



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

Date of decision: 14<sup>th</sup> OCTOBER, 2025

IN THE MATTER OF:

+ **CRL.A. 307/2004**

KAMRUDDIN KHAN @ Bhole & ANR. ....Appellants

Through: Mr. Prashant Chandra, Adv. for  
Appellant No. 1.  
Ms. Khushboo Nahar, Advocate  
(*Amicus Curiae*) along with Appellant  
No. 2.

versus

GOVT. OF N.C.T. OF DELHI ....Respondents

Through: Mr. Aashneet Singh, APP for State  
with Insp Kishore Kumar, PS Vasant  
Kunj North.  
Mr. Kamran Khan, Mr. Sunil Pal,  
Advocates for the Complainant

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE VIMAL KUMAR YADAV**

**JUDGMENT**

**SUBRAMONIUM PRASAD, J.**

1. The present Appeal has been filed against the Judgment on Conviction dated 27.03.2004, and the Order on Sentence dated 02.04.2004, respectively passed by the Learned Additional Sessions Judge, New Delhi (hereinafter referred to as "**Trial Court**") in Sessions Case No.70/2002, arising out of FIR No.255/2002, registered at Police Station, Vasant Kunj, under Section 302 read with Section 34 of the Indian Penal Code, 1860 ("**IPC**"). By the Judgment on Conviction dated 27.03.2004, the Appellants herein, Kamruddin Khan @ Bhole ("**Kamruddin**") and Ram Dhani @ Dhanni



(“**Ram Dhani**”) have been convicted for committing the murder of one Gufran Khan. By a separate Order on Sentence dated 02.04.2004, the Appellants have been sentenced to undergo life imprisonment and to pay a fine of Rs.500/- each and in default of payment of fine, they were further directed to undergo simple imprisonment for one month each for the commission of the offences punishable under Section 302 read with Section 34 of IPC.

2. The Appellants, being aggrieved by the conviction and sentence, have preferred the present Appeal.

3. Shorn of unnecessary details, the facts leading to the filing of the present Appeal as stated in the Impugned Judgment are as follows:

- a. On 03.06.2002 at about 7:30 AM, the accused Kamruddin came to the house of Azamuddin Khan, the father of the then injured Gufran Khan, and told them that the supply of water is very little and questioned Azamuddin Khan as to whether they had closed the pipe.
- b. Thereafter, Azamuddin Khan and the accused Kamruddin went to check the pipe, they found out that the pipe was pressed. Then Azamuddin Khan informed the accused Kamruddin that this is the reason for less supply of water. Pursuant thereto, the accused Kamruddin told the father Azamuddin Khan to return his money back. The father Azamuddin Khan told the accused Kamruddin that he will return the money to him. But the accused Kamruddin started fighting with him and also started saying that he has to get more money.



- c. On hearing about the quarrel, the accused Kamruddin's servant, Ram Dhani also came there to the house along with one *danda* and started giving blows to Azamuddin Khan . Thereafter, Azamuddin Khan's son the then injured Gufran Khan came out of the house and on seeing him, another accused Azhar Khan @Chutka ("**Azhar Khan**") hit the then injured Gufran Khan with an iron pipe due to which he sustained injuries on his head.
- d. Thereafter, the accused Kamruddin took out something in his hand and hit Azamuddin Khan on the ring finger of his right hand, due to which he sustained an injury.
- e. Due to this quarrel, many people gathered outside Azamuddin Khan's house and it was only thereafter the then injured Gufran Khan and the accused persons, Kamruddin and Azhar Khan were disentangled. Thereafter, PCR was informed and the then injured Gufran Khan was admitted in Safdarjung Hospital.
- f. Further, on the same day, on receipt of DD entry No.6A, ASI Raghu Vir Singh along with Constable Vinod Kumar went to the spot/place of incident i.e. Rang Puri Pahari, Israiel Camp where they came to know that then injured Gufran Khan had been shifted to Safdarjung Hospital by the PCR Van.
- g. It was then ASI Raghu Vir Singh went to the Hospital and found out that then injured Gufran Khan was admitted in the Hospital but was declared 'unfit' for giving any statement. Thereafter, the IO recorded the statement of Azamuddin Khan. On the basis of this statement, the FIR No.255/2002 dated 03.06.2002 was initially registered under Section 308 of IPC.



