* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd January, 2026
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\+ **CRL.A. 920/2025 & CRL.M.(BAIL) 1425/2025**

AJAY .....Appellant

Through: Ms. Aishwarya Rao and Ms. Mansi Rao, Advs.

versus

STATE & ANR. .....Respondents

Through: Mr. Ritesh Kumar Bahri (APP for State), with Ms. Divya Yadav, Adv. SI Vikash PS Subzi Mandi

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal under Section 415(2) of Bhartiya Nagrik Suraksha Sanhita, 2023, (herein afters *'BNSS'*) has been preferred by the Appellant assailing the order of conviction dated 26th April, 2025 and the order on sentence dated 6th May, 2025, passed by the ld. Court of Sessions in FIR No. 264/2015, Police Station Subzi Mandi, titled ***State v. Ajay***. The ld. Trial court *vide* the Impugned Order, has convicted the Appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 for the murder of Rakesh, and sentenced to imprisonment for life, along with a fine of ₹1,000/-, with a default sentence of simple imprisonment for two months. The Appellant has been granted the benefit of Section 428 The Code Of Criminal Procedure, 1973 (herein after CrPC).

"12. In v1ew of facts and circumstances of the case,

> *submissions of the Ld. Amicus Curie for convict and Ld. Addl. PP for the State, convict namely Ajay is hereby sentenced to undergo* ***imprisonment for life with fine of Rs. 1,000/;. for the offence punishable under Section 302 IPC for commission of murder of deceased Rakesh. In case of default to pay fine, the convict shall undergo simple imprisonment of two months.***
> *13. Benefit of Section 428 Cr.P.C. shall be given to the convict. for the period already undergone by him during the trial."*

2. The Appellant was, however, acquitted of the charges under Sections 393 and 397 IPC, the ld. Trial Court holding that the prosecution had failed to establish the ingredients of attempt to commit robbery and robbery with a deadly weapon. The ld. Trial Court held as under:

> *"67. The prosecution has successfully proved the ingredients of offence punishable under Sec. 302 IPC against accused Ajay beyond reasonable doubt. Prosecution has failed to prove the ingredients of offences punishable under Sec. 393/397 IPC against accused Ajay beyond reasonable doubt.*
> *68.* ***Accordingly, accused Ajay is hereby convicted for the offence punishable under Sec. 302 IPC. He is hereby acquitted for the offences punishable under Sec. 393/397 IPC****."*

FACTUAL MATRIX:

3. The prosecution case, as unfolded before the ld. Trial Court, arises out of an incident alleged to have taken place in the early hours of 3rd June, 2015, at approximately 3:00–3:30 AM, at the corner of Kamla Nehru Park, Barafkhana Chowk, Delhi, within the jurisdiction of Police Station Subzi Mandi. The deceased Rakesh was stated to be a cycle rickshaw puller who was sleeping on his rickshaw at the said location at the relevant time.

4. According to the prosecution, the Appellant attempted to commit robbery upon the deceased while he was sleeping on his rickshaw. It was

alleged that during this attempt, a quarrel ensued, following which the Appellant is stated to have assaulted the deceased using a cemented stone/six-cornered tile, inflicting repeated blows on the head of the deceased, resulting in grievous injuries.

5. The first information regarding the incident was received at Police Station Subzi Mandi through DD No. 5A, which was recorded at about 3:47 AM on the intervening night of 3rd June, 2015. The DD entry indicated that a rickshaw puller had been assaulted and was lying injured near Barafkhana Chowk.

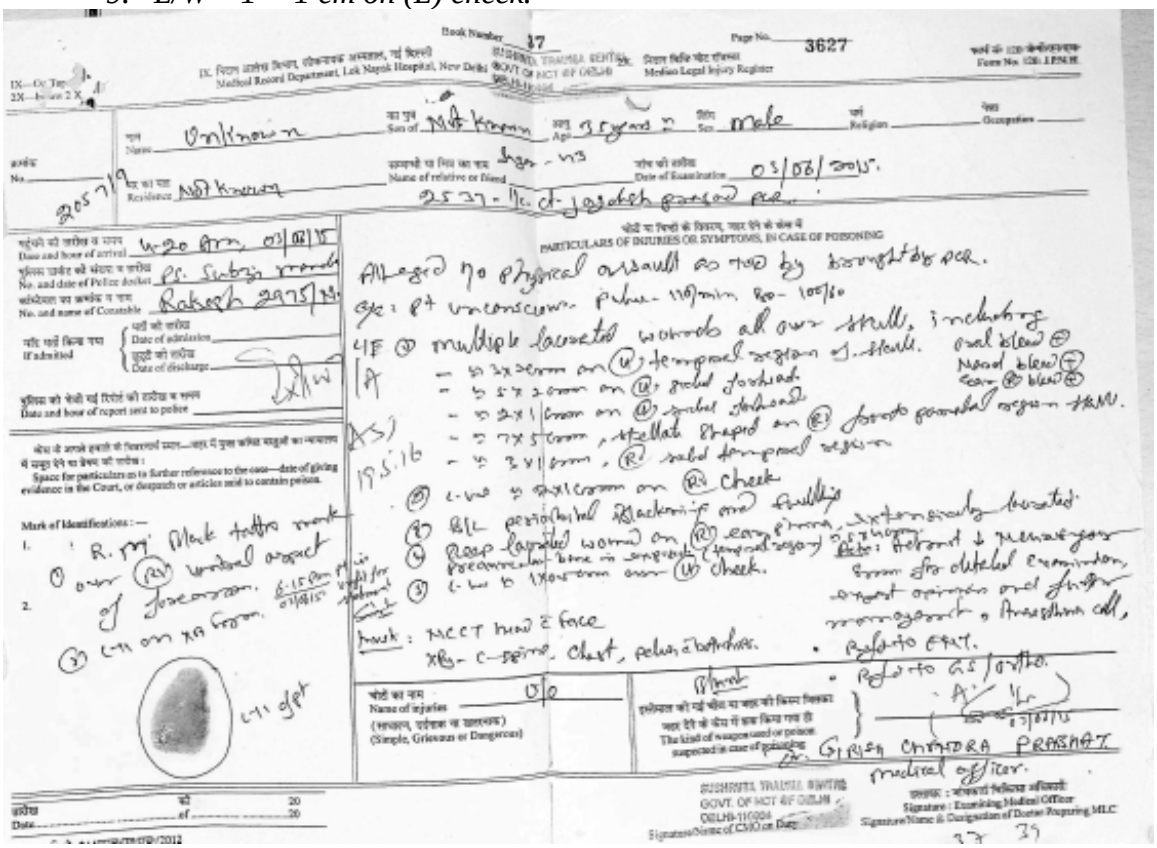
6. Upon receipt of the said DD entry, police officials being SI Yogender Kumar along with Ct. Fakir Chand proceeded to the spot of incident. On reaching the site, a blood-stained cycle rickshaw was found stationed near the footpath, with blood scattered on the pavement and surrounding area. The injured person was found lying near the rickshaw in an unconscious condition.

7. The injured was initially removed by PCR officials to Hindu Rao Hospital, from where he was referred to Sushruta Trauma Centre in view of the seriousness of the injuries. An MLC was prepared noting multiple head injuries. The injured was declared unfit for statement and subsequently succumbed to his injuries at about 9:00 AM on the same day. The MLC recorded as under:

> ***"****Alleged h/o physical assault as told by brought by PCR.*
> *G/E: Pt unconscious. Pulse – 110/min. BP – 100/60.*
> *L/E:*
> *Multiple lacerated wounds all over skull, including:*
> *Oral bleeding (+)*
> *Nosal bleeding (+)*
> *Ear (R)bleeding (+)*
> 1. *~ 3 × 2 cm on (L) temporal region of skull.*

Oozing blood +

2. *~ 5 × 2 cm on (L) side of forehead. Fresh blood +*
3. *~ 2 × 1 cm on (L) side of forehead.*
4. *~ 7 × 5 cm stellate shaped on (R) fronto-parietal region of skull.*
5. *~ 3 × 1 cm on (R) skull temporal region.*
6. *L/W ~ 2 × 1.5 cm on (R) cheek.*
7. *B/L periorbital blackening and swelling.*
8. *Deep lacerated wound on (R) ear pinna, extremely lacerated. Preauricular bone is exposed (temporal region) 5x4 cm.*
9. *L/W ~ 1 × 1 cm on (L) cheek."*



8. During the initial stage of investigation, one Mohd. Irshad was stated to be present at or near the spot. His statement was recorded, wherein he claimed to have witnessed the incident. On the basis of his statement, a rukka was prepared and the FIR was registered under Sections 393/397/302

IPC.

9. The Appellant was apprehended by police officials nearby, at or around Kamla Nehru Park, shortly after the occurrence. The Appellant was arrested and his personal search was conducted.

10. During the course of investigation, several articles were seized from the spot, including blood-stained tiles, pieces of rexin from the rickshaw, blood-stained earth, footpath tiles, keys of the rickshaw, and the rickshaw itself. The blood-stained clothes of the deceased as well as the Appellant were also seized.

11. The spot was inspected by the Crime Team, photographs were taken, and both an unscaled and a scaled site plan were prepared. The scaled site plan depicted the relative positions of the deceased, the alleged weapon of offence, and the location from where the eyewitness claimed to have seen the incident.

12. Post-mortem examination of the deceased was conducted, wherein multiple external and internal injuries were noted. The cause of death was opined to be cranio-cerebral damage consequent upon heavy blunt force impact, sufficient to cause death in the ordinary course of nature. A subsequent opinion was also obtained regarding the alleged weapon of offence.

13. During investigation, the seized exhibits were sent for forensic examination. The FSL report indicated the presence of human blood on several exhibits, including the clothes of the deceased and the Appellant, as well as on the seized tiles. The Appellant admitted the genuineness of the FSL report under Section 294 CrPC before the ld. Trial court *vide* order dated 3rd October, 2023.

14. Upon completion of investigation, a charge-sheet was filed before the concerned Magistrate. On 31st August, 2015 copies of documents were supplied to the Appellant under Section 207 CrPC, and the case was committed to the Court of Sessions.

15. Charges were framed against the Appellant on 18th September, 2015 under Sections 393, 397 and 302 IPC, to which the Appellant pleaded not guilty and claimed trial.

16. In order to prove its case, the prosecution examined 27 witnesses, including the alleged sole eyewitness, police officials involved in investigation and arrest, medical officers, forensic experts, and formal witnesses. The witnesses deposed as under:

> *"8. PW-2 Ct Bijender Singji, deposed that on the intervening night of 02-03.06.2015, he along with HC Gyanender was on patrolling on government motorcycle bearing registration no. DL-lSN-5374 and at about 03:35 pm {word 'pm' seems to be a clerical mistake as the witness has specifically deposed that it was the intervening night of 02/03.06.2025) when they reached at Baraf Khana Chowk, one unknown person stopped them and told them that somebody had hit a person with stone and eaused injury and the injured was lying on the patri on Kamla Nehru Park. He further deposed that the abovesaid person disclosed his name as Mohd. Irshad and after receiving the said information, they immediately reached at the spot i.e. patri Kamla Nehru Park and found that a person was lying there in a pool of pillar and the blood was profusely bleeding from his head. He further deposed that they immediately informed to Sugar-I through wireless set and called the PCR. He also deposed that the abovesaid person, Mohd. Irshad came to them and told that the person who had caused the injury to the abovesaid injured with stone had gone towards Hindu Roa Pahadi and thereafter he immediately chased the abovesaid person and he apprehended him from the patri when he was trying to jump over the railing of Kamla Nehru Park. He further deposed that on interrogation, accused disclosed his name as Ajay and eyewitness Mohd. Irshad had identified accused Ajay at*

the spot and told them that accused Ajay was the same person who had caused injury to the abovesaid injured with stone. He further deposed that lO/SI Yogender reached at the spot and recorded statement of complainant Mohd. Irshad, prepared rukka on the basis of statement of complainant and got the present FIR registered at PS through Ct. Fakir Chand. He narrated about proceedings conducted by the 10 viz. inspection of the spot of incident through Crime Team and seizure of the exhibits i.e. blood lying on footpath and on rickshaw in gauze piece, blood stained footpath tiles, blood stained hexagonal tiles, blood stained raxin of rickshaw, footpath tiles without blood, keys of rickshaw lying beneath the seat and blood stained rickshaw, vide seizure memo Ex. PW-2/A. He also narrated about preparation of site plan, Ex. PW-2/B by lO at the instance of complainant. He proved arrest memo, personal search memo and disclosure statement of accused Ajay as Ex. PW-2/C to Ex. PW-2/E. This witness has correctly identified the accused and case properties during his deposition in the court. In his crossexamination, he denied the suggestion that when they reached at the spot except the injured, they did not find any other person. He deposed that Irshad was standing in front of Barafkhana gate and there was distance of 20-30 feet between the place of incident and the place where Irshad was found standing. He also deposed that Mohd. Irshad remained at the spot when they had gone towards Pahadi Hindu Rao to apprehend the accused. He also deposed that lO had recorded the statement of complainant Irshad at the spot by using the motorcycle seat and site plan was prepared in his presence. He denied the suggestion that pullanda items identified by him were not lifted in his presence or that he had disclosed about the same only on seeing the noting on pullanda before opening of the same. He also deposed that no other public person except the complainant was present at the spot nor any other public person had been associated during the investigation at the spot. He also deposed that information of arrest of accused was given to his sister and he did not know who had identified the injured in the hospital.

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10. PW-4 Mohd. Irshad was the sole eyewitness of the incident as well as complainant in the present case. He deposed that on 03.06.2015 at about 03:00-03:30 am, he was returning to his home after worshiping at the

graveyard situated at Malkaganj near Subzi Mandi and when he reached Barafkhana Chowk on patri, Nehru Park, he saw that accused Ajay was searching a rickshaw puller who was sleeping on his rickshaw at the abovesaid patri. He further deposed that in the meantime, rickshaw puller woke up and thereafter accused started quarreling with the abovesaid rickshaw puller and during the said quarrel, accused lifted six corners tiles from the patri and hit the same on the head of the abovesaid rickshaw puller repeatedly. He further deposed that accused gave many blows of the abovesaid tiles on the head of rickshaw puller repeatedly and thereafter rickshaw puller fell down. He further deposed that he saw two police officials coming on bullet motorcycle and he told them about the said incident. He further deposed that accused started running from the spot towards Pahari Hindu Rao Hospital and park and both the abovesaid police officials chased the accused and after sometime, both the abovesaid police officials along with accused Ajay came back to the spot. He further deposed that thereafter police gypsy was called at the spot by the abovesaid police officials and police officials took the injured rickshaw puller to the hospital. He narrated about proceedings conducted by the 10 at the spot i.e. seizure of exhibits i.e. six corner blood stained tiles, tiles from patri and blood from rickshaw and proved their seizure memo as Ex. PW-2/A. He also narrated about preparation of site plan, Ex. PW-2/B by lO at his instance and proved his statement, Ex. PW-4/D. He also proved arrest memo, personal search memo and disclosure statement of accused Ajay as Ex. PW-2/C to Ex. PW-2/E. This witness was cross-examined by Ed. Addl. PP for the State in which this witness was confronted with his statement recorded under Sec. 161, Ex. PW-4/P1 on various points regarding seizure of exhibits as well as case properties by the 10 from the spot of incident. In his cross-examination on behalf of accused, he deposed that the abovesaid rickshaw puller was sleeping on rickshaw at a distance of around 20-25 feet from the place where he was standing for taking TSR. He denied the suggestion that there was dark at the spot at that time. He deposed that the road lights were on at that time. He denied the suggestion that he had not seen the accused hitting or causing injuries to the deceased. He further deposed that he had not told both the abovesaid police officials that accused had run towards Pahari Hindu Rao Hospital. He denied the suggestion that police had not

apprehended and arrested theaccused in his presence. He also deposed that he had signed only one document at the spot and had signed the second document at PS. He also deposed that he had not read the contents of above said documents as he was illiterate. He also deposed that the said documents were not read over to him by the police. He denied the suggestion that he had earlier seen accused and he knew him prior to the incident in question. He admitted that exhibits lifted from the spot had not been sealed or kept in the envelopes in his presence, which was produced in the court on that day. He deposed that he had not stated in his statement, Ex. PW-4/D that the person who was taking the search of rickshaw puller had demanded the key of rickshaw from deceased or had said that otherwise he would kill him. He denied the suggestion that he had not seen the abovesaid incident. He denied the suggestion that accused was not apprehended in his presence. He also denied the suggestion that he was a stock witness of the police or that he had signed the abovesaid documents on the asking of police officials in PS.

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13. PW-7 Dr. Girish Chandra Prabhat, Medical Officer, has proved the MLC of deceased as Ex. PW-7 I A. In his crossexam ination, he deposed that he had mentioned in the abovesaid MLC that the abovesaid injuries were caused by blunt object. He denied the suggestion that the abovesaid injury may be caused by a 'danda' . He also deposed that the abovesaid injured was brought to the hospital at about 04:20 am by Ct. Jagdish Prasad with history of 'Jhagra' (physical assault). He also deposed that he prepared the abovesaid MLC within half an hour after examination of the injured. He denied the suggestion that Ex. PW-7/A was not prepared by him on 03.06.2015.

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PW-21 Dr. A. S. Bajwa, Specialist, Mortuary, Subzi Mandi, has proved the detailed postmortem report No. 1013/15 of deceased Rakesh, as Ex. PW-21/A. He also deposed that cause of death in the present case was 'cranio cerebral damage consequent upon heavy blunt force impact which was sufficient to cause death in an ordinary course of nature'. He also proved his detailed subsequent opinion about weapon of offence as Ex. PW-21/H. In his cross-examination, he denied the suggestion that pattern of external injuries mentioned in the postmortem report could be sustained by falling of a person towards his face/mouth.

He also denied the suggestion that sub scalp buries mentioned in PM report were possible by falling on rough or hard surface."

17. After closure of prosecution evidence, the statement of the Appellant was recorded under Section 313 CrPC, wherein he denied the prosecution allegations and claimed that he had been falsely implicated. He asserted that the deceased was under the influence of alcohol and had sustained injuries by falling on cemented tiles. The Appellant did not lead any defence evidence. The relevant paragraph from the Impugned Order is reproduced hereinbelow:

"34. After closing of prosecution evidence, statement of accused was recorded under Sec. 3 13 Cr.PC, wherein he denied all the charges against him. Accused claimed that he was innocent and IO had falsely implicated him in the present case. He further claimed that he used to work as a labourer (loading and unloading of vegetables on the truck) at Azadpur, Subzi Mandi, Delhi from 10:00 pm to 03:00 am. He also claimed that on 03.06.20 I 5, he bad arrived at Baratkhana Chowk from Azadpur Subzi Mandi at about 03:00 am and asked the deceased who was sitting on his rickshaw to go his house at the address. He also claimed that the deceased was under influence of liquor. He further claimed that deceased asked for Rs. 50/- for taking him from Barafkhana Chowk to his house. He also claimed that he asked him Rs. 50/- was too much fare then accused replied him in abusive language. He further claimed that he asked deceased not to use abusive language. He also stated that he started abusing him in the name of his mother and sister. He further claimed that he was under influence of liquor and that's why he bad fallen on the heap of the cemented tiles twice or thrice and sustained injuries on his head and abrasion on other other parts of his body. He also claimed that he had not caused any bodily injury to the deceased. Accused did not examine any defence witness in the present case."

18. Upon hearing final arguments and appreciation of the material on record, the ld. Trial Court concluded that the prosecution had failed to prove

the offences under Sections 393 and 397 IPC but held that the offence under Section 302 IPC stood proved beyond reasonable doubt. Accordingly, the Appellant was convicted and sentenced as noted above.

19. Aggrieved by the conviction and sentence, the Appellant has preferred the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

20. The ld. counsel for the appellant submits that the entire prosecution case hinges upon the testimony of PW-4 Mohd. Irshad, who has been projected as the sole eyewitness to the incident. Learned counsel contended that PW-4 is a planted witness, and his alleged presence at the place of occurrence in the early hours of 03.06.2015 at around 03:00–03:30 AM is highly improbable.

21. It is argued that PW-4 claimed to have remained present at the spot throughout the incident and thereafter. However, this assertion is contradicted by the testimony of PW-10 Ct. Jagdish Prasad, the PCR official, who categorically deposed in his examination-in-chief dated 19.05.2016 that when he reached the spot, no person other than the injured/deceased was present.

22. The learned counsel for the appellant submits that this version is in direct conflict with the testimony of PW-2 Ct. Bijender Singh, who in his cross-examination stated that PW-4 remained at the spot when PW-2 and PW-14 went towards Pahari Hindu Rao to apprehend the accused. The learned counsel for the Appellant further submits that, these irreconcilable versions strike at the root of the prosecution case and render the presence of PW-4 doubtful.

23. The learned counsel further submits that the testimony of PW-4 is riddled with material contradictions, particularly when his statement recorded under Section 161 CrPC dated 03.06.2015 is compared with his deposition before the Court.

24. In his statement under Section 161 CrPC, PW-4 stated that while waiting at Barafkhana Chowk at about 03:30 AM, he saw a person searching the clothes of a rickshaw puller sleeping on his rickshaw, that the rickshaw puller woke up and resisted, and that the assailant threatened to kill him if he did not hand over the keys of the rickshaw. PW-4 further stated that upon refusal to hand over the keys, the assailant picked up a stone lying nearby and attacked the deceased. However, in his examination-in-chief recorded on 04.04.2016, PW-4 did not depose about any demand for the rickshaw keys. More significantly, in his cross-examination on the same date, PW-4 categorically stated that he did not know whether the accused had demanded the keys of the rickshaw and further denied having heard the deceased refusing to hand over the keys.

25. It is submitted that this contradiction goes to the very genesis of the incident and undermines the prosecution version regarding the motive and sequence of events, rendering PW-4's testimony unreliable.

26. The learned counsel further submits that PW-4 admitted during his deposition that he had signed certain documents at the police station. Despite the accused being named in the FIR, PW-4 deposed that he came to know the name of the accused only at the police station, which casts serious doubt on the prosecution's claim that PW-4 was aware of the identity of the assailant at the time of the incident. According to the Appellant, this circumstance further strengthens the defense plea that PW-4 was introduced

later and that his testimony is not spontaneous or natural.

27. The learned counsel submits that even if the prosecution case is accepted at its highest, the evidence on record does not make out an offence under Section 302 IPC. It is argued that the material on record, including the statement of the accused under Section 313 CrPC, indicates the absence of premeditation and motive, and at best discloses a case of culpable homicide not amounting to murder.

28. The learned counsel contends that the incident, as projected by the prosecution itself, arose out of a sudden quarrel and that the possibility of grave and sudden provocation has not been ruled out. Consequently, the conviction of the Appellant for murder and the imposition of life imprisonment is wholly disproportionate and legally unsustainable.

SUBMISSIONS ON BEHALF OF THE STATE

29. *Per contra,* Mr. Bahri, the ld. APP for State submits that the prosecution has succeeded in proving its case beyond reasonable doubt, and that all material prosecution witnesses have supported the prosecution version and have corroborated each other on material particulars.

30. The learned APP places reliance on the testimony of PW-4 Mohd. Irshad, who is the sole eyewitness to the incident. It was submitted that PW-4 has fully supported the prosecution case and his testimony remained consistent on the core aspects of the occurrence, namely: the presence of the accused at the spot, the quarrel with the deceased, the repeated assault on the head of the deceased with a stone/tile, and the immediate flight of the accused from the spot.

31. It is contended that PW-4 is a chance witness whose presence stands

duly explained, and that his testimony has been corroborated by: PW-2 Ct. Bijender Singh, PW-14 HC Gyanender and the medical evidence.

32. The learned APP submits that merely because PW-4 was subjected to lengthy cross-examination and certain omissions were elicited, the same does not render his testimony unreliable, particularly when such omissions do not affect the core substratum of the prosecution case.

33. The learned APP further submits that the complainant PW-4 and the accused were not known to each other prior to the incident, and therefore, the question of false implication does not arise.

34. It is contended that there was no prior enmity between PW-4 and the accused, and no motive has been suggested as to why PW-4 would falsely implicate the accused in a serious offence of murder.

35. The learned APP submits that the manner in which the accused repeatedly struck the deceased on the head with a heavy stone/tile clearly attracts Clause Thirdly of Section 300 IPC, and therefore, the conviction under Section 302 IPC is fully justified. It is argued that the act of repeatedly inflicting head injuries with a blunt object demonstrates the requisite intention and knowledge, and the case does not fall within any of the Exceptions to Section 300 IPC.

ANALYSIS AND FINDINGS

36. The Court has considered the matter.

37. At the outset, it must be noted that there is no dispute with respect to the homicidal nature of the death of the deceased Rakesh. The post-mortem report (Ex. PW-21/A) and the testimony of PW-21 Dr. A. S. Bajwa unequivocally establish that the cause of death was "*cranio-cerebral*

damage consequent upon heavy blunt force impact, sufficient to cause death in the ordinary course of nature." The medical evidence further rules out the defense version that the injuries could have been sustained by an accidental fall. PW-21, in his cross-examination, specifically denied the suggestion that the pattern of injuries could be caused by falling on cemented tiles. The medical opinion is consistent, cogent and inspires confidence.

38. This Court also finds no perversity in the conclusion that the injuries were caused by the Appellant. The presence of the Appellant at the spot stands established through the testimony of PW-4 Mohd. Irshad, corroborated by PW-2 Ct. Bijender Singh and PW-14 HC Gyanender, as also by the fact that the Appellant was apprehended from the vicinity of the place of occurrence shortly after the incident. The defence version of false implication or accidental injury has rightly been rejected.

39. Accordingly, this Court concurs with the ld. Trial Court to the extent that the death of the deceased was homicidal and that the Appellant was responsible for causing the injuries which ultimately resulted in his death.

40. The substantial question which arises for consideration, however, is whether the act attributed to the Appellant amounts to the offence of murder punishable under Section 302 IPC, or whether it falls within the ambit of culpable homicide not amounting to murder, punishable under Section 304 IPC.

41. The distinction between *culpable homicide* and *murder* is often subtle but well-settled. Section 299 IPC defines culpable homicide, while Section 300 IPC specifies when culpable homicide amounts to murder. Section 304 IPC provides punishment for culpable homicide not amounting to murder, divided into Part I and Part II, depending upon the presence or absence of

intention.

42. It is well settled that culpable homicide is the genus and murder is its species. All murders are culpable homicides, but all culpable homicides are not murders. The dividing line between Sections 299 and 300 IPC is thin and often overlapping, and the determination depends upon a careful evaluation of intention, knowledge, the nature of the weapon used, the manner of its use, and the surrounding circumstances in which the incident occurred.

43. The Supreme Court in ***Virsa Singh v. State of Punjab***, AIR 1958 SC 465, laid down the classic test for the applicability of third clause of Section 300 IPC, holding that the prosecution must establish not merely the nature of the injury but also the intention to inflict that particular injury. This principle has been consistently reaffirmed and continues to guide Courts in determining whether an offence amounts to murder.

44. In the present case, the prosecution version itself depicts the incident as one arising out of a sudden altercation in the early hours of the morning. There is no evidence of any prior enmity between the Appellant and the deceased. The ld. Trial Court has, in fact, acquitted the Appellant of the charges under Sections 393 and 397 IPC, thereby rejecting the prosecution case of an attempted robbery as the genesis of the incident. Once the motive of robbery is ruled out, what remains is a spontaneous confrontation between two strangers.

45. The alleged weapon of offence was not a weapon carried by the Appellant in advance. It was a cemented tile lying at the spot, picked up during the course of the altercation. There is no material to suggest that the Appellant came prepared or armed with the intention of causing death. The

assault appears to have occurred in the heat of the moment, without deliberation or design.

46. The Supreme Court in ***Sudam Prabhakar Achat v. State of Maharashtra***, 2025 SCC OnLine SC 602, dealt with a situation where death was caused during a sudden quarrel using objects readily available at the spot. In the said judgment, the Supreme Court held that where the incident occurs without premeditation, in the heat of passion, and without the offender taking undue advantage or acting in a cruel or unusual manner, the case would fall within Exception IV to Section 300 IPC. The conviction in that case was accordingly altered from Section 302 IPC to Section 304 Part I IPC. The factual matrix of the present case bears a close resemblance to the situation considered by the Supreme Court in the aforesaid decision wherein it was held as under:

> *"12. From the evidence of the prosecution witnesses itself, it is clear that the place of incident is near the house of accused persons. The possibility of a quarrel taking place on account of previous enmity between the accused persons and the deceased; and* ***in a sudden fight in the heat of the moment, the appellant along with the co-accused assaulting the deceased cannot be ruled out. It can further be seen that the weapons used are a stick and the blunt side of the axe. These tools are easily available in any agricultural field. It therefore cannot be said that there was any premeditation****.*
>
> *13. It is further to be noted that the appellant is alleged to have used the stick whereas the co-accused is said to have used the blunt side of the axe****. If their intention was to kill the deceased, there was no reason as to why the co-accused would not have used the sharp side of the axe. The nature of injury and the evidence of the prosecution witnesses would also not show that the appellant had taken undue advantage or acted in a cruel manner.***
>
> *14. In that view of the matter, we find that the present case would not fall under the ambit of Section 302 of IPC and the appellant would be entitled to benefit of Exception IV of*

> *Section 300 of IPC. It is further to be noted that the appellant has already undergone the sentence of 6 years 10 months.*
> *15. We are therefore inclined to partly allow the appeal. In the result, we pass the following order:*
> *(i) The appeal is partly allowed;*
> *(ii) The conviction under Section 302 IPC is converted to Part I of Section 304 IPC;*
> *(iii) The appellant is sentenced to the period already undergone; and (iv) The appellant is directed to be released forthwith if not required in any other case."*

47. Similarly, in ***Nandkumar @ Nandu Manilal Mudaliar v. State of Gujarat***, 2025 SCC OnLine SC 2374, the Supreme Court undertook an elaborate analysis of the mental element required to distinguish murder from culpable homicide not amounting to murder. In paragraphs 5.5 to 6.3 of the judgment, the Court reiterated that where the act is committed with the knowledge that it is likely to cause death, but without the intention to cause death, the offence would fall under Section 304 Part I IPC. The Court emphasised that the surrounding circumstances, including absence of premeditation and the manner in which the incident unfolded, must guide the classification of the offence. These principles apply squarely to the present case.

> *"5.5. Section 304, IPC has two parts namely; Section 304 Part I and Section 304 Part II. The distinction between these two Parts of Section 304, IPC is required to be considered having regard to the provisions of Sections 299 and 300, IPC. Whether the offender had intention to cause death or he had no such intention brings out the vital distinction.*
> *5.6. In Kesar Singh v. State of Haryana1, this Court observed thus,* ***"The distinguishing feature is the mens rea. What is prerequisite in terms of clause (2) of Section 300 is the knowledge possessed by the offender in regard to the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal. Intention to cause death is not an***

essential ingredient of clause (2). When there is an intention of causing a bodily injury coupled with knowledge of the offender as regards likelihood of such injury being sufficient to cause the death of a particular victim would be sufficient to bring the offence within the ambit of this clause."

5.6.1. For the above purpose, the exceptions contained in Section 300, IPC are taken into consideration. In the same judgment, the Court further explained the distinction between 'culpable homicide amounting to murder' and 'not amounting to murder', stating, "Culpable homicide is genus, murder is its specie. The culpable homicide, excluding the special characteristics of murder, would amount to culpable homicide not amounting to murder. The Code recognises three degrees of culpable homicide. When a culpable homicide is of the first degree, it comes within the purview of the definition of Section 300 and it will amount to murder. The second degree which becomes punishable in the first part of Section 304 is culpable homicide of the second degree. Then there is culpable homicide of third degree which is the least side of culpable homicide and the punishment provided for is also the lowest among the punishments for the three grades. It is punishable under the second part of Section 304."

5.7. In other words, where the two ingredients namely that the infliction of bodily injury on deceased was caused intentionally and secondly that it was sufficient to cause death in the ordinary course of nature, are satisfied, the offence would amount to murder. There may be circumstances which may emerge from the facts and evidence of a given case that the offence becomes 'culpable homicide not amounting to murder'.

5.8. In Virsa Singh v. State of Punjab and further in Shankar Narayan Bhadolkar v. State of Maharashtra3, this Court stated that divided into two Parts, Section 304, IPC deals with the situations where 'culpable homicide' would not be a murder. The conceptualisation of the 'culpable homicide not amounting to murder' were explained in the following way, as quoted in para 4 of the Kesar Singh,

***"If an injury is inflicted with the knowledge and intention that it is likely to cause death, but with no intention to cause death the offence would fall within the definition of Section 304 Part I**, however, if there is no intention to cause such an injury, but there is knowledge that such an injury can cause death, the offence would fall within the*

definition of Section 304 Part II. Thus, is intention. If intention to cause such an injury as is likely to cause death, is established, the offence would fall under Part I but where no such intention is established and only knowledge that the injury is likely to cause death, it would fall under Part II."

6. In the context of the above parameters as to what would constitute murder under Section 302, IPC and under what circumstances the 'culpable homicide' would not amount to murder, recollecting the basic facts of the present case, looking to the kind and nature of injuries referred to above which is available from the medical evidence, it could not be said that the injuries were not of the nature which were sufficient to cause death in ordinary course. The assailant used knife and inflicted serious injuries on the body of the deceased, including below the belly. Looking to the act on part of the appellant, it has to be concluded that the accused was liable to be attributed with the knowledge that the injuries which he was to inflict by using the weapon in hand, would be sufficient to result into death in ordinary course.

6.1. At the same time, the sequence of incident highlights that there was an altercation involving the nephew of the appellant and the deceased in the evening time and subsequently in the night at around 10 p.m., the appellant went to the house of the accused where he started abusing the deceased and ultimately assaulted him to inflict the injuries with knife. There was an element of impulse, anger and selfprovocation on part of the appellant.

6.2. Given the above aspects and in the totality of facts and circumstances emerging in the whole incident, it would not be correct to presume or view in respect of the conduct on part of the appellant that the appellant acted with premeditation to kill or that he acted in assailing the deceased with an intention to cause death. The degree of the offence committed could not be said to be partaking the act of murder as defined under Section 300, IPC, since it could be concluded that the intention to cause death was missing. The appellant could not have been convicted and sentenced under Section 302, IPC.

6.3. The other attending aspects which may be relevant in judging the nature of the offence committed by the appellant were that the injuries did not result into instantaneous death of the deceased. Thus, the attack by the appellant remained with the knowledge but without intention to cause death. Admittedly, the death of the

> *deceased was after 13 days. Not only that he died while under treatment in the hospital but he had developed septic conditions in the injuries suffered by him. The cause of death was medically identified as 'Septicemia'."*

48. The consistent line of authority emerging from decisions such as ***Kesar Singh v. State of Haryana***, (2008) 15 SCC 753, and ***Shankar Narayan Bhadolkar (Supra)*** further reinforces the principle that where the assault is sudden, unplanned, and occurs in the heat of the moment, Courts must be circumspect in attributing intention to kill, even if the injuries ultimately prove fatal.

49. Applying these principles to the facts of the present case, this Court finds that while the Appellant must undoubtedly be attributed with the knowledge that repeatedly striking the head with a hard object was likely to cause death, the evidence does not establish beyond reasonable doubt that he intended to cause death or intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death.

50. The conduct of the Appellant, viewed in its entirety, reflects a spontaneous and impulsive act rather than a calculated or premeditated one. The possibility of grave and sudden provocation, though not fully substantiated in the defence version, cannot be entirely ruled out when the incident is examined in its factual context.

51. The facts, therefore, clearly attract Exception IV to Section 300 IPC, namely that the act was committed without premeditation, in a sudden fight, in the heat of passion, and without the offender taking undue advantage or acting in a cruel or unusual manner.

52. The ld. Trial Court, while correctly appreciating the evidence to the extent of holding the Appellant responsible for the homicidal death of the

deceased, failed to give due weight to the absence of intention and the circumstances in which the incident occurred, and thereby erred in convicting the Appellant under Section 302 IPC.

CONCLUSION

53. Having regard to the overall facts and circumstances of the case, the nature of the occurrence, the absence of premeditation, and the legal position discussed hereinabove, this Court is of the considered view that while the Appellant is liable for causing the death of the deceased, the offence established against him is one of culpable homicide not amounting to murder, punishable under Section 304 Part I IPC, and not murder punishable under Section 302 IPC.

54. Consequently, the appeal is allowed in part. The conviction of the Appellant under Section 302 IPC is set aside and is altered to a conviction under Section 304 Part I IPC.

55. Coming to the question of sentence, this Court is mindful of the settled principle that sentencing must be proportionate to the nature of the offence and the degree of culpability established. The act in question, though serious and resulting in the loss of a human life, was committed without premeditation and in the heat of the moment. The Appellant was not shown to have acted with a deliberate intention to kill, though he must be attributed with the knowledge that his act was likely to cause death.

56. It is also relevant to note that the Appellant has already undergone a substantial period of incarceration. As per the custody certificate placed on record, the Appellant has undergone actual imprisonment of 7 years, 8 months and 10 days as on 06.05.2025, excluding any remission that may be

admissible to him in accordance with law.

57. In the considered opinion of this Court, the period of imprisonment already undergone by the Appellant sufficiently meets the ends of justice for an offence punishable under Section 304 Part I IPC, in the facts of the present case.

58. Accordingly, the Appellant is sentenced to the period of imprisonment already undergone for the offence under Section 304 Part I IPC. The fine imposed by the ld. Trial Court is maintained. In default of payment of fine, the default sentence, as directed by the ld. Trial Court, shall remain operative. If the fine has already been deposited, no further orders are required in that regard.

59. The Appellant shall be entitled to the benefit of Section 428 CrPC.

60. The Appellant is directed to be released forthwith, if not required to be detained in any other case.

61. The appeal and the pending application are accordingly disposed of in the above terms.

62. Copy of this order be sent to the Jail Superintendent, for information and compliance.

MADHU JAIN
JUDGE

PRATHIBA M. SINGH
JUDGE

FEBRUARY 9, 2026/b/*P*