HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

DIVISION BENCH

BEFORE: G.S.AHLUWALIA

AND

RAJEEV KUMAR SHRIVASTAVA, JJ.

Criminal Appeal No. 73/2004

Pahalwan Singh @ Chimme S/o Mungaram Jatav
Resident of Village Taidot Police Station Godan
District Datia (MP)

Versus

State of Madhya Pradesh
Through Police Station Godan
District Datia (MP)

Shri A.K.Jain, learned counsel for the appellant.
Shri Lokendra Shrivastava, learned Public Prosecutor for the respondent/ State.

Date of hearing : 17th August, 2021
Date of Judgment : 1st September, 2021
Whether approved for reporting: YES

J U D G M E N T
(01/09/2021)

Per Rajeev Kumar Shrivastava, J.:

The instant Criminal Appeal is preferred under Section 374 (2) of CrPC, challenging the judgment of conviction and sentence dated 22.12.2003 passed by Additional Sessions Judge, Camp Seondha, District Datia in Sessions Trial No. 46/2001, whereby appellant has been convicted under Section 302 of IPC (on two counts) and sentenced to undergo RI for life and fine of Rs.200/- on each count, for committing murder of Brijrani and Chandni, and in default of payment of fine, to undergo additional RI for two months on each count. Both the sentences

were directed to run concurrently.

2. It is admitted fact that deceased Brijrani and Chandni were the appellant's mother and daughter respectively and Atar Singh, who lodged the FIR is brother of appellant/accused.

3. The prosecution story in short is that on the date of incident, i.e., on 28.10.2000, Atar Singh (PW-1) lodged oral report in Police Station Godan that he had purchased a Bakhar (house) situated in village Taidot, from Santram Jatav for a consideration of Rs.12000/-. The said amount was paid by Pahalwan Jatav (appellant herein). Battu Jatav and Shobharam, who were residing adjoining to the said house, were interested in purchasing the house because they used to tie their cattle in a portion of the said house. Complainant Atar Singh asked Battu Jatav and Shobharam to vacate the house. Santram, who sold the house, had conveyed that he will get vacated the house. In the morning of 28.10.2000 when Atar Singh was in his house then Laxman Jatav came to his house and informed that Battu Jatav etc. and Pahalwan are quarrelling. At the time of quarrel Pahalwan was residing in the same house. The complainant reached and saw on the place of incident that Brijrani and Chandni, mother and daughter of Pahalwan were lying. Brijrani had already died and Chandni was seriously injured. Battu Jatav and Shobharam were present at the place of incident, Shobharam Jatav was having lathi and Shobharam Jatav committed murder of mother of Pahalwan and also caused head injury to the daughter of Pahalwan. After sometime, Chandni, daughter of Pahalwan died. Brijrani and Chandni were murdered by Battu Jatav and Shobharam Jatav, therefore, because of terror of Battu Jatav and Shobharam, appellant Pahalwan had absonded from the place of incident. On account of that, merg (Ex.P/2) was registered. Spot map (Ex.P/3)

was prepared and Lash Panchnama (Ex.P/4 and P/4-B were prepared. Postmortem of the dead bodies of deceased Brijrani and Chandi was conducted at Primary Health Centre, Indergarh. Post-mortem report of deceased Brijrani is Ex.P/14 and that of deceased Chandni is Ex. P/15. Post-mortem was conducted by Dr. M.M.Shakya (PW-10). Investigation was done by S.D.Nayar (PW-11), who had recorded memorandum of accused Chimme @ Pahalwan, i.e., Ex.P/11. On the basis of aforesaid memorandum given by Pahalwan, one luhangi was seized from the room of Pahalwan. Seizure of luhangi is Ex.P/12. Accused Pahalwan was arrested vide Ex.P/9. Blood-stained soil and plain soil and pieces of bricks were seized from the place of incident vide Ex.P/18. One agreement was seized from Atar Singh Jatav (PW-1). Statements of Lalaram Dangi, Diman Barar, Devi Singh, Kishori Jatav, Chatur Singh Jatav, Dayaram Jatav, Pappu @ Pomal Singh Dangi, Shobharam, Laxman Jatav, Battu Jatav, Dr. Santram Sironiya, Ramroop Jatav were recorded under Sections 161 of CrPC by Investigating Officer Dr. S.D.Nayar. After completion of investigation charge sheet was filed.

4. Appellant was tried for the offences under Section 302 of IPC for committing murder of Brijrani and Chandni. Appellant abjured his guilt. The Trial Court after appreciation of evidence available on record convicted and sentenced the appellant as under :-

Name of accused	Section	Punishment	Fine	In default, punishment
Pahalwan @ Chimme	302 IPC (on two counts)	Life Imprisonment (on each count)	200/- (on each count	2 Months RI (on each count)

5. The grounds raised are that the trial Court has

wrongly convicted the appellant. The judgment of conviction and sentence passed by the trial Court is against settled principles of law. As per FIR (Ex.P/1) itself, the present appellant is not the accused, despite the trial Court has erred in giving finding that the appellant is accused, rather the appellant has been falsely implicated in this case. The trial Court has not analyzed the evidence of prosecution properly and despite the fact that the evidence produced before the trial Court clearly indicates commission of crime by Battu and Shobharam, the trial Court has wrongly convicted present appellant Pahalwan. The prosecution has presented Diman (PW-4) and Dayaram (PW-6) as main eye-witnesses but in the spot map (Ex.P/3) their presence has not been shown. There is no iota of evidence in respect of motive behind commission of alleged crime. It is also orally submitted that the actual culprits are Battu and Shobharam, who had committed murder of mother as well as daughter of appellant and due to their terror the present appellant absconded from the place of incident and Investigating Officer had malafidely molded the case. Hence, prayed for setting aside the impugned judgment of conviction and sentence.

6. Per Contra, learned State Counsel opposed the submissions and submitted that the trial Court has rightly convicted the appellant and awarded sentence. Hence, no case is made out for interference.

7. Heard the learned counsel for the rival parties and perused the record.

8. In the present case, the following question emerges for consideration :

> "(i) Whether, on 28.10.2000 at about 7.00 am the death of Brijrani and Chandni

was culpable homicide ?

(ii) Whether, the culpable homicide of deceased Brijrani and Chandni comes within the purview of 'murder' ?

(iii) Whether, the aforesaid act was done by the appellants/accused Pahalwan?

9. Before considering the merits of the case, it would be appropriate to throw light on relevant provisions of Sections 299 and 300 of Indian Penal Code.

10. The Law Commission of United Kingdom in its 11th Report proposed the following test :

> "The standard test of 'knowledge' is, Did the person whose conduct is in issue, either knows of the relevant circumstances or has no substantial doubt of their existence?"

[See Text Book of Criminal Law by Glanville Wiliams (p.125)] “Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability. Consequently, it cannot be held that the appellant caused the injury with the intention of causing such bodily injury as the appellant knew to be likely to cause the death of Shri Ahirwar. So, clause Secondly of Section 300 IPC will also not apply.”

11. The enquiry is then limited to the question whether the offence is covered by clause Thirdly of Section 300 IPC. This clause, namely, clause Thirdly of Section 300 IPC reads as under: -

> "Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is

> sufficient in the ordinary course of nature to cause death."

The argument that the accused had no intention to cause death is wholly fallacious for judging the scope of clause Thirdly of Section 300 IPC as the words "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death in the ordinary course of nature. This is also borne out from illustration (c) to Section 300 IPC which is being reproduced below: -

> "(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death."

Therefore, the contention advanced in the present case and which is frequently advanced that the accused had no intention of causing death is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

12. The scope and ambit of clause Thirdly of Section 300 IPC was considered in the decision in **Virsa Singh vs. State of Punjab**, [**AIR 1958 SC 465]**, and the principle enunciated therein explains the legal position succinctly. The accused Virsa Singh was alleged to have given a single spear blow and the injury sustained by the deceased was "a punctured wound 2" x =" transverse in direction on the left side of the abdominal wall in the lower part of the iliac region just above the inguinal canal. Three coils of intestines were coming out of the wound." After analysis of the clause Thirdly, it was held: -

> "The prosecution must prove the following facts before it can bring a case under S. 300 "Thirdly"; 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. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under S. 300 "Thirdly". It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (there is no real distinction between the two), or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death."

13. In **Arun Nivalaji More vs. State of Maharashtra (Case No. Appeal (Cri.) 1078-1079 of 2005)**, it has been observed as under :-

> “11. First it has to be seen whether the offence falls within the ambit of Section 299 IPC. If

the offence falls under Section 299 IPC, a further enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly' of Section 300 IPC. If the offence falls in any one of these clauses, it will be murder as defined in Section 300IPC, which will be punishable under Section 302 IPC. The offence may fall in any one of the four clauses of Section 300 IPC yet if it is covered by any one of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done

(i) with the intention of causing death; or

(ii) with the intention of causing such bodily injury as is likely to cause death; or

(iii) with the knowledge that the act is likely to cause death."

If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of Section 300 IPC, it will not be murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted under Section 304 Part I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause

death" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part II IPC because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor.

12. What is required to be considered here is whether the offence committed by the appellant falls within any of the clauses of Section 300 IPC.

13. Having regard to the facts