



2025:CGHC:47692-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 786 of 2021

N. Gopal @ N. Gopal S/o N. Gopi Aged About 21 Years R/o Sector - 11, Street-08, Zone-1, Behind Dena Bank, Sweeper Mohalla, Khursipar, P.S. Chhaoni, Distt. Durg (Chhattisgarh)

... Appellant

versus

State Of Chhattisgarh Through The District Magistrate, Distt. Durg (Chhattisgarh), District : Durg, Chhattisgarh

... Respondent

For Appellant : Mr. M.P.S.Bhatia, Advocate

For Respondent : Mr. S.S.Baghel, Deputy Government Advocate

**Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Bibhu Datta Guru, Judge**

Judgment on board

Per Ramesh Sinha, Chief Justice

17.09.2025

1. This criminal appeal filed by the appellant-accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") is directed against the impugned judgment of conviction and order of sentence dated 24.02.2021, passed by learned Sessions Judge, Durg, District- Durg (C.G.) in Sessions Case No. 15/2019, whereby the appellant-accused has been convicted for offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.500/-, in default of payment of



fine amount, to further undergo additional simple imprisonment for 10 days.

2. Case of the prosecution, in brief, is that on 07.11.2018 at around 10:00 P.M., complainant Harendra Chaurasia (PW-9) appeared at Chhawani Police Station and lodged the First Information Report (FIR) (Ex.P-13), stating that on the same night at 10 P.M., while he was having dinner at his home, he heard sound of a quarrel outside. When he stepped out, he saw that the appellant was abusing his nephew, Amit Chaurasia. When he tried to intervene and mediate, appellant N. Gopal @ N. Gopalu, in an attempt to murder, attacked his nephew Amit Chaurasia with a sharp knife, stabbing him in the abdomen. As a result, Amit was seriously injured. Harendra and Shrikant Chaurasia (PW-11) immediately took him to Jawaharlal Nehru Hospital & Research Centre (Sector 9 Hospital) for treatment. However, he died during treatment. The attending doctor Dr. Seema Lakra (PW-10) informed the Station House Officer (SHO), Sector 6, about the death through Operation Cum Technician V.C. Yadav (PW-1) of Sector 9 Hospital, which is recorded as Ex.P-1. Thereafter, Assistant Sub-Inspector Kamla Yadav (PW-17) of Bhilainagar Police Station recorded the marg intimation (unnatural death intimation) as per Ex.P-2, and since the place of incident fell under the jurisdiction of Chhawani Police Station, the report was transferred there. Then, Sub-Inspector Jagdish Prasad Sidar (PW-15) registered Marg No.



61/2018 as per Ex.P-18. On 08.11.2018, he issued notices to the panch witnesses (Ex.P-15) and conducted an inquest (Ex.P-16) over the dead body of Amit Chaurasia at the mortuary of Sector 9 Hospital. He then prepared a post-mortem application (Ex.P-5) and sent the body to the District Hospital, Durg, through Constable Deepak Jan. At 1:10 P.M. on 08.11.2018, Dr. R.K. Nayak (PW-12) conducted postmortem over the body of the deceased vide Ex.P-5”A” and found incised wound size 6 x 3 cm, oblique & about 4 cm from mid line and below and medial to right nipple on chest right (about 5 cm) Depth 15 cm, direction – posterior, upper and towards medial. The doctor has opined that cause of death was shock due to extensive vessel injuries and hemorrhages.

3. During the post-mortem, the clothes on the deceased's body were sealed and handed over to the constable, who submitted them to PW-15 Jagdish Prasad Sidar, and a seizure memo (Ex.P-6) was prepared. During the investigation, PW-15 Jagdish Prasad Sidar recorded the statements of prosecution witnesses under Section 161 of the Code of Criminal Procedure. He also sent a query letter (Ex.P-17) to the concerned doctor regarding the seized items and, through the Superintendent of Police, forwarded the seized items to the State Forensic Science Laboratory, Raipur, with the forwarding letter Ex.P-19, and received acknowledgment Ex.P-20.
4. During this period, the Station House Officer of Chhawani Police



Station, PW-18 Bhavesh Sahu, completed the remaining investigation. He prepared the site map (Ex.P-14) and seized blood stains found on the cement floor of the crime scene using cotton swabs as per the seizure memo (Ex.P-12). On 08.11.2018 at 10:00 A.M., he took the appellant into custody, interrogated him, and recorded a memorandum statement (Ex.P-10). Based on that, the appellant led the police to recover the knife used in the crime, which was seized as per Ex.P-11. He also recorded statements of witnesses Harendra Chaurasia, Sunita Devi, and others under Section 161 of the CrPC. Accordingly, a charge-sheet under Section 302 of the Indian Penal Code and Sections 25 & 27 of the Arms Act was filed before the Court of Judicial Magistrate First Class, Durg, who thereafter committed the case to the Court of Sessions for trial.

5. During the trial, charge under Section 302 IPC was framed and read over to the accused, to which he abjured guilt and claimed to be tried. In his statement recorded under Section 313 of the Cr.P.C., the accused denied the allegations and pleaded false implication.
6. In order to bring home the offence, the prosecution examined as many as 18 witnesses and exhibited 42 documents i.e. Ex. P-1 to Ex. P-24. In defence, the accused-appellant has examined three witnesses namely Rajesh Rao (DW-1), R.Yesu (DW-2) and Abbas Khan (DW-3).



7. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 24.02.2021, convicted the appellant for offence under Section 302 of the IPC and sentenced him as aforementioned, against which, this criminal appeal has been filed.
8. Mr.M.P.S.Bhatia, learned counsel appearing for the appellant submits that the learned trial Court is absolutely unjustified in convicting the appellant for offence under Section 302 of the IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. He further submits that if the case of the prosecution is accepted as it is, then also the appellant is said to have caused injury to the deceased in spur of moment. 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 injury to the deceased, which caused his death. Learned counsel for the appellant urged that: (a) there was no premeditation; (b) the incident ensued all of a sudden; (c) the assault consisted of a single blow; and (d) intention to cause death is absent; at best knowledge can be imputed. Therefore, the case of the present appellant falls within the purview of Exception 4 to Section 300 of 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 offence under Section 302 of the



IPC can be converted/alterd to an offence under Section 304 (Part-I or Part-II) of the IPC. Hence, the present appeal deserves to be allowed in full or in part.

9. On the other hand, Mr.S.S.Baghel, learned Deputy Government Advocate appearing for the respondent/State supports the impugned judgment and submits that the appellant has caused murder of deceased by deadly attacking him with knife due to which, he succumbed to his injury, therefore, the learned trial Court has rightly convicted the appellant under Section 302 of the IPC and it is not a case where the appellant's conviction under Section 302 of the IPC can be altered/converted under Section 304 Part-I or Part-II IPC and as such, the instant criminal appeal deserves to be dismissed.
10. We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
11. The first question for consideration would be, whether death of deceased Amit Choursiya was homicidal in nature ?
12. The nature, seat and severity of the injury, as described by the medical officer, rule out the possibility of accidental or suicidal cause. There is nothing on record to suggest that the injury could have been self-inflicted. On the contrary, the evidence unmistakably points towards an intentional assault.



- 13.** The trial Court after appreciating oral and documentary evidence available on record, particularly relying upon the statement of Dr.R.K.Nayak (PW-12), who conducted postmortem, has come to the conclusion that cause of death was shock due to extensive vessel injuries and hemorrhages. After hearing learned counsel for the parties and after considering the submissions, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Amit Choursiya was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.
- 14.** Now, the question for consideration would be whether the accused-appellant herein is the perpetrator of the crime in question.
- 15.** The prosecution has relied upon the testimonies of Harendra Chourasiya (PW-9), Shrikant Chourasiya (PW-11) and Ravindranath Chourasiya (PW-13), who claimed themselves to be an eyewitnesses to the incident. Harendra Chourasiya (PW-9) has stated in his evidence that incident occurred on 07.11.2018, which was Diwali day. On that day, around 10:00 P.M., he saw the appellant and a few others playing cards and gambling near his house. He advised them to stop playing and using abusive language. After that, he went home and was having dinner. Later, he heard a commotion and came out to see his nephew, Amit



Chaurasia, arguing with the appellant and others. The appellant then stabbed Amit in the chest with a knife and twisted it, causing his intestines to come out. Amit fell to the ground near his house, which is close to his house. They took him to Chandulal Chandrakar Hospital and then to Sector 9 Hospital, where he was declared dead. He reported the incident to the police, and they prepared a site plan of the incident in his presence. The police also conducted a panchnama of the deceased's body and took his signature on the documents. There was no prior dispute between the appellant and Amit; the incident occurred due to Amit's objection to the appellant's gambling.

16. Shrikant Chourasiya (PW-11) has stated in his evidence that incident occurred around 10 P.M. The appellant and his associates were gambling and using abusive language near his house. Amit asked them to stop, but they did not listen. The appellant then stabbed Amit in the chest with a knife and fled the scene. They took Amit to Chandulal Chandrakar Hospital and then to Sector 9 Hospital, where he was declared dead. There was no prior dispute between the appellant and Amit or their family; the incident occurred due to Amit's objection to the appellant's gambling.
17. Ravindranath Chourasiya (PW-13) also stated the same thing as stated by witnesses Harendra Chourasiya (PW-9), Shrikant Chourasiya (PW-11).



- 18.** Thus, the evidence of Harendra Chourasiya (PW-9), being an eyewitness, is trustworthy and stands corroborated by Shrikant Chourasiya (PW-11) and Ravindranath Chourasiya (PW-13) in material particulars. The consistent version of these witnesses, coupled with medical evidence, leaves no manner of doubt that it was the appellant who inflicted the fatal blow with a knife upon Amit Chourasiya, causing his death.
- 19.** In view of the above discussion, it stands proved beyond reasonable doubt that on 07.11.2018 at about 10 P.M., in Soniya Gandhi Nagar, near house of Shrikant Chourasiya, the appellant assaulted Amit Chourasiya with a knife, causing fatal injury, resulting in his death. The prosecution has successfully established its case by cogent, ocular and documentary evidence.
- 20.** 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 ?
- 21.** The distinction between intention and knowledge in the context of Section 299 and Section 300 IPC is crucial in determining the culpability of the appellant. Intention denotes a conscious desire to bring about a particular result, whereas knowledge implies awareness that a particular consequence is likely to ensue. In the



present case, while the appellant's actions were undoubtedly culpable, the circumstances suggest that he did not intend to cause the death of Amit Chourasiya. However, it is evident that he knew that his actions were likely to cause harm.

22. Reverting to the facts of the present case, the following facts are salient:

- *No premeditation or prior motive has been proved by the prosecution.*
- *The incident occurred due to the deceased's objection to the appellant's gambling.*
- *There was one fatal blow with a knife; there is no evidence of repeated assault or pursuit.*

23. The Hon'ble Apex Court in the matter of ***Anbazhagan v. The State Rep. By The Inspector of Police, 2023 INSC 632***, readily held when a case would fall under Section 304 Part II of the IPC rather than Section 302 of the IPC, emphasizing that Part II applies where "murder is never established" and only knowledge (not intention) is attributable; it also surveys classic "single blow" cases altering Section 302 to Section 304 Part II (e.g., Jawahar Lal, Camilo Vaz, Jai Prakash, Kulwant Rai, Hem Raj, Pulicherla Nagaraju) and ultimately converts the conviction to Section 304 Part II. Relevant paras of the judgment are reproduced hereinbelow:-

"20. The word "intent" is derived from the word archery or aim. The "act" attempted to must be with



"intention" of killing a man.

21. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are the following:-

- 1. The nature of the weapon used.*
- 2. The place where the injuries were inflicted.*
- 3. The nature of the injuries caused.*
- 4. The opportunity available which the accused gets.*

22. In the case of Smt. Mathri v. State of Punjab, AIR 1964 SC 986, at page 990, Das Gupta J. has explained the concept of the word 'intent'. The relevant observations are made by referring to the observations made by Batty J. in the decision Bhagwant v. Kedari, I.L.R. 25 Bombay 202. They are as under:-

"The word "intent" by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired-but rather connotes the one object for which the effort is made-and thus has reference to what has been called the



dominant motive, without which, the action would not have been taken."

23. In the case of *Basdev v. State of Pepsu*, AIR 1956 SC 488, at page 490, the following observations have been made by Chadraseskhara Aiyar J.:-

"6. 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 had led to a certain amount of confusion."

24. In para 9 of the judgment, at page 490, the observations made by Coleridge J. in *Reg. v. Monkhouse*, (1849) 4 COX CC 55(C), have been referred to. They can be referred to, with advantage at this stage, as they are very illuminating:-

"The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then



his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered. For instance, if such an act were done by a born idiot, the intent to kill could not be inferred from the act. So if the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely; was he rendered by intoxication entirely incapable of forming the intent charged?"

25. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind that our 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 proper to hold that 'intent' and 'knowledge' cannot be equated with each other. They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that 'intent' and 'knowledge' are the same. 'Knowledge'



will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

*26. In the case In re **Kudumula Mahanandi Reddi**, AIR 1960 AP 141, also the distinction between 'knowledge' and 'intention' is aptly explained. It is as under:-*

"Knowledge and intention must not be confused.

17. Every person is presumed to intend the natural and probable consequences of his act until the contrary is proved. It is therefore necessary in order to arrive at a decision, as to an offender's intention to inquire what the - natural and probable consequences of his acts would be. Once there is evidence that a deceased person, sustained injuries which were sufficient in the ordinary course of nature to cause death, the person who inflicted them could be presumed to have intended those natural and probable consequences. His offence would fall under the third head of sec. 300, I.P.C.

18.A man's intention has to be inferred from what he does. But there are cases in which death is caused and the intention which can safely be imputed to the offender is less grave. The degree of guilt depends upon intention and the intention to be inferred must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the



ordinary course of nature to cause death, but which the offender knows is likely to cause the death. Proof of such knowledge throws light upon his intention.

19. ...Under sec. 299 there need be no proof of knowledge, that the bodily injury intended was likely to cause death. Before deciding that a case of culpable homicide amounts to murder, there must be proof of intention sufficient to bring it under Sec.300. Where the injury deliberately inflicted is more than merely likely to cause death' but sufficient in the ordinary course of nature to cause death, the higher degree of guilt is presumed."

It has been further observed therein as under:-

"26. ... Where the evidence does not disclose that there was any intention, to cause death of the deceased but it was clear that the accused had the knowledge that their acts were likely to cause death the accused can be held guilty under the second part of sec. 304, I.P.C. The contention that in order to bring the case under the second part of sec. 304. I.P.C. it must be brought within one of the exceptions to sec 300, I.P.C. is not acceptable."

27. Thus, while defining the offence of culpable homicide and murder, the framers of the IPC laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be. The framers of the IPC designedly



used the two words 'intention' and 'knowledge', and it must be taken that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where mens rea is not required in order to prove that a person had certain knowledge, he "must have been aware that certain specified harmful consequences would or could follow." (Russell on Crime, Twelfth Edition, Volume 1 at page 40).

28. This awareness is termed as knowledge. But the knowledge that specified consequences would result or could result by doing an act is not the same thing as the intention that such consequences should ensue. If an act is done by a man with the knowledge that certain consequences may follow or will follow, it does not necessarily mean that he intended such consequences and acted with such intention. Intention requires something more than a mere foresight of the consequences. It requires a purposeful doing of a thing to achieve a particular end. This we may make it clear by referring to two passages from leading text-books on the subject. Kenny in his Outlines of Criminal Law, Seventeenth Edition at page 31 has observed:-

"To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connexion is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of



his conduct..... It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed..... Again, a man cannot intend to do a thing unless he desires to do it."

29. Russell on Crime, Twelfth Edition, 1st Volume at page 41 has observed:-

"In the present analysis of the mental element in crime the word "intention" is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims..... Differing from intention, yet closely resembling it, there are two other attitudes of mind, either of which is sufficient to attract legal sanctions for harm resulting from action taken in obedience to its stimulus, but both of which can be denoted by the word "recklessness". In each of these the man adopts a line of conduct with the intention of thereby attaining an end which he does desire, but at the same time realises that this conduct may also produce another result which he does not desire. In this case he acts with full knowledge that he is taking the chance that this secondary result will follow. Here, again, if this secondary result is one forbidden by law, then he will be criminally responsible for it if it occurs. His precise mental attitude will be one of two kinds-(a) he would



prefer that the harmful result should not occur, or (b) he is indifferent as to whether it does or does not occur."

30. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that "whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

31. Thus, in order that the requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide proved, it is necessary that any of the two specific intentions must be proved. But, even when such intention is not proved, the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his such act to cause death, that is, with the knowledge that the result of his doing his act may be such as may result in death.

32. The important question which has engaged our



careful attention in this case is, whether on the facts and in the circumstances of the case we should maintain the conviction of the appellant herein for the offence under Section 304 Part I or we should further alter it to Section 304 Part II of the IPC?

SECTIONS 299 AND 300 OF THE IPC:-

33. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299, 'culpable homicide' is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted-above, it would be 'culpable homicide'. Section 300 of the IPC, however, deals with 'murder', although there is no clear definition of 'murder' in Section 300 of the IPC. As has been repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'. (see Rampal Singh v. State of U.P., (2012) 8 SCC 289)

34. In the case of State of Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382, this



Court, while clarifying the distinction between these two terms and their consequences, held as under:-

"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' is species. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide not amounting to murder'. For the purpose of fixing punishment. proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is what may be called 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

35. Section 300 of the IPC proceeds with reference to Section 299 of the IPC. 'Culpable homicide' may or may not amount to 'murder', in terms of Section 300 of the IPC. When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of the IPC, while in other cases, that is, where an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC. Various judgments of this



Court have dealt with the cases which fall in various classes of firstly, secondly, thirdly and fourthly, respectively, stated under Section 300 of the IPC. It would not be necessary for us to deal with that aspect of the case in any further detail.

36. The principles stated in the case of Virsa Singh v. State of Punjab, AIR 1958 SC 465, are the broad guidelines for the courts to exercise their judicial discretion while considering the cases to determine as to which particular clause of Section 300 of the IPC they fall in. This Court has time and again deliberated upon the crucial question of distinction between Sections 299 and 300 of the IPC, i.e. 'culpable homicide' and 'murder' respectively. In Phulia Tudu v. State of Bihar, (2007) 14 SCC 588, this Court noticed that confusion may arise if the courts would lose sight of the true scope and meaning of the terms used by the legislature in these sections. This Court observed that the safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of these sections.

37. This Court in Phulia Tudu (supra) has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions



seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

Section 299	Section 300
<i>A person commits culpable homicide if the act by which the death is caused is done-</i>	<i>Subject to certain culpable homicide is murder if the exceptions act by which the death is caused is done-</i>
INTENTION	
<i>(a) with the intention of causing death; or</i> <i>(b) with the intention of such causing bodily injury as is likely to cause death; or</i>	<i>(1) with the intention of causing death; or</i> <i>(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or</i> <i>(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or</i>
KNOWLEDGE	
<i>(c) with the knowledge that the act is likely to cause death</i>	<i>(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.</i>

24. Recently, in **Velthepu Srinivas v. State of A.P., 2024 SCC OnLine SC 107**, the Supreme Court converted a Section 302 of



the IPC conviction to Section 304 Part II for one accused, sentencing him to 10 years, where the role and circumstances evidenced lack of intention but knowledge that the act was likely to cause death. Relevant paras of the judgment are reproduced hereinbelow:-

“28. Even though, A-3 might not have had the common intention to commit the murder, nevertheless, his participation in the assault and the wielding of the stone certainly makes him culpable for the offence that he has committed. While we acquit A-3 of the offence under Section 302 read with Section 34 of the IPC, he is liable for the offence under 304 Part II IPC. The law on Section 304 Part II has been succinctly laid down in Camilo Vaz v. State of Goa, (2000) 9 SCC 1, where it was held that:

14. This section is in two parts. If analysed, the section provides for two kinds of punishment to two different situations: (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the “intention”; (2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on a vital part of the body with such force that the person hit meets his death, knowledge has to be imputed to the accused....

29. In the past, this Court has considered factors such



as lack of medical evidence to prove whether the act/injury was individually sufficient to cause death 1, a single blow on head with a hammer² and lack of cogent evidence of the eye-witnesses that the accused shared a common intention to commit murder 3 as some factors to commute a sentence from Section 302 to Section 304 Part II IPC.

30. Returning back to the facts of the case, there is certainly no escape from coming to the conclusion that A-3 should have had the knowledge that the use of a stone to hit the head of the deceased is likely to cause death. However, as demonstrated 1 Bawa Singh v. State of Punjab, 1993 Supp (2) SCC 754. 2 Sarup Singh v. State of Haryana, (2009) 16 SCC 479. 3 Ghana Pradhan & Ors. v. State of Orissa, 1991 Supp (2) SCC 451. before, the evidence is insufficient to deduce a conclusion that he shared a common intention with the other accused to commit the murder of the deceased. Considering the role that A-3 has played, we hold him guilty of the offence under Section 304 Part II IPC.

