

GAHC010103992022



2026:GAU-AS:1043-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.APP. NO. 106/2022

Mukul Sk @ Mukul Hussain, S/o Late Bokta
Zamal, Resident of Village – Futamari Niz
Chirakhowa, P.S.- Mankachar, P.S. – Kalapani,
District – South Salmara, Mankachar, Assam,
Pin – 783155.

.....Appellant

-VERSUS-

1. The State of Assam, Represented by P.P.
Assam.
2. Md. Aijal Hoque, S/o Late Abdul Goni, Village
– Futamari, P.O. – Kalapani, P.S. – Mankachar,
District – South Salmara, Mankachar, Pin –
783135, Assam.

.....Respondents

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates :

For the Appellant : Mr. S. Das, Advocate

For the Respondent : Mr. R.R. Kaushik,
Additional Public Prosecutor, Assam

Date on which judgment is reserved : Not applicable

Date of Hearing : 21.01.2026 & 22.01.2026

Date of pronouncement of judgment : 22.01.2026

Whether the pronouncement is of the
Operative part of the judgment ? : No

Whether the full judgment has been
Pronounced ? : Yes

JUDGMENT & ORDER

1. This criminal appeal under Section 374[2], Code of Criminal Procedure, 1973 [‘the Code’ or ‘CrPC’, for short] is directed against a Judgement and Order dated 19.04.2022 passed by the Court of learned Sessions Judge, South Salmara – Mankachar in Sessions Case no. 19 of 2021 [New]/Sessions Case no. 339 of 2018 [Old]. By the Judgment and Order dated 19.04.2022, the accused-appellant has been convicted for the offence of murder under Section 302,

Indian Penal Code [IPC] and he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo simple imprisonment for another month.

2. It was on 26.06.2017, a First Information Report [FIR] was lodged before the In-Charge, Kalapani Out Post, Kalapani by one Md. Aizal Hoque as the informant. In the FIR, the accused-appellant and one Hamida Khatun were named as accused. It was inter-alia alleged that at around 03-30 p.m. on 25.06.2017, a cow of the informant's nephew, Mozidur Rahman tore the tether and entered the vegetable garden of the accused persons. The accused persons caught the cow and took it to their house. The cow was thereafter, kept tied in their house compound. The informant further stated that when Mozidur Rahman was on his way to bring the cow back, the accused-appellant, with the help of Hamida Khatun, way laid Mozidur Rahman on the public road near their house and hacked him on his neck with a beki dao. As a result, the head of Mozidur Rahman got severed from his body. Blows were also dealt on other parts of the person of Mozidur Rahman with the dao. Mozidur Rahman died instantaneously on the spot. Later on, the neighbours and the informant informed the In-Charge, Kalapani Out Post about the incident and handed over the deadbody.

3. On receipt of the FIR, the In-Charge, Kalapani Out Post registered the same vide General Diary Entry no. 380 dated 26.06.2017 and thereafter, forwarded the FIR to the Officer In-Charge, Mankachar Police Station for registering a case under proper sections of law while taking up the investigation of the case himself. On receipt of the FIR, the Officer In-Charge, Mankachar Police Station registered the same as Mankachar Police Station Case no.

506/2017 [corresponding G.R. Case no. 636/2017] under Sections 341/326/302/34, IPC on 27.06.2017 and allowed the In-Charge, Kalapani Out Post to carry on with the investigation.

4. Prior to registration of General Diary Entry no. 380 on 26.06.2017, another General Diary Entry no. 365 was entered into in the General Diary by the In-Charge, Kalapani Out Post on 25.06.2017 at 05-00 p.m. on 26.06.2017. As per General Diary Entry no. 365, a telephonic information was received from one Golap Hussain of Village – Fetamari to the effect that a murder was committed in the village and Police personnel should visit to the place of occurrence.

5. Pursuant to receipt of such information about death and General Diary Entry no. 365, the In-Charge, Kalapani Out Post along with staff proceeded immediately to the place of occurrence [P.O.], that is, a place on the public road in Village – Fetamari and reached the P.O. at around 05-45 p.m. On reaching the P.O., the In-Charge, Kalapani Out Post, who subsequently testified as P.W.7, found the deadbody of the deceased, Mozidur Rahman lying on the public road, which was a katcha road, surrounded by persons from the nearby locality. He then took steps to take the deadbody to the Civil Hospital at Hatsingimari.

6. At the Civil Hospital, Hatsingimari, P.W.7 conducted inquest on the deadbody of the deceased and prepared an Inquest Report [Ext.-4]. During inquest, P.W.7 found that the deceased had cut injuries on the back of his head, left cheek, left side of the neck, legs and right-hand wrist. The deadbody was thereafter, forwarded to Dhubri Civil Hospital for post-mortem examination. The post-mortem examination on the deadbody of the deceased was performed at

Dhubri Civil Hospital by the Medical & Health Officer [M&HO]–I on 26.06.2017 and the Autopsy Doctor, who subsequently testified as P.W.6, prepared a Post-Mortem Examination [PME] Report [Ext.-2] recording his findings and opinion therein.

7. During the course of investigation, the I.O. [P.W.7] recorded the statements of witnesses under Section 161, CrPC and prepared a Sketch Map of the P.O. [Ext.-A]. Vide a Seizure List, M.R. no. 58/2017 [Ext.-1], the I.O. [P.W.7] after carrying out a search in the house premises of the accused-appellant at Fetamari, seized four objects/articles :- [1] one 'dao' of blade length, 10 inches [approx.] with wooden handle length, 8 inches [approx.]; [2] one knife of blade length, 6 inches [approx.] with wooden handle of length, 5 inches [approx.]; [3] one iron rod, 'khonti' of length, 38 inches [approx.]; and [4] one bamboo stick of length, 39 inches [approx.] in presence of two witnesses viz. [i] Abdul Baten [P.W.2]; and [ii] Monirul Islam [P.W.5]. The accused-appellant was arrested during investigation. Subsequently, he was released on bail. After completing investigation into the case, Mankachar Police Station Case no. 506/2017, the I.O. [P.W.7] submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 234/2017 on 26.09.2017 finding a prima facie case established to proceed against the present accused-appellant [hereinafter also referred to as 'the accused', at places, for ease of reference] for commission of the offence of murder under Section 302, IPC. According to the I.O. [P.W.7], there was insufficient evidence against Hamida Khatun to submit the charge-sheet.

8. On receipt of the Charge-Sheet submitted in connection with Mankachar Police Station Case no. 506/2017 [corresponding G.R. Case no. 636/2017], the

Court of Sub-Divisional Judicial Magistrate [M], Hatsingimari, District – Dhubri [‘the S.D.J.M., Hatsingimari’, for short] as the committal court secured the appearance of the accused-appellant on 26.10.2018 by issuance of process. On appearance of the accused-appellant, he preferred an application with a prayer to allow him to remain on previous bail and the said prayer was allowed by the Court of S.D.J.M., Hatsingimari till his appearance before the Court of Sessions, Dhubri on 15.12.2018. As the copies were ready, the same were furnished to the accused-appellant as per the provisions of Section 207, IPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the Court of S.D.J.M., Hatsingimari committed the case record of G.R. Case no. 636/2017 to the Court of Sessions, Dhubri in conformity with Section 209, CrPC. The Public Prosecutor was notified accordingly.

9. On receipt of the case record of G.R. Case no. 636/2017, the Court of Sessions, Dhubri registered the same as Sessions Case no. 339/2018 [Old]. Subsequently, it was registered as Sessions Case no. 19/2021 [New], when the case record stood transmitted to the newly created Court of Sessions, South Salmara – Mankachar [‘the Trial Court’, for short]. Before the Trial Court, the case was opened by the learned Public Prosecutor. After hearing the learned Public Prosecutor and the learned defence counsel; and upon perusal of the materials on record, the Trial Court proceeded to frame the following charge against the accused-appellant on 18.02.2019 :-

That, you on 25.06.2017, at about 03-30 p.m. at Village – Fetamari [Domalkona] under Mankachar Police Station, committed murder by intentionally causing the death of Md. Mozidur Rahman nephew of the complainant Md. Aizal Hoque and

that you thereby committed an offence punishable under Section 302 of the Indian Penal Code [IPC] and within the cognizance of the Court of Session.

10. When the charge was read over and explained to the accused-appellant, the accused pleaded not guilty to the charge and claimed to be tried. During the course of the trial, the prosecution side examine the following prosecution witnesses and exhibited the following documents as prosecution exhibits in order to bring home the charge of murder against the accused :-

Prosecution witnesses	
P.W.1	Jorina Khatun
P.W.2	Aijal Hoque – Informant
P.W.3	Abdul Baten
P.W.4	Shah Alom
P.W.5	Monirul Islam
P.W.6	Dr. Jintu Sharma – Medical & Health Officer
P.W.7	T.S. Singh – Investigating Officer [I.O.]
Prosecution Exhibits	
Ext.-1	Seizure List
Ext.-2	Post-Mortem Examination [PME] Report
Ext.-3	Extract copy of GDE no. 365 dated 25.06.2017
Ext.-4	Inquest Report
Ext.-5	First Information Report [FIR]
Ext.-6	Charge-Sheet

11. After closure of the evidence from the prosecution side, the accused was examined under Section 313 [1][b], CrPC to provide him the opportunity to explain the incriminating circumstances appearing against him in the evidence of the prosecution witnesses/evidence. The plea of the accused was falsity in the prosecution case. When the accused was asked to adduce evidence in his

support, he initially declined to adduce any evidence.

12. Subsequently, the accused filed a petition to adduce evidence under Section 315, CrPC and the said prayer was allowed. Thereafter, the defence side adduced the evidence of the following four persons as defence witnesses :-

Defence Witness	
D.W.1	Hamida Bibi
D.W.2	Mukul Sk – the accused
D.W.3	Mozibor Rahman
D.W.4	Ilias Rahman

13. After closure of evidence; and after hearing the learned counsel for the parties; and upon appreciation of the evidence/materials on record, the Trial Court reached the finding of guilt against the accused-appellant for committing the offence of murder. After hearing the accused on the point of sentence under Section 235[2], CrPC, the Trial Court had delivered the impugned Judgment and Order of conviction and sentence, assailed in the present appeal.

14. We have heard Mr. S. Das, learned counsel for the accused-appellant; and Mr. R.R. Kaushik, learned Additional Public Prosecutor, Assam for the respondent State.

15. Mr. Das, learned counsel appearing for the accused-appellant has submitted that though few of the prosecution witnesses had claimed to have witnessed the incident of assault on the deceased, their testimonies are not consistent and corroborative. The defence had led evidence through four

prosecution witnesses and from the evidence of the defence witnesses, it would be clear that there was involvement of a number of Bangladeshi nationals. He has further contended that the case of the prosecution has become vulnerable because of failure to connect with any alleged weapon of assault with the death of the deceased. It is his further contention that even if one reaches a view that it was due to assault on the deceased by the accused-appellant, the deceased had met instantaneous death at the place of occurrence, the case would still fall within Exception-1 of Section 300, IPC making the offence not murder but culpable homicide not amounting to murder. To press such point, Mr. Das has referred to a decision of the Hon'ble Supreme Court in **Gurmukh Singh vs. State of Haryana, [2009] 15 SCC 635**. Relying on **Gurmukh Singh** [supra], Mr. Das has submitted that the factors referred to in paragraph 23 therein ought to have taken into consideration for sentencing the accused-appellant. With such submissions, it is contended that the Judgment and Order of conviction and sentence passed by the Trial Court calls for an interference. If it is found that the entire Judgment and Order of conviction is not to be set aside, the accused-appellant is at least entitled to get the conviction modified to Section 304, Part-I or Part-II, IPC and accordingly, an altered sentence. Mr. Das has further urged that there was delay in lodging and registering the FIR in respect of the incident occurred on 25.06.2017. The investigation commenced on 25.06.2017 on the basis of a General Diary Entry and the FIR was lodged later on 26.06.2017. The FIR was registered only on 27.06.2017. He has relied upon a decision of a Division Bench of this Court in **Bul Turi vs. State of Assam, 2014 [2] GLT 252**.

16. Mr. Kaushik, learned Additional Public Prosecutor appearing for the State has submitted that the prosecution witnesses – P.W.1, P.W.2, P.W.3 & P.W.4 –

were eye-witnesses to the incident of assault on the deceased. Their testimony was categorical on the point that it was the accused-appellant who made the fatal assault on the deceased with dao and the defence had miserably failed to shake their testimony in any manner whatsoever. He has contended that when there was direct evidence the contention regarding alleged failure to connect any alleged weapon of assault with the homicidal death of the deceased is insignificant and would not affect the prosecution case. In fact, the weapon of assault was exhibited and no dispute was raised by the defence. There was no evidence to the effect that the wounds inflicted upon the deceased by a sharp weapon by the accused-appellant was due to any grave and sudden provocation to bring the case within Exception-1 of Section 300, IPC. He has further contended that the story sought to be projected through the defence witnesses was an afterthought. He has, thus, contended that there is no ground to interfere with the Judgment and Order of conviction and sentence passed by the Trial Court and as the appeal is bereft of any merit, the same is liable to be dismissed.

17. We have duly considered the submissions of the learned counsel for the parties and have also gone through the materials/evidence on record including the testimonies of the prosecution witnesses and the defence witnesses, available in the case records of Sessions Case no. 339/2018, in original. The decisions referred to by the learned counsel for the parties are also considered and reference of the cited decisions would be made in the later part of the Judgment as and when found relevant.

18. The prosecution witness, P.W.1 – Jarina Khatun is a sister of the informant-

P.W.2 and an aunt of the deceased. In her examination-in-chief, P.W.1 deposed that the accused was a co-villager. She stated that the incident occurred at about 03-30 p.m. two years ago when the accused kept cows of the deceased, Mazidur Rahman confined within his house premises. Mazidur Rahman went to the house of the accused with a view to release the cows. Then, the accused attacked Mazidur Rahman in front of his house by means of a dao. The accused gave blows on the neck and other parts of the person of Mazidur Rahman. As a result, Mazidur Rahman died on the spot. P.W.1 asserted that the incident took place in her presence. When alarm was raised, the accused fled away from the spot.

18.1. During her cross-examination, P.W.1 stated that in between her house and the P.O., there were houses of Nur Abdin and Nural Hoque. P.W.1 stated that five cows, belonging to Mazibur Rahman, had damaged the cultivation of the accused. Hearing the alarm of her brother, Aizal Hoque [P.W.2] she reached the spot and saw that the accused was giving blows to Mazidur Rahman by means of a dao. After the incident of assault, several persons gathered at the P.O. P.W.1 stated that there were four houses in between her house and the house of Mazidur Rahman. Her house is situated near to the Indo-Bangla Border. A number of suggestions were put to her but all those suggestions were denied by P.W.1. A suggestion that her brother, Aizal Hoque [P.W.2] and the deceased, Mazidur Rahman were involved in illegal trade of cows to Bangladesh was also denied.

19. P.W.2, Aizal Hoque was the informant and the deceased, Mazidur Rahman is his nephew. In his examination-in-chief, P.W.2 deposed that the incident

occurred on a day two years earlier. He knew the accused as the accused was a co-villager. As regards the incident, P.W.2 stated that when he was returning to his house from the house of his daughter and reached the road in front of the house of the accused at about 03-30 p.m., he saw that the accused was inflicting blows to his nephew, Mazidur Rahman by means of dao. When he tried to resist the accused, the accused also threatened to kill him. P.W.2 stated that Mazidur Rahman died on the spot. It was on the same day, he filed the FIR.

19.1. In cross-examination, P.W.2 stated that his house is situated about half a kilometre away from the P.O. At the time of the incident, he was returning from the house of his daughter alone where he had gone earlier at about 11-00 a.m. on that day. P.W.2 further stated that there were houses of Nural Hoque, Jarina Khatun [P.W.1] and Jobbar near the P.O. Jarina Khatun [P.W.1] reached at the P.O. after him. When the accused threatened him he ran up to a distance of one hundred metres from the P.O. to avoid the accused. P.W.2 stated that after the incident, the accused ran away from the P.O. When Police personnel proceeded to the P.O., he also accompanied them. When Police personnel reached the P.O., few persons including Golap, Atowar and Baten, were present at the spot. P.W.2 stated that five cows, belonging to Mazidur Rahman, damaged the cultivation of the accused. A number of suggestions were put to P.W.2 but all those suggestions were denied by him. A suggestion that he [P.W.2], the deceased and some others were involved in illegal trade of cows to Bangladesh was denied by P.W.2. P.W.2 also denied a suggestion that on the date of the incident, the deceased had taken cows of the accused to sell them in Bangladesh.

20. P.W.3, Abdul Baten knew both the informant-P.W.2 and the accused. In

examination-in-chief, P.W.3 deposed that the murder took place near his house on 25.06.2017. On the date of the incident, he was going by the road leading to Fetamari and at the turning, he heard a shouting 'Maa I am assaulted' from the deceased, Mazidur Rahman. Hearing the shouting of Mazidur Rahman, he went closer and saw that the accused was armed with two daos, one of small size and the other big. He witnessed that the accused stabbed Mazidur Rahman several times with the daos. Though he tried to resist the accused, the accused continued stabbing. Thereafter, leaving the small dao, the accused fled away from the spot with the big dao in his hands. Mazidur Rahman succumbed to his injuries instantaneously at the spot in front of him. Police personnel came to the spot after about half an hour and in the meantime, people also started to gather at the P.O. Police Personnel went to the house of the accused in search but he was not found in his house. Police personnel seized one small dao of 6 inches length, one big dao and an iron rod and P.W.3 identified those as Mat. Ext.-1, Mat. Ext.-2 & Mat. Ext.-3 respectively.

20.1. When cross-examined, P.W.3 stated that he lived in Tetlabari Village and the incident took place at Fetamari Double Cona. His house was at a distance of about 700 metres from the P.O. There were several houses in and around the P.O. The informant-P.W.2 is his brother-in-law. P.W.3 stated that he heard the shouting from about thirty feet away from the spot of assault [P.O.]. At that time, he was riding a bike. He saw the presence of Jarina Khatun [P.W.1], Aizal Hoque [P.W.2], Shah Alom [P.W.4] and others at the P.O. P.W.3 further stated that the house of Jarina Khatun [P.W.1] was in the vicinity of the P.O. and there were other houses within 200 metres from the P.O., which was on a public road. P.W.3 further stated that he came to know subsequently that the deceased,

Mazidur Rahman was going to the house of the accused for releasing his cows, which were kept confined by the accused inside his farm. A number of suggestions were put to P.W.3 but all those suggestions were denied by him. When P.W.3 was given a suggestion that they dealt in stolen cows with persons from Bangladesh to which the accused had objected, P.W.3 categorically denied the suggestion. P.W.3 also denied that no dao, etc. was recovered from the house of the accused.

21. P.W.4, Shah Alom stated that he knew the informant-P.W.2, Aizal Hoque, the accused and the deceased. In his testimony-in-chief, P.W.4 stated that the incident took place about two years earlier in their village on a public road, which led to the house of the deceased, Mazidur Rahman. At that time, he was working in his field. He heard a shouting 'Marlago' from the southern side. Getting alarmed, he approached towards the P.O. on the public road and saw that the accused was stabbing Mazidur Rahman with daos - one small and the other big. In the meantime, people started gathering at the P.O. Jarina Khatun [P.W.1], Aizal Hoque [P.W.2] and Abdul Baten [P.W.3] were amongst them. The accused fled away from the P.O. with the big dao in his hands while leaving the small dao at the P.O. Mazidur Rahman died instantaneously at the P.O. Police Personnel came to the P.O. later on and took away the deadbody. P.W.4 stated to have heard that the accused stabbed Mazidur Rahman because Mazidur Rahman was on the way to the house of the accused for releasing his cows, which were kept confined by the accused for the reason that the cows had eaten up the vegetables grown by the accused.

21.1. During cross-examination, P.W.4 stated that the informant-P.W.2, Aizal

Hoque is his brother and the deceased, Mazidur Rahman is his nephew. He belonged to Village – Chirakhawa and the accused belonged to Village – Fetamari and the two villages were adjacent to each other and it required hardly five minutes to reach one village from the other. There were many houses in and around the P.O. The house of the accused was adjacent to the house of the informant-P.W.2, Aizal Hoque. Besides Aizal Hoque [P.W.2], Nur Abdin from the village of the accused was also present at the P.O. The suggestions given to P.W.4 by the defence were categorically denied by him. P.W.4 also denied the suggestion that the accused objected to the acts of the informant-P.W.2 and others in view of their involvement in trafficking of animals to Bangladesh. P.W.4 also denied a suggestion that the case was filed against the accused to teach him a lesson.

22. P.W.5, Manirul Islam deposed that he knew the informant-P.W.2 as well as the accused. He stated that the incident occurred at around 03-00 / 03-30 p.m. about 3½ years earlier at Fetamari. Around that time on that day, he was on his way to the market after having procured vegetables. He heard shouting 'Marile Marile'. Hearing the cry, he approached towards the P.O. and saw that the deadbody of Mazidur Rahman was lying on the ground. The accused was found going towards the market brandishing a beki dao. While brandishing the dao, the accused warned all that no one should come near him as they would be finished. People started to gather near the P.O. The deadbody of the deceased was subsequently taken by Police. Certain other articles such as khanti, stick and dao were seized from the P.O. P.W.5 did not know whether the dao which was brandished by the accused was seized or not. P.W.5 stated that a number of articles/objects were seized by the Police vide Ext.-1, Seizure List wherein he

subscribed his signature as Ext.-1[1].

22.1. During cross-examination, P.W.5 stated that his house was at a distance of about 2-3 miles from the P.O. When he reached the P.O., many persons had reached there already as it was a thickly populated area. The suggestions given to P.W.5 by the defence were denied by him.

23. P.W.6, Dr. Jintu Sarma was posted as the Medical & Health Officer [M&HO]–I at Dhubri Civil Hospital on 26.06.2017. P.W.6 deposed that he performed post-mortem examination on the deadbody of the deceased, Mazidur Rahman, aged about 17 years, on 26.06.2017. During post-mortem examination, he found that rigor mortis was absent. On examination, he found the following injuries on the deadbody of the deceased :-

1. Horizontal cut injury over neck exposing trachea. Muscles, vessels, nerves are cut through and through.
2. Cut injury over back of neck extending from angle of mandible on left to angle of mandible on right side. Muscles, vessels, nerves are cut exposing the spinal cord.
3. Cut injury over lower end of left arm 2" X 1".

He opined that all the injuries were ante-mortem in nature. On the basis of his findings, he recorded in his opinion that the cause of death was shock and hemorrhage as a result of the cut injury sustained over neck by the deceased. P.W.6 exhibited the PME Report as Ext.-2, and his signature and the signature of the Joint Director, Dhubri therein as Ext.-2[1] and Ext.-2[2] respectively.

23.1. The defence declined cross-examination of P.W.6.

24. The I.O., who testified as P.W.7, stated that before the FIR was lodged in Kalapani Out Post, he had proceeded to the P.O. for the case on the basis of General Diary Entry no. 365 dated 25.06.2017. A written FIR was lodged subsequently by Aizal Hoque [P.W.2] on 26.06.2017. He registered the FIR in the General Diary vide General Diary Entry no. 380 dated 26.06.2017 at about 03-30 p.m. and the case was thereafter, registered as Mankachar Police Station Case no. 506/2017. The manner in which the investigation was carried out by the I.O. has already been narrated hereinabove. The I.O. exhibited an extract copy of the G.D. Entry no. 365 dated 25.06.2017 [Ext.-3], the Inquest Report [Ext.-4], the FIR [Ext.-5] and the Charge-Sheet [Ext.-6] along with his signatures therein. He further stated that he seized articles/objects from the house of the accused after a search was carried out in the house of the accused on 25.06.2017.

24.1. In cross-examination, P.W.7 stated that he received the FIR on 26.06.2017 as In-Charge, Kalapani Out Post and after entering the details in the General Diary, the FIR was forwarded to the Officer In-Charge, Mankachar Police Station for registration. The Officer In-Charge, Mankachar Police Station registered the case at 09-30 a.m. on 27.06.2017. The I.O. stated that he recorded the statements of the witnesses prior to filing of the formal FIR and prepared the sketch map of the P.O. after reaching the P.O. The defence sought to confront the I.O. to the previous statements made by the prosecution witnesses without bringing the specific parts of their respective previous statements to the notice of those prosecution witnesses at the time when they were examined-in-chief in order to prove any contradiction. In view of such failure on the part of the

defence to bring in any contradiction in the manner required, a discussion of the said aspect is not necessary. P.W.7 stated that he did not send the dao for examination to the FSL to find out whether there was any human blood stains or not.

25. D.W.1, Hamida Biwi is the wife of the accused. In her testimony-in-chief, D.W.1 stated that on the date of the incident, occurred five years earlier, the accused was returning home from market with his hand cart. She saw that an altercation was going on between the deceased and some Bangladeshi nationals. She saw that Bangladeshi nationals were severely assaulting the deceased. Then, her husband gave water to the deceased, Mazidur Rahman. Bangladeshi nationals took away cattle heads from the deceased. No one was present at that time and her husband was not involved in the incident. D.W.1 stated that there was no one present when the deceased was assaulted.

25.1. In cross-examination, D.W.1 stated that Bangladesh border was 40/50 KMs away from the P.O. at Fetamari Village. In the Indo-Bangladesh border, there was fencing. So, it was difficult to cross the border as BSF personnel were always in patrolling duty there. D.W.1 stated that the incident occurred on a Government road near her house and she did not know the Bangladeshi nationals with whom the family of the deceased used to trade in cows. D.W.1 admitted that her statement was not recorded previously.

26. D.W.2 is the accused himself who testified to the effect that the incident occurred at 06-00 p.m. on the date of the incident. On that day, he returned home with his handcart at around 05-00/06-00 p.m. The deceased and the

informant-P.W.2, Aizal Hoque who were his relatives, were involved in selling of cows, etc. to Bangladesh. On the date of the incident, 6/7 Bangladeshi Nationals assaulted the deceased. On hearing commotion, he went to the P.O. and saw that the deceased, Mazidur Rahman was already killed. He further stated that the informant-Aizal Hoque [P.W.2] was opposed to his marriage, which was solemnized prior to 2011, and sought to prevent his wife from continuing the conjugal life. D.W.2 further stated that a case was lodged in that connection and in connection with the case, he was arrested and in custody for three months and later on, he was acquitted. The accused, however, did not furnish details of any case allegedly lodged by the informant [P.W.2]. D.W.2 further mentioned that he had six children with the eldest being aged about 18 years. He denied to have committed the murder of the deceased and stated that after the incident, he was stabbed by all the witnesses of this case for which he had lodged an FIR and the case was being investigated.

26.1. In cross-examination, D.W.2 stated that he cannot enter Bangladesh even if he had wished as passport, visa, etc. were required to enter inside Bangladesh from India and he could not afford such kind of documents. He further stated that he could not identify anyone from Bangladesh. He stated that he did not see injury on the deceased, Mazidur Rahman. He denied that he kept five cattle heads belonging to the deceased tied inside his paddy field after they destroyed his paddy field.

27. D.W.3, Mojibar Rahman was a boatman by occupation. Deposing on the incident, D.W.3 stated that on the date of the incident, he hearing hue and cry had gone to the P.O. and saw the deadbody of the deceased there. He saw that

the accused was giving water to Mazidur Rahman and he was told by the accused that Bangladeshi people had assaulted the deceased. D.W.3 further stated that they chased those Bangladeshi nationals but they could not catch them. He stated that they had, however, recovered eight cattle heads from the Bangladeshi nationals and handed over those cattle heads to Mankachar Police Station.

27.1. During cross-examination, D.W.3 stated that when he went to the P.O., he did not see anything except the deadbody and the accused with water. It was the accused who told him that Bangladeshi nationals killed the deceased. Police did not record his statement. D.W.3 stated that no one can enter Bangladesh without proper documents like visa, etc. and moreover, there was border fencing and BSF personnel patrolling the border in all the times. He claimed ignorance about the event of cattle, belonging to the deceased, entering into the paddy field of the accused.

28. D.W.4, Iliyas Rahman stated that in the evening hours on the date of the incident, he saw the deadbody of the deceased lying on a road. But he did not go near the deadbody, but he saw the accused giving water to the deceased. He, later on, heard that Bangladeshi nationals who dealt in trading of cows, etc. had caused the incident.

28.1. During cross-examination, D.W.4 stated that no one can cross the border as there was border fencing and patrolling of BSF personnel. He did not see the incident.

29. As it has emerged from the discussion above that when the prosecution witnesses – P.W.1, P.W.2, P.W.3 & P.W.4 – were examined, they were given suggestions that the deceased and the informant were involved in trading of cows with persons from Bangladesh. But, they were not given any suggestion that in the incident of assault leading to the death of the deceased, there was involvement of Bangladeshi Nationals. Initially, when the accused was asked during his examination under Section 313, CrPC, he declined to adduce evidence in his support. The suggestions given during the cross-examination of prosecution witnesses are ordinarily in line with the defences which the defence counsel keeps in mind to defend the accused. During his cross-examination under Section 313, CrPC, the accused claimed falsity in the prosecution case and he never whispered about involvement of Bangladeshi Nationals in the killing of the deceased. It was after his refusal to adduce evidence at the stage of Section 313, CrPC, the accused made a prayer before the Trial Court to examine himself and other witnesses in his support, after changing his earlier learned engaged counsel and by appointing another learned counsel. After the prayer was allowed, the defence witnesses – D.W.1, D.W.2, D.W.3 & D.W.4 – were examined wherein, for the first time, the defence witnesses introduced a new story that in the incident of assault which led to the death of the deceased, there was involvement of Bangladeshi Nationals. But, D.W.1 and D.W.2 deposed that they did not know the assailants. But D.W.3 admittedly deposing at the request of D.W.1, proceeded to depose that not only he along with D.W.2, chased the assailants from Bangladesh but also recovered cattle heads from them to deposit it at the Police Station. D.W.2 also deposed that it was to settle scores in connection with his marriage which was solemnized prior to 2011, P.W.2 foisted the false case on him.