- h. During the investigation, the site plan was prepared and all the accused persons were arrested and their disclosure statements were recorded. Whereas, as per the disclosure statements, the weapon of offence was recovered from the possession of the accused persons respectively.
- i. On 06.06.2002, the then injured Gufran Khan was declared dead. Further, on 07.06.2002, the dead body of the deceased Gufran Khan was handed over to Jameel Khan & Taswar Khan and the same was exhibited as Ex.PW-10/B. Thereafter, Section 302 read with Section 34 of IPC was added to the present case.
- j. Further, on 07.06.2002, the Post Mortem of the deceased Gufran Khan was conducted. The said Post Mortem Report bearing No.899/2002 was prepared by the Department of Forensic Medicine, Safdarjung Hospital and the same was exhibited as Ex.PW-3/A.
- k. On 13.01.2003, the accused persons i.e. Kamruddin and Ram Dhani were formally charged for having, in furtherance of their common intention, committed the murder of the deceased Gufran Khan by beating him with iron pipe and thereby committed an offence punishable under Section 302 read with Section 34 of IPC. Both the accused persons pleaded not guilty and claimed trial. Whereas, the third accused Azhar Khan was tried in Juvenile Court.
- l. During trial, the prosecution examined 14 witnesses including members of the PCR, investigating officers, medical and forensic experts and alleged eye witnesses. The Defence led no evidence.



- m. The Trial Court convicted the accused persons i.e. Kamruddin and Ram Dhani under Section 302 read with Section 34 of IPC, holding that the prosecution had succeeded in establishing the commission of murder of the deceased Gufran Khan beyond reasonable doubt.
- n. The Trial Court noted that the incident as per the prosecution, had taken place on 03.06.2002 at about 7:30 AM while Azamuddin (PW-6) was getting ready for his office and at that time, the accused Kamruddin, Azhar Khan and Ram Dhani came in front of his house on the pretext of fighting with him in relation to the pipeline which Kamruddin and Azamuddin (PW-6) had laid together. The accused Kamruddin started saying that Azamuddin (PW-6) had broken the pipeline. Thereafter, the accused Kamruddin started fighting with the deceased Gufran Khan. After which, an alarm was raised by the public persons. The Trial Court also noted that when Azamuddin (PW-6) came out of his house, he saw the accused Azhar Khan inflicting a blow with an iron pipe on the head of the deceased Gufran Khan, following which the deceased Gufran Khan fell down on the ground. Thereafter, the other accused persons Kamruddin and Ram Dhani also gave the deceased Gufran Khan *dandi* blows on his head. Thereafter, Azamuddin (PW-6) tried to stop the accused persons, but he failed to do so. Due to which Azamuddin (PW-6) sustained injuries on his head and ring finger. Thereafter, the accused persons and the deceased Gufran Khan were separated by the villagers. The villagers intimated the police about the incident and they further



shifted the deceased Gufran Khan to the Hospital, where the deceased Gufran Khan went in coma and ultimately expired after 3 days.

- o. The Trial Court also noted that on the statement of Azamuddin (PW-6), who also sustained injuries, the present case was registered. Further, Azamuddin (PW-6) had very specifically deposed that when he came out of the house, his son the deceased Gufran Khan was being beaten and one blow was given with iron pipe on his head by the accused Azhar Khan and thereafter, the deceased Gufran Khan was given further blows by the other accused persons Kamruddin and Ram Dhani. It was further pointed out by the Trial Court that Azamuddin's (PW-6) statement had been corroborated by the statement of other witnesses that an iron pipe blow was given by the accused Azhar Khan, while the other accused persons Kamruddin and Ram Dhani gave *dandi* and *kikker sticks* blows due to which the deceased Gufran Khan sustained injuries as stipulated in the Post Mortem Report i.e. Ex. PW-3/A.
- p. The Trial Court further noted that as far as the main occurrence is concerned, there is no contradiction to the fact that several blows with iron pipe, *dandi* and *kikker sticks* were given by the accused persons to the deceased Gufran Khan. It also noted that all the accused persons were present at the time of their arrest, respectively and all of them have been named in the FIR No.255/2002 and only on the basis of the said FIR, the accused persons were arrested.



- q. The Trial Court also noted that no explanation had come out from the accused persons as to why they were being implicated in the present case. Further, death of the deceased Gufran Khan had taken place due to the injuries sustained by him on his head which is duly corroborated by the testimony of Azamuddin (PW-6) and also supported by the Post Mortem Report i.e. Ex.PW-3/A which shows the injuries sustained by the deceased Gufran Khan. For ease of reference, the said Post Mortem Report i.e. Ex.PW-3/A is being reproduced herein below:
- r. The Trial Court further noted that the Doctor (PW-3) conducted the Post Mortem examination on the body of the deceased Gufran Khan on 07.06.2002. The Doctor had opined the cause of death was due to shock, head injury, ante mortem in nature, caused by application of blunt force, from blunt object and the said injuries were sufficient to cause death in the ordinary course of nature.
- s. The Trial Court also considered the distinction between the murder (Section 300 of IPC) and culpable homicide (Section 299 of IPC) not amounting to murder. The Trial Court emphasized on the key words used in the various clauses of Section 299 and 300 of IPC. It further stated that two aspects should be considered during the case of murder: (i) intention; and (ii) knowledge. So, as far as the intention is concerned for Section 299 of IPC, a person commits culpable homicide if the act by which the death is caused is done. Further, as far as intention is concerned for Section 300 of IPC subject to certain exceptions culpable homicide is murder if the act by which the death caused is done. As far as knowledge is



- concerned for Section 300 of IPC is 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 or such injury as is mentioned above.
- t. The Trial Court was of the opinion that the accused persons Kamruddin and Ram Dhani had the intention of causing death to the deceased Gufran Khan and that they had the knowledge that their act of giving iron pipe blows and *dandi and kikker sticks* blows will cause death to him. Therefore, the intention had been proved by the prosecution and that they had the knowledge that their act was so imminently dangerous that it would, in all probability, will cause death and death was caused to the deceased Gufran Khan due to the head injuries sustained by him.
- u. Vide Judgment on Conviction dated 27.03.2004, and the Order on Sentence dated 02.04.2004, respectively the Trial Court convicted the Appellants herein for commission of offence punishable under Section 302 read with Section 34 of IPC and the Appellants herein were sentenced to undergo life imprisonment and to pay a fine of Rs.500 each and in default of payment of fine, each of the convicts shall further suffer simple imprisonment for one month for the commission of offence punishable under Section 302 read with Section 34 of IPC.
- v. It is these Orders passed by the Trial Court which are under challenge in the present Appeal.





4. Learned Counsel for the Appellant submitted that the Trial Court has failed to appreciate: (i) that there are material contradictions in the testimonies of Azamuddin (PW-6) and Shamshad (PW-9) with regard to the alleged incident on 03.06.2002 and about the injuries inflicted on the deceased Gufran Khan as well as the injuries sustained by PW-6, in the light of the testimony of Israil (PW-8), wherein he denies the presence of PW-6 & PW-9 at the time of incident at the spot; (ii) that during the cross-examination of PW-8, he had not suggested anything regarding the presence of PW-6 at the time of the incident; (iii) that PW-6 stated about injuries that resulted in flowing of blood from the deceased Gufran Khan, whereas, PW-9 specifically denied about such injuries; (iv) that the presence of PW-9 was doubtful in view of major contradictions in the testimonies of PW-6 & PW-8 and further in the testimony of PW-9 himself; (v) that the accused persons have been erroneously convicted under Section 302 of IPC without considering the material facts; (vi) that PW-6 had improved his testimony in comparison to his statement in Ex.PW-6/A; (vii) that there are contradictions in the testimony of PW-9, wherein, he had specifically stated that he had been in the hospital from 8 AM (03.06.2002) till 5-6 PM (04.06.2002), so how could his signatures be obtained with regard to the proceedings/investigation conducted by ASI Raghuvir Singh (PW-14) in relation to arrest, personal search, disclosure and recoveries; (viii) that there are contradictions in the testimonies of Constable Vinod Kumar (PW-1) & ASI Raghuvir Singh (PW-14) with regard to time of arrest, disclosure, recoveries etc; (ix) that the site plan Ex.PW-14/B is contradictory to Ex.PW-13/A, the one being prepared later at the instance of PW-14; (x) that Dr. Chandrakant (PW-3) was not produced before the Trial Court for cross-



examination after 07.04.2003, hence, his examination in chief cannot be read in evidence; (xi) that there is no material on record to prove the injuries of PW-6 in the absence of MLC; and (xii) that the Trial Court failed to exercise its powers under Section 73 of the Indian Evidence Act for comparison of the alleged signature of PW-14, on Ex.PW-1/H with his other admitted signatures on the Application of the present Appellant No.1 herein and the said Application was dismissed by the Trial Court without appreciating the law.

5. Learned Counsel for the Appellant submitted that the entire case of the prosecution is based upon the evidence of PW-6, PW-8 and PW-9, who are the material witnesses of the prosecution and their testimonies are related to witnessing the alleged incident. He further submits that the entire case of evidence as adduced on behalf of the prosecution does not inspire confidence in order to convict the Appellants herein under Section 302 read with Section 34 of IPC.

6. The counsel for the Appellants further submitted that PW-6 and PW-9 are having highly contradictory versions with regard to the incident and the same do not inspire confidence being unnatural and improbable in the light of the fact that PW-6 in his entire examination in chief or in Ex.PW-6/A, he does not show that PW-9 was present at the time of the occurrence. PW-9 stated that *“Mein aur Gufran Nashta kar rahe the aur tabhi bahar jhagde ka shor sunayi diya. Mein aur Gufran bahar nikle aur issise pehle ki hum kuchh sochte hamare bahar nikaletе hi Azhar alias Chutka jo lohe ki pipe liye huye tha, Gufran ke Sar par mara”*. Whereas, PW-6 stated that *“Mujrim Hazir Adalat, mere ghar ke samne planning kar ke aaye aur pani ki pipe, jo ki hamne ikkathе lagvayi thi iska bahana banakar, ki mere pipe ko apne tod*



*diya hein aur mere bete ke saath ladai shuru kar di. Maine police ko ye baat batayi thi ki mera beta Gufran wahan majood tha. Vol. Veh ghar ki boundary par brush kar raha tha aur bahar jhagda ho raha tha. Jab accused ko arrest kiya gaya mein police ke saath nahin tha. Mujhe pata nahin hein ki accused ke arrest ke samay police ke saath aur kaun log the. Accused ke arrest ke kagzo par mere sign hein. Vol. Mujhe hospital se bulaya gaya tha, kariban subah 9 baje ka samay tha. Maine apne bete ke sar par lohe ke pipe se ek baar vaar hote dekha jo ki Azhar Khan ne kiya tha. Accused ka bayaan mere samne nahin likha gaya”.* In light of these circumstances, the statements of PW-6 and PW-9 are highly contradictory inter-se with regard to the other circumstances of arrest, recovery etc. in view of their deposition before the Trial Court.

7. He also submitted that the FIR was not registered on the statement of the deceased Gufran Khan (then injured), who was in a conscious state as per the testimony of Dr. Jai Prakash (PW-5). He further submitted that PW-5, was the one who exhibited the death summary of the deceased Gufran Khan vide Ex. PW-5/A.

8. Learned counsel for the Appellants also shed light on the fact that PW-3 conducted the autopsy of the deceased Gufran Khan, who stated that there were three injuries present on the body of the deceased Gufran Khan, out of which injury No.2 was sufficient to cause death. He further submitted that the external injuries (anti-mortem in nature) as mentioned in the Post Mortem Report are as under:

*“i) One contused, lacerated wound in lower limb left side size 2 cms X 1 cms.*

*ii) Contusion on left parieto - temporal region size 6 cms X 2.5 cms.”*



And the internal injuries are as under:

*“i) Extra vasation of blood under scalp in left parieto - temporal region 8 cms X 4.5 cms.*

*ii) Extra dural haemorrhage on superior surface of left parieto temporal lobes sized 10 cms X 8.5 cms.*

*iii) Fracture of left temporal - parieto bones.*

*iv) Multiple contusions and laceration of under surface of right temporal lobe, right frontal lobe.”*

He also submitted that PW-3 was not present for cross-examination and the version of PW-3 belies the testimonies of PW-6 and PW-9 with regard to the inflicting of 10 to 20 blows of iron pipe, *dandi* and *kikker sticks* on the deceased Gufran Khan after which he fell down. For ease of reference the Post Mortem Report of the deceased Gufran Khan is produced herein below:



DEPARTMENT OF FORENSIC MEDICINE  
SAFAR HANG HOSPITAL  
NEW DELHI

Post Mortem Report No. 899/2002  
Date & Time of receipt of body 7-6-2002 at 11:30 A.M.  
Date & Time of receipt of request papers 7-6-2002 at 11:30 A.M.  
Date & Time of starting autopsy 7-6-2002 at 11:40 A.M.  
Date & Time of completing autopsy 7-6-2002 at 12:41 P.M.  
Body identified by: (A) Police I. Shri Raghubir Singh A.S.I.  
Name, designation & address of the Investigating Officer P.S. Vasant Kuriy New Delhi

Shri Shub (S) Jit team 2 only  
M.C. prepared in Satalajung Hospital New Delhi  
Date of preparation of M.C. 7/8/2002 dated 3-6-2002 at 8:30 A.M.  
(B) Identified by D. Shri NARAYAN S/O B. S. SINGH  
Address: Carbon copy of 2 F.I.R.O. Shri NARAYAN S/O B. S. SINGH

Name Sh./Snt. /Ka. Shri Jyoti Age about 16 years Male / Muslim. AGE SEX  
Father's / Husband's Name Sh. S/O Mst. Azimuddin Khan  
Address No. 426 Juggi Ismail Camp Rangpuri Bahadur  
Height About 159 cm Weight Not recorded Delhi

Brief History of the case (as per inquest papers)  
papers 759 Alleged history of assault with iron pipe on the head on 3-6-2002 at about 7:30 A.M. He was brought and admitted in Satalajung Hospital New Delhi on 3-6-2002 at about 8:30 A.M. and expired on 6-6-2002 at about 7:45 P.M.  
GENERAL OBSERVATION  
Body received in white hospital sheet. Wearing one full sleeve part open yellow coloured shirt and one blue part - both removed, sealed in a bundle handed over to Police.  
Kindly see on the back at Page No. 72



P.M. No 899/2002  
Date 7-6-2002

-2-

FIR No 253/2002  
Date 3-6-2002

Shaved scalp  
Eyes - closed. Mouth - closed. Regnum -  
well developed in both upper limbs, developing in  
both lower limbs. Post mortem staining well developed in  
the back. No signs of putrefaction present.

#### Antemortem Injuries

① One cutting, lacerated wound in the lower lip  
left side 2 cm x 1 cm.

② Contusion left parieto-temporal region  
6 cm x 2.5 cm.

#### Internal examinations

Extracranial blood under scalp  
in left parieto-temporal region 8 cm x 4.5 cm.  
Extra-cranial haemorrhage on superior surface of  
left parieto-temporal lobe size 10 cm x 8.5 cm.  
Fracture of left temporo-parietal bone. Multiple,  
contusion and laceration of under surface of  
right temporo-parietal lobe, right frontal lobe. Brain -  
congested, oedematous with petechial haemorrhages

① Sample blood duly  
sealed.  
② Sample of blood  
Gauze duly sealed.  
③ One bundle containing  
two clothes that is  
one yellow colour shirt  
and one blue colour  
pant duly sealed.  
④ Along with sample  
A seal,  
handed  
over to  
Police  
(Kanchan)  
7/6/2002

Lungs -	NO DD
Right Lung	Both congested and oedematous.
Left Lung	
Heart	NO DD
Stomach	unopened, liquid contents, mucosa healthy.
Liver	congested.
Kidneys	congested.
Spleen	congested.

Time since Death - 15 - 17 hours.

Cause of Death - Shock, head injury,  
antemortem in nature, caused by application of  
blunt force, from blunt object, and both collectively,  
and injury no (2) individually sufficient to cause  
death in ordinary course of nature.

Chandra Kant  
7/6/2002

DR. CHANDRA KANT



9. It is pertinent to mention that the Appellants herein had filed an Application being CRL.M.B.645/2004 for suspension of sentence before this Court. This Court vide Order dated 28.07.2004 was pleased to allow the said Application which reads as under:

*“Heard.*

*The appellants have, in our opinion, made out a case for the suspension of sentence of life imprisonment imposed upon them. We accordingly direct that the sentence imposed on the appellants shall remain suspended, subject to the appellants furnishing personal bonds in an amount of Rs.10,000/- each with two sureties in the like amount to the satisfaction of the Trial Court.*

*The office shall expedite preparation of the paper books and post the appeal for final hearing at its turn.*

*Dasti.”*

10. Before advertng to the merits of the case, it is apposite for this Court to examine and evaluate the testimonies of the witness statements given before the Trial Court.

