



2025:CGHC:47203-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 453 of 2022**

Sunita Bai W/o Shri Ramsharan Dagarji Aged About 35 Years Caste-
Suryavanshi, Sakin- Village- Mohda, Station Ratanpur, Hal Mukam-
Village-Mohra, Station- Seepat District- Bilaspur, (Chhattisgarh)

... Appellant**versus**

State Of Chhattisgarh Through Reserved Center, Seepat District-
Bilaspur, Chhattisgarh

...Respondent

For Appellant	:	Mr. Ashutosh Singh Kachhawaha, Advocate
For Respondent/State	:	Ms. Saumya Sharma, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Bibhu Datta Guru, Judge****15.09.2025**

1. Heard Mr. Ashutosh Singh Kachhawaha, learned counsel for the
appellant. Also heard Ms. Saumya Sharma, learned Panel Lawyer



appearing for the respondent/State.

2. This criminal appeal filed by the appellant/accused under Section 374(2) of the Criminal Procedure Code, 1973 is directed against the impugned judgment of conviction and order of sentence dated 04.02.2022, passed by the learned 5th Additional Sessions Judge, Bilaspur (C.G.) in Sessions Trial No. 167/2019, whereby the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence
U/s 302 of the Indian Penal Code	Rigorous Imprisonment for life and fine of Rs. 100/-, with default stipulation.

3. Case of the prosecution, in brief, is that on 08.09.2019 at 10:30 AM, the complainant Balram Bhoi (PW-7) along with village Kotwar Anil Gandharva (PW-6) appeared at Police Station Sipat and lodged a verbal information that his maternal uncle Suresh Bhoi/ the deceased had been living in a hut near Tugan Nala in village Mohra for about 5 years. The deceased used to survive by begging for food as he was having disability in his left leg. Accused Sunita Bai Dagarji had been living with the deceased for about 2-3 months. On 08.09.2019, at his duty place "Sharma Dairy" at about 10:00 AM, after receiving information from Kotwar Anil Gandharva about the death of his maternal uncle Suresh Bhoi in the hut where he lived, the Kotwar along with him went to the spot, on reaching the spot, deceased Suresh Bhoi was found lying on the ground in a dead state on his right side, with blood on his body and hands, and bare body. The woman/accused residing with the deceased was also present at that time.



On the information given by the complainant that an unknown person had killed the deceased by hitting him on the head, an FIR was registered at Police Station-Sipat against the unknown accused under Section 302 IPC.

4. During investigation, spot map (Ex.P/07) was prepared and after due investigation, the Police filed charge-sheet against the appellant before the jurisdictional criminal Court and the case was committed to the Court of Session for trial from where the learned 5th Additional Sessions Judge, Bilaspur (C.G.) received the case on transfer for trial and for hearing and disposal in accordance with law.

5. The trial Court has framed charges against the appellant for the offences punishable under Section 302 of the IPC and proceeded on trial. The appellant abjured the guilt and entered into defence stating that she has not committed any offence and she has been falsely implicated.

6. In order to bring home the offence, the prosecution examined as many as 15 witnesses and exhibited 25 documents.

7. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 04.02.2022, convicted the accused/appellant for the offence punishable under Section 302 of the IPC and sentenced her as aforementioned, against which, this criminal appeal has been filed.

8. Learned counsel for the appellant submits that the learned trial Court is absolutely unjustified in convicting the appellant, as the prosecution has failed to prove the offence beyond reasonable doubt. He would submit that the learned trial Court has not taken into consideration the evidence available on record in its proper prospective and thereby committed grave



error in being selective in appreciating those piece of evidence which are incriminatory to the appellant/accused and discarded those piece of evidence which are favourable to the appellant. The learned trial Court has failed to see that the there is no eyewitness to the incident and there are material omission and contradiction in statements of prosecution witnesses. He would further submit that the conviction of appellant is purely based on the evidence adduced by the police officials during investigation which is highly unreliable, though their evidence has not been duly corroborated by the independent witness. He would further contend that the appellant without any basis has been falsely roped in the present case as the learned trial Court has failed to consider that the prosecution could not prove any incident against the accused. He further submits that there was no motive or intention on the part of the appellant to cause death of the deceased and only on account of sudden quarrel, under heat of passion and in anger, the appellant caused injuries to the deceased, which caused his death. Therefore, the case of the present appellant falls within the purview of Exception 4 to Section 300 of the IPC and the act of the appellant is culpable homicide not amounting to murder, and therefore, it is a fit case where the conviction of the appellant for the offence punishable under Section 302 of the IPC can be converted/alterd to an offence under Section 304 (Part-I or Part-II) of the IPC. Further, as the appellant is in jail since 10.09.2019 and she has completed 06 years of her jail sentence, and therefore, considering the period she had already undergone, she be awarded the sentence of the period already undergone by her. Hence, the present appeal deserves to be allowed in full or in part.



9. Per contra, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. She further submits that the learned trial Court has rightly convicted the appellant for the offence under Section 302 of the IPC. It has been contended that the appellant has committed heinous crime of murder and in such circumstances, it is not the case where conviction of the appellant for the offence under Section 302 of IPC requires to be altered to Section 304 Part-I or Part-II of IPC. Thus, the present appeal deserves to be dismissed.

10. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

11. The question for consideration would arise before this Court whether the appellant has committed such offence punishable under Section 302 of the IPC. The prosecution for proving its case beyond reasonable doubt examined the witnesses whose statements have been recorded before the trial Court observed hereinbelow.

12. PW-7/Balram Bhoi complainant stated in his statement that he recognize the accused and the deceased Suresh Bhoi who was his maternal uncle. The deceased had been living in a hut in village Mohra for about 5 years and the accused Sunita was also living with him for about two to three months. He stated that when the incident took place, he was at Rakesh Sharma's dairy farm. The village Kotwar Anil came and told him whether the person who lives in the hut is your uncle, to which he said yes.



Then he said that he has been murdered, then PW-7 went to the deceased's hut with the Kotwar and saw that Suresh Bhoi was lying on the ground and he had an injury on his head and blood was oozing out from there. Then there were many people from the village and the police came. In his cross-examination, he admitted the fact that he does not know who killed the deceased.

13. PW/8- Siddhnath, who is one of the villagers of the deceased stated in his evidence that he recognizes the accused and also knew the deceased Suresh Bhoi by face. The deceased lived in a hut on the banks of the drain. He stated that he came to know that the accused was also living with him in the same house. On the date of incident, he was at his house in village Mohra and Kotwar Anil came and told him that Sunita had come and informed him that some unknown person had killed Suresh Bhoi in his house. On which he also went to the spot. Then he saw that the deceased Suresh Bhoi was lying on the ground inside the hut and there was blood on his temporal region and there was blood on the ground. The police also came there and the police interrogated the accused in front of him, then the accused first told that two people had come on a motorcycle and they had beaten Suresh Bhoi and when asked again, she told that she had killed him herself. She had beaten Suresh Bhoi with a 'khura' and 'kapthari'. At this stage he was declared hostile. Thereafter he admitted the fact that the accused came to the crime scene after he had reached there. He stated that in his presence, the accused told the police that the deceased suspected her and when there was a dispute over this issue, she hit him 8 times on his head and back with the cot's leg and she had



hidden the said cot's leg in a bush near the hut and she would get it recovered.

14. Other prosecution witnesses No.1, 2 & 3 also turned to hostile. PW/1 – Shukwara Bai is the second wife of the deceased, who stated that after death of her first husband, Suresh Bhoi took her to his house as his wife after wearing bangles. She lived with Suresh Bhoi for four months as his wife. After four months, she had a quarrel with the deceased, thereafter she left his company, there was no relationship between them. She stated that she cannot tell today when the incident took place. She received a call from Sipat police station and was told that your husband Suresh has been murdered.

15. PW/13 - Dr. R. S. Maravi, who conducted post-mortem on the body of the deceased submitted his report Ex.P/04 wherein the injuries sustained by the deceased has been elaborated. He stated in paragraph-2 of his examination that on 09.09.2019, when the dead body of the deceased was brought before him for postmortem, he found a lacerated wound measuring 6x1x2 cm on the right side of the head of the deceased and the bone inside the wound was broken. He further stated that the cause of death of the deceased was of "homicidal nature" due to "shock and hemorrhage due to severe head injury". This witness has expressed disagreement with the suggestion that the injuries to the deceased could have been caused by a person falling into a drain. The evidence of Dr. R.S. Maravi (PW-13) regarding the murderous nature of death of the deceased remained irrefutable.

