



2026:CGHC:18930-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2390 of 2025

1 - Balsingh Nuruti S/o Late Manguram Nuruti Aged About 45 Years R/o Village-Aamakot, Police Station Siksod, Distt. North Bastar Kanker (C.G.)

... Appellant(s)

versus

1 - State Of Chhattisgarh Through Station House Officer, Police Station Siksod, Distt. North Bastar Kanker (C.G.)

... Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	: Shri Vivek Kumar Shrivastava, Advocate
For Respondent/State	: Shri Shailendra Sharma, PL

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

Per Ravindra Kumar Agrawal, J.
24.04.2026

Heard Shri Vivek Kumar Shrivastava, learned counsel for the appellant. Also heard Shri Shailendera Sharma, PL, appearing for the State.

1. Present appeal has been listed for consideration on IA No.2 of 2025 application for suspension of sentence and grant of bail. However, considering the fact that appellant is in jail since 28.12.2019, with the consent of the parties, matter is heard finally.

2. Present appeal under section 415 (2) of the BNS 2023 filed by the appellant against the impugned judgment of conviction and sentence dated 26.11.2024 passed by the learned Additional Session Judge, Banupratappur, District-North Bastar, Kanker in Session Trial-15 of 2020 whereby appellant has been convicted and sentenced in the following manner with default stipulation:

Conviction	Sentence
Under Section 325 of the IPC {Section 117(2) of Bharatiya Nyaya Sanhita, 2023}	RI for three years, and to pay fine of Rs.500/-
Under Section 302 of the IPC {Section 103(1) of Bharatiya Nyaya Sanhita, 2023}	Life imprisonment, and to pay fine of Rs.500/-

3. Prosecution case in brief is that on 27.12.2019, complainant-Balram Nuruti, PW1, lodged dehati merg intimation Ex.P2 informing that in the evening of the day before, he came back to his fields from the market, he saw his mother lying in the field in pool of blood. When he asked from his younger brother Baldev Nuruti PW2, he disclosed that there was a quarrel between the appellant Balsingh Nuruti and the deceased Jugteenbai, and the appellant assaulted the deceased by danda. The incident was intervened by Baldev Nuruti and he too was assaulted by the appellant. He took his mother to the hospital where she was declared dead. Based on the dehati merg intimation, dehati nalishi Ex.P1 was also recorded by the police. Inquest of the dead body Ex.P7 was prepared by the police in presence of

the witnesses and the dead-body was sent to the community health centre, Antagarh, where PW9 Dr.Sheetal Dugga conducted postmortem of dead body of the deceased and found the injury on right frontal region, left mandible region and found fracture of manubrium and clavicle bone. Doctor has opined that cause of death was head injury and nature of death was homicidal and gave postmortem report Ex.P8. Injured Baldev Nuruti was also sent for medical examination to the Community Health Centre, Antagarh, where he too was examined by PW9 Dr.Sheetal Dugga. While medically examining the injured Baldev Nuruti, doctor noticed one tear on frontal part of the head with swelling on right hand wrist joint and gave his report Ex.P16. He advised for X-ray of right wrist joint. After examining the X-ray report, he found fracture of Alna Bone of right wrist which was grievous in nature. Spot map Ex.P3 was prepared by the police, Blood stained and plain soil and one part of the danda was seized from the spot vide seizure memo Ex.P13. Sport map Ex.P4 was prepared by the Patwari. Merg intimation Ex.P18 was recorded at police station Sixole and then FIR Ex.P19 was registered against the appellant for the offence under Section 302 of the IPC. Appellant was taken into custody on 28.12.2019 and his memorandum statement Ex.P11 was recorded. Based on his memorandum statement, the Bamboo Club in two pieces, T-shirt, and half pant of the appellant have been seized from him vide seizure memo Ex.P.12. Pieces of bamboo club were sent for their query report to the doctor who after examining the articles gave query report Ex.P17 and opined that injury found on the body of the deceased could have been caused by the said pieces of bamboo club and for confirmation of blood he referred them for chemical examination. The

blood stained and plain soil, parts of the danda seized from the spot, pieces of bamboo club, T-shirt and half pant seized from the appellant were sent for their chemical examination to Regional FSL, Jagdalpur from where FSL report was received vide Ex.P27 and according to the FSL report, human blood was found on half pant of the appellant and blood was found on the blood stained soil, part of the danda seized from the spot and one piece of danda seized from the appellant.

4. Statement of the witnesses under Section 161 of CrPC were recorded and after completion of usual investigation, charge-sheet was filed against the appellant for the offence under section 302 and 325 IPC before the learned Judicial Magistrate First Class, Bhanupratapur, Kanker.

5. The case was committed to the learned court of North Bastar, Kanker from where it has been transferred to the learned trial court for its trial. The learned trial court has framed charge against the appellant for the offence under sections 302, and 325 of the IPC. Appellant denied the charge and claimed trial.

6. In order to prove the allegation against the appellant, prosecution has examined as many as 10 witnesses. Statement of the appellant under section 313 of the CRPC has also been recorded in which he denied the circumstances appearing against him pleaded innocence and submitted that he is innocent and has been falsely implicated in the case.

7. After appreciation of oral as well as documentary evidence lead by the prosecution, learned trial court has convicted the appellant and sentenced him as mentioned in the earlier part of the judgment. Hence this appeal.

8. Learned counsel for the appellant would submit that prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict him for the offence in question. There is no motive to commit the murder of the deceased who is his own mother. There is no independent witness in the case and the injured witness PW2 Baldev Nuruti is an interested witness, whose vision is very less and he is unable to see. Therefore, it cannot be said that the incident was witnessed by him. It is only an apprehension that the appellant himself assaulted the deceased. Even from the FSL report, in absence of any blood group, the same cannot be considered as incriminating evidence against the appellant to connect him with the offence in question. In alternative, he would submit that there was a property dispute between the family members. PW1 Balram Nuruti & PW2 Baldev Nuruti are own brothers of the appellant and there was no property partition between them. On the issue of property partition, there was altercation took place in the house and the deceased started shouting and in that even the incident occurred which is on the heat of passion and there was no premeditation. Therefore, the offence of the appellant, if any, does not travel beyond scope of 304 of the IPC and therefore, by altering his conviction from the offence of 302, to 304 Part-II IPC, his sentence may be

reduced for the period already undergone by him, as the appellant is in jail since 2019.

9. On the other hand, learned counsel appearing for the state opposed the submissions made by learned counsel for the appellant and submitted that prosecution has proved its case beyond reasonable doubt but for minor omissions and contradictions, the evidence of prosecution witnesses is consistent and sufficient to hold the appellant guilty for commission of murder of the deceased, who is none other but his own mother. Repeated blows by danda were given by the appellant upon the deceased which reflected from her postmortem report and when the injured Baldev Nuruti PW2 intervened, he too was being assaulted. By this act of the appellant, his intention was clear to commit murder of the deceased. Therefore, witness PW2 duly supported the prosecution case which has been corroborated by the FSL report and other evidence available on record. Therefore, there is no scope for interference by this court in this appeal and the same is liable to be dismissed.

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

11. The first and foremost question arises for consideration is about the nature of death of the deceased that whether the deceased died due to homicidal death or by any other reason.

12. The prosecution has relied upon the evidence of Dr. Sheetal Dugga PW9, who conducted postmortem of the dead body of the deceased and

gave report Ex.P8. He stated in his evidence that he conducted the postmortem of the dead body of the deceased on 27.12.2019 and while conducting the postmortem, he noticed incised wound on right frontal region, lacerated wound on left mandible region. He also found fracture of manubrium and clavicle bone and also left 1, 2, 3 ribs. Doctor has opined that cause of death was head injury and nature of death was homicidal and gave postmortem report Ex.P8. He also proved query report Ex.P17.

In cross examination, he admitted that if the assault would have been made by the danda, the injury depends upon the kind of danda. The assault may cause death or may not. The defense could not extract any material in his cross-examination so that the injury found on the body of the deceased or the nature of death could be disbelieved. Homicidal death of the deceased was further supported by the witness of dehati merg intimation Ex.P1, given by PW1 Balram Nuruti who saw injuries on the body of the deceased and also by the witnesses of inquest PW7 Samsai and PW8 Nirmal Kumar Tandia, who found various injuries of the dead body of the deceased and thus finding recorded by the learned trial court that the death of the deceased Jugteenbai is homicidal in nature is based on proper appreciation of evidence and material available on record.

13. With respect to the involvement of the present appellant in the offence in question, the case of the prosecution based on the evidence of PW2 Baldev Nuruti, who is injured witness and brother of the appellant. PW2 has stated in his evidence that appellant-Balsingh Nuruti is his brother and deceased was his mother. They were residing together. On the date of

incident when he heard noise of his mother that Balsingh is assaulting her, he went on the spot and tried to intervene but the appellant assaulted his mother and he also made assault upon him by danda. His elder brother Balram Nuruti PW1 has gone to Nawagarh Market. When he came from the market, his mother was lying there in pool of blood and then he tried to arrange a vehicle. He informed his elder brother PW1 Balram Nuruti that Balsingh Nuruti assaulted their mother.

In cross-examination, he admitted that he lost his vision by both the eyes and he can perform his routine work with the help of others. He denied that since he could not see properly, he could not tell as to who assaulted his mother. He remained firm in saying that appellant- Balsingh Nuruti assaulted their mother. The defense had tried to put various questions to this witness. However, this witness remained firm in saying that Balsingh assaulted their mother by danda and he remained firm in saying that appellant Balsingh Nuruti is the person who assaulted their mother. PW2 Baldev Nuruti is the injured witness, who too injured on his body. Though he is son of the deceased but also brother of the appellant. He cannot be said to be an interested witness. Rather, he would be best witness to depose about the incident, which he did to the best of his ability. From his evidence, nothing could be extracted by the defense that appellant has not committed any offence. The injury found on the body of the injured PW2 Baldev Nuruti has been proved by PW9 Dr. Sheetal Dugga, who gave his MLC report Ex.P16 and found injury on his frontal part of head and right wrist joint and found fracture of ulna bone of right wrist. The injuries found on the body of the

Baldev Nuruti injured witness further proved his presence on the spot and it is the allegation that when he tried to intervene with the appellant while assaulting her, appellant assaulted him and his mother.

14. The involvement of the appellant in the offence in question further proved in the FSL report Ex.P27 in which the blood was found on the half pant of the appellant, as well as the pieces of the bamboo club seized from him for which there is no explanation in his 313 CrPC statement.

15. PW1 Balram Nuruti, brother of the appellant and son of the deceased. He stated in his evidence that when he came back from the market his brother Baldev Nuruti PW2 informed him about the incident and he saw the dead body of his mother lying in pool of blood. Then he tried to arrange vehicle and thereafter, he went to the police station for lodging report. Though this witness has been declared hostile, however he supported the prosecution case that when he enquired about the incident from his brother Baldev Nuruti- PW2, he informed him that Balsingh Nuruti assaulted his mother and himself.

In cross-examination, he admitted that his brother Baldev Nuruti is having very less vision and differently able person. He admitted that villagers have raised suspicion that his brother may have caused injuries to his mother. Police have taken his brother Balsingh Nuruti in custody on suspicion. Since he was not an eye witness to the incident he was only informed by his brother Baldev Nuruti, PW2 that Balsingh Nuruti assaulted the deceased by danda which he supported the evidence of PW2 Baldev

Nuruti because it is the evidence of PW2 also that his brother Balram came from the market and he disclosed the incident to him.

16. From the above evidence, the involvement of the appellant in the offence in question has been established by the prosecution that he is the perpetrator of the crime in question.

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

18. Cause of death assigned in the postmortem report of the deceased is 'Head injury and nature of death is homicide'. 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 case of **Rampal Singh Vs State of Uttar Pradesh**¹.

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, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the

¹(2012) 8 SCC 289

² AIR 1956 SC 488

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 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

³ (2002) 3 SCC 327

⁴ (2009) 15 SCC 635

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.”

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 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.

⁵ (2012) 8 SCC 450

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.

⁶ (2017) 3 SCC 247

Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

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

“9. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on

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

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

⁷(2019) 6 SCC 122

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 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.”

28. Referring to the facts of the present case in light of the principles laid down by Hon’ble Supreme Court in the above stated judgments, it is quite vivid that the incident occurred suddenly in the course of quarrel between the appellant and the deceased over dispute of family property. Prosecution evidence itself indicates that there was verbal altercation immediately preceding the incident. There is nothing on record to show that accused has any prior intention and preplan to commit murder of the deceased. The incident appears to have occurred in a spur of moment.

29. Although the assault was made on the vital part of the body i.e. on chest, the concerned circumstances clearly indicate that act of the appellant comes within the Ambit of exception 4 of Section 300 of the IPC as it was committed without premeditation, in a sudden fight, in the heat of passion and as such his case would fall within the purview of except 4 of section 300 IPC as Act of the Appellant herein completely satisfy the four necessary ingredients of exception 4 to the section 300 IPC. They are (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.

30. Thus upon careful consideration of entire evidence on record including relevant testimony of witnesses, PW2 Baldev Nuruti and other witnesses PW1 Balram Nuruti and the medical evidence of PW9 Dr.Sheetal Dugga and the FSL report Ex.P27 confirming presence of blood on the weapon danda and half pant of the appellant, this court is of the considered opinion that the prosecution has successfully proved the offence of the appellant beyond any reasonable doubt that the accused assaulted the deceased which resulted into death of the deceased Jugteenbai and made injury and fracture of right alna bone of PW2 Baldev Nuruti.

31. However, considering the circumstances in which the incident occurred in a sudden quarrel, without any premeditation and in heat of passion, the act of the appellant would fall within the ambit of culpable homicide not amounting to murder.

32. Accordingly, conviction of the appellant- Balsingh Nuruti under Section 302 of the IPC is set aside, instead thereof, he is convicted under Section 304 Part II of the IPC and sentenced to undergo RI for 7 years.

33. Appellant is reported to be in jail since 28.12.2019 being the date of arrest. He is directed to serve out the sentence as modified above.

34. Criminal Appeal is **partly allowed** to the extent indicated herein above.

35. 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 Service Committee.

36. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice