



2026:CGHC:3195-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1984 of 2025**

Shaniram Manjhi S/o Late Etwaram Manjhi Aged About 55 Years R/o Village Katkalo, Dumarpara, P.S. Sitapur, District : Surguja (Ambikapur), Chhattisgarh

... Appellant**versus**

State of Chhattisgarh Through S.H.O. Sitapur, Surguja, District : Surguja (Ambikapur), Chhattisgarh

... Respondent

For Appellant	: Mr. Wasim Miyan, Advocate
For Respondent/State	: Mr. S.S. Baghel, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board**Per Ramesh Sinha, Chief Justice****20.01.2026**

1. Heard Mr. Wasim Miyan, learned counsel for the appellant as well as Mr. S.S. Baghel, learned Government Advocate, appearing for the appellant.
2. This criminal appeal filed by the appellant/accused under Section 415(2) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') is directed against the impugned judgment of conviction and order of sentence dated 12.08.2025 passed by the learned Sessions Judge, Surguja (Ambikapur), District - Surguja (C.G.) in



Sessions Trial No. 06 of 2020, whereby the appellant/accused has been convicted for the offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment and fine of Rs.100/-, in default of payment of fine, additional SI for 03 months. Further the appellant has also been convicted under Section 323 of IPC and sentenced to undergo SI for 01 month, with a direction to run both the sentences concurrently.

3. Case of the prosecution, in brief, is that the complainant / informant Laxman Manjhi appeared at the Sitapur Police Station on 17/11/2019 and filed a verbal complaint stating that his father, Shaniram, had doubts about his mother, Manmati's character. On the date of the incident, he and his wife, Basanti, had gone to work, while accused Shaniram and his wife, Manmati, were at home. When his wife, Basanti Manjhi, went to drink water, she saw accused Shaniram standing in the courtyard with an axe in his hand, which was covered in blood. Manmati was lying dead on the ground, her neck severed, and blood was on the floor. Seeing this incident, his wife, Basanti, became alarmed and rushed home. Meanwhile, when neighbor Nadhiyaro Bai arrived at their house, accused Shaniram Manjhi also assaulted Nadhiyaro with a stick. During the intervention, Laxman Manjhi tied accused Shaniram with a rope and informed the surrounding people and the Kotwar (village police officer). Based on the oral information provided by complainant Laxman Manjhi, a Case Intimation No. 94/2019, Ex.P-14, was recorded at Sitapur Police Station.



Subsequently, a First Information Report (FIR) bearing Crime No. 136/2019, Ex.P.-1, was registered against the accused under sections 302 and 323 of the Indian Penal Code for the murder of his wife, Manmati and causing simple injury to injured victim.

4. During the investigation, after giving notice to the witnesses (Ex.P.3), in their presence, the Panchnama (Ex.P.4) of the dead body of the deceased Manmati was prepared. The dead body of the deceased Manmati was sent to the Primary Health Centre-Sitapur for postmortem by Constable No.-68 Nirmal Kuren, from where the postmortem report (Ex.P.11) was received. On the basis of the accused's memorandum (Ex.P.7), the axe and stick were seized as per Ex.P.8. An application, Ex.P-21, was submitted to the Tehsildar, Narmadapur for providing a site plan of the incident A site map of the incident was prepared by the Patwari as per Ex. P-10. Blood-soaked soil and plain soil were seized from the scene as per Ex.P-6. The injured victim was taken to CHC, Sitapur, for medical treatment by female constable Pushpa Lakra No. 604, who provided her medical report as per Ex.P-12. The accused was arrested and an arrest panchnama (Ex.P-19) was prepared. The seized items were sent to FSL, Ambikapur, via letter Ex.P-22 through the Superintendent of Police, Surguja, from where the FSL report Ex.P-24 was received. After completing the remaining stages of the investigation, the final report was submitted to the Court of the Judicial Magistrate First Class, Sitapur.



5. Judicial Magistrate First Class, Sitapur registered the case as Criminal Case No. 533/2019 and since the case was exclusively triable by the Sessions Court, on being presented to the Court of Sessions, Ambikapur, District - Sarguja on 03/01/2020 as per the provision of Section 209 of the Cr.P.C., the case was registered as a Sessions case and the trial of the case was started by the Sessions Judge.
6. On 23/01/2020, when the charge of offence under Sections 302 and 323 of the IPC was framed against the accused, he denied the allegations of the prosecution and declared himself innocent during his trial and expressed his intention to present evidence in his defence, but the accused has not produced any witness in his defence.
7. In support of its case, the prosecution has examined as many as 09 witnesses, namely, Laxman Manjhi (PW1), Basanti (PW2), Veer Singh (PW3), Nadhiyaro (PW4), Jaimuni Nag (PW5), Shravan Kumar (PW6), Patwari Kannilal Beck (PW7), Dr. S.N. Paikra (PW8), Deputy Police Superintendent Anup Kumar Ekka (PW-9).
8. The Sessions Judge upon appreciation of oral and documentary evidence available on record, by its judgment dated 12.08.2025, convicted and sentenced the appellant as aforementioned, against which, this criminal appeal has been filed.
9. Mr. Wasim Miyan, learned counsel for the appellant submitted that



the learned trial Court is absolutely unjustified in convicting the appellant for the offence punishable under Section 302 of the IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. He further submitted that if the case of the prosecution is accepted on the face of it, then also the appellant is said to have caused injuries to deceased on the spur of the moment and heat of passion, as the appellant used to suspect on the character of his deceased wife, who used to go here and there without intimating him and on the date of incident at about 7.30 am, when the appellant asked his wife that from where she had worn new sari, petticoat and blouse, who had given the same, her wife started speaking rudely and abusively, on account of which, on the spur of moment and heat of passion, the appellant brought the axe (tangi) kept in the room and stuck a strong blow on her neck, due to which the deceased died. There was no motive or intention on the part of the appellant to cause death of the deceased and only on account of sudden hot talk and quarrel, under heat of passion and in anger, the appellant caused injuries to the deceased, which caused her 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



appellant is in jail since 17.11.2019 and he has completed near about 06 years and 02 months of jail sentence and at present, the age of the appellant is about 61 years old, therefore, considering the period he had already undergone and his age, he be awarded the sentence of the period already undergone by him.

10. On the other hand, Mr. S.S. Baghel, learned Government Advocate, appearing for the respondent/State supports the impugned judgment and submits that the appellant has caused murder of the deceased deadly attacking her with an axe due to which he succumbed to injuries and while intercepting, the appellant has also assaulted PW-4 Nadiyaro with stick due to which she became unconscious though the same was simple in nature, therefore, the learned trial Court has rightly convicted the appellant under Section 302 of 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.
11. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
12. **The first question for consideration would be whether the deceased died under unnatural circumstances ?**
13. The trial Court after appreciating oral and documentary evidence available on record particularly relying upon the statement of



Dr.S.N. Painkra (PW-8), who had conducted postmortem over the dead body of deceased Manmati, has stated that while conducting postmortem he found that there was a lacerated wound over the laryngeal area of the neck, measuring 5 x 3 x 2 inches, with a clot of blood in it and opined that cause of death is hemorrhagic shock due to injury on neck and nature of death is homicidal.

14. After hearing learned counsel for the parties and after considering their submissions, we are of the considered opinion that the finding recorded by the trial Court that death of deceased Manmati 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.
15. Now, the next question for consideration would be whether the accused/appellant herein is the perpetrator of the crime in question, which the learned trial Court has recorded in affirmative by relying upon the testimony of Dr.S.N. Painkra (PW-8) and further relying upon the testimonies Laxman Manjhi (PW-1) and Basanti (PW-2), who are son and daughter-in-law of the appellant and the deceased, who had specifically stated that they had seen the accused holding a blood-soaked axe near his wife's dead body. Furthermore, relying upon the statement of Nadhiyaro (PW-4), to whom the appellant has also assaulted by stick on the same day.
16. Thus, on the basis of testimonies of aforesaid prosecution witnesses, it is clear that it is the appellant herein who on the



fateful date and time has caused grievous injuries to the deceased, due to which she died. As such, 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 her death. Accordingly, we hereby affirm the said finding.

17. 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 ?
18. The cause of death assigned in the post-mortem report of the deceased as already noticed are 'hemorrhagic shock due to injury on neck'. 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 ***Rampal Singh Vs. 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.
19. The Hon'ble Supreme Court in the case of ***Basdev Vs. 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.”

20. 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 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.

21. 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

3 (2002) 3 SCC 327



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

22. The Supreme Court in the matter of ***Gurmukh Singh v. State of Haryana***⁴ 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 the accused;

4 (2009) 15 SCC 635



- (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.”

23. 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

5 (2012) 8 SCC 450



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 cause death.

24. 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 I 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

6 (2017) 3 SCC 247



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”.

25. 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.



26. Further, the Hon'ble 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.”

27. The Hon'ble Supreme Court in a recent judgment in the case of ***Anbazhagan 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 was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act

⁷ (2019) 6 SCC 122



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 cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused



and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

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

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

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

28. Reverting to the facts of the present case in light of principles of law laid down by their Lordships of the Supreme Court in the



above-stated judgments (*supra*), it is quite vivid that the appellant used to suspect on the character of his deceased wife, who used to go here and there without intimating him and on the date of incident at about 7.30 am, when the appellant asked his wife that from where she had worn new sari, petticoat and blouse, who had given the same, her wife started speaking rudely and abusively, on account of which, on the spur of moment and heat of passion, the appellant brought the axe (*tangi*) kept in the room and stuck a strong blow on her neck, due to which the deceased died. Though there was no motive or premeditation on the part of the appellant to cause death of deceased, but by attacking with sharp edged axe he has intention to cause death of deceased and by doing so, he must have had the knowledge that such injuries inflicted by him would likely to cause death of the deceased, as such, his 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.

29. Considering the aforesaid facts and circumstances of the case and also taking into consideration that at present appellant is aged about 61 years, and he is in jail since 17.11.2019 and he has already undergone about 06 years and 02 months of



imprisonment, the conviction of the appellant under Section 302 of the IPC can be altered/converted to Section 304 Part-I of the IPC.

30. **Accordingly, conviction of the appellant under Section 302 of the IPC is set aside, however, he is convicted under Section 304 Part-I of the IPC and sentenced to undergo rigorous imprisonment for 10 years.**
31. The criminal appeal is **partly allowed** to the extent indicated hereinabove.
32. It is stated that the appellant is in jail, he shall serve out the remaining sentence as modified by this Court.
33. 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 and also send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence 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.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice