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

Date of decision: 16th JULY, 2025

IN THE MATTER OF:

\+ **CRL.A. 974/2024 & CRL.M.(BAIL) 1741/2024**

ROBIN MASSEY @ MONU .....Appellant

Through: Mr. B. Badrinath, Adv. (DHCLSC)

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Aashneet Singh, APP for State.
SI Sanjay Kumar, PS Mehrauli
Mr. Harsh Prabhakar, Adv (DLSA), Mr. Dhruv Chaudhry, Mr. Shubham Sourav, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The present appeal is directed against the judgment of conviction dated 07.05.2024 and the order on sentence dated 25.07.2024, passed by the learned Additional Sessions Judge in Sessions Case No. 7141/2016, arising out of FIR No. 1883/2014, registered at Police Station Mehrauli, under Section 302 of the Indian Penal Code, 1860. By the impugned judgment, the Appellant, Robin Massey @ Monu, was convicted for committing the murder of one Dharmender @ Dharmu during the intervening night of 6th and 7th October, 2014. He has been sentenced to rigorous imprisonment for life along with a fine of ₹50,000, and in default of payment, to undergo six months' simple imprisonment.

2. The Appellant, being aggrieved by the conviction and sentence, has preferred the present appeal.

3. The facts leading to the filing of the present appeal as stated in the impugned judgment are as follows:

a) The prosecution was initiated when a PCR van, Eagle-30, on routine patrolling duty, received an oral intimation from one *Arvind Kumar Tripathi* (PW9) around 2:00 a.m. that a person was being assaulted with bricks and stones near Chhatarpur Mandir Road. Acting on this information, the police personnel comprising HC Mange Ram (PW1), Ct. Jaideep (PW2), and Ct. Praveen (PW3) proceeded to the indicated location, where they allegedly found an injured male person lying unconscious on the ground and another individual, later identified as *Robin Massey @ Monu*(the Appellant), standing nearby.

b) It is stated that the PCR officials inquired into the circumstances, during which, according to the prosecution, the Appellant admitted to having assaulted the injured person. It is further stated that the injured, later identified as *Dharmender @ Dharmu*, was found bleeding profusely from the head and was immediately taken to Fortis Hospital, Vasant Kunj, in the PCR vehicle along with the Appellant. Upon medical examination, the injured was declared "brought dead" by the attending doctors. The death was noted in the medico-legal register, and the same was intimated to the local police station for further proceedings. FIR No.1883/2014 was registered at Police Station Mehrauli for offences under Section 302 IPC.

c) It is stated that the investigation was taken over by Inspector Sunil Kumar (PW23), who recorded the statement of the patrolling officer HC Mange Ram and accordingly prepared a rukka which was handed over to HC Tejpal Singh (PW5) for the registration of FIR. The FIR No. 1883/2014 under Section 302 IPC was formally registered at 4:10 a.m. on 07.10.2014 by the Duty Officer, SI Shriram (PW7), and was duly transmitted to the concerned Magistrate and senior officers.

d) It is stated that during the course of investigation, the police visited the scene of occurrence near Rajdhani Medical Store and MCD Park, Chhatarpur Road. The site was inspected in the presence of forensic and crime teams. Multiple articles were recovered and seized from the spot, including a half-brick, a large flat stone (silli), blood-stained earth, control earth, strands of hair, and a blood-stained slipper. These articles were taken into possession under panchnamas and sealed for subsequent forensic analysis. A site plan was also prepared, and photographs were taken. The Appellant was formally arrested at the hospital based on the alleged identification by witness Arvind Kumar Tripathi (PW9), and a disclosure statement was recorded.

e) It is further stated that in the days following the incident, the investigating team recorded the statements of several individuals claiming to be eyewitnesses to the occurrence. Among them were *Akash* (PW4), who resided nearby and stated that he witnessed the assault while returning from relieving himself, and *Rahul* (PW8), a tea vendor who alleged he was passing by due

to abdominal pain and saw the Appellant hitting the deceased. Both witnesses initially supported the prosecution version. However, it is noted that during trial, PW8 resiled from his earlier statement and alleged coercion by the Investigating Officer. PW4 maintained his account during chief and cross-examination.

f) It is stated that another witness, *Arvind* (PW9), who claimed to be a part-time watchman at a local workshop, stated that he had seen the Appellant and the deceased quarrelling and that he had alerted the PCR van when he saw the assault take place. His testimony corroborated that of PW4 to a limited extent.

g) It is stated that during the investigation, the police came into possession of a CCTV hard disk from one *Laxman Singh* (PW12), the owner of a nearby property. The footage was claimed to capture the incident from a distance. The hard disk was seized and sent to the FSL, and subsequently, a CD containing the footage was produced as Ex.PW17/P1. During trial, the footage was played in court. While some witnesses affirmed that the recording matched the incident they had witnessed, the Court recorded that the visual clarity was insufficient for facial identification, given the night-time setting and distance of the camera.

h) It is stated that a post-mortem examination was conducted on the body of the deceased at AIIMS, New Delhi, and the report prepared by Dr. Hari Prasad (PW26) concluded that the cause of death was cranio-cerebral damage consequent to blunt force trauma, sufficient to cause death in the ordinary course of nature.

The injuries were opined to be ante-mortem and homicidal in nature.

i) It is stated that following completion of investigation, a charge-sheet was filed under Section 302 IPC. The Appellant was formally charged with having committed murder by intentionally inflicting injuries with bricks and stones with the knowledge that such injuries were likely to cause death. The Appellant pleaded not guilty and claimed trial.

j) It is stated that at trial, the prosecution examined 27 witnesses, including members of the PCR, investigating officers, medical and forensic experts, and alleged eyewitnesses. The defence led no evidence.

k) Upon evaluating the testimony and material on record, the Trial Court convicted the Appellant and sentenced him to life imprisonment along with a fine leading to the present Appeal.

4. The Trial Court convicted the Appellant, Robin Massey @ Monu, under Section 302 IPC, holding that the prosecution had succeeded in establishing the commission of murder of Dharmender @ Dharmu beyond reasonable doubt. The trial court found that the case rested primarily on the testimonies of three purported eyewitnesses-PW4 Akash, PW8 Rahul, and PW9 Arvind Kumar Tripathi-as well as the recovery of physical evidence from the scene of occurrence and post-mortem confirmation of homicidal injuries.

5. The trial court noted that although PW8 Rahul later retracted his testimony, he had, during his examination-in-chief, identified the accused as

the assailant and had narrated the sequence of the attack. Similarly, PW4 Akash offered a consistent narrative of the incident, stating that he saw the accused strike the deceased multiple times on the head with a brick and stone. PW9 Arvind corroborated these accounts to the extent that he saw a quarrel between the accused and the deceased, and also informed the PCR van of the ongoing incident.

6. The Trial Court took into account the medical evidence-specifically the post-mortem report (PW26, Dr. Hari Prasad)-which confirmed that the injuries suffered by the deceased were consistent with the use of heavy blunt objects and were sufficient in the ordinary course of nature to cause death.

7. The trial Court further relied on the testimonies of the PCR officials (PW1 HC Mange Ram, PW2 Ct. Jaideep, PW3 Ct. Praveen), who stated that the Appellant was found at the spot, confessed on the scene, and was taken to the hospital along with the deceased. Although the CCTV footage (Ex.PW17/P1) was played in court, the Trial Court itself noted that the footage was not visually clear enough for conclusive identification, but accepted it as corroborative of the occurrence of a violent altercation at the relevant time and place.

8. The Trial Court also noted that the defence had not led any evidence, and that the cross-examination of prosecution witnesses failed to substantially dent the prosecution case. The retraction of PW8's statement was not considered fatal, as the trial court found PW4 and PW9 reliable and consistent. Accordingly, the trial court convicted the Appellant under Section 302 IPC and sentenced him to life imprisonment with fine.

9. The Trial Court adopted a cumulative approach to appreciating the evidence, noting that even if some links in the chain were weakened-such as PW8 turning hostile or the limited utility of the CCTV footage-the overall evidentiary matrix still formed an unbroken chain pointing to the guilt of the Appellant.

10. The Trial Court further emphasized the role of ocular evidence, particularly that of PW4 Akash, as the most reliable testimony. PW4 described seeing the accused and deceased quarrelling, followed by the accused hitting the deceased with a brick and a stone slab multiple times on the head. The Trial Court found this testimony to be natural, cogent, and uninfluenced.

11. As for PW8 Rahul, though he later denied being present, the trial court took into account his initial detailed testimony, wherein he had corroborated PW4's version and identified the accused in court. The Trial Court, relying on the principle laid down in Ram Bhukan v. State, **AIR 1994 SC 561,** held that even a partly hostile witness can be relied upon to the extent of the truth in their statement.

12. PW9 Arvind was treated as a corroborative eyewitness whose testimony about witnessing a quarrel, informing the police, and identifying the accused at the spot was found to be consistent and trustworthy. His neutrality, being a bystander and watchman, was emphasized.

13. The PCR team (PW1 to PW3) was also relied upon to establish the immediate presence of the accused at the scene and the chain of events leading to medical examination. These witnesses consistently stated that the

Appellant was standing near the injured person and volunteered his role when questioned.

14. The medical evidence, particularly the post-mortem report of Dr. Hari Prasad (PW26), noted multiple lacerated and contused wounds over the head and face, leading to death due to cranio-cerebral damage. This was considered entirely consistent with the weapons recovered at the scene.

15. The CCTV footage (Ex. PW17/P1) was noted as supportive, but not conclusive. The Trial Court recorded that while the footage captured a scuffle, the faces of the individuals were not clearly discernible due to night-time recording and camera angle.

16. The forensic evidence included the seizure of blood-stained stones, a brick slab, soil, slippers, and hair strands (Ex. PW5 series). The articles were sent to FSL and the DNA report confirmed the presence of human blood matching the deceased's profile on some of these items. These findings were accepted as confirmatory rather than standalone proof.

17. In evaluating the evidence led by the prosecution, this Court is mindful that credible and consistent eyewitness testimony can form the basis for conviction even in the absence of corroborative material, while circumstantial evidence must meet the test of forming a complete and unbroken chain that leads only to the guilt of the accused. In the present case, the prosecution has relied on the direct testimony of three witnesses—PW4 *Akash*, PW8 *Rahul*, and PW9 *Arvind Kumar Tripathi*—as well as physical and forensic evidence, supported by medical opinion.

18. The occurrence in question took place during the intervening night of 6th and 7th October, 2014, at around 1:30 to 2:00 a.m., near the T-point

adjoining MCD Park, Chhatarpur Road, New Delhi. PW4 *Akash*, who was residing at an under-construction house near the spot, deposed that he had stepped out to relieve himself when he saw a group of 3–4 persons near a TSR, engaged in a verbal exchange. He stated that the Appellant, Robin Massey @ Monu, began arguing with one of the persons and struck him with a brick. After the victim fell to the ground, the Appellant continued to hit him with a stone slab on the head. Akash's statement was consistent with his presence near the scene, and his version remained substantially unshaken during cross-examination.

19. PW9 *Arvind,* who was employed to watch over a nearby workshop and was present at the tea stall of his maternal uncle at the relevant time, also deposed that he witnessed the accused striking the deceased. He specifically stated that he saw four boys get down from a TSR, and soon thereafter, one among them began hitting another with a smaller stone, then a larger stone, and finally with a flat slab ("silli"). PW9 testified that he flagged down a PCR van and alerted the officials, who then reached the spot. His testimony was consistent in material particulars with that of PW4 and his role in summoning the police was independently corroborated by the PCR officials.

20. PW8 *Rahul,* who ran a tea stall in the locality and claimed to be heading to purchase medicine due to stomach pain, initially stated that he witnessed the Appellant hitting the deceased with a stone. However, when recalled for further cross-examination, Rahul retracted his testimony, denied being present at the scene, and claimed he was coerced by the Investigating Officer into making his earlier statement. He further denied operating a tea stall or living at the address attributed to him. Despite this retraction, the

Trial Court accepted his examination-in-chief to the extent it aligned with other evidence, invoking the settled position that the testimony of a hostile witness is not to be discarded outright but may be relied upon where found credible.

21. In addition to these witnesses, the prosecution examined the PCR personnel—PW1 *HC Mange Ram,* PW2 *Ct. Jaideep,* and PW3 *Ct. Praveen*—who stated that while patrolling in PCR Van Eagle-30, they were flagged down by Arvind (PW9) and informed that a man was being assaulted. On reaching the scene, they found the injured lying on the ground and the Appellant standing nearby. Upon inquiry, the Appellant allegedly admitted to having assaulted the injured with bricks. The injured was then taken to Fortis Hospital, where he was declared brought dead.

22. The post-mortem examination was conducted by PW26 *Dr. Hari Prasad* who opined that the cause of death was cranio-cerebral damage caused by blunt force trauma, consistent with repeated blows from heavy objects like bricks or stones. The injuries were stated to be ante-mortem.

23. The forensic evidence included the recovery of blood-stained bricks, stones, a slipper, hair strands, and soil samples, all seized vide various seizure memos (Ex. PW5/D to Ex. PW5/J). These items were sent to the FSL, and reports (Ex. PW16/A and others) confirmed the presence of human blood, though the source matching was not categorically established on all items. The CCTV footage, seized from a DVR at PW12 *Laxman Singh's* house, was presented via Ex. PW17/P1 and played in court. However, the Trial Court observed that the faces of the individuals were not clearly visible due to the camera angle and lighting, limiting the footage's evidentiary value to corroboration of the occurrence but not of identity.

24. Upon a cumulative appreciation, the court found that the eyewitness accounts of PW4 and PW9, reinforced by corroborative medical and forensic evidence, provide a consistent narrative implicating the Appellant. Although PW8 retracted from his earlier version, his prior testimony is partly admissible under law and is corroborative in nature. The physical presence of the Appellant at the scene, his alleged admission before the PCR, and the sequence of events support the prosecution's case. While the circumstantial evidence alone may not have been sufficient to establish guilt, it significantly strengthens the otherwise reliable direct evidence available in the form of eyewitness accounts.

25. Learned Counsel for the Appellant contends that the Trial Court committed a grave error in convicting the Appellant solely on the basis of uncorroborated and inconsistent testimony, while ignoring key procedural safeguards and the benefit of doubt arising from the overall evidentiary record.

26. It is submitted that the Trial Court failed to appreciate that the FIR is not based on any written complaint or initial statement by an eyewitness, but rather initiated upon DD entry made by PCR officials on being informed by PW9 Arvind. There is no prior complaint or statement by an injured or eye-witness at the time of the lodging of FIR. This, it is argued, casts doubt on the spontaneity and reliability of the prosecution's case.

27. He further contends that the case rests predominantly on the testimony of PW4 and PW9. However, these witnesses, according to the defence, were either not present at the scene or had reasons to falsely implicate the Appellant. PW4 was a known person to the Appellant and resided nearby; his testimony is argued to be motivated and lacking in independent

corroboration. PW9, on the other hand, did not mention the name of the accused when initially informing the PCR van, nor did he offer any explanation for the delay in identifying the accused.

28. It is also contended that PW8 Rahul, who was presented as an independent eyewitness, completely retracted from his original testimony upon being recalled and cross-examined. He stated that he was not present at the spot, had not seen the incident, and was allegedly coerced by the police into making the earlier statement. Despite this, the Trial Court relied on selective portions of his testimony, in violation of established law which mandates caution when dealing with hostile witnesses.

29. It is argued that the so-called extra-judicial confession before the PCR officials—where the accused allegedly stated that he had hit the victim—is neither admissible in law nor corroborated by any independent witness. The confession was not recorded under Section 164 CrPC, nor were any recovery or disclosure proceedings duly followed thereafter.

30. It is furthermore stated that the CCTV footage produced by the prosecution has also been challenged as vague and lacking probative value. It neither clearly captures the face of the Appellant nor does it depict the sequence of assault with sufficient clarity. No scientific analysis was conducted to verify identity, and the DVR was seized from a private residence without ensuring an evidentiary chain of custody.

31. It is argued that all the recoveries shown by the prosecution—including the bricks, stones, blood-stained earth, and slippers—were allegedly made from an open public place. No independent public witness was joined at the time of seizure. The prosecution has not adequately

explained why neutral witnesses were not available or examined, especially when the incident occurred in a public area.

32. On medical grounds, it is submitted that while the post-mortem confirms death due to blunt force trauma, it does not conclusively link the injuries with the exact manner or weapon attributed by the prosecution. The absence of fingerprints or blood on the hands or clothes of the Appellant also militates against his alleged involvement.

33. Lastly, he emphasizes on the prolonged incarceration since October 2014 and the absence of any criminal antecedents. The conviction, it is argued, results in a miscarriage of justice given the lack of a complete and unimpeachable chain of evidence. It is important to note that the Trial Court failed to apply the principle that in cases resting on circumstantial and partially hostile evidence, the benefit of doubt must go to the accused.

34. *Per contra*, the learned APP for the State has supported the judgment of conviction and sentence, contending that the impugned judgment is well-reasoned, based on credible evidence, and does not suffer from any illegality or perversity warranting interference by this Court in appellate jurisdiction.

35. It is submitted that the conviction of the Appellant is primarily based on the direct ocular testimony of PW4 Akash and PW9 Arvind Kumar Tripathi, both of whom witnessed the Appellant striking the deceased with a brick and a heavy stone in the early morning hours of 07.10.2014. Their testimonies, it is contended, are natural, consistent, and fully corroborated by the medical and forensic evidence on record.

36. The State further contends that the eyewitness account of PW4 was credible and remained unshaken in cross-examination. PW9, a night

watchman, is an independent witness with no animus against the accused, and his deposition is consistent with the prosecution version. It is emphasized that the defence failed to elicit any material contradiction in their testimonies.

37. As regards PW8 Rahul, it is submitted that the witness turned hostile during further cross-examination but had already deposed during examination-in-chief that he had seen the Appellant attacking the deceased. Relying on the decision in State of U.P. v. Ramesh Prasad Misra, it is argued that even the testimony of a hostile witness can be relied upon to the extent it supports the prosecution, particularly where it is corroborated by other evidence.

38. The APP asserts that the forensic evidence, including the blood-stained bricks and stones recovered from the crime scene, and the medical report showing multiple blunt force injuries, further corroborate the eyewitness account. The post-mortem report confirms that the injuries were sufficient to cause death in the ordinary course of nature.

39. On the issue of CCTV footage, he contends that the footage supports the prosecution timeline and shows movement consistent with the version of events. While the footage may not identify the accused with clarity, it corroborates the occurrence of a violent incident at the stated time and place.

40. The argument regarding absence of motive is downplayed by the prosecution, asserting that motive, though relevant, is not indispensable when there is clear and direct eyewitness evidence of the commission of the crime. It is pointed out that the accused was present at the spot, did not raise

any alarm or call for help, and instead attempted to flee, indicating a guilty mind.

41. The APP also stresses on the fact that the Appellant's confession to the PCR officials, though not a judicial confession, forms part of the sequence of events showing his involvement and was immediately acted upon by law enforcement. The statement is admissible under Section 8 of the Indian Evidence Act as conduct of the accused post-offence.

42. Lastly, it is contended that the defence has not brought on record any plausible explanation for the presence of the accused at the scene, nor any alternative theory to rebut the prosecution's case. The cumulative chain of evidence—eyewitnesses, forensic proof, medical opinion, and the absence of plausible defence—forms a complete narrative implicating the Appellant beyond reasonable doubt. The appeal, it is therefore submitted, is without merit and liable to be dismissed.

43. Heard the learned Counsels for the parties and perused the material on record.

44. In adjudicating the present appeal, it is imperative to draw a clear distinction between culpable homicide under Section 299 IPC and murder under Section 300 IPC, as the entire question of culpability hinges on whether the act alleged falls within the four corners of the latter. 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.

45. 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."*

46. 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.

47. 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 specie. 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."

48. 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."

49. 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.*

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***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."*

50. 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."

51. Applying the said parameters to the facts of the present case wherein PW-8 & PW-9, who are two eye-witnesses, have stated that on the fateful

night four boys, including the deceased and the Appellant herein, got down from the TSR. It is stated that all the four persons were under the influence of liquor. The eye-witnesses have stated that one of the four boys started beating the other boy. It is stated that the deceased was first hit with a smaller stone and then he was hit by a bigger stone which was lying there. The Trial Court has itself observed that the CCTV footage is quite blurred. Exhibit-19, which are the photographs, shows presence of two stones. The dimension of stones are not available. In view of the fact that there was a quarrel and all the four persons, including the deceased and the Appellant herein, came together from the TSR, it cannot be said that there was any intention to commit murder. The motive of murder has not been brought out very clearly. The incident seems to have happened in the spur of the moment in a quarrel. The death has been caused by a stone which was lying nearby.

52. There is no criminal background of the Appellant. In view of the law laid down by the Apex Court and the material on record, this Court is of the opinion that the material against the Appellant herein is not sufficient to bring him under Section 300 IPC punishable under Section 302 IPC. Accordingly, the conviction of the Appellant under Section 302 IPC is set aside. Instead, the Appellant is convicted under Section 304 Part-I IPC, which applies to acts done with the intention of causing such bodily injury as is likely to cause death.

53. As regards the sentence, the Appellant has been in custody since 07.10.2014, and has thus undergone more than eight years of incarceration.

54. Accordingly, the Appellant is sentenced to rigorous imprisonment for a period of 10 years and is directed to be released after completion of 10 years, if not required to be detained in any other case.

55. The appeal is partly allowed in the above terms. The impugned judgment of conviction and order on sentence dated 07.05.2024 and 27.07.2024 respectively passed by the learned ASJ are modified to the extent indicated hereinabove.

56. Let a copy of this judgment be transmitted to the concerned Jail Superintendent for compliance.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

JULY 16, 2025
JP/Rahul