31. The perusal of the evidence would reveal that it is not the case of the prosecution that A-3 was along with the other accused while the deceased was dragged to the house. The deposition would reveal that after the other accused assaulted the deceased with sword, A-3 came thereafter and assaulted the deceased with stone lying there. We, therefore, find that the prosecution has not been in a position to establish that A-3 shared the common intention with the other accused to cause the murder of the deceased.

32. For the reasons stated above, we uphold the



conviction and sentence of A-1, A-2 and A-4 under Section 302 read with Section 34 IPC and dismiss their Criminal Appeal No. 2852 of 2023 against the judgment of the High Court of Telangana in Criminal Appeal No. 308 of 2005 dated 26.04.2022. We acquit A-3 of the conviction and sentence under Section 302 read with Section 34 and convict him under Section 304 Part II and sentence him to undergo imprisonment for 10 years. To this extent, the appeal of A-3 is allowed by altering the conviction under Section 302 to Section 304 Part II IPC.”

- 25.** A incised wound on a vital part is undoubtedly sufficient in the ordinary course of nature to cause death. But the question is not capacity of the injury; it is whether, in these circumstances, we can safely infer intention to cause death or that very particular injury. Given the heat of passion, absence of premeditation, and the occurrence of a single blow, we are not persuaded that the prosecution has met the burden of proving intention beyond a reasonable doubt. At the very least, the appellant knew that causing injury with a knife was likely to cause death. That maps squarely attracting Section 304 Part II.
- 26.** The record satisfies the Chronological four-part test: *(i) sudden quarrel; (ii) no premeditation; (iii) heat of passion; (iv) no evidence of undue advantage or cruelty (there is no repetition of blows; the weapon appears to be available in the house; the assault was momentary)*. Thus, Exception 4 is attracted; the offence cannot be murder.



- 27.** So far as recovery and medical consistency are concerned, the recovery of knife (Ex. P-11) on the appellant's disclosure and the medical opinion (Ex.P-17) that the said weapon could have caused the injury sustained by the deceased, undoubtedly, fortify authorship and connect the appellant with the assault. These circumstances lend assurance to the prosecution version. However, such factors, by themselves, cannot automatically elevate the offence to murder punishable under Section 302 IPC, particularly when the surrounding circumstances demonstrate that the incident occurred all of a sudden due to the deceased's objection to the appellant's gambling and was confined to a single blow.
- 28.** On careful consideration of the ocular and medical evidence, it is evident that the incident was not a pre-planned or premeditated act. The occurrence arose due to the deceased's objection to the appellant's gambling, in the heat of passion. In such a setting, it would not be proper to ascribe to him the intention of causing death or of inflicting that very particular injury which was sufficient in the ordinary course of nature to cause death. The single blow on the vital part of the chest, however, certainly warrants imputation of knowledge on the part of the appellant that his act was likely to cause death. Therefore, while intention is not proved beyond reasonable doubt, knowledge is clearly attributable, and the case squarely falls within the ambit of Section 304 Part II IPC.



- 29.** In view of the above, this Court holds that the appellant is guilty of culpable homicide not amounting to murder under Section 304 Part II IPC. His culpability is writ large from the fact that he inflicted the fatal blow with a knife upon Amit Chourasiya, which ultimately resulted in his death. Nonetheless, the attendant circumstances, namely the absence of premeditation, the occurrence being in the course of a sudden quarrel, justify the alteration of conviction from Section 302 IPC to Section 304 Part II IPC.
- 30.** As regards sentence, this Court is mindful of the need to strike a balance between deterrence and proportionality. While the act of the appellant cannot be condoned and calls for societal censure, the mitigating features, particularly the fact that the incident was not a cold-blooded or calculated act of murder but arose spontaneously, must also weigh in sentencing. Therefore, in the considered opinion of this Court, rigorous imprisonment for a period of seven years under Section 304 Part II IPC would meet the ends of justice.
- 31.** Accordingly, conviction and sentence of the appellant under Section 302 IPC are set aside. However, he is convicted under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for 7 years. It is stated at the Bar that the appellant is in jail since 08.11.2018 and has completed more than more than 6 years and 10 months of jail sentence. He is directed to



serve out the sentence as modified above.

- 32.** The criminal appeal is **partly allowed** to the extent indicated herein-above.
- 33.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellant is undergoing the jail term, to serve the same on the Appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
- 34.** Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice