



2026:DHC:2247-DB



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

***Reserved on: 18.02.2026***  
***Pronounced on: 18.03.2026***

+ **CRL.A. 85/2024**

**JITAN BORA**

..... Appellant

Through: Mr.Himanshu Anand Gupta,  
Mr.Sidharth Barua, Ms.Mansi  
Yadav, Mr. Shekhar Anand  
Gupta, Ms.Navneet Kaur,  
Ms.Shivani Rampal and  
Mr.Mike Desai, Adv.

versus

**THE STATE (GOVT. OF NCT) DELHI** .....Respondent

Through: Mr.Aman Usman, APP with  
Mr.Manvendra Yadav, Adv.  
with Insp. Madan Mohan, P.S.  
GK-I, New Delhi.

**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. The appellant has approached this Court, assailing the judgment dated 15.07.2023 passed by the learned Additional Sessions Judge-05, South- East District, Saket Courts Complex, New Delhi (hereinafter referred to as the 'Trial Court') in Sessions Case No. 490/2019, titled



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*State v. Jitan @ Jitan Bora*, arising out of FIR No. 134/2019, registered at Police Station Greater Kailash, New Delhi, under Sections 302 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'), whereby the appellant has been convicted under Section 302 of the IPC for the offence of murder.

2. The appellant also challenges the order on sentence dated 19.10.2023, whereby the appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, and in default of payment of fine, to undergo simple imprisonment for a further period of six months, for the offence punishable under Section 302 of the IPC.

**CASE OF THE PROSECUTION:**

3. Briefly stated, it is the case of the prosecution that on 13<sup>th</sup> July 2019, at around 04:53 A.M., upon receipt of information *vide* DD No. 7A at Police Station Greater Kailash, Constable Asif/PW-11 reached the All India Institute of Medical Sciences (AIIMS), where the victim, Sanjeev Pandey, S/o Sh. Ramnath Pandey, with an alleged history of physical assault, was undergoing treatment. During the course of the treatment, at around 05:48 A.M., the victim was declared dead, and the said information was recorded *vide* DD No. 8A. In the investigation, it was revealed from the statement of PW-1/Ajeet Pandey, that he, along with the deceased, heard the sounds of a quarrel emanating from the appellant's room. The deceased went to the room of the appellant and attempted to pacify the appellant and his wife, however, the same was not received well by the appellant. Thereafter,



when the deceased returned to his room, where PW-1 was also present, the appellant followed him. After a heated exchange of words, the deceased assaulted the appellant with a wooden stick, following which, the appellant attacked the deceased with a kitchen knife. PW-1 attempted to intervene and stop the scuffle, but he was pushed away by the appellant and he fell down. During the altercation, the deceased sustained grievous injuries and was taken to AIIMS Trauma Centre, Delhi, where, approximately 30-40 minutes after his admission, he was declared dead. Thereafter, on the basis of the complaint of PW-1 (Ex. PW-1/A), the subject FIR was registered, and the appellant was subsequently arrested.

4. Upon completion of the investigation, the Chargesheet was filed on 02.10.2019.

5. The learned Trial Court, *vide* Order dated 30.10.2019, framed Charges under Section 302 of the IPC against the appellant, to which he pleaded 'not guilty' and claimed trial.

6. During the course of the trial, the prosecution examined fifteen witnesses, including PW-1, PW-4 and PW-5, who are vital for the purposes of the present appeal, and whose testimony shall be discussed in detail hereinafter.

7. The statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') was recorded on 31.10.2022. The appellant denied the prosecution's case and pleaded false implication. He stated that on the intervening night of 12/13.07.2019, he had consumed liquor outside his house. Thereafter, he returned home, where PW-1 and the deceased asked



him to come to their room, stating that they had brought liquor, and requested him to consume the same with them. As he was already under the influence of liquor, he agreed and went to their room. He further stated that PW-1 brought some namkeen from a nearby shop and that they were about to consume liquor. In the meantime, the deceased passed obscene and derogatory remarks about the appellant and his wife, stating: “*Tum chinki log bade kamine hote ho, tumhari aurten dhandha karti hain, teri wife badi sexy lagti hai aur main usse sex karna chahta hoon*”. Upon hearing this, the appellant became enraged and questioned the deceased as to how he could dare to make such remarks about his wife. Thereafter, the deceased assaulted him by giving blows to his face and also hit him on the head with a *danda*. He further stated that PW-1 also started beating him with fists. The appellant stated that he attempted to resist, but being under the influence of liquor and outnumbered, he was unable to do so. He further stated that due to the *danda* blow on his head, he felt dizzy, and after making efforts, he managed to free himself and ran away from the room of the deceased. He further stated that he sat beside the road in G.K.-I for some time and, in the morning, after becoming sober, he went to the house of his brother-in-law in G.K.-I. His brother-in-law informed him that the police had taken his wife to the police station for inquiry. Thereafter, at about 6:00 A.M. to 6:30 A.M., he went to the police station to inquire about the reason for bringing his wife there. He stated that the Investigating Officer, Inspector Pankaj Pandey, informed him that a person named Sanjeev Pandey had expired and that his brother had blamed the appellant and lodged a



complaint against him. He was further informed that an FIR under Section 302 of the IPC had been registered, in which he was implicated as an accused. The appellant stated that he was not aware of any death, as he was under the influence of liquor, had sustained injuries, and had left the house during the night. He claimed that when he ran away from the room of the deceased, the deceased was alive. He asserted that he had not committed any wrongful act against the deceased.

8. As noted above, the learned Trial Court, *vide* Order dated 15.07.2023, convicted the appellant for the offence punishable under Section 302 of the IPC. The learned Trial Court held that the presence of PW-1 at the spot at the time of the incident was beyond the pale of doubt. PW-1 had also explained in detail the manner in which the incident occurred. The learned Trial Court, placing reliance on the testimony of PW-4 and PW-5, held that it had been proved that the injuries suffered by the deceased, which were sufficient in the ordinary course of nature to cause death, had been inflicted by the knife produced by the prosecution as the weapon of offence. Further, placing reliance on the testimonies of PW-8, PW-11, and PW-13, the learned Trial Court held that the Bermuda worn by the appellant and the knife had been recovered at the instance of the appellant. The learned Trial Court further held that the Forensic Report (Ex. PW15/A) proved that the deceased had been murdered with the knife (Ex. 1L) recovered at the instance of the appellant. The learned Trial Court, while considering the defence set up by the appellant, held that the same amounted to an admission of his presence at the spot and of



the altercation between him, PW-1, and the deceased on the fateful night, however, the appellant did not provide any cogent or reasonable explanation as to why he ran away from his home merely after having quarrelled with PW-1 and the deceased. The learned Trial Court held that the testimony regarding the incident was reliable, cogent, and trustworthy, and was sufficient to hold the appellant guilty, especially when corroborated by the medical and forensic evidence, as well as by the recovery of the knife at his instance.

9. The learned Trial Court, thereafter, *vide* order on sentence dated 19.10.2023, imposed the sentence as noted hereinabove upon the appellant.

10. Aggrieved by the Impugned Order of Conviction dated 15.07.2023 and the Order on Sentence dated 19.10.2023 passed by the learned Trial Court, the appellant has preferred the present appeal before this Court.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:**

11. Mr. Himanshu Anand Gupta, the learned counsel for the appellant, submits that the evidence on record establishes that there was no prior enmity between the appellant and the deceased and, therefore, there existed no motive for the appellant to commit the alleged offence of murder. He submits that the appellant has been falsely implicated in the present case.

12. It is further submitted that, on the night of the incident, the appellant had consumed liquor outside his house and was later invited



by PW-1 and the deceased to join them for drinks in their room. During the interaction, the deceased made obscene and derogatory remarks about the appellant and his wife. When the appellant objected, the deceased allegedly assaulted him by striking him on the face and hitting him on the head with a *danda*, which led to a sudden altercation, in which PW-1 also allegedly participated. The appellant claims that, being intoxicated and outnumbered, he was unable to effectively defend himself. He states that, after sustaining a blow on his head and feeling dizzy, he managed to leave the room, and at that time, the deceased was alive. He contends that he had no knowledge of the subsequent death.

13. He submits that the deceased was wearing only his underwear at the time of the incident, as borne out by the testimony of eye-witness PW-1 and the medical evidence indicating intoxication. The deceased's semi-nude condition, coupled with his heavily intoxicated state and the alleged obscene remarks directed at the appellant's wife, created an extremely offensive and provocative situation, which materially contributed to the escalation of the quarrel.

14. He submits that no other neighbour heard any quarrel between the appellant and his wife or between the appellant and the deceased. He further submits that PW-1 admitted during cross-examination that there were five rooms between his room and the appellant's room, and that no other neighbour came out of his room. He contends that this circumstance also falsifies the prosecution's case that the appellant was having verbal altercation with his wife and that later, the appellant had come to the room of the deceased shouting, as alleged by PW-1.



15. The learned counsel for the appellant further contends that, even if the prosecution's case is accepted in its entirety, the present case would fall within Exception 4 to Section 300 of the IPC. In support of this submission, reliance is placed on the judgments of the Supreme Court in *Mangesh v. State of Maharashtra*, (2011) 2 SCC 123; *Rampal Singh v. State of U.P.*, (2012) 8 SCC 289; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770; *Yatendrasingh Ajabsingh Chauhan v. State of Maharashtra* (judgment dated 04.08.2022 passed in Criminal Appeal 822/2018); and *Dauvaram Nirmalkar v. State of Chhattisgarh*, (2023) 12 SCC 541. He submits that the incident occurred during a sudden quarrel and in the heat of passion, without premeditation or any intention to cause death. It is, therefore, urged that the act, at best, would amount to culpable homicide not amounting to murder, punishable under Section 304 Part II of the IPC, and would not attract Section 302 of the IPC.

**SUBMISSIONS OF THE LEARNED APP FOR THE STATE:**

16. Mr. Aman Usman, the learned APP, submits that in the present case, the prosecution has fully proved its case through the testimony of PW-1, which stands duly corroborated by other evidence on record. He submits that the presence of the appellant at the time and place of the incident stands admitted. He further submits that the medical evidence completely corroborates the ocular version. He submits that PW-4 duly proved the MLC and opined that the injuries were caused by a sharp-edged weapon and were dangerous in nature. PW-5, who conducted the post-mortem examination, found multiple stab wounds,



including a fatal injury to the heart, and opined that the death was caused due to hemorrhagic shock. He further submits that PW-5 opined that Injury No. (ii) was sufficient to cause death in the ordinary course of nature and that the injuries were consistent with the recovered knife. The learned APP submits that, on the basis of the testimony of PW-1, the corroborative medical evidence, and the investigation on record, the prosecution has successfully discharged its burden of proving the offence under Section 302 of the IPC against the appellant.

17. He submits that once the appellant seeks to bring the case within any exception to Section 300 of the IPC, particularly by invoking the plea of grave and sudden provocation, the burden to prove the same shifts upon him under Section 105 of the Indian Evidence Act. However, the appellant has led no evidence whatsoever to substantiate such a plea. Despite having the opportunity to examine his wife or any other relevant witness, the appellant failed to do so and, therefore, he cannot now claim the benefit of conversion of his conviction to one under Section 304 of the IPC.

18. He submits that the contention of the learned counsel for the appellant that the case falls within the ambit of Section 304 of the IPC, is wholly devoid of merit. As borne out from the testimony of PW-1, neither the complainant nor the deceased was the aggressor, nor did they provoke or instigate the appellant in any manner. There was no element of sudden provocation. On the contrary, the appellant arrived at the spot armed with a knife and assaulted the deceased in a deliberate and premeditated manner.



19. The learned APP further submits that even assuming the defence argument that the deceased inflicted the first *danda* blow to be correct, the aggressive conduct of the appellant is clearly established. The appellant first pushed PW-1 without any provocation. When the appellant attempted to assault the deceased, the deceased, in an act of self-defence, picked up a *danda* and struck the appellant. In such circumstances, the deceased cannot be termed to be the aggressor by any stretch of imagination.

20. He submits that the argument regarding the alleged lack of force in the knife blows, based on the depth of the injuries mentioned in the MLC and the post-mortem report, is untenable and irrelevant to the determination of intention. This is not a case of a single blow, as the deceased sustained multiple stab injuries. One of the injuries was inflicted on a vital part of the body and was sufficient to cause death in the ordinary course of nature, leading to the almost immediate demise of the deceased. Having inflicted such grievous injuries with a deadly weapon, the appellant cannot claim the benefit of Exception 4 to Section 300 of the IPC. He submits that the present case squarely falls under Clause Thirdly and/or Fourthly of Section 300 of the IPC. In support of his plea, he places reliance on the judgments of the Supreme Court of India in *State of Rajasthan through the Secretary v. Kanhaiya Lal*, (2019) 5 SCC 639, and *Bavisetti Kameswara Rao Alias Babai v. State of A.P. Represented by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad*, (2008) 15 SCC 725.



21. He further submits that the conviction recorded by the learned Trial Court is well-founded, based on a sound appreciation of the evidence and settled principles of law, and therefore calls for no interference by this Court.

**ANALYSIS AND FINDINGS:**

22. We have considered the submissions made on behalf of the appellant and the learned APP for the State, and have perused the material available on record.

23. As noted above, the case of the prosecution is based on the testimony of the PW-1, Ajit Pandey, who is the cousin of the deceased and was residing with the deceased. He deposed that he was present at the spot along with the deceased, Sanjeev Pandey, at the time of the incident. He described the incident in detail and stated that, on the intervening night of 12<sup>th</sup> /13<sup>th</sup> July 2019, at about 2:00 A.M., he and the deceased heard a noise coming from the appellant's room, where the appellant was quarrelling with his wife. Upon hearing the noise, the deceased went to the appellant's room. Upon returning, the deceased informed PW-1 that he had settled the matter between the appellant and his wife. In the meantime, the appellant followed the deceased from his room to their room, holding a knife in his hand. PW-1 deposed that he tried to stop the appellant, however, the deceased struck the appellant on the head with a *danda*, as the appellant had come to their room armed with a knife and was saying, "*tera roz-roz ka hamare kamre mein aana khatam kar doonga*".



24. PW-1 further stated that the appellant pushed him, due to which he fell on the floor. Thereafter, the appellant attacked the deceased with the knife and caused injuries to his chest and thigh. He deposed that the appellant inflicted several knife blows on the deceased with the intention to kill him, while shouting, “*tera aaj kissa khatam kar doonga*”.

25. PW-1 stated that he lifted the deceased, wrapped him in a bedsheet, and rushed him to the AIIMS Trauma Centre in a TSR with the help of a neighbour. PW-1 also stated that he had called the police at number 100 before taking the injured to the hospital. PW-1 identified the clothes worn by himself, the appellant, and the deceased at the time of the incident. He also identified the knife used by the appellant to stab the deceased.

26. The presence of PW-1 at the spot is not only natural, as he was residing with the deceased, but is also supported by the testimony of PW-7, *HC Basant Kumar*, who was posted in the PCR stationed at the Emergency Gate of AIIMS Hospital. He deposed that, on the date of the incident, upon receiving a call from the Command Centre at about 02:58 A.M., he found PW-1 at the hospital, who informed him that it was the appellant who had stabbed the deceased. PW-8, *HC Kailash Singh*, deposed that, on the fateful night, he was on emergency duty, and at about 02:16 A.M., he, along with PW-11, *Ct. Asif* reached the house of the deceased, and upon inquiry, came to know that the deceased had been taken to AIIMS. He later met PW-1, who informed him that the deceased was in a serious condition and was in the operation theatre. Thereafter, the IO interrogated PW-1. From the



testimony of these witnesses, the presence of PW-1 at the spot and his consistent description of the events, stand further corroborated.

27. PW-8, *HC Kailash Singh*, and PW-13, *Inspector Pankaj Pandey*, the Investigating Officer, deposed regarding the arrest of the appellant and the recovery of the clothes worn by the appellant and the weapon of offence, namely the knife, pursuant to the disclosure statements made by the appellant.

28. PW-4, *Dr. Subhankar Paul*, deposed that on 13.07.2019, he was on duty in the Emergency Department at JPNA Trauma Centre, AIIMS, New Delhi. On that day, at about 2:47 A.M., the deceased was brought by PW-1 with an alleged history of assault and was medically examined by him. He recorded the general condition of the injured and noticed three injuries on his person, which were described in detail in the MLC (Ex. PW-4/A). After providing first aid, he referred the injured to the Departments of Radiology, Neurosurgery, Orthopaedics, Trauma Surgery, and Medicine for further treatment and management. He further recorded that the injuries sustained by the patient were caused by a sharp object, and the nature of the injuries was opined to be dangerous.

29. PW-5, *Dr. Shinto Devassy*, deposed that he was posted as a Senior Resident in the Department of Forensic Medicine, AIIMS, New Delhi. He further deposed that he conducted the post-mortem examination on the body of the deceased. As per the post-mortem report (Ex. PW-5/B), the body of the deceased had the following injuries:





*The track of the wound could not be measured due to surgical intervention, and blood was extravasated throughout and over the fracture site.*

*(iv) A stab wound was present over the left thigh, obliquely placed, measuring 1.2 cm × 0.6 cm. The upper end was 21.5 cm below the anterior superior iliac spine, and the lower end was 68 cm from the left heel. The upper end was sharp and the lower end was blunt. On dissection, the tract of the wound was directed upward, medially, and backward, penetrating the skin and subcutaneous tissue. The tract of the wound measured 3 cm, and blood was extravasated throughout the track.”*

30. PW-5 further stated that the cause of death was haemorrhagic shock due to the injuries sustained to the heart. Injury No. (ii) was fatal and was sufficient to cause death in the ordinary course of nature. Upon examining the knife (Ex. PW-1/P9), PW-5 stated that injuries Nos. (i), (ii), and (iii), as mentioned in the post-mortem report, could possibly have been inflicted with the said weapon.

31. As far as the defence version of the appellant is concerned, he admits his presence along with the PW-1 and the deceased in the house of the deceased on the fateful night. However, he states that he was heavily intoxicated and had gotten into a fight with the deceased and PW-1, whereafter the deceased hit him with a *danda*. The factum of the fight with the deceased is, therefore, also admitted by the appellant. The appellant further states that he went away upon regaining consciousness. Interestingly, he did not return to his own house. This renders his version of simply walking away, unacceptable.



32. We, therefore, find that it was the appellant who had stabbed the deceased, resulting in the death of the deceased.

33. Now coming to the alternate submission of the learned counsel for the appellant that, even if the prosecution's version is accepted, the appellant is, at best, guilty of culpable homicide not amounting to murder, punishable under Section 304 Part II of the IPC. At the outset, we would 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.”*

34. 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.

35. Section 300 of the IPC lays down the circumstances in which culpable homicide amounts to murder. Section 300, insofar as it is relevant to the present appeal, reads as follows:

*“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—*



*Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—*

*Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—*

*Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

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**Exception 1.**—*When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

*The above exception is subject to the following provisos:—*

*First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

*Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

*Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.*

*Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.*

**Exception 2.**—*Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by*



*law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*

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**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.*

xxxxxx”

36. From the above, and insofar as it is relevant to the present appeal, the essential ingredients of Exception 1 to Section 300 of the IPC are as follows:

- A. The provocation must be grave and sudden;
- B. The offender must have been deprived of the power of self-control;
- C. The act must have been committed in the heat of passion;
- D. The provocation must not have been sought or voluntarily provoked by the accused;
- E. The provocation is not given by anything done in the lawful exercise of the right of private defence.

37. 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.”

38. The interplay between Sections 299, 300, and 304 of the IPC has been explained in detail by the Supreme Court in **Rampal Singh** (supra), 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 [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] 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.”





sections.

**16.** *The Court in Phulia Tudu [(2007) 14 SCC 588 : (2009) 3 SCC (Cri) 221 : AIR 2007 SC 3215] 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**

*A person commits culpable homicide if the act by which the death is caused is done -*

#### *Intention*

- a) With the intention of causing death; or*
- b) With the intention of causing such bodily injuries as is likely to cause death; or*

### **Section 300**

*Subject to certain exceptions, culpable homicide is murder if the act by which the death is caused is done -*

- 1) with the intention of causing 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<sup>3</sup>, 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. [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] 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 [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] where it was observed as under: (Vineet Kumar case [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915], 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 [AIR 1958 SC 465 : 1958 Cri LJ 818] and Rajwant Singh v. State of Kerala [AIR 1966 SC 1874 : 1966 Cri LJ 1509], 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 [(2011) 9*



SCC 462 : (2011) 3 SCC (Cri) 712]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. [Ed.: Para 21 corrected vide Official Corrigendum No. F.3/Ed.B.J./54/2012 dated 6-9-2012.]** 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.





*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 [(1979) 3 SCC 30 : 1979 SCC (Cri) 635 : AIR 1979 SC 577]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. ”*

39. In ***Dauvaram Nirmalkar*** (supra), the Supreme Court explained the essentials for invoking Exception 1 and Exception 4 to Section 300 of the IPC, by observing as under:

*“ 9. Exception 1 differs from Exception 4 of Section 300 IPC. Exception 1 applies when due to grave and sudden provocation, the offender, deprived of the power of self-control, causes the death of the person who gave the provocation. Exception 1 also applies when the offender, on account of loss of self-control due to grave and sudden provocation, causes the death of any other person by mistake or accident. Exception 4 applies when an offence is committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and the offender commits culpable homicide without having taken undue advantage of acting in a cruel and unusual manner. The Explanation to Exception 4 states*



*that in such cases it is immaterial which party gives the provocation or commits the first assault.*

**10.** *Interpreting Exception 1 to Section 300 in K.M. Nanavati v. State of Maharashtra this Court has held that the conditions which have to be satisfied for the exception to be invoked are:*

- (a) the deceased must have given provocation to the accused;*
- (b) the provocation must be grave;*
- (c) the provocation must be sudden;*
- (d) the offender, by the reason of the said provocation, should have been deprived of his power of self-control;*
- (e) the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and*
- (f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident.*

**11.** *For determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an unusually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. K.M. Nanavati succinctly observes: (SCC OnLine SC paras 150-51)*

*“150. Is there any standard of a reasonable man for the application of the doctrine of “grave and sudden” provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional*













when the deceased went to the appellant's house after hearing the appellant quarrelling with his wife in the middle of the night. The deceased thereafter returned to his room and informed PW-1 that he had been able to stop the quarrel. However, immediately thereafter, the appellant followed him with a knife, which, in the present case, is admitted to be a kitchen knife. Though it is the case of PW-1 that, while following the deceased, the appellant was exhorting and saying “*tera roz-roz ka hamare kamre mein aana khatam kar doonga*” and “*tera aaj kissa khatam kar doonga,*” and pushed PW-1 to the floor, thereafter inflicting several knife blows on the person of the deceased with the intention to kill him, PW-1 also admitted that, when he was trying to stop the appellant, it was the deceased who first struck the appellant on the head with a *danda*.

41. The above sequence of events shows that the incident occurred on the spur of the moment and without any premeditation. It was the deceased who first went to the appellant's house in the middle of the night, and intervened in a verbal altercation between the appellant and his wife. Although the appellant followed him with a knife in his hand and was exhorting that he would kill him, the same, by itself, does not conclusively establish an intention to kill; at best, it indicates that passions were running high. Further, while the act of the deceased in striking the appellant on the head with a *danda*, in the above facts, would not amount to sudden and grave provocation, nor justify the appellant in inflicting knife blows in self-defence, an overall consideration of the circumstances would show that there was no



intention on the part of the appellant to cause the death of the deceased.

42. In *Mangesh* (supra), the fact that the injuries were not deep, is one of the factor that was taken into consideration by the Supreme Court also in converting a conviction from Section 302 IPC to Section 304-I IPC, by observing as under:

*“12. It is evident from the medical report that the appellant has not given the knife-blow with full force. Otherwise, the depth of Injury 1 would have been more than just “cavity-deep”. The fact that the appellant stabbed the deceased twice in the thigh and only once in the chest is indicative of a lack of intention to cause death. Had the appellant intended to kill the deceased, it is unlikely that he would flee from the scene without having inflicted more injuries on the deceased.”*

43. In the present case, what is also relevant is that the appellant had been hit on the head by the deceased with a *danda*. It is in the consequent fight, the appellant inflicted the knife blows which landed on chest as also the thigh of the deceased. It can, therefore, not be concluded that the appellant had inflicted the injuries with the intent of causing death of the deceased or with the intention to cause such bodily injury as is likely to cause the death of the deceased. However, at the same time, having gone to house of the deceased armed with the kitchen knife and having assaulted him with it, the appellant must be attributed with the knowledge that his acts were likely to cause the death of the deceased. In our opinion, therefore, the present case falls within the ambit of Section 304 Part II of the IPC.



44. Accordingly, the Impugned Order dated 15.07.2023, whereby the appellant was held guilty of the offence under Section 302 of the IPC, as well as the Order on Sentence dated 19.10.2023, sentencing the appellant to life imprisonment, are hereby set aside.

45. Instead, the appellant is held guilty of the offence punishable under Section 304 Part-II of the IPC. As regards the quantum of sentence, as on date, the appellant has already undergone imprisonment for more than seven years, including remissions. Accordingly, the sentence of the appellant is modified to the period already undergone by him, and he is directed to be released from jail forthwith, if not required in any other case.

46. The remaining directions of the learned Trial Court in the Order on Sentence, insofar as they relate to the fine, are sustained.

47. The present appeal is disposed of in the above terms. All pending applications, if any, are also disposed of.

48. A copy of this judgment shall be communicated to the learned Trial Court and the concerned Jail Superintendent for compliance.

**NAVIN CHAWLA, J.**

**RAVINDER DUDEJA, J.**

**MARCH 18, 2026/RV/DG**