premeditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of

³ (2009) 15 SCC 635

the accused;

- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;
- (m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.”

37. Likewise, in the matter of ***State v. Sanjeev Nanda***⁴, their Lordships of the Supreme Court have held that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both. It has further been held that to make out an offence punishable

⁴ (2012) 8 SCC 450

under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.

38. Further, the Supreme Court in the matter of **Arjun v. State of Chhattisgarh**⁵ has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-

“20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in *Surinder Kumar v. UT, Chandigarh* [(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under : (SCC p. 220, para 7)

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the

⁵ (2017) 3 SCC 247

offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

21. Further in *Arumugam v. State* [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

“9. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion

requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provisions means “unfair advantage”.

39. In the matter of *Arjun* (supra), the Hon’ble Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of the IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II of the IPC.

40. Further, the Hon'ble Supreme Court in the matter of ***Rambir v. State (NCT of Delhi)***⁶ has laid down four ingredients which should be tested to bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

- (i) There must be a sudden fight;
- (ii) There was no premeditation;
- (iii) The act was committed in a heat of passion; and
- (iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.”

41. The Hon'ble Supreme Court in a recent judgment in the case of ***Anbzhagan vs. The State represented by the Inspector of Police*** in Criminal Appeal No.2043 of 2023 disposed of on 20.07.2023 has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:

“60. 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

⁶(2019) 6 SCC 122

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 302 of 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 course 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.”

42. Referring to the facts of the present case in light of the principles of law laid down by the Hon’ble Supreme Court in the above said judgements, it is quite vivid that the incident occurred suddenly in a course of quarrel between the accused and the deceased on a dispute occurred on the spot. The prosecution evidence itself indicates that there was a previous altercation, immediately proceeding the incident. It is also evident that the deceased was under the influence of alcohol at the time of incident and the act was committed all of a sudden in a heat of passion upon sudden provocation without any premeditation. There is nothing on record to show that the accused had any prior intention, or preplanned to commit murder of the deceased.

43. Though injury was inflicted on abdomen of the deceased, the concerning circumstances clearly indicate that the act of appellant-Jitendra falls within the ambit of exception 4 of section 300 of the IPC as the incident was without any premeditation in a sudden fight occurred in heat of passion, as such his case would fall within the purview of except 4 of section 300 IPC. Appellant-Jitendra completely satisfy the four necessary ingredients of

Exception 4 to Section 300 IPC, i.e. (i) There must be a sudden fight; (ii) There was no premeditation; (iii) The act was committed in a heat of passion; and (iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.

44. Accordingly, the conviction of the **appellant-Jitendra Sen @ Gajni (CRA 247 of 2026)** under Section 302 of the IPC is set aside, instead thereof, he is convicted under Section 304 Part II of the IPC and sentenced for the period already undergone by him.

45. Conviction and sentence of the appellant-Jitendra for the offence under Section 25(1b)(B)/27 of the Arms Act is maintained.

46. Appellant-Jitendra is reported to be in jail since 16.09.2019. He shall be released forthwith if not required in any other case, as he has been sentenced for the period already undergone by him for the offence under Section 304 Part-II IPC and he has already served the sentence awarded under Section 25(1b)(B)/27 of the Arms Act, as there is direction that all sentences shall run concurrently.

47. Appellant-Ashwani (Criminal Appeal 2216 of 2025) is acquitted from the offence 302 / 34 IPC by giving him "Benefit of Doubt". Conviction and sentence against this appellant is set aside and his appeal is **allowed**.

48. Appellant-Ashwani is also reported to be in jail since 17.07.2025. He be released forthwith if not required in any other case.

49. Keeping in view the provisions of Section 481 of the BNSS 2023, the appellants are directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs. 25,000/- each with one reliable surety in the like amount before the court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgement or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

50. The trial court records along with a copy of this judgment be sent back immediately to the trial court for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice