



2025:CGHC:19618-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 638 of 2021

1 - Ravi Kumar Yadav S/o Shri Panchuram Yadav Aged About 30 Years R/o Rampur Para, Kapan, Out Post - Naila, Police Station Janjgir, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

2 - Panchuram Yadav S/o Late Maniram Yadav Aged About 50 Years R/o Rampur Para, Kapan, Out Post - Naila, Police Station Janjgir, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3 - Bhagwat Yadav S/o Shri Panchuram Yadav Aged About 22 Years R/o Rampur Para, Kapan, Out Post - Naila, Police Station Janjgir, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

...Appellants(s)

versus

1 - State Of Chhattisgarh Through - Police Station Janjgir, District Janjgir Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

...Respondent(s)

| | | |
|----------------------|---|---------------------------------|
| For appellants | : | Mr. Ashutosh Trivedi, Advocate. |
| For Respondent/State | : | Mr. S.S. Baghel, Dy. G.A. |

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Arvind Kumar Verma Judge

Judgment on Board

Per Arvind Kumar Verma, Judge

30.04.2025

1. Heard Mr. Ashutosh Trivedi, learned counsel for the appellants.

Also heard Mr. S.S. Baghel, learned Dy. G.A., appearing for the respondent/State.

2. This criminal appeal filed by the appellants/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment of conviction and order of sentence dated 05.04.2021, passed by the learned Special Judge, Prevention of Atrocities Act, Janjgir-Champa, District Janjgir-Champa (C.G.) in Special Session Trial No. 23/2019, whereby the appellants have been convicted and sentenced as under:

| Conviction under Section | Sentence |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 302/34 of the Indian Penal Code (<i>for short, 'IPC'</i>) | Rigorous imprisonment (<i>for short, 'R.I.'</i>) for life (for all the appellantss) and fine of Rs. 1,000/-, in default of payment of fine, 01 month additional R.I. |

3. Case of the prosecution, in brief, is that the complainant Umrav Patle went to police outpost Naila and has made a oral complaint to the effect that on the date of incidence i.e. on 28.05.2019 around 09:00 with he and his brother namely Mithlesh sat in the house of deceased Shashikant at Village Saajapali. After a while Shashikant the deceased asked them to have a walkaround and all of three went together to village Rampurkapan where three persons were standing looking to which the deceased asked the Ravi (accused) why they are standing on which the accused started abusing the deceased and went inside and brought a Tangiya, the accused along with the other co-accused started assaulting

the deceased and looking to which the complainant and the other person who came with the deceased ran away from the spot. The accused persons threatened the complainant that they would kill them if the complainant discloses the incident to anyone. The deceased was taken to District Hospital Janjgir for treatment and from where he was referred to Higher institute for medical treatment and thereafter the deceased succumbed to death due to injury. After the said complaint was lodged, the police outpost Naila registered a unnumbered FIR against the accused persons. The case was registered at the City Kotwali Police Station in Janjgir Champa, and the body panchnama was prepared and an application for the postmortem examination was recorded vide Ex.P/27.

4. Based on this, since the incident occurred within the jurisdiction of the Janjgir Champa Police Station, a First Information Report (FIR) was registered vide Ex.P/15. A spot map (Ex.P/01) was prepared by the Patwari. The accused was taken into custody vide Ex.P/21 to 23, and tangiya was seized vide Ex.P/10. A crime details form was prepared by the Police vide Ex.P/7 & 07A. . The seized property was sent to the State Forensic Laboratory for examination and the report was received vide Ex.P/19.

5. Dead body of the deceased was sent for postmortem to CIMS Hospital, Bilaspur (C.G.), where Dr. Shiv Narayana Gole (PW-16) conducted postmortem over the body of the deceased vide Ex.P/27 and found following injuries:-

Injuries:

1. Stiches of caniotomy were present on left frontoparietal temporal region of head, measuring 08 cms swollen with blood stain and irregular margins.
2. Five stitches were present on occipital scalp
3. There were four stitches in front of the left ear.
4. Green contusion measuring 14x 06 cm was present over the suprascapular region of the left region.
5. There was a contusion of 10x 8 cm on the outer part of the left hip

All the above injuries were antemortem (before death).

Dr. Shiv Narayana Gole (PW-16) opined that the death of the deceased was caused due to the impact of a blunt and hard object on the head, leading to cardiac and respiratory arrest. The death of the deceased occurred within 12-18 hours of the examination.

6. After due investigation, the Police filed charge-sheet against the appellants before the trial Court. The trial Court has framed charges against the appellants for the offences punishable under Section 294, 506(B), 302/34 of the IPC and Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act 1989 and proceeded on trial. The appellants abjured the guilt and entered into defence stating that he has not committed any offence and he has been falsely implicated.

7. In order to bring home the offence, the prosecution examined as many as 16 witnesses and exhibited 48 documents. The appellants/accused examined none in his defence.

8. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 05.04.2021, convicted the accused/appellants for the offence punishable under Section 302 of the

IPC and sentenced him as aforementioned, against which, this criminal appeal has been filed.