30. D.W.2 himself stated that after solemnization of his marriage prior to 2011, he had six children with his wife, D.W.1. The allegation of institution of a false case in 2017, that too, after birth of six children from marriage by the informant-P.W.2 after nursing a grudge all those years is not a story, which could be believed. In the absence of any whisper as regards involvement of Bangladeshi Nationals in the incident of assault leading to death of the deceased during thorough cross-examination of the prosecution witnesses, even by way of suggestion, and in view of the fact that the accused maintained silence on this aspect during his examination under Section 313, CrPC, it is clear that the stories sought to be projected by the accused through the defence witnesses were clearly afterthoughts and not ones which can be given any credence.

31. The learned counsel appearing for the accused has sought to contend that the death of the deceased was not murder but culpable homicide not amounting to murder.

32. From the medical evidence in the form of testimony of the Autopsy Doctor [P.W.6] and the PME Report [Ext.-2], it has clearly emerged that the deceased had sustained a cut injury over neck exposing trachea. The muscles, vessels and nerves were cut throughout. There was another cut injury on the back of the neck extending from angle of mandible on left to angle of mandible on right side. The muscles, vessels and nerves were cut exposing the spinal cord. There was another cut injury over the lower end of left arm of size : 2" X 1". The Autopsy Doctor opined that all the injuries were ante mortem in nature and the

defence declined to cross-examine the Autopsy Doctor. The opinion regarding cause of death was due to shock and hemorrhage as a result of cut injury over neck sustained by the deceased remained unchallenged by the defence.

33. The evidence of the prosecution witnesses – P.W.1, P.W.2, P.W.3 & P.W.4 – was categorical on the points that all of them had witnessed the assaults made upon the deceased by the accused with a dao and as a result of such assaults, the deceased died instantaneously on the spot. It has emerged that the house of P.W.1 was near to the P.O. That P.W.1 arrived at the P.O. after P.W.2 finds corroboration from the testimony of P.W.2. From the testimonies of P.W.1, P.W.2, P.W.3 & P.W.4 it has emerged that they were the first ones among the persons who rushed and proceeded to the P.O. Though P.W.3 was not from the same village, he in his testimony had explained the reason of his presence near the P.O. at the relevant point of time. Similarly, P.W.4 had mentioned how he reached the P.O. after hearing hue and cry while working in his paddy field.

34. In assessing the value of the evidence of the eye-witnesses, two principal considerations, as observed by the Supreme Court in **Shahaja @ Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra**, [2022] 12 SCR 196, are, *firstly*, whether in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them; and *secondly*, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, would have a bearing

upon the value which a Court would attach to their evidence.

35. When the testimony of the four eye witnesses – P.W.1, P.W.2, P.W.3 & P.W.4 – are examined along with the other evidence, it is evidently clear that the defence had failed to discredit their testimony as regards their presence at the P.O. at the time of assault and also to improbalise at the P.O. to witness the fatal assault on the deceased by the accused. On the other hand, their testimony remained consistent.

36. It is found the defence had failed to discredit the testimony of the eye-witnesses – P.W.1, P.W.2, P.W.3 & P.W.4 – in any manner whatsoever to raise any doubt regarding their presence at the P.O. and their witnessing the assaults made upon the deceased by the accused with a dao. This Court has found that there is nothing to disbelieve the presence of these eye-witnesses at the P.O. at the relevant point of time and has found that their testimony are consistent and in corroboration to each other.

37. From the testimony of the Autopsy Doctor [P.W.6] and the PME Report [Ext.-2], it has clearly emerged that the deceased sustained cut injuries, as described in paragraph 23 above. The injuries sustained by the deceased were ante-mortem. The cause of death was shock and hemorrhage and the deceased sustained injuries on the vital parts of his body. From the injuries, it has clearly emerged that the deceased sustained the injuries from a sharp edged weapon. The opinion of the autopsy doctor was not challenged in any manner whatsoever by the defence at any point of time.

38. On evaluation of the entire evidence including the testimonies of the prosecution witnesses and the medical evidence, led by the prosecution, which is found consistent to one another, the only conclusion that can be reached is that the deceased met instantaneous death at the P.O. due to the injuries sustained on his person. Such kind of injury can be inflicted by a sharp-edged cutting weapon. The dao is a sharp-edged cutting weapon and the eye-witnesses' accounts were consistent on the point that the deceased sustained those injuries due to assaults inflicted by the accused with a dao. That the accused was present at the P.O. with a dao in his hand and that the blows were given by the accused on the deceased have been clearly established by cogent, reliable and convincing evidence and the defence has not been able to bring anything on record to dislodge such evidence during the course of the trial.

39. The offence of culpable homicide is defined in Section 299 of the Indian Penal Code [IPC]. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the genus and the offence of murder its species, meaning thereby, all murders are culpable homicides but all culpable homicides are not murders. The offence of murder is defined in Section 300, IPC, which reads as under :-

300. Murder –

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly - If it is done 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

Thirdly - If it is done 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

Fourthly - If the person committing the act knows that it 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 aforesaid.

40. The Hon'ble Supreme Court of India in **Abdul Waheed Khan @ Waheed and others vs. State of Andhra Pradesh**, reported in [2002] 7 SCC 175, has considered earlier decisions in **Virsa Singh vs. State of Punjab**, AIR 1958 SC 465, and **State of Andhra Pradesh vs. Rayavarapu Punnayya**, [1976] 4 SCC 382, and the distinction between the offences of culpable homicide and murder, defined in Section 299, IPC and Section 300, IPC. For ready reference, the relevant excerpts from **Abdul Waheed Khan** are quoted hereinbelow :-

11. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC culpable homicide is the genus and 'murder', its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest 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.

* * * *

15. For cases to fall within clause [3], it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. **Rajwant Singh vs. State of Kerala, AIR 1966 SC 1874**, is an apt illustration of this point.

16. In **Virsa Singh vs. State of Punjab [AIR 1958 SC 465]** Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause [3]. It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly'. First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

17. The ingredients of clause 'thirdly' of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows : [AIR p. 467, para 12]

12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective

investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

18. The learned Judge explained the third ingredient in the following words [at p. 468] :
[AIR para 16]

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

19. These observations of Vivian Bose, J. have become **locus classicus**. The test laid down by **Virsa Singh** case [AIR 1958 SC 465] for the applicability of clause 'thirdly' is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly

of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. [a] that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and [b] that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. 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 viz. that the injury found to be present was the injury that was intended to be inflicted.

20. Thus, according to the rule laid down in **Virsa Singh** case [AIR 1958 SC 465] even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration [c] appended to Section 300 clearly brings out this point.

41. In this connection, the decision in **Pulicherla Nagaraju @ Nagaraja Reddy vs. State of Andhra Pradesh**, reported in [2006] 11 SCC 444, can be referred to. In the said decision, some of the circumstances which are to be taken note of to draw inference as regards presence of intention, have been mentioned. It has been observed therein that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : [i] nature of the weapon used; [ii] whether the weapon was carried by the accused or was picked up from the spot; [iii] whether the blow is aimed at a vital part of the body; [iv] the amount of force employed in causing injury; [v] whether the act was in the course of sudden quarrel or sudden fight or free from all fight; [vi] whether the incident occurs by chance or whether there was any premeditation; [vii] whether there was any prior enmity or whether the deceased was a stranger; [viii] whether there was any grave and sudden provocation, and if so, the cause for such provocation; [ix] whether it

was in the heat of passion; [x] whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; and [xi] whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.

42. The learned counsel for the accused has raised a plea to the effect that there was an element of provocation from the end of the deceased and it was in response to such provocation, the accused had reacted and the provocation was sudden and grave. The prosecution case is that on the day of the incident, few cattle belonging to the deceased entered into the paddy field of the accused and the accused kept the cattle tied inside his house premises. Having received the information that the cattle were kept tied by the accused, the deceased by proceeding by the public road was walking towards the house of the accused in order to get the cattle released. It was at that point of time, the accused, armed with daos, waylaid and confronted the deceased on the public road and inflicted a number of blows on the person of the deceased, which as per the PME Report [Ext.-2] were cut injuries and one of them was a fatal one.

43. Exception 1 to Section 300, IPC has laid down that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. Explanation thereto has provided that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question

of fact.

44. The Hon'ble Supreme Court of India in **B.D. Khunte vs. Union of India and others**, reported in [2015] 1 SCC 286, has considered the ingredients of Exception 1 to Section 300 of the Penal Code in the following manner :-

12. What is critical for a case to fall under Exception 1 to Section 300 IPC is that the provocation must not only be grave but sudden as well. It is only where the following ingredients of Exception 1 are satisfied that an accused can claim mitigation of the offence committed by him from murder to culpable homicide not amounting to murder:

- [1] The deceased must have given provocation to the accused.
- [2] The provocation so given must have been grave.
- [3] The provocation given by the deceased must have been sudden.
- [4] The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and
- [5] The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of self-control.

45. Taking into consideration the afore-mentioned ingredients vis-à-vis the evidence/materials on record of the case in hand, we find that the plea of grave and sudden provocation is one which has to be discarded outrightly.

46. It is, thus, clear that in order to find out whether the act will come within the scope and ambit of Clause 'thirdly' of Section 300, IPC, some of important factors which are required to be considered to ascertain about the intention, are the kind of weapon used, the part of the body hit, the amount of force employed, etc. From the evidence/materials on record, it has unerringly

emerged that the accused had come out of his house, located near to the P.O, armed with a dao, a sharp weapon. At the time of occurrence, the accused was carrying a dao, a sharp-edged cutting weapon. There is conclusive evidence that it was the accused who had inflicted the bodily injury on the person of the deceased at the P.O. at the time and on the date of the incident. The bodily injury was inflicted on a vital part of the person of the deceased, that is, the back side of the neck. It has also emerged that the blow was struck by the accused with the intention to cause the particular injury. Even if there was a single blow by the dao, but from the ferocity and the force with which the blow was struck and the suddenness of the attack, the only conclusion possible to be drawn is that the accused had struck the blow with the intention to cause that particular bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause death of a person and as a result, the deceased met his death instantaneously. The law is well settled that even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would still be murder. Illustration [c] appended to Section 300, IPC has clearly made this point and it reads as under :-

Illustration [c] :

A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

47. It was vide Seizure List [Ext.-1], one dao, one knife, one iron road and one bamboo stick, as described above, were seized from the house of the accused and in presence of P.W.3 & P.W.5. P.W.3 exhibited one small dao, one big dao

and one iron road as Mat. Ext.-1, Mat. Ext.-2 and Mat. Ext.-3. It has been contended on behalf of the accused that none of the seized objects is the weapon of assault; none of them was not sent for forensic examination and there was non-recovery of any weapon of assault from the P.O. whereas a number of witnesses deposed that the accused has left the weapon of assault at the P.O. The I.O. had also admitted that the alleged weapon of assault, the dao was not sent to the FSL for examination. It has been contended that such fact of not sending the alleged weapon of assault was fatal to the prosecution case in that there was no connection established between the seized articles/objects and the alleged homicidal death of the deceased.

48. The grounds urged as regards not sending the alleged weapon of assault, dao for chemical examination and non-recovery of a dao, allegedly left by the accused at the P.O. are to be discarded. A weapon of assault is to be sent for chemical examination in order to establish its connection, more particularly, when the weapon of assault was a blood stained one, with the alleged homicide of a person. Sometimes, it can be considered as a flaw in the investigation. But, it is not an inflexible rule that there must be recovery of the weapon of assault and the connection with the weapon of assault with the alleged homicidal death of a person is to be established. It is also not a general and broad proposition of law that in case of non-recovery of weapon of assault or failure to establish the connection the whole prosecution case gets weakened.

49. In the case of **State Through the Inspector of Police vs. Laly @ Manikandan and another**, reported in [2022] 15 SCR 633, it has been held as under :-

7. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to the convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted.

50. Similarly, in the case of **Prabhash Kumar Singh vs. the State of Bihar [Now Jharkhand]**, reported in **[2019] 9 SCC 262**, it has been observed on the point of non-recovery of weapon as under :-

13. ... As there is clear eye-witness account of the incident and none of the two eye-witnesses could be shaken during cross-examination and they had stuck to the recollection of the facts to the incident, the mere fact that the weapon of assault or the bullet was not recovered cannot demolish the prosecution case.

51. The facts enumerated in paragraph 23 of **Gurmukh Singh** [supra] are required to be taken into consideration before awarding appropriate sentence to the accused. Those factors are required to be taken into consideration when an accused is to be sentenced for committing the offence under Section 304 Part-II, IPC. The nature of punishment provided for committing the offence of murder under Section 302, IPC is either death in case of the rarest of rare cases or else, imprisonment for life.

52. We have already reached a conclusion that the offence committed by the accused herein is murder within the scope and ambit of Section 300, IPC and

the case does not fall within Exception 1 of Section 300, IPC. As such, the decision in **Gurmukh Singh** [supra] is not found applicable in the fact situation obtaining in the present case.

53. In the decision in **Bul Turi** [supra], the observation regarding delayed FIR was made as the Court had found that there was substantial delay of sixteen hours in registering the FIR. In the present case, it has emerged from the record that the incident occurred at around 03-30/04-00 p.m. on 25.06.2017 and on the basis of a telephonic information, General Diary Entry no. 365 was entered into the General Diary of Kalapani Out Post at 05-00 p.m. on 26.06.2017. Thereafter, on 26.06.2017, a written FIR was lodged before the In-Charge, Kalapani Out Post and the In-Charge, Kalapani Out Post registered the same vide General Diary Entry no. 380 at 03-30 p.m. on 26.06.2017, while forwarding the FIR to the Officer In-Charge, Mankachar Police Station for registering a case under proper sections of law. The Officer In-Charge, Mankachar Police Station had, in turn, registered the FIR as Mankachar Police Station Case no. 506/2017 on 27.06.2017. While forwarding the FIR, the I.O. [P.W.7] took up the case for investigation. The case in hand is similar to the case in **Bul Turi** [supra].

54. It has emerged from the materials on record that after arrival at the P.O. at 05-45 p.m. on 25.06.2017, he initiated the procedural formalities required to be taken in connection with deadbody like conducting inquest proceeding and thereafter, forwarding of the deadbody for post-mortem examination in reference to Kalapani Out Post General Diary Entry no. 365 dated 25.06.2017. It cannot be conceived that the Police Officer had to wait for a written First

Information Report fulfilling the conditions under Section 154, CrPC before taking requisite procedural steps in case of a deadbody on a public road once it is found that the person had met an unnatural death.

55. It is also settled that a cryptic telephonic information given by any individual to the Police without any detail particulars of the offence or accused bereft of any details is not for the purpose of lodging an FIR but rather a request to the Police to reach the place of occurrence. The cryptic telephonic message which did not specify a cognizable offence, recorded as General Diary Entry no. 365 dated 25.06.2017, cannot be treated as FIR. The mere fact that the information was the first in point of time would not turn the General Diary Entry into the character of FIR. The FIR was lodged on 26.06.2017, which, by no stretch, can be said to be a delayed FIR.

56. In this connection, it is apposite to refer to the following observations made in **Sidhartha Vashisht Alias Manu Sharma vs. State [NCT of Delhi], [2010] 6 SCC 1 :-**

113. The information about the commission of a cognizable offence given '*in person at the Police Station*' and the information about a cognizable offence given '*on telephone*' have forever been treated by this Court on different pedestals. The rationale for the said differential treatment to the two situations is, that the information given by any individual on telephone to the police is not for the purpose of lodging a First Information Report, but rather to request the police to reach the place of occurrence; whereas the information about the commission of an offence given in person by a witness or anybody else to the police is for the purpose of lodging a First Information Report. Identifying

the said objective difference between the two situations, this Court has categorically held in a plethora of judgments that a cryptic telephonic message of a cognizable offence cannot be treated as a First Information Report under the Code.

114. It has also been held in a number of judgments by this Court that merely because the information given on phone was prior in time would not mean that the same would be treated as the First Information Report, as understood under the Code. This view has been reiterated in *Ramesh Baburao Devaskar and Others vs. State of Maharashtra*, [2007] 13 SCC 501, that a cryptic message given on telephone by somebody who does not disclose his identity may not satisfy the requirement of Section 154 of the Code of Criminal Procedure.

57. Taking into consideration the facts and circumstances obtaining in the case in its entirety, as discussed above, and for the reasons assigned therein, we are of the clear view that the case clearly falls under Clause 'thirdly' of Section 300 of the Penal Code, which is punishable under Section 302 of the Penal Code. There was abject failure on the part of the defence to bring in Exception-1 to Section 300. Therefore, we find no ground, not to speak of any good and sufficient ground, to interfere with the conclusion recorded by the Trial Court for the charge of murder in the case in hand.

58. Resultantly, the criminal appeal is found to be bereft of any merit. Consequently, affirming the Judgment and Order of Conviction and Sentence passed by the learned trial court in Sessions Case no. 19 of 2021 [New]/Sessions Case no. 339 of 2018 [Old], the appeal is dismissed.

59. The records of the Trial Court is to be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant