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

Reserved on: 13.02.2026
Pronounced on: 02.04.2026

\+ **CRL.A. 487/2002**

TARUN ALIAS ROCKY .....Appellant

Through: Mr.Rakesh Kr. Dudeja, Mr.Davendra Kumar and Ms.Priti, Advs.

versus

STATE N.C.T. OF DELHI .....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with Inspector Sunil Kumar, P.S. Lodhi Colony.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed challenging the order dated 07.05.2002 passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No. 95/01, titled ***State v. Tarun @ Rockey***, convicting the appellant of the offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as, 'IPC').

2. The appellant further challenges the order dated 07.05.2002 passed by the learned Trial Court, imposing the punishment of imprisonment for life and a fine of Rs. 500/- on the appellant. In

default of payment of the fine, the appellant has been directed to undergo further Simple Imprisonment for a period of three months.

CASE OF THE PROSECUTION:

3. It is the case of the prosecution that on 10.03.2001, a complaint was lodged by Ms. Savitri Devi, PW-6, alleging that at about 2 p.m., her son Ramesh (the deceased) was playing Holi. When she went to call him for lunch, she saw the appellant, Tarun @ Rocky, stab the victim with a knife and flee. On receiving information of the incident, PCR came to the spot and took the injured victim to All India Institute of Medical Sciences (AIIMS) Hospital for treatment. It is also the case of the prosecution that on the way to the hospital, the victim made a statement to the effect that Rocky had assaulted him. However, when the victim reached the Hospital, he was declared to be unfit for giving statement.

4. On the basis of the above information, a case was initially registered under Section 324 of the IPC. However, the victim passed away in the hospital at around 2 a.m., on the intervening night of 10.03.2001 and 11.03.2001, and the case was converted to one under Section 302 of the IPC.

5. The appellant resided in House no. 40, in the vicinity of the house of the complainant, and was arrested on 10.03.2001 from his house. It is also the case of the prosecution that, subsequent to his arrest, the appellant made a disclosure statement regarding the knife used by him for stabbing the deceased victim. The appellant then led

the police party to the recovery of a knife from an empty cooler installed outside his house. A blood-stained pyjama belonging to the appellant was also recovered and seized from his house.

6. During the investigation, earth control was taken from the place of the incident along with blood samples of the deceased. On a perusal of the CFSL Report, it was found that the blood group of the deceased matched the blood group on the earth control, the clothes of the deceased, the clothes of the appellant and the knife recovered at the instance of the appellant.

7. On the basis of the above allegations, *vide* order dated 02.08.2001, a charge under Section 302 of the IPC was framed against the appellant by the learned Trial Court. The appellant pleaded 'not guilty' and claimed trial.

8. The prosecution, in support of its case, examined 12 witnesses, including PW-3 and PW-6, who are stated to be the eye-witnesses to the incident and are considered vital for the present appeal. The testimonies of some of the other prosecution witnesses, that is PW-5, the initial Investigating Officer, PW-9, to whom the deceased allegedly informed the name of the assailant as the appellant, and PW-7, the doctor who details the injuries suffered by the deceased, will also be discussed in detail hereinafter.

9. The statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 was recorded on 27.11.2001, wherein he denied the charges alleged, and stated that he was not present at the spot, but had gone out to visit his relatives, and then had returned to

his house. The appellant also denied making the discovery statement regarding the knife allegedly used in the commission of the offence. It was further stated by the appellant that the police had not taken his clothes in custody, therefore, the question of blood on his clothes does not arise. The appellant stated that he was being falsely implicated in the present case due to some enmity between his family and the family of the victim.

10. On analysis of the evidence, the learned Trial Court held that the prosecution had proved its case beyond reasonable doubt, and accordingly, the appellant was held guilty under Section 302 of the IPC. The learned Trial Court concluded as under:

> *"31. To my mind the circumstantial evidence produced by the prosecution is only competable with hypothesis of guilt of the accused. According to PW3 Veer Singh and PW6 Smt. Savitri Devi incident took place at 2 pm. PCR van came at the spot. PW9 HC Jagjit Singh reached at the spot at about 2.10 pm and flashed a message Ex. PW12/B. PW9 HC Jagjit Singh had a talk with injured Ramesh who is deposed to have told that he had been stabbed by "Rockey". This is to my mind it is a dying declaration. PW11/B is based upon this very information. When within 10 minutes after the incident the name of the accused came to be entered in the police information to my mind it is worthy of highest credence. Secondly, PW5 ASI R Y Pandey arrested the accused from his house on the same day vide personal search memo Ex. PW5/D. He made the disclosure statement Ex. PW5/E. He disclosed the whereabout of a knife allegedly used in the incident. Thereafter he lead the police party to the cooler of installed near his house and from inside the cooler he produced*

the knife Ex. P4 which was converted in a pullinda and taken into possession. The track trouser of accused was also taken into possession by the police. In the report of CFSL Ex. PW10/B and C Pent P1 and Shirt P2 of the deceased were found stained with human blood of AB group and payajama P3 was found stained with human blood of AB group. Knife produced by the accused was also found stained with human blood of AB group. The blood gauze of the deceased determined the blood group of deceased as AB group. No explaination is forth coming from the side of accused as to how the blood group of the deceased came to be present on his own cloths. No explaination is forth coming from his side as to how the blood group of the deceased was found present on the knife produced by him. To my mind these pieces of corroborative evidence unimipeachabley go to prove that nobody except the accused was the person who had stabbed the deceased. To my mind the quantum of corroborating evidence produced by the prosecution is sufficient to guard against any kind of exaggeration or false implication which enmical witnesses are prone to resort to. On the basis of this evidence I come to the conclusion that prosecution has proved beyond reasonble doubt that it was the accused who had stabbed the deceased on his left thigh twice. I had already noticed report of the post martem examination. In Ex. PW7/A Dr. Sunil Kumar Sharma who conducted the post martem has clearly opined that cause of death was injury no. 1, because of the stabbed wound the femoral artery of the deceased was cut on the interior aspect as a result of which there was extensive muscle hemotoma which caused the death of the deceased. Injury was opined to be sufficient in the ordinary course of nature to caused death. From the circumstances proved on record it clearly stands proved that accused

> *had the intention to caused injury inflicted by him and the same were not accidental. When injuries intentionally inflicted by the accused on the deceased have been found sufficient in the ordinary course of nature to caused death, to my mind the case of the prosecution u/s 302 IPC against the accused stands clearly established beyond reasonble doubt."*

11. Thereafter, the order on sentence dated 07.05.2002 was passed, imposing the sentence as noted hereinabove on the appellant.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

12. The learned counsel for the appellant submits that the learned Trial Court has failed to appreciate various contradictions in the statements of the witnesses, which cast doubt on the case of the prosecution. He submits that the statements of PW-3, the father of the deceased, and PW-6, the mother of the deceased, also show unnatural conduct, which further casts serious doubt on their version of the incident. He submits that PW-3 had stated that he had seen the appellant running away with a knife. PW-3 is claimed to have accompanied the deceased to the hospital. The learned counsel submits that in spite of the same, the FIR was not registered on the statement of PW-3, but on the statement of PW-6, who is not claimed to have accompanied her injured son to the hospital, but is stated to have stayed back at her house. The learned counsel submits that PW-6 staying back despite the grievous injuries suffered by the deceased itself creates a doubt regarding her presence at the spot of the incident. It is further submitted that even otherwise, if PW-3 was in the

hospital, the FIR would ordinarily have been registered on the basis of his statement. The non-registration of the FIR on the statement of PW-3 also shows that even PW-3 was not present at the time of the incident, and both PW-3 and PW-6 had been subsequently set up as alleged witnesses by the prosecution.

13. He further submits that there is also a discrepancy regarding the seizure of the clothes worn by the deceased. PW-3 states that he had removed the clothes of the deceased at his house before taking him to the hospital. These clothes were admittedly handed over to PW-5 by PW-6, the mother of the deceased. However, the prosecution has not explained why the clothes of the deceased were removed before he was taken to the hospital. The learned counsel submits that this also casts a doubt on the version of PW-9, who is supposed to have responded to a call received by the police and taken the deceased to the hospital, upon finding him sitting on the footpath at the place of the incident.

14. He further submits that, as per the MLC and FSL Reports of the deceased, it is evident that the deceased was under the influence of liquor. He submits that, considering the nature of the injuries and the influence of liquor, it is not possible to believe that the deceased would have made a statement to PW-9, informing PW-9 of the name of his assailant. Even otherwise, PW-9 states that there was a gunman and a driver accompanying the deceased in the PCR van, however, these important witnesses were withheld by the prosecution, thereby creating a doubt regarding the veracity of PW-9's statement.

15. Referring to the statement of PW-6, the learned counsel further submits that PW-6 had stated that her statement was recorded by the police at around 09:00 p.m. However, the *Rukka* (Ex. PW-5/A), allegedly based on her statement, was recorded at 03:50 p.m. He submits that this again casts a doubt on the veracity of the statement.

16. With respect to the alleged disclosure made by the appellant and the recoveries made pursuant thereto, the learned counsel for the appellant submits that though it is alleged that the knife was recovered from a cooler installed outside the house of the appellant, and PW-5 is stated to have carried it to the hospital, the knife was not shown to a doctor for an opinion as to whether the injuries sustained by the deceased could have been caused by the said knife.

17. He submits that the seized clothes and the knife were not deposited in the *malkhana* till the day following the day of the incident, thereby breaking the chain of custody and rendering the FSL Report of no value. He submits that even otherwise, the FSL Report, at best, states that the blood group of the blood found on the clothes allegedly worn by the appellant, and those seized from him as being worn by him at the time of the incident, and the knife, matched with the blood group of the deceased. He submits that this, however, would not rule out the possibility of tampering with the evidence and, even otherwise, it would not suggest that the blood on the knife and the blood on the clothes of the appellant was that of the deceased.

18. The learned counsel for the appellant further submits that PW-5 had admitted that he was initially given the name of the assailant as

Arun, which was subsequently corrected as Tarun, that is, the appellant. The learned counsel submits that this casts a doubt on whether the prosecution was attempting to shield the real assailant, that is, the person named Arun.

19. He submits that, therefore, the prosecution has been unable to prove its case beyond reasonable doubt, for which the appellant must be acquitted of the charges, and the Impugned Orders be set aside.

20. He further submits that even assuming that the prosecution has been able to make out a case against the appellant, at best, the appellant can be convicted only for the offence punishable under Section 304 Part-II of the IPC and not under Section 302 of the IPC.

SUBMISSIONS OF THE LEARNED APP:

21. On the other hand, the learned APP submits that the case of the prosecution stands established not only from the statement of PW-6, the mother of the deceased, who had witnessed the incident, but also from the statement of PW-3, the father of the deceased, who had seen the appellant running away with a knife after assaulting the deceased. He submits that minor contradictions in their statements with respect to the clothes worn by the deceased and their recovery cannot come to the aid of the appellant. He further submits that the case of the prosecution is also established from the statement of PW-9, HC Jagjeet Singh, who had responded in the PCR van upon receiving a call regarding the deceased being inflicted with a knife injury. He submits that PW-9 stated that, while being taken to the hospital, the

deceased disclosed the name of the appellant as the assailant, and on the basis of this, PW-9 had reported the matter and DD entry No. 6A (Ex. PW-12/B) was recorded stating that the appellant had assaulted the deceased with a knife. Thereafter, DD No. 7A (Ex. PW-12/C) was recorded from AIIMS regarding the admission of the deceased in AIIMS by PW-9, thereby corroborating his presence and completing the whole chain.

22. On the disclosure of the appellant, the knife and the clothes worn by him at the time of the incident were recovered, which contained the same blood group as that of the deceased, as proved from the FSL Report (Ex. PW-10/C). With respect to the FSL report, the learned APP submits that the incident pertains to the year 2001, when the DNA technology was not widely available, therefore, the same blood group is in itself adequate proof that the knife recovered at the pointing of the appellant was used for inflicting the injuries on the deceased and that the appellant is the assailant. He further submits that merely because the disclosure was made to the police, it does not cast a doubt on the same, as it is a known fact that the members of the general public are often loath to join the police investigations. In support, he places reliance on ***Mukesh & Anr. v. State (NCT of Delhi) & Ors.***, AIR 2017 SC 2161.

23. He submits that the mere non-examination of the gunman and the driver of the PCR van is also not relevant, as it is not necessary for the prosecution to examine each and every witness on a particular fact. In support, he places reliance on Sections 114 and 134 of the Indian

Evidence Act, 1872 and on the judgments of the Supreme Court in ***Bhagwan Jagannath Markad & Ors. v. State of Maharashtra***, (2016) 10 SCC 537 and ***Nand Kumar v. State of Chhattisgarh***, (2015) 1 SCC 776.

24. He further submits that merely because PW-6 had given the name of the assailant as Arun instead of Tarun, it would not cast a doubt on the case of the prosecution, inasmuch as the same could have been either because PW-6 was under tremendous stress or because PW-5 had recorded the name incorrectly. Either way, the *alias* name of the appellant, that is, Rocky, was duly recorded. It is not the case of the appellant that there is another person named Rocky in the locality. Therefore, these minor contradictions cannot come to the aid of the appellant.

ANALYSIS AND FINDINGS:

25. We have considered the submissions made by the learned counsel for the parties and have perused the record of the learned Trial Court.

26. The case of the prosecution is primarily based on the statements of PW-3, the father of the deceased; PW-6, the mother of the deceased; and PW-9, HC Jagjit Singh, who was the first responder in the PCR van.

27. As noted hereinabove, PW-3, the father of the deceased, has been produced by the prosecution as one of the eyewitnesses to the incident. He stated that on 10.03.2001, at about 1:30 p.m., he was

standing outside his house with his son when the appellant came and called his son to play Holi. Upon this, his son went along with the appellant. At the time of lunch, PW-3 informed his wife of the same, after which she went outside to call their son. He followed his wife and reached near quarter no. 26, when his wife raised an alarm, shouting, '*ladhai ho gai ladhai ho gai'*. He further stated that when he reached the spot, he saw that the appellant was fleeing with a knife in his hand, and their son was lying on the ground, having sustained stab injuries on his left thigh. He supported the prosecution case and stated that his son had made a statement to the police and was fit to make the same. He denied the allegation that his son was unable to make a statement to the police due to the influence of alcohol. He, in fact, maintained that his son never took liquor, and that on the day of the incident as well, he had not consumed any liquor. PW-3 further stated that he had changed the clothes of his deceased son and left them at his house. He stated that he was later informed by the police that the blood-stained clothes were handed over to them by his wife.

28. PW-6, the mother of the deceased, stated that on the date of the incident the appellant called her son 2-3 times from their house, however, her son did not go out. Thereafter, she came to know through her husband that her son had gone along with the appellant. She then went in search of him and, was near quarter no. 26 when she saw the appellant inflicting knife blows on her son's left thigh. She raised an alarm and called for her husband, whereupon the appellant fled from the spot. She further stated that the clothes of her injured son

were soaked in blood, and therefore she changed them and handed over the blood-stained clothes to the Investigating Officer. During her examination, PW-6 was shown the seized clothes of the deceased and the appellant by opening the seal of the FSL parcel, however, she failed to identify them. In her cross-examination, it was also stated that there was enmity between her son and the appellant.

29. We are of the view that PW-3 and PW-6, who have lost their son, would have no reason to falsely implicate the appellant in the death of their son. Their testimonies are consistent to the effect that, upon the appellant calling him, the deceased had accompanied him. When PW-6 went to call him back, she saw the appellant assaulting the deceased with a knife. She immediately raised alarm and shouted, upon which, PW-3 reached the spot and saw the appellant running away from the spot, carrying a knife. Merely because there is some inconsistency in their statements with respect to the clothes of the deceased, it cannot come to the aid of the appellant. As is evident from the record, the case was initially registered under Section 324 of the IPC and the appellant was, in fact, released on bail.

30. The fact of the admission of the deceased at AIIMS stands proved. The case of the prosecution is further proved by the testimony of PW-9, HC Jagjit Singh, who was the first responder. He stated that on 10.03.2001, while he was on duty, he received a call informing him that a person had been assaulted by a man named Rocky. On reaching the spot of the incident, he saw that the victim was lying on the road and was drenched in blood. PW-9, along with the father of the

deceased, then took the deceased to AIIMS. On the way, the deceased made a statement to the effect that he had been injured by Rocky. In his cross-examination, PW-9 denied the assertion that the victim was under the influence of alcohol and was not capable of speaking. PW-9 reiterated that the victim was not under the influence of alcohol and smell of alcohol was not coming from his mouth.

31. It is on the basis of his report that DD No. 6A (Ex. PW-12/B) was recorded, which mentions the name of the assailant as the appellant. The said entry was recorded merely 10 minutes after the incident occurred, that is, at 02:10 p.m. The next DD entry, that is, DD No. 7A, was recorded at 02:40 p.m. when the deceased was brought to AIIMS, which again records that it was PW-9 who had brought him there.

32. From the above, how the clothes of the deceased came into the possession of PW-3, loses all significance. In fact, when read together, statements of PW-3, PW-6, and PW-9, along with other documentary evidence, corroborate each other and undoubtedly point to the appellant being the assailant of the deceased.

33. The submission of the learned counsel for the appellant that the deceased was under the influence of liquor and was injured, and that PW-7, Dr. Sunil Kumar Sharma, had stated that the deceased was not in a position to give a statement, casts a doubt on the version of PW-9 that the deceased had informed him of the name of the appellant as his assailant, also cannot be accepted. Merely because the deceased, at a later stage, due to loss of blood, was unable to give a statement to the

police, it cannot cast a doubt on the statement of PW-9, who was the first responder.

34. Similarly, merely because the statements of other police personnel present in the PCR van were not recorded, it would not be sufficient to cast a doubt on the version of PW-9. It is not the case of the prosecution that these police personnel had also heard the deceased naming the appellant as the assailant and, therefore, were material witnesses. As long as the presence of PW-9 has been proved by the prosecution, and his statement that the deceased had disclosed the name of the assailant to him is found believable, the appellant does not stand to benefit from the non-examination of the other police personnel of the PCR van. It is a settled law that it is not the number of witnesses, but the quality of evidence produced by the prosecution that is to be seen for determining whether the prosecution has been able to bring home the case beyond reasonable doubt against the accused.

35. The recovery of the knife, that is, the weapon of offence, and the blood-stained clothes of the appellant, has been duly proved by PW-5, ASI R.Y. Pandey, P.S. Lodhi Colony, who stated that on receiving the information of the incident, he went to AIIMS Hospital where the deceased had been admitted and was declared unfit for giving statement. Thereafter, he visited the spot of the incident and subsequently proceeded to the house of the appellant along with PW-6. He further stated that the appellant was found present at his house, and he led the police party to a cooler installed in front of his house,

from where a knife was recovered. PW-5 seized the said knife along with the blood-stained clothes worn by the appellant at the time of the incident.

36. Though it is correct that public witnesses should have been involved while recording such disclosure and making such recoveries, it is also a fact that generally, the public persons do not wish to be involved, especially when crimes of this nature are committed.

37. We are also of the view that the submission of the learned counsel for the appellant that the name of the assailant was subsequently corrected as 'Tarun' in order to shield the real assailant, that is, Arun, does not hold merit. The said correction of the name does not cast a doubt on the case of prosecution, inasmuch as the *alias* name of the appellant, that is, Rocky, was duly recorded and remained constant. In this regard, reference may also be made to the finding of the learned Trial Court, wherein the said overwriting was opined to have been made due to 'lack of care or audio errors'.

38. From the above, we conclude that the prosecution has been able to prove that it was the appellant who assaulted the deceased, leading to the death of the deceased.

39. This, however, still leaves us with the issue as to whether the appellant was rightly convicted for the offence punishable under Section 302 of the IPC instead of Section 304 of the IPC. In furtherance, we reproduce Section 299 of the IPC, which reads as under:

> *"**299. Culpable homicide.—**Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."*

40. A reading of the above provision would show that whoever causes death by doing an act,

(a) With the intention of causing death, or

(b) With the intention of causing such bodily injury as is likely to cause death, or

(c) With the knowledge that he is likely by such act to cause death,

Commits the offence of culpable homicide.

41. Section 302 of the IPC prescribes the punishment for murder, while Section 304 of the IPC prescribes the punishment for culpable homicide not amounting to murder. Section 304 of the IPC is subdivided into two parts and is reproduced hereunder:

> *"**304. Punishment for culpable homicide not amounting to murder.**—Whoever commits culpable homicide not amounting to murder shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*
>
> *or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause*

death, or to cause such bodily injury as is likely to cause death."

42. The Supreme Court in ***Rampal Singh v. State of U.P.,*** (2012) 8 SCC 289, explained the interplay between Sections 299, 300, and 304 of the IPC as under:

> *"**11.** Sections 299 and 300 of the Code deal with the definition of "culpable homicide" and "murder", respectively. In terms of Section 299, "culpable homicide" is described as an act of causing death: (i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it, emphasises on the expression "intention" while the latter upon "knowledge". Both these are positive mental attitudes, however, of different degrees. The mental element in "culpable homicide", that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted above, it would be "culpable homicide". Section 300, however, deals with "murder" although there is no clear definition of "murder" in Section 300 of the Code. As has been repeatedly held by this Court, "culpable homicide" is the genus and "murder" is its species and all "murders" are "culpable homicides" but all "culpable homicides" are not "murders".*
>
> ***12.** Another classification that emerges from this discussion is "culpable homicide not amounting to murder", punishable under Section 304 of the Code. There is again a very fine line of distinction between the cases falling under Section 304 Part I and Part II, which we shall shortly discuss.*
>
> ***13.** In State of A.P. v. Rayavarapu*

Punnayya this Court while clarifying the distinction between these two terms and their consequences, held as under: (SCC p. 386, para 12)

"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its species. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally, ... 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

14. *Section 300 of the Code proceeds with reference to Section 299 of the Code. "Culpable homicide" may or may not amount to "murder", in terms of Section 300 of the Code. When a "culpable homicide is murder", the punitive consequences shall follow in terms of Section 302 of the Code while in other cases, that is, where an offence is "culpable homicide not amounting to murder", punishment would be dealt with under Section 304 of the Code. Various judgments of this Court have dealt with the cases which fall in various classes of Firstly, Secondly, Thirdly and Fourthly, respectively, stated under Section 300 of the Code. It would not be necessary for us to deal with that aspect of the*

case in any further detail. Of course, the principles that have been stated in various judgments like Abdul Waheed Khan v. State of A.P., Virsa Singh v. State of Punjab and Rajwant Singh v. State of Kerala are the broad guidelines and not cast-iron imperatives. These are the cases which would provide precepts for the courts to exercise their judicial discretion while considering the cases to determine as to which particular clause of Section 300 of the Code they fall in.

15. *This Court has time and again deliberated upon the crucial question of distinction between Sections 299 and 300 of the Code i.e. "culpable homicide" and "murder" respectively. In Phulia Tudu v. State of Bihar the Court noticed that confusion is caused if courts, losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of these sections.*

16. *The Court in Phulia Tudu provided the following comparative table to help in appreciating the points of discussion between these two offences: (SCC p. 591, para 7)*

" 7. ....'12. * * * *

Section 299	***Section 300***
A person commits culpable homicide if the act by which the death is caused is done -	*Subject to certain exceptions, culpable homicide is murder if the act by which the death is caused is done –*
	Intention
a) With the intention of causing death; or	*1) with the intention of causing death; or*
b) With the intention of causing such bodily injuries as is likely to cause death; or	*2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the*

	person to whom the harm is caused; or 3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
	Knowledge
c) With the knowledge that the act is likely to cause death.	*4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death of such injury as is mentioned above.' (Abdul Waheed case, SCC p. 184, para 12).*

17. *Section 300 of the Code states what kind of acts, when done with the intention of causing death or bodily injury as the offender knows to be likely to cause death or causing bodily injury to any person, which is sufficient in the ordinary course of nature to cause death or the person causing injury knows that it is so imminently dangerous that it must in all probability cause death, would amount to "murder". It is also "murder" when such an act is committed, without any excuse for incurring the risk of causing death or such bodily injury. The section also prescribes the Exceptions to "culpable homicide amounting to murder". The Explanations spell out the elements which need to be satisfied for application of such Exceptions, like an act done in the heat of passion and without premeditation. Where the offender whilst being deprived of the power of self-control by grave and sudden provocation causes the death of the person who has caused the provocation or causes the death of any other person by mistake or accident, provided such provocation was not at the behest of the offender himself, "culpable homicide would*

not amount to murder". This Exception itself has three limitations. All these are questions of facts and would have to be determined in the facts and circumstances of a given case.

18. *This Court in Vineet Kumar Chauhan v. State of U.P. noticed that academic distinction between "murder" and "culpable homicide not amounting to murder" had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya where it was observed as under: (Vineet Kumar case, SCC pp. 665-66, para 16)*

"16. ... that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in Virsa Singh v. State of Punjab and Rajwant Singh v. State of Kerala, speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. ... If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the First or the Second Part of Section 304, depending, respectively, on

whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative."

19. *Having noticed the distinction between "murder" and "culpable homicide not amounting to murder", now we are required to explain the distinction between the application of Section 302 of the Code on the one hand and Section 304 of the Code on the other.*

20. *In Ajit Singh v. State of Punjab the Court held that: (SCC p. 468, para 20)*

"20. In order to hold whether an offence would fall under Section 302, or Section 304 Part I IPC, the courts have to be extremely cautious in examining whether the same falls under Section 300 IPC which states whether a culpable homicide is murder, or would it fall under its five Exceptions which lay down when culpable homicide is not murder…."

In other words, Section 300 states both, what is murder and what is not. First finds place in Section 300 in its four stated categories, while the second finds detailed mention in the stated five Exceptions to Section 300. The legislature in its wisdom, thus, covered the entire gamut of culpable homicide that "amounting to murder" as well as that "not amounting to murder" in a composite manner in Section 300 of the Code.

21. *Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences. An analysis of these two sections must be done having regard to what is*

common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is, (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of Section 304 includes only those cases in which offence is really "murder", but mitigated by the presence of circumstances recognised in the Exceptions to Section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in Fatta v. Emperor, 1151. C. 476 (Refer: Penal Law of India by Dr Hari Singh Gour, Vol. 3, 2009.)

22. *Thus, where the act committed is done with the clear intention to kill the other person, it will be a murder within the meaning of Section 300 of the Code and punishable under Section 302 of the Code but where the act is done on grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the offence would fall under the Exceptions to Section 300 of the Code and is punishable under Section 304 of the Code. Another fine tool which would help in determining such matters is the extent of brutality or cruelty with which such an offence is committed.*

23. *An important corollary to this discussion is the marked distinction between the provisions of Section 304 Part I and Part II of the Code. Linguistic distinction between the two parts of Section 304 is evident from the very language of this section. There are two apparent distinctions, one in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. It is neither advisable nor possible to state any straitjacket formula that would be universally applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.*

24. *A Bench of this Court in Mohinder Pal Jolly v. State of Punjab stating this distinction with some clarity, held as under: (SCC pp. 36-37, para 11)*

> *"11. A question now arises whether the appellant was guilty under Part I of Section 304 or Part II. If the accused commits an act while exceeding the right of private defence by which the death is caused either with the intention of causing death or with the intention of causing such bodily injury as was likely to cause death then he would be guilty under Part I. On the other hand if before the application of any of the Exceptions of Section 300 it is found that he was guilty of murder within the meaning of clause 'Fourthly', then no question of such intention arises and only the knowledge is to be fastened on him that he did indulge in an act with the knowledge that it was likely to cause death but without any intention to cause it or without any intention to cause such bodily injuries as was likely to cause death. There does not seem to be any*

escape from the position, therefore, that the appellant could be convicted only under Part II of Section 304 and not Part I."

25. *As we have already discussed, classification of an offence into either part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of premeditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view i.e. by applying the "principle of exclusion". This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, "culpable homicide amounting to murder". Then secondly, it may proceed to examine if the case fell in any of the Exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused. "*

43. Applying the above principles to the facts of the present case, though it is stated that the appellant and the deceased had enmity, no

proof of the same is coming forward from the evidence. On the other hand, it is also evident from the statements of PW-3 and PW-6 that the deceased had gone with the appellant on his own. The fact that the deceased was found under the influence of liquor, indicates that a sudden fight may have arisen between the appellant and the deceased while they were consuming liquor. PW-6, when she witnessed the incident, first shouted '*ladhai ho gai ladhai ho gai'*. This also shows a sudden fight between the appellant and the deceased. The appellant had inflicted two knife injuries to the deceased on the thigh and not on a vital part of the body. The case was also initially registered under Section 324 of the IPC, which also shows that at that stage, it was considered to be only a grievous injury inflicted by the appellant on the deceased. It is unfortunate that because of the said injuries the deceased eventually met his death. Though the injuries have been opined to be sufficient to cause death in the natural course, it would not be sufficient, in the totality of the evidence, to infer, let alone conclusively prove, that the appellant had the intention to kill the deceased.

44. Therefore, in our opinion, keeping in view the totality of the circumstances, the appellant did not have the intention to cause death but would have had the knowledge that the injury inflicted by him on the deceased was likely to cause death.

45. We, therefore, set aside the Impugned Order dated 07.05.2002 insofar as it convicts the appellant under Section 302 of the IPC, and instead, find the appellant guilty of the offence punishable under

Section 304 Part-II of the IPC.

46. We also set aside the order dated 07.05.2002 imposing a punishment of life imprisonment on the appellant. We instead impose a punishment of rigorous imprisonment for a period of 7 years on the appellant, while maintaining the fine imposed upon him.

47. As the sentence of the appellant was suspended by our order dated 22.03.2006 and, as per the Nominal Roll of the appellant, he had undergone imprisonment of 5 years and 17 days, and had earned remissions of 1 year 4 months and 10 days as on 27.03.2006, the appellant is directed to surrender to undergo the remaining period of his sentence within a period of two weeks from the date of this judgment, failing which the respondents are directed to ensure that the appellant is apprehended to undergo the remaining sentence.

48. The appeal is disposed of in the above terms.

49. A copy of this judgment be sent to the concerned Jail Superintendent and the learned Trial Court for ensuring compliance.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

APRIL 02, 2026/*rv*/Yg