



\$~4

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 2nd September, 2026Uploaded on: 10th September, 2026

CNR No. DLHC010482352025

+ CRL.A. 1032/2025 & CRL.M.(BAIL) 1572/2025

SURESH

.....Appellant

Through: Mr. Avneesh Saran, Adv.

versus

STATE, NCT OF DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with Mr. Lalit Luthra, Mr.
Randeep Kumar, Mr. Rishabh and
Ms. Divya Yadav, Advs. with SI N.K.
Patil, P.S. Gazipur (M. 9766981530)**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE VIKAS MAHAJAN****VIKAS MAHAJAN, J. (ORAL)**

1. This hearing has been done through hybrid mode.
2. The present criminal appeal under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) has been preferred by the Appellant *assailing* the impugned Judgment of conviction dated 25th March, 2025 and the Order on sentence dated 16th April, 2025 passed by the Ld. Additional Sessions Judge (FTC), East District, Karkardooma Courts, Delhi, in Sessions Case No. 2650/2019.
3. *Vide* the impugned Judgment dated 25th March, 2025, the Appellant was convicted for the offences punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as '**IPC**') and Section 174-A IPC, arising out of FIR No. 96/2019, registered at Police Station Gazipur.



4. *Vide* the Order on sentence dated 16th April, 2025, the Trial Court sentenced the Appellant to undergo rigorous imprisonment for life for the offence under Section 302 IPC, and simple imprisonment for a period of one year for the offence punishable under Section 174-A IPC, with a direction that both sentences shall run concurrently. The relevant portion of the said order is reproduced hereunder:

*“13. Thus, considering the overall facts and circumstances of the case including the gravity of offence committed by the convict and the young age of deceased victim, the convict **Suresh is sentenced to undergo life imprisonment and to pay fine of Rs.10,000/-for commission of offence punishable under Section 302 IPC. In default of payment of fine, he shall undergo simple imprisonment of six months. Further the convict is also sentenced to undergo simple imprisonment for period of one year and to pay fine of Rs. 2000/- for commission of offence u/s 174-A of IPC. In default of payment of fine of Rs. 2,000/-, he shall undergo simple imprisonment for 15 days. The sentences of convict shall run concurrently. The benefit of Section 428 Cr.P.C. be given to the convict. Fine amount realized shall be disbursed to the LRs of deceased as compensation.**”*

5. Briefly stated, the case of the prosecution, as culled out from the record, is that on 6th April, 2019, at about 8:40 AM, information was received at Police Station Gazipur, *vide* DD No. 14A, regarding an incident in front of Shop No. C-265, Paper Market, Gazipur, Delhi, in which a person had sustained a head injury. The said DD entry was entrusted to SI Amit Bhardwaj (PW-23), who along with Ct. Dinesh (PW-15) reached the spot, where bloodstains were found on the road. Upon inquiry, it transpired that the injured person namely, Mahajan had already been taken to Lal



Bahadur Shastri (LBS) Hospital. Due to his critical condition, the patient was in turn referred by LBS Hospital to GTB Hospital, where he was subsequently declared unfit to make a statement.

6. SI Amit Bhardwaj, however, met Smt. Krishna Wati, wife of the injured, and recorded her statement. In her statement, she stated that she resided with her family in a jhuggi situated opposite C-265, Paper Market, Gazipur, Delhi. On 6th April, 2019, at about 8:00 AM, Smt. Nankarna, mother of appellant Suresh started abusing them on the allegation that they had hit their dog. An altercation ensued between Bifai Lal, father of the Appellant, and Krishna Wati's husband namely, Mahajan, whereafter both retreated to their respective jhuggis.

7. Shortly thereafter, while Mahajan was standing outside, the Appellant Suresh came there and uttered that he would teach Mahajan a lesson for insulting his father ("*abhi maja chakhata hoon*"), went inside his jhuggi, brought an axe (*kulhari*), and struck a single blow on the head of Mahajan, who fell to the ground bleeding, and the accused fled with the axe.

8. On the basis of Smt. Krishna Wati's statement, a *rukka* was prepared and FIR No. 96/2019 was registered under Section 307 IPC. The custody of the Appellant was handed over to SI Amit Bhardwaj by Ct. Prem at the police station, whereupon the Appellant was arrested *vide* arrest memo, Ex. PW-13/D. Pursuant to his disclosure statement, Ex. PW-13/F, the accused led the police team behind his jhuggi and facilitated the recovery of an iron axe (*kulhari*) Ex. P2.

9. During the course of treatment at GTB Hospital, the injured Mahajan succumbed to his injuries on 8th April 2019, consequent upon which Section 302 IPC was added to the case, and further investigation was



entrusted to Inspector Rajiv Kumar Vats. Post-mortem was conducted by Dr. Shilpa Singh [PW-10] *vide* PM Report No. 600/19, Ex. PW-10/A, which opined the cause of death to be shock, consequent upon an ante-mortem head injury caused by a sharp-edged weapon, sufficient to cause death in the ordinary course of nature.

10. Upon completion of investigation, a charge sheet under Section 302 IPC was filed against the Appellant, and *vide* order dated 26th August, 2019, the Ld. Trial Court framed charge under the said Section against Appellant, to which he pleaded not guilty and claimed trial.

11. During the pendency of trial, the Appellant, who had been released on interim bail during the COVID-19 pandemic, failed to appear, whereupon process under Section 82 Cr.P.C. was executed against him and was declared a Proclaimed Offender *vide* order dated 1st September, 2022. He was subsequently re-arrested on 14th December, 2022 from Dehradun, Uttarakhand. Thereafter, an additional charge for the offence punishable under Section 174-A IPC was framed against him on 21st February, 2023, to which he pleaded not guilty and claimed trial.

12. To establish its case, the prosecution examined 26 witnesses in all. After the conclusion of prosecution evidence, the statement of the Appellant was recorded under Section 313 Cr.P.C., wherein he denied the allegations and pleaded false implication on account of prior enmity, asserting that the complainant party wanted to evict him and his family from their jhuggi. He stated that the axe had been planted on him and opted not to lead any evidence in defence.

13. The Ld. Trial Court, upon appreciation of the evidence on record, concluded that the prosecution had successfully proved beyond reasonable



doubt that the Appellant had committed the murder of the deceased Mahajan, and that he had deliberately evaded his appearance before the Court despite issuance of process under Section 82 Cr.P.C. The Appellant was accordingly convicted for the offences punishable under Sections 302 and 174-A IPC. The relevant extract of the impugned Judgment is reproduced hereinbelow:

“68.....Therefore, from all the angles, the prosecution has successfully proved that PW-2 Krishna Wati was present at the scene of crime at the time of incident and she had witnessed the incident. In view of the oral deposition of prosecution witnesses including Smt. Krishna Wati and the documentary evidence including medical evidence such as the MLC and PMR of deceased, the prosecution has proved beyond reasonable doubt that accused Suresh had caused injury on the head of Mahajan with an axe which resulted into his death. Thus, prosecution has proved beyond reasonable doubt that accused Suresh had committed murder of Mahajan.

“74. Thus, in view of the aforementioned discussion, it has to be concluded that the prosecution has successfully proved beyond reasonable doubt that the accused Suresh had committed murder of deceased Mahajan and he deliberately evaded his appearance and did not appear before the court despite issuance of process u/s 82 Cr. PC. Accordingly, accused Suresh is convicted for commission of offences u/s 302 IPC 174-A IPC respectively.”

14. Mr. Avneesh Saran, Ld. counsel for the Appellant has argued that on the basis of evidence on record, only an offence of culpable homicide not amounting to murder punishable under section 304 Part II IPC is made out as there was no premeditation and the entire incident happened in 2-3 minutes.



15. *Per contra*, Mr. Ritesh Bahri, learned APP submits that in view of the nature of weapon used and the *situs* of the injury, the Appellant is not entitled to the benefit of Exception 4 to Section 300 IPC.

16. We have heard Mr. Saran, as well as, Mr. Bahri and have gone through the impugned Judgment, as well as, the records of the case.

17. The case of the prosecution hinges on the ocular version given by the sole eyewitness examined by the prosecution, namely, PW-2 Smt. Krishna Wati, wife of the deceased, therefore, it is imperative to examine the same for ascertaining the criminal liability of the Appellant. PW-2 Smt. Krishna Wati deposed as under in her examination-in-chief recorded on 25th November, 2019:

***“On 06.04.2019 at about 8 am, I along with my husband/deceased Mahajan were present in my aforesaid jhuggi along with our children. In the meantime, Smt. Nankarna, mother of accused Suresh started abusing to us on the issue of dog and saying that we had beaten her dog. On the issue, an altercation also took place between my husband and father of the accused namely Bifai Lal. After sometime, while my husband Mahajan (deceased) was standing outside our jhuggi, accused Suresh present in the court today, came there and stated that 'abhi maja chakhata hoon' (I will teach a lesson to you as you have insulted my father). After saying this, Suresh went to his jhuggi and his mother Nankarna gave a kulhari (axe) to him and thereafter, accused reached the spot and hit kulhari on the head of my husband to kill him. Blood started oozing out from the head of my husband. Accused ran away from the spot with kulhari. One person namely Kamal chased the accused and apprehended him at some distance and axe was seized from the accused. At the time of incident, one Suraj, Lal Babu and Kamal were also present near the spot beside other public persons.*”**



I alongwith my relative Raju took my husband to LBS Hospital in an auto. After providing treatment, my husband was sent to GTB Hospital..."

(emphasis supplied)

18. When recalled for cross-examination on 26th November, 2019, PW-2 Smt. Krishna Wati, further deposed as follows:

*"We were residing at the above mentioned address for the last about four years prior to the date of incident. The jhuggi of accused persons is situated at a distance of 10-15 meters from our jhuggi. **We had not beaten the dog of accused persons. We had slightly pushed the dog with hands in the morning on the day of incident just before 8 am. No call at 100 number was made regarding the issue of dog. No one came there to pacify the matter of dog. No quarrel took place prior to the incident of pushing the dog.** There is only one room in my jhuggi. The quarrel regarding pushing the dog took place in middle of road between two jhuggis. My jhuggi is surrounded by other jhuggis approximately 150.*

xxx

xxx

xxx

*My husband was standing at the distance of about 6-7 feet from our jhuggi gate. I was present outside my jhuggi when accused was causing injury to my husband. I tried to intervene but father of the accused pushed me aside. I raised alarm to save my husband. No public person saved my husband from the accused. **The occurrence of hitting of kulhari (axe) by the accused had happened within 2-3 minutes. Accused had brought the axe (kulhari) within one minute of threatening my husband.** Smt. Nankarna, mother of the accused was also present outside her jhuggi but she had gone inside jhuggi to giving the kulhari to accused Suresh. I did not go anywhere when accused Suresh went to bring the kulhari (axe)...."*

(emphasis supplied)



19. Dr. G.K. Himanshu (Junior Resident, LBS Hospital) who prepared the MLC, Ex. PW-5/A, deposed as under:

"On 06.04.2019, I was on duty in casualty of LBS Hospital. On that day at about 9 am, patient Mahajan was brought in the casualty with alleged history of assault. The patient was in drowsy condition and patient was not maintaining SPO2 (oxygen level). The patient was given oxygen to the patient. On local examination, I found the following injuries: -

- 1. Lacerated wound over parietal area size approx. 7x2x2 cm.*
- 2. Active bleeding present in the wound.*

I provided initial treatment to the patient and referred to SR (Surgery) for further management and treatment. I prepared the MLC of the patient bearing No.003575/2019 which bears my signature at point A. The MLC is Ex.PW5/A."

20. PW-10 Dr. Shilpa Singh, Senior Resident, GTB Hospital, who conducted the post-mortem examination, proved the Post-Mortem Report, Ex. PW-10/A, and testified as follows:

"In external injury no.1: *On removal of bandage mentioned above, a sutured wound with 14 sutured present on the head measuring 9.5 cm x 0.7 cm. On removal of suture margins not approximated. Upper end of wound 1 cm away from mid-line towards right side and 10 cm above right side of eyebrow. Lower end of the wound is 0.5 cm away from mid-line on the right and 10 cm above occipital protuberance. Margins are clean-cut and well defined. Wound is bone deep and the surgical bandage is blood soaked.*

Internal examination: *Skull depressed fracture with radiating fissured margins present on the right frontal*



and parietal temporal bone. Fracture at the base of skull was also present.

Scalp. Subscalp hematoma present on bilateral frontal and right parietal region.

Brain: Weighs 1340 grams edematous, pale. Dura is torn with brain matter protruding out at right frontal region and right parietal region. Brain lacerated and contusion present over right parietal region. Subdural hemorrhage present over right frontal, temporal, partial region. Subarachnoid hemorrhage present over bilateral frontal and right partial region...

Time since death: About half a day.

Cause of death: Shock as a result of ante-mortem head injury produced by a sharp edged weapon. Injury mentioned in external injury is sufficient to cause death in ordinary course of nature. My detailed report is Ex.PW10/A which bears my signatures at Point A."

21. The seized axe [kulhari], Ex. P2, was subjected to examination at FSL Rohini. The FSL Report dated 31st July, 2019, Ex. PA, reveals that blood could not be detected on the axe.
22. From a reading of testimony of PW-2 Smt. Krishna Wati, which appears to be credible, the factum of the Appellant having dealt a single blow on the head of the deceased with an axe which resulted in his demise two days later, stands established on record. The post-mortem report [Ex. PW-10/A] as well as testimony of PW-10 Dr. Shilpa Singh reveals that external injury no.1 present on the head of the deceased was sufficient to cause death in ordinary course of nature. This clearly brings the case within the ambit of clause (3) of Section 300 IPC.
23. The core issue that, however, survives for our determination lies within a narrow compass viz. whether the case warrants the invocation of



Exception 4 to Section 300 IPC, thereby constituting ‘culpable homicide not amounting to murder’ punishable under Section 304 Part II IPC.

24. In ***Sita Ram Kuchhbedia v. Vimal Rana & Ors.***, 2026 SCC OnLine SC 293, following its earlier decision in ***Virsa Singh v. State of Punjab***, 1958 SCC OnLine SC 37, the Supreme Court reiterated the structured three-stage inquiry required to be undertaken by courts while delineating between ‘murder’ and ‘culpable homicide not amounting to murder’:

“47. At the first stage, the Court must determine whether the accused has committed an act which has caused the death of another, that is to say, whether the case involves a homicide. If such causal connection between the act of the accused and the death is established, the enquiry then proceeds to the second stage, that is to say, whether the act so committed amounts to ‘culpable homicide’ within the meaning of Section 299 IPC.

48. If the answer to this question is prima facie in the affirmative, the Court must then enter upon the third stage of enquiry, viz., whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of Section 300 IPC, which define murder. If the case does not fall within any of the four clauses of Section 300, the offence would be culpable homicide not amounting to murder, punishable under either Part I or Part II of Section 304 IPC, depending upon whether the case attracts the second or the third clause of Section 299 IPC.

49. Even if the case falls within the four clauses of Section 300 IPC, the Court must further examine whether any of the Exceptions to Section 300 IPC are attracted. If the case is covered by any such Exception, the offence would fall back to Section 299, that is, culpable homicide not amounting to murder.”

(emphasis supplied)



25. As exposited in **Sita Ram Kuchhbedia** (supra) even where a homicidal act ostensibly satisfies the objective criteria of Section 300 IPC, the inquiry does not terminate there; the court is duty-bound to further examine whether the act is mitigated by any of the statutory Exceptions to Section 300 IPC. Incidentally, the Trial Court did not delve into this aspect of the matter.

26. In the present case, the learned counsel for the Appellant has invoked Exception 4 to Section 300 IPC, which reads as under:

"Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault."

27. Section 304 IPC deals with cases not covered by Section 302 IPC and it divides the offence into two distinct classes, i.e., (i) those in which the death is intentionally caused; and (ii) those in which death is caused unintentionally but knowingly. The cases of the first category are punishable under Section 304 Part I, whereas the cases under the second category are punishable under Section 304 Part II of the IPC.

28. The intention being the state of mind, is to be gathered from a cumulative effect of the circumstances proved on record. As laid down by the Hon'ble Supreme Court in **Pulicherla Nagaraju v. State of A.P., (2006) 11 SCC 444**, either few or several of the factors in combination will be decisive for ascertaining whether there was any intention to cause death. The Supreme Court delineated the relevant factors as under:



"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters—plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. 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 for 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; (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. Be that as it may.”

(emphasis supplied)

29. The legal requirements for invoking Exception 4 to Section 300 IPC were authoritatively summarized by the Hon'ble Supreme Court in ***Surinder Kumar v. UT, Chandigarh***, (1989) 2 SCC 217, and reaffirmed in ***Arjun v. State of Chhattisgarh***, (2017) 3 SCC 247, in the following terms:

“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 [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 is it 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.”



(emphasis supplied)

30. A Co-ordinate Bench of this Court in ***Sanjay Singh v. State (NCT of Delhi)***, 2026 SCC OnLine Del 4184, noting the circumstances, where two men, who were friends, were drinking together and had a fight over a trivial issue of payment for a bottle of liquor, which led to a sudden rage in a state of intoxication, leading to the Appellant therein picking up a brick that was lying outside and striking the deceased, opined that there was no intention to cause death, and accordingly, the offence under Section 302 was altered to one under Section 304 Part II of the IPC. The relevant extract from the said decision reads thus:

“45. The circumstances of the case in hand fit squarely within this well-settled principle. The two men were friends. They were drinking together. The quarrel arose without warning over something as trivial as payment for a bottle of liquor. The deceased slapped the Appellant. The Appellant, in a state of intoxication and sudden rage, picked up a brick that was lying outside and struck the deceased. There was no prior plan. The Appellant was not carrying any weapon. There was no motive to kill. There was no intention, in the legal sense of the term, to cause death, but there was knowledge, that striking a person repeatedly on the head with a brick is likely to cause death.

XXXX

XXXX

XXXX

XXXX

49. Having considered the entire evidence on record, this Court is of the view that though the Appellant had the knowledge that repeated blows with a brick on the head could likely cause death, the material on record does not establish a deliberate intention to commit murder within the meaning of Section 300 IPC. The present case would therefore fall within the ambit of Section 304 Part II IPC.



XXXX

XXXX

XXXX

XXXX

52. Accordingly, the conviction of the Appellant under Section 302 IPC is altered to one under Section 304 Part II of the IPC. The sentence of rigorous imprisonment for life awarded by the Ld. trial court is modified and reduced to rigorous imprisonment for a period of eight years. The fine imposed by the Ld. trial court shall remain undisturbed.”

(emphasis supplied)

31. The aforementioned principle was recently reaffirmed by this Court in ***Mukesh v. State (NCT of Delhi), 2026 SCC OnLine Del 5961***. In that case, the Appellant and the deceased, who were co-workers sharing a room, engaged in a sudden scuffle over a trivial issue of not opening a door by the Appellant therein when the deceased knocked the same. During the altercation, the Appellant inflicted a single fatal stab wound using a pair of scissors. Noting the absence of prior animosity, the Court held that the use of a readily available tool negated any inference of premeditation, and thereby altered the conviction to Section 304 Part II IPC. The Court observed:

“30. The offence weapon i.e. scissors, which is stated to have been used, was, readily available at the site of the crime since both the Appellant and deceased were tailors and were staying in the tailoring shop. It is not a situation where the Appellant had specially brought any offence weapon to execute the crime, in a pre-meditated manner.

31. Further, PW 1 had not seen the Appellant giving any blow to the deceased, much less with a force which in all probability would have caused a fatal injury. The injuries were suffered by the deceased during scuffle, and the same was noticed by PW 1 when he separated them. The entire incident happened in a short span of time or at the spur of the moment, in a sudden fight when both Appellant



and deceased where under the influence of liquor. It is thus, clear that there was no intention on part of the appellant to kill the deceased, nor he had committed the crime with any pre-planning or premeditation.”

32. Reference may also be had to the decision of **Atul Thakur v. State of Himachal Pradesh, (2018) 2 SCC 496 : (2018) 1 SCC (Cri) 743**, wherein there was sudden fight between friends who had gathered for a drink party in which appellant gave six knife blows to the deceased in the heat of passion on different parts of the his body, causing serious bodily injuries to which he succumbed, the Supreme Court held that the facts of the case warrant the invocation of Exception 4 to Section 300 IPC, as it is a case of culpable homicide not amounting to murder since it was found that there was no shred of evidence that the appellant had assaulted the deceased with an intention to cause his death, and that the act was done without the appellant taking any undue advantage or acting in a cruel manner. The Court also concluded that the number of wounds caused cannot be a decisive factor, and neither the use of a knife nor the factum of multiple injuries given by the appellant would deny him the benefit of Exception 4 to Section 300 IPC. The relevant extract from the said decision reads thus:

*“7. We have carefully considered the oral evidence adduced by the prosecution, in particular the evidence of PW 11 and PW 12 who were the eyewitnesses to the incident during which **Hitesh Thakur was assaulted by the appellant with knife causing serious bodily injuries to which he finally succumbed.** In addition to the said oral evidence, the other circumstances also point towards the complicity of the appellant in the commission of crime such as recovery of the knife at his instance and the nature of injuries suffered by the deceased attributable to the assault by the same knife by the appellant. We find that the trial court has justly*



*analysed the evidence to record a finding about the complicity of the appellant in the commission of crime. That has been affirmed by the High Court after reappreciation of the relevant evidence. We are in agreement with the view so taken by the two courts below. In other words, we are inclined to uphold the concurrent finding recorded by the courts below that the appellant caused six injuries to deceased Hitesh Thakur by attacking him with a knife on the night of 27-7-2011 in the presence of their friends (including PW 11 and PW 12) who had gathered at the house of Mukesh Thakur for celebrating a drink party arranged at the behest of Hitesh Thakur. **Further, Hitesh Thakur succumbed to the injuries caused by the appellant. Thus, it is a case of homicidal death.***

8. Notably, the evidence on record plainly establishes that a sudden fight took place between the appellant and Hitesh Thakur and in the heat of passion, the appellant assaulted Hitesh Thakur causing serious bodily injuries. There is no shred of evidence, much less even a remote suggestion that the appellant had assaulted Hitesh Thakur with an intention to cause his death. Though the High Court found the appellant guilty, it has not held that the bodily injuries caused by the appellant were with an intention to cause the death of Hitesh Thakur. The High Court overturned the finding recorded by the trial court regarding the nature of offence, principally on the ground that the appellant gave repeated knife-blows to Hitesh Thakur and Hitesh Thakur could not defend himself as he was unarmed. Thus, the appellant was found guilty of offence punishable under Section 302 IPC.

9. In other words, the controversy in these appeals boils down to the nature of offence and the sentence to be awarded in that behalf. As aforesaid, the evidence on record, as held by the two courts below and with which finding we are in full agreement, is that the appellant gave six knife-blows to Hitesh Thakur on the fateful



night to which he succumbed. Thus, it is a case of homicidal death. **However, there is no evidence that the injuries inflicted by the appellant were with an intention to cause the murder of Hitesh Thakur. On the other hand, the evidence clearly establishes that the appellant assaulted Hitesh Thakur without any premeditation. The whole incident took place suddenly and, in the heat of passion a sudden quarrel started as Hitesh Thakur, while smoking, blew smoke on the face of the appellant. Resultantly, the appellant got enraged. He told him that he was senior in age and thus should not smoke in his presence much less blow the smoke towards him. Then a sudden physical fight started between them, in which the appellant, in heat of passion, gave six knife-blows to Hitesh Thakur on different parts of his body.**

10. The evidence of PW 11 and PW 12 (eyewitnesses) would establish that the appellant and others including deceased Hitesh Thakur had gathered at the spot for a drink party arranged at the instance of Hitesh Thakur. They had consumed drinks when the incident took place. Soon after assaulting Hitesh Thakur by knife, when the appellant realised that Hitesh has been badly injured, he offered him water and took him to the hospital along with his other friends. He was in the hospital till Hitesh Thakur succumbed to the injuries. He had also informed the father of Hitesh on telephone and called him to the hospital. Further, when Hitesh was taken to the hospital, the doctors did not provide him immediate treatment but insisted on calling his father. This can be culled out from the evidence of PW 11 and PW 12, who were eyewitnesses and also present throughout and until the last rites of Hitesh Thakur were performed.

11. Taking into account the events as unfolded, it leaves no manner of doubt that the appellant had no intention to cause the death of Hitesh Thakur. The



incident happened without any premeditation in a sudden fight between Hitesh Thakur and the appellant and in heat of passion the appellant inflicted six knife-blows on Hitesh Thakur. On the contrary, after realising his mistake, he immediately offered water to Hitesh Thakur and also took him to hospital and stayed there till his last rites were performed. PW 2, father of deceased Hitesh Thakur also corroborates the position that the appellant had contacted him to inform that Hitesh had been brought to the hospital in serious condition.

12. Taking overall view of the matter, the facts of the present case warrant invocation of Exception 4 to Section 300 IPC. For, it is a case of culpable homicide not amounting to murder inasmuch as the incident happened on account of sudden fight between the friends who had gathered for a drink party arranged at the behest of Hitesh Thakur. There was no premeditation and the act done by the appellant was in the heat of passion without the appellant taking any undue advantage or acted in a cruel manner. The number of wounds caused by the appellant, it is a well-established position, by itself cannot be a decisive factor. The High Court committed manifest error in being influenced by the said fact. What is relevant is that the occurrence was sudden and not premeditated and the offender acted in the heat of passion. The evidence supports the case of the appellant in this behalf. The fact that the appellant used weapon such as knife, is also not a decisive factor to attract Section 302 IPC. Neither the use of a knife in the commission of offence nor the factum of multiple injuries given by the appellant would deny the appellant of the benefit of Exception 4.

13. Dealing with a somewhat similar situation, in Surain Singh v. State of Punjab [Surain Singh v. State of Punjab, (2017) 5 SCC 796 : (2017) 3 SCC (Cri) 461],



this Court has restated the settled legal position about the purport of Exception 4 to Section 300 IPC. Even in that case, the accused had repeatedly assaulted the deceased with a kirpan and caused injuries resulting into death. After restating the legal position, the Court converted the offence to one under Section 304 Part II instead of Section 302 IPC. Following the same legal principle and keeping in mind the factual position as unfolded, the view taken by the trial court of convicting the appellant for the offence punishable under Section 304 Part II, is unexceptionable.

XXXX

XXXX

XXXX

XXXX

15. As aforesaid, the High Court overturned this finding of the trial court on the question of nature of offence, by mainly observing that the appellant had caused repeated blows with a weapon like knife, causing six serious injuries to Hitesh Thakur to which he succumbed. **We are of the opinion that neither the factum of use of knife by the appellant during the assault nor the multiple blows (six) given by the appellant can be the sole basis to deny the appellant of the benefit available under Exception 4 to Section 300 IPC. The Court is obliged to take an overall view of the matter on the basis of the established facts.** This principle is restated in Surain Singh case [Surain Singh v. State of Punjab, (2017) 5 SCC 796 : (2017) 3 SCC (Cri) 461].

(emphasis supplied)

33. When the evidence in the present case is evaluated on the touchstone of above noted settled principles, several significant features emerge:

- (a) The entire genesis of the incident was an exceedingly trivial dispute concerning the pushing of a pet dog, which took place in a congested jhuggi cluster where the parties were immediate neighbour residing merely 10 to 15 meters apart;



- (b) There was no history of prior enmity or animosity between the Appellant and the deceased, inasmuch as in her cross-examination PW-2 Smt. Krishna Wati candidly admitted that no quarrel had ever taken place prior to that morning;
- (c) The initial altercation occurred between the elderly parents of the Appellant and the deceased, and the Appellant was not even an initial participant in the dispute;
- (d) The entire incident from the exchange of words to the assault transpired in a rapid sequence within 2-3 minutes;
- (e) It seems upon hearing his father being insulted in the course of the quarrel, the Appellant reacted impulsively in a fit of anger, uttering "*abhi maja chakhata hoon*", went into his adjacent jhuggi, brought out a domestic axe, and inflicted a single blow on the deceased;
- (f) Significantly, the Appellant inflicted only one single blow, he did not attempt to repeat the strike, nor did he persist in assaulting the deceased after the latter fell to the ground; and thereafter he immediately fled from the spot; and
- (g) The weapon was a domestic tool readily accessible in the household of a jhuggi dweller. Moreover, the deceased did not die instantaneously, but survived for nearly two days and succumbed in the hospital on 08th April, 2019.

34. The above enumerated circumstances demonstrate that the occurrence was sudden and not premeditated, arising out of a sudden quarrel in the heat of passion. A single blow and the immediate cessation of the assault repels the inference of a deliberate intention to cause death or of causing such bodily injury as is likely to cause death. However, in the opinion of this



Court, the Appellant acted with a knowledge that striking the deceased on the head with an axe was likely to cause death. Clearly, the Appellant did not even take undue advantage or acted in a cruel or unusual manner.

35. The mere utterance of words such as "*abhi maja chakhata hoon*" in the heat of an ongoing altercation cannot be elevated to an intention to commit murder. Reference in this regard may be had to the decision of a Co-ordinate Bench of this Court in ***Jagraj Singh v. State of Delhi***, 2019 SCC ***OnLine Del*** 7922, which dealt with an identical utterance made during a sudden quarrel. Extending the benefit of Exception 4 to Section 300 IPC, the Division Bench observed as follows:

*"31. The above circumstances demonstrate that the appellant had not taken undue advantage of the situation or acted in a cruel or an unusual manner for being deprived of the benefit available under Exception 4 to Section 300 IPC. It was an unpremeditated incident arising from a sudden accident. **The use of the words "Mein tumhein abhi maja chakhata hun" by the appellant at the time of the incident also goes to show that he did not have any intention to kill the deceased, but to assault him.** We are therefore of the opinion that considering the totality of the circumstances, the benefit of Exception 4 to Section 300 IPC ought to be extended to the appellant. Our view is also fortified by a string of decisions of the Supreme Court in circumstances where Exception 4 to Section 300 IPC has been applied and the offence against the appellant in the said case, was converted from capital offence to a lesser offence i.e., culpable homicide not amounting to murder, as noted above."*

(emphasis supplied)

36. The case thus, squarely satisfies all the requirements of Exception 4 to Section 300 IPC, thereby reducing the gravity of offence from 'murder' to



‘culpable homicide not amounting to murder’ punishable under Section 304 Part II IPC.

37. Insofar as the conviction under Section 174-A IPC is concerned, no argument was put forth on behalf of the Appellant. The punishment awarded for the same was for one year, which the Appellant has already served.

38. The next question that arises for consideration is the quantum of sentence to be awarded to the Appellant under Section 304 Part II IPC. The maximum sentence prescribed under Section 304 Part II IPC is imprisonment for a term which may extend to ten years, but no minimum sentence is stipulated therefor.

39. A perusal of the latest Nominal Roll indicates that as on 21st October, 2025, the Appellant has undergone an actual sentence of 5 years and 17 days besides earning remission of 3 months and 25 days. Thus, as on date, taking into account the time that has elapsed since the issuance of the Nominal Roll, the Appellant has undergone nearly 06 years of actual incarceration, besides remission.

40. The nominal Roll further depicts that the Appellant is not involved in any other criminal case, his jail conduct has been satisfactory, and he has been working as a “*Sahayak*” in jail.

41. In ***Sanjay Singh (supra)***, where the appellant had similarly inflicted fatal blows in a sudden quarrel without premeditation and had undergone actual incarceration for over 5 years and 6 months, a Co-ordinate Bench of this Court deemed it fit to modify the sentence to rigorous imprisonment for a period of 8 years. While in ***Mukesh (supra)*** this Court restricted the sentence to the period already undergone. The said sentence was granted



specifically because the Appellant therein had already served more than 10 years, which constitutes the maximum punishment prescribed under Section 304 Part II IPC.

42. Having regard to the totality of facts and circumstances, the nature of the weapon used, the single blow delivered in a sudden heat of passion over a trivial dispute, the clean antecedents of the Appellant, we are of the view that the ends of justice would be adequately met by modifying the sentence from imprisonment for life to rigorous imprisonment for a period of 08 years.

43. Consequently, the appeal is partly allowed in the following terms:

- (i) The conviction of the Appellant under Section 302 IPC is altered to a conviction under Section 304 Part II IPC.
- (ii) The sentence of rigorous imprisonment for life awarded by the Ld. Trial Court under Section 302 IPC is modified and reduced to the period of 08 years.
- (iii) The fine of Rs. 10,000/- imposed under Section 302 IPC is maintained under Section 304 Part II IPC, and in default of payment of fine, the Appellant shall undergo simple imprisonment for one month.
- (iv) The conviction and sentence of simple imprisonment for one year along with a fine of Rs. 2,000/- under Section 174-A IPC stands affirmed, and having been directed to run concurrently, stands already served.
- (v) The direction issued by the Ld. Trial Court referring the matter to DLSA (East) for grant of suitable compensation



to the legal heirs of the deceased under the Delhi Victim Compensation Scheme, 2018 shall remain undisturbed.

44. The appeal, along with any pending applications, stands disposed of accordingly.

45. A copy of this judgment be transmitted forthwith to the Superintendent of Prison, for necessary information and immediate compliance.

46. The judgment be uploaded on the website of this Court forthwith.

**VIKAS MAHAJAN
JUDGE**

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 2, 2026

nsa