16. A careful perusal of the above statements, along with the evidence



adduced by the medical expert, clearly indicates that the accused, acting under the influence of suspicion and in a sudden fit of rage, assaulted the deceased. As a direct consequence of this violent act, the deceased sustained grievous injuries, which ultimately led to his death.

17. From the material available on record, we are of the considered view that the learned trial Court has rightly held that it is the appellant/accused who has caused injuries over the body of the deceased and caused his death. Accordingly, we hereby affirm the said finding.

18. The aforesaid finding brings us to the next question for consideration, whether the case of the appellant is covered within Exception 4 to Section 300 of the IPC *vis-a-vis* culpable homicide not amounting to murder and his conviction can be converted to Section 304 Part-I or Part-II of the IPC, as contended by learned counsel for the appellant.

19. It is a trite law that “culpable homicide” is a genus and “murder” is its species and all “murders” are “culpable homicides, but all “culpable homicides are not “murders” as held by the Hon’ble Supreme Court in the matter of **Rampal Singh v. State of Uttar Pradesh**¹. The intention of the accused must be judged not in the light of actual circumstances, but in the light of what is supposed to be the circumstances.

20. The Hon’ble Supreme Court in the case of **Basdev v. State of Pepsu**² has made the following observations :

“Of course, we have to distinguish between motive,

1 (2012) 8 SCC 289

2 AIR 1956 SC 488



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.”

21. 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 her acts were likely to cause death, the accused can be held guilty under second part of Section 304 of the IPC. It is in this 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 of the 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.

22. The Hon'ble Supreme Court in the matter of **Sukhbir Singh v. State of Haryana**³ 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 a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.”

23. The Hon'ble Supreme Court in the matter of **Gurmukh Singh v. State of Haryana**⁴ has laid down certain factors which are to be taken into

3 (2002) 3 SCC 327

4 (2009) 15 SCC 635



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 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.”

24. Likewise, in the matter of **State v. Sanjeev Nanda**⁵, 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 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

⁵ (2012) 8 SCC 450



cause death.

25. Further, the Supreme Court in the matter of **Arjun v. State of Chhattisgarh**⁶ 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 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

6 (2017) 3 SCC 247



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. '18. 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”.

26. In the matter of **Arjun** (supra), the 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.

27. Further, the Supreme Court in the matter of **Rambir v. State (NCT of Delhi)**⁷ 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.”*

28. The Hon'ble Supreme Court in a recent judgment in the case of **Anbazhagan v. The State represented by the Inspector of Police** in **Criminal Appeal No. 2043 of 2023** disposed off 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*

⁷ (2019) 6 SCC 122



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 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.”

29. Reverting to the facts of the present case, in light of principles of law laid down by their Lordships of the Hon’ble Supreme Court in the above-stated judgments (supra), it is quite vivid that as per the medical evidence, it is evident that on the date of incident, the accused/appellant assaulted the deceased in suspicion, with the help of a hard object like leg of cot. There was no premeditation on the part of the appellant to cause death of deceased. The appellant did not had any intention to cause death of deceased, but by causing such injuries, she must had the knowledge that such injuries inflicted by her would likely to cause death of deceased, as



such, her case would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellant herein completely satisfies 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 appellant had not taken any undue advantage or acted in a cruel or unusual manner.

30. Considering the above-stated facts, also considering the evidence of witnesses and taking into consideration that at present appellant- Sunita Bai is aged about 38 years, and she is in jail since 10.09.2019 *i.e.* more than six years, the conviction of the appellant under Section 302 of the IPC can be altered/converted to Section 304 Part-II of the IPC.

31. Accordingly, the conviction and sentence of the appellant under Section 302 of the IPC is set aside, however, she is convicted under Section 304 Part-II of the IPC and sentenced to undergo for a period already undergone by her.

32. The appellant is in jail. She be released forthwith if not required in any other case, on furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of six months as required under the provisions of Section 481 of the BNSS. The appellant shall appear before the higher Court as and when directed.

33. The criminal appeal is **allowed in part** to the extent indicated herein-above.



34. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial Court concerned forthwith for necessary information and compliance.

**Sd/-
(Bibhu Datta Guru)
Judge**

**Sd/-
(Ramesh Sinha)
Chief Justice**

S. Bhilwar