9. Learned counsel for the appellants submits that the learned trial Court is absolutely unjustified in convicting the appellants for the offence punishable under Section 302 of the IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. He further submits that if the case of the prosecution is accepted on the face of it, then also the appellants is said to have caused injuries to deceased on the spur of the moment because the deceased himself came to the appellants and talked to them and thereafter altercation between them has been commenced. There was no motive or intention on the part of the appellants to cause death of the deceased and only on account of sudden quarrel, under heat of passion and in anger, the appellants caused injuries to the deceased, which caused his death. Therefore, the case of the present appellants falls within the purview of Exception 4 to Section 300 of the IPC and the act of the appellants is culpable homicide not amounting to murder, and therefore, it is a fit case where the conviction of the appellants for the offence punishable under Section 302 of the IPC can be converted/altered to an offence under Section 304 (Part-I or Part-II) of the IPC. Further, the appellants No. 1 and 3 are in jail since 04.06.2019 and they have completed near about 05 years and 10 months, and the appellant No. 2 is in jail since 05.04.2021 and he has completed near about 04 years, therefore, considering the period he had already undergone, he be awarded the sentence of the period already undergone by him. Hence, the present appeal deserves to be allowed in full or in part.

10. Per contra, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. He further submits that Mithlesh Kumar Patle (PW-1) and Umrao Patle (PW-5), who are the eyewitnesses of the incident, have stated that they saw that the accused assaulted the deceased by Tangiya, due to which the deceased died, therefore, in view of the statements of the prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted the appellants for offence under Section 302 of the IPC. It has been contended that appellants has committed heinous crime of murder and in such circumstances, it is not the case where conviction of the appellants for offence under Section 302 of IPC requires to be altered to Section 304 Part-I or Part-II of IPC. Thus, the present appeal deserves to be dismissed.

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

So far as conviction of the appellant No. 1 Ravi Kumar Yadav & appellant No. 3 Bhagwat Yadav for the offence punishable under Section 302 of IPC is concerned.

12. The first question for consideration would be, whether death of deceased was homicidal in nature ?

13. The trial Court after appreciating oral and documentary evidence available on record particularly relying upon the statement of Dr. Shiv

Narayana Gole (PW-16), who conducted postmortem had opined that death of the deceased was caused due to the impact of a blunt and hard object on the head, leading to cardiac and respiratory arrest. The injuries were antemortem in nature. The Doctor ultimately opined through his report the nature of death to be homicidal. After hearing learned counsel for the parties and after considering the submissions, we are of the considered opinion that the finding recorded by the trial Court that death of deceased was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.

14. Now, the next question for consideration would be whether the accused/appellants herein is the perpetrator of the crime in question, which the learned trial Court has recorded in affirmative by relying upon the testimony of Dr. Shiv Narayana Gole (PW-16), who conducted postmortem has opined that death of the deceased was caused due to the impact of a blunt and hard object on the head, leading to cardiac and respiratory arrest. The injuries were antemortem in nature. The Doctor ultimately opined through his report the nature of death to be homicidal and the testimonies of Mithlesh Kumar Patle (PW-1) and Umrao Patle (PW-5), who are the eyewitnesses of the incident and they clearly deposed in their statement that on the date of incident they saw the accused assaulted the deceased due to which the deceased died. Thus, on the basis of testimonies of Dr. Shiv Narayana Gole (PW-16), Mithlesh Kumar Patle (PW-1) and Umrao Patle (PW-5), it is clear that it is the appellants herein who on the fateful date and time has caused grievous injuries to the deceased, due to which he died. As such, the learned trial

Court has rightly held that it is the appellants/accused who has caused injuries over the body of the deceased and caused his death. Accordingly, we hereby affirm the said finding.

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

16. The cause of death assigned in the postmortem report of the deceased as already noticed are ‘cardiac arrest and respiratory failure caused by a head injury’. It is a trite law that “culpable homicide” is a genus and “murder” is its species and all “murders” are “culpable homicides, but all “culpable homicides are not “murders” as held by the Hon’ble Supreme Court in the matter of ***Rampal Singh v. State of Uttar Pradesh***¹. The intention of the accused must be judged not in the light of actual circumstances, but in the light of what is supposed to be the circumstances.

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

“Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other

¹ (2012) 8 SCC 289

² AIR 1956 SC 488

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.”

18. 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 of the IPC. It is in this background that the expression used in Indian Penal Code namely “intention” and “knowledge” has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 of the IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the

ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted.

19. 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 appellants 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.”

20. The Hon'ble Supreme Court in the matter of **Gurmukh Singh v. State of Haryana**⁴ has laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of the IPC, which state as under :-

3 (2002) 3 SCC 327

4 (2009) 15 SCC 635

“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.”

21. 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.

22. 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 :-

⁵ (2012) 8 SCC 450

⁶ (2017) 3 SCC 247

“20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under : (SCC p. 220, para 7)

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the 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. '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been

with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provisions means “unfair advantage”.

23. In the matter of **Arjun** (supra), the Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of the IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II of the IPC.

24. Further, the Supreme Court in the matter of **Rambir v. State (NCT of Delhi)**⁷ has laid down four ingredients which should be tested to bring a case within the purview of Exception 4 to Section 300 of IPC, which

⁷ (2019) 6 SCC 122

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.”*

25. The Hon’ble Supreme Court in a recent judgment in the case of ***Anbazhagan v. The State represented by the Inspector of Police*** in ***Criminal Appeal No. 2043 of 2023*** disposed off on **20.07.2023** has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:

“60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:

- (1) When the court is confronted with the 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.”

26. In the present case, Mithlesh Kumar Patle is the eyewitness (PW-01) stated that on the date of incident, the deceased Shashikant Patle told him that let's go for a walk, then he along with deceased and Umrao went to village of the incident, where Ravi (accused) was standing near his house, the deceased Shashikant Patle asked him “how are you”, then Ravi told him that the deceased has eloped his sister, on this they both started using abusive language, thereafter accused Ravi went to his house and brought a tangia and hit him on the head with the tangia, thereafter co-accused came and hit the deceased with sticks, thereafter he and his cousin out of fear ran away from the spot and informed about the incident to deceased's father Reshamlal and brother Surendra. The deceased was admitted in the hospital and he died during treatment.

27. Likewise Umrao Patle (PW-5), has narrated the same version and he corroborated the statement of Mithlesh Kumar Patle (PW-1). During their cross-examination, the statements of the witnesses remain unbroken, and there are no inconsistency in their statements that would make them unreliable.

28. Dr. S.N. Gole (PW-16), who has conducted the postmortem of the

deceased vide (Ex.P27). After the postmortem, he found the injuries as stated in paragraph 05 of this appeal and he opined that the death of the deceased was caused due to the impact of a blunt and hard object on the head, leading to cardiac and respiratory arrest.

29. Reverting to the facts of the present case, in light of principles of law laid down by their Lordships of the Hon'ble Supreme Court in the above-stated judgments (*supra*), it is quite vivid that as per evidence of Mithlesh Kumar Patle(PW-1) and Umrao Patle (PW-5), it is evident that the on the date of incident, the accused/appellants quarrelled with deceased and the and on account of sudden fight the accused assaulted the deceased with the help of tangia. There was no premeditation on the part of the appellants to cause death of deceased as the deceased himself went to the place of the appellants. The appellants did not had any intention to cause death of deceased, but by causing such injuries, he must had the knowledge that such injuries inflicted by him would likely to cause death of deceased, as such, his case would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellants herein completely satisfies the four necessary ingredients of Exception 4 to Section 300 IPC *i.e.* (i) there must be a sudden fight; (ii) there was no premeditation; (iii) the act was committed in a heat of passion and (iv) the appellants had not taken any undue advantage or acted in a cruel or unusual manner.

30. So far as conviction of the appellants No. 1 & 3 Ravi Kumar Yadav and Bhagwat Yadav is concerned, considering the above-stated facts, also considering the evidence of witnesses and taking into consideration that appellant No. 1 Ravi Kumar Yadav and appellant No. 3 are in jail since 04.06.2019, the conviction of the appellants No. 1 & 3 under Section

302/34 of the IPC can be altered/converted to Section 304 Part-II of the IPC. Accordingly, conviction and sentence of the appellants No. 1 & 3 under Section 302/34 of the IPC is set aside, however, appellants No. 1 & **3 Ravi Kumar Yadav and Bhagwat Yadav** convicted under Section 304 Part-II of the IPC and sentenced to undergo rigorous imprisonment for 10 years. The appellants No. 1 & 3 are in jail and they shall served out the sentence as modified above.

31. So far as conviction of appellant No. 2 Panchuram Yadav is concerned, taking into consideration that at present appellant-**Panchuram Yadav** is aged about 56 years and he is in jail since 05.04.2021, looking to the role played by the appellant No. 2 that he was not knowledge of act committed by the appellant No. 1 & 3 and also considering the fact that he has not made any assault or participated in the said crime and no any witnesses examined before the trial Court has stated against him, we are of the considered view that the prosecution has not proved its case beyond reasonable shadow of doubt against the appellant No. 2 for the offence punishable under Section 302/34 of IPC. Therefore, the **appellants No. 2 Panchuram Yadav** is liable to be and is hereby acquitted of the charges framed against him under Section 302/34 by the court of Special Judge, Prevention of Atrocities Act, Janjgir-Champa, District Janjgir-Champa (C.G.) in Special Session Trial No. 23/2019 The appellant 2 Panchuram Yadav in jail since 05.04.2021. he shall be set at liberty forthwith if not required in any other criminal case.

32. In the result, as regards criminal appeal in respect of the appellant No. 1 Ravi Kumar Yadav and appellant No. 3 Bhagwat Yadav **is partly allowed** and as regards criminal appeal in respect of the appellant No. 2 Panchuram Yadav

is **allowed**.

33. Keeping in view the provisions of Section 437-A of the CrPC (now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant No. 2 Panchuram Yadav is directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs. 25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

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

35. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellants is undergoing his jail sentence to serve the same on the appellants 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, if so advised, with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

**(Arvind Kumar Verma)
Judge**

Sd/-

**(Ramesh Sinha)
Chief Justice**