11. Azamuddin Khan PW-6, father of the deceased Gufran Khan deposed that on 03.06.2002 at about 7.30 AM when he was getting ready for his office, at that time, the accused persons Kamruddin and Azhar Khan (being tried in Juvenile Court) and then the accused Ram Dhani came in front of PW-6's house on the pretext of the water pipeline which was installed by PW-6 along with accused persons. The accused persons told PW-6 that he has broken the pipeline and thereafter, the accused persons started fighting with him and the deceased Gufran Khan. The public raised an alarm and when he came out, he saw the accused Azhar Khan giving blows with an



iron pipe on the head of the deceased Gufran Khan. On receiving the blows, the deceased Gufran Khan fell down and at that time, the accused Kamruddin along with the other accused Ram Dhani gave *dandi* blows and *kikker sticks* blows to the deceased Gufran Khan and when PW-6 tried to stop them, all the three accused attacked PW-6, due to which his ring finger got fractured. Thereafter, public persons gathered there and they separated them. PW-6 further deposed that the public persons called the police and they were shifted to Safdarjung Hospital, wherein, after some time the deceased Gufran Khan went in Coma and after three days of being in coma, the deceased Gufran Khan expired on 06.06.2002 at about 7.30 PM. The Post Mortem on the body of the deceased Gufran Khan was conducted and after the same, his dead body was handed over to PW-6 on 07.06.2002. PW-6 has further deposed that he along with the deceased Gufran Khan were taken to the hospital where his statement was recorded which is exhibited as Ex. PW 6/A. PW-6 further deposed that on 04.06.2002, the accused persons Azhar Khan, Kamruddin and Ram Dhani were arrested by the police and their personal search was taken vide memo Ex. PW 1/A to C and on interrogation, their disclosure statements were recorded vide memo Ex. PW 1/D to F and as per their disclosure statements, one *kikker ki lakdi* was recovered from the accused Ram Dhani, one *ganti ki dandi* was recovered from the accused Kamruddin and one iron pipe was recovered from the accused Azhar Khan, which was seized by the IO vide memo Ex PW 1/G to I. The witness identified the case property as Ex. P1 to P3.

12. Israil, PW-8, deposed that last year on 2nd or 3rd day of June, he heard some noise in the area and when he came out, he saw a crowd in front of the house of PW-6 and the accused Kamruddin reached there and later





PW-8 found that the son of PW-6, the deceased Gufran Khan was lying on the ground and was having injuries on his head and PW-8 immediately informed the PCR, and the PCR came on the spot and shifted the deceased Gufran Khan to the hospital. PW-8 also accompanied the injured to the hospital and after two days, the deceased Gufran Khan died. Further, PW-8 was interrogated by the IO, and PW-8 had not seen as to who had inflicted injuries to the deceased Gufran Khan. PW-8 was cross-examined by Ld. APP and in the cross-examination, PW-8 admitted that a quarrel had taken place between the accused Kamruddin and PW-6 in the evening time of 02.06.2002. PW-8 compromised the matter between the accused Kamruddin and PW-6 and on the day of occurrence of the incident i.e. 03.06.2002, at about 7.30 AM, PW-8 was sitting in front of his house when he heard a noise of quarrel from the *gali* and when he reached the spot and later he found out that the deceased Gufran Khan and Shamshad Khan (PW-9) had come out of PW-6's house but PW-8 denied that the accused Azhar Khan was having iron pipe or that the accused Azhar Khan hit the same on the head of the deceased Gufran Khan due to which he fell down and became unconscious or that the accused persons Kamruddin and Ram Dhani also gave blows to the deceased Gufran Khan with the *danda*. PW-8 admitted that he along with PW-9 and others separated the deceased Gufran Khan from the hands of accused persons and then later on PW-8 rectified his statement and stated that when he reached the spot, the deceased Gufran Khan had already received injuries. PW-8 admitted that he called the PCR, who later came to the spot and shifted the injured persons to the hospital. The accused Kamruddin and Ram Dhani were present in the court and PW-8 further deposed that he can identify all the accused persons.



13. Shamshad Khan PW-9 deposed that 5/6 days prior to 03.06.2002, he had come to his Mause's house i.e. Azamuddin (PW-6). He deposed that on 03.06.2002, he along with the deceased Gufran Khan were having breakfast and at that time, they heard some noise of quarrel and he along with the deceased Gufran Khan came out of the house and before they could do anything, on their coming out, the accused Azhar Khan who was holding an iron pipe, attacked the deceased Gufran Khan with that pipe on his head due to which the deceased Gufran Khan fell down and got unconscious and at that time, the accused persons Kamruddin and Ram Dhani (present in the court) also gave *danda* blows to the deceased Gufran Khan. The accused persons also attacked his Mause Azamuddin PW-6 with *danda* due to which, his right eye and ring finger of his right hand got injured. PW-9 has further deposed that at that time, he along with PW-8, the area Pradhan separated the accused persons and his Mause and the deceased Gufran Khan. PW-9 further deposed that the PCR was informed by his Mause and then the deceased Gufran Khan and his Mause were shifted to Safdarjung Hospital and PW-9 also accompanied them to the hospital. Thereafter, PW-9 deposed that he came to know that quarrel had taken place because of the pipeline. He has further deposed that the deceased Gufran Khan remained in Coma for 2/3 days and thereafter, he expired in the Hospital. Thereafter, Police came to the spot and prepared the site plan as per PW-9's pointing out, and also recorded his statement. PW-9 has further deposed that on 04.06.2002, the accused persons Azhar Khan, Kamruddin and Ram Dhani were arrested and their personal search was taken vide memo Ex. PW 1/A to C and all the three were interrogated. Then their disclosure statements were recorded vide Ex. PW 1/D to F. As per their disclosure statement, from the accused



persons the following were recovered: (i) iron pipe; (ii) ganti ka *danda*; and (iii) *kikker ka danda* which were siezed vide memo Ex. PW 1/G to I. The witness identified the case property as Ex. P1 to P3.

14. A plain reading of the depositions of PW-6, PW-8 and PW-9 indicates that the Appellants herein had given several blows to the deceased Gufran Khan and the deceased Gufran Khan had gone into coma for 2-3 days and due to which he succumbed to his injuries.

15. Section 299 defines *culpable homicide* as the act of causing death 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 the act is likely to cause death. Section 300, in contrast, carves out specific categories of culpable homicide that amount to *murder* by setting a higher threshold of intention and knowledge.

16. The Apex Court has clarified in State of Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382, that "culpable homicide is the genus and murder its species", and that all murders are culpable homicides but not all culpable homicides are murders. The distinction depends upon the degree of probability of death, and the intention or knowledge with which the act is committed. The relevant portion of the said judgment reads as under:-

*"12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "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.”*

17. The Apex Court in State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382, has held that whenever the a 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 will 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 prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300. 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, of the Penal Code.

18. Similarly, in Abdul Waheed Khan v. State of A.P., (2002) 7 SCC 175, the Apex Court has observed that in the scheme of IPC culpable homicide is the genus and “murder”, its species. The Apex Court has held that all “murder” is “culpable homicide” but not vice versa. The Apex Court has further held that “culpable homicide” without “special characteristics of murder is culpable homicide not amounting to murder” and for the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, “culpable homicide of the first degree” and this is the gravest 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” which 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. In the said judgment, the Apex Court has observed as under:

*"14. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver,*



*or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.”*

19. The Apex Court in Pulicherla Nagaraju v. State of A.P., (2006) 11 SCC 444, has observed as under:

*"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations*



*and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."*



20. Bringing out the distinction between clause (b) of Section 299 IPC and clause (3) of Section 300 IPC, the Apex Court in Raj Pal v. State of Haryana, (2006) 9 SCC 678, has held as under:

*"16. Clause (b) of Section 299 corresponds with clauses (2) [Ed. : Secondly] and (3) [Ed. : Thirdly] of Section 300. The distinguishing feature of the mens rea requisite under clause (2) [ Arising out of SLP (Crl.) No. 5228 of 2005. From the Final Judgment and Order dated 15-7-2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 177-SB/92] is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2) [ Arising out of SLP (Crl.) No. 5228 of 2005. From the Final Judgment and Order dated 15-7-2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 177-SB/92] . Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) [ Arising out of SLP (Crl.) No. 5228 of 2005. From the Final Judgment and Order dated 15-7-2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 177-SB/92] is borne out by Illustration (b) appended to Section 300.*

*17. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) [ Arising out of SLP (Crl.) No. 5228 of 2005. From the Final Judgment and Order dated 15-7-2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 177-SB/92]*





*of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) [Ed. : Secondly] of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) [Ed. : Secondly] of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.*

**18.** *For cases to fall within clause (3) [Ed. : Secondly], it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional*



*bodily injury or injuries sufficient to cause death in the ordinary course of nature. Kalarimadathil Unni v. State of Kerala [1966 Supp SCR 230 : AIR 1966 SC 1874 : 1966 Cri LJ 1509] is an apt illustration of this point.*

21.\*\*\*\*\*

*20. The ingredients of clause “thirdly” of Section 300 IPC were brought out by the illustrious Judge in his terse language (in AIR para 12) as follows : (SCR pp. 1500-01)*

*“[12.] To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 ‘3rdly’;*

*First, it must establish, quite objectively, that a bodily injury is present.*

*Secondly, the nature of the injury must be proved; these are purely objective investigations.*

*Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.*

*Once these three elements are proved to be present, the enquiry proceeds further and,*

*fourthly, it must be proved that the injury of the type just described made up of the three elements set out*



*above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”*

**21.** *The learned Judge explained the third ingredient in the following words (at AIR p. 468) : (SCR p. 1503)*

*“The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.”*

**22.** *These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case [1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818] for the applicability of clause “thirdly” is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing*



*death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted."*

22. In Gurmukh Singh v. State of Haryana, (2009) 15 SCC 635, the Apex Court, while describing the factors which are to be taken into consideration while awarding the sentence to an accused, has observed as under:

*"23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:*

- (a) motive or previous enmity;*
- (b) whether the incident had taken place on the spur of the moment;*
- (c) the intention/knowledge of the accused while inflicting the blow or injury;*
- (d) whether the death ensued instantaneously or the victim died after several days;*
- (e) the gravity, dimension and nature of injury;*
- (f) the age and general health condition of the accused;*
- (g) whether the injury was caused without premeditation in a sudden fight;*
- (h) the nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*



*(i) the criminal background and adverse history of the accused;*

*(j) whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;*

*(k) number of other criminal cases pending against the accused;*

*(l) incident occurred within the family members or close relations;*

*(m) the conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?*

*These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused."*

23. Dr. Chandrakant, PW-3 has also stated that the cause of death was due to shock and head injury individually.

24. The internal examination of the Post Mortem Report indicates that (i) extra vacation of blood under scalp in left parieto-temporal region 8 cm x 4.5 cm; (ii) extradural haemorrhage on superior surface of left parieto-temporal lobes sized 10 cm x 8.5 cm; (iii) fracture of left temporal-parietal bones; (iv) multiple, contusions and laceration of under surface of right temporal lobe, right frontal lobe; and (v) brain congested, oedematous with petechial haemorrhage.

25. The Post Mortem Report opines that the cause of death was due to head injury, ante mortem in nature, caused by application of blunt force, from blunt object and the said injuries were sufficient to cause death in the ordinary course of nature.



26. The Prosecution has proved that the injuries were inflicted on the head by an iron pipe, *danda* and *kikker sticks*. The injuries were inflicted on the head which is a vulnerable portion of the body. The nature of the injury was such that it was sufficient to cause death in the ordinary course of nature.

27. In the opinion of this Court, this case would fall under second and third limb of Section 300 of IPC and therefore, this Court does not find any infirmity in the Order of Conviction passed by the Trial Court.

28. Therefore, the conviction is upheld. The Appellants are directed to surrender forthwith, and if the Appellants do not surrender, the State is directed to take steps to ensure that the Appellants are taken into custody to serve the remaining part of their sentence. The bail bonds are cancelled.

29. Let a copy of this judgement be transmitted to the concerned Jail Superintendent for compliance.

**SUBRAMONIUM PRASAD, J**

**VIMAL KUMAR YADAV, J**

**OCTOBER 14, 2025**

*Prateek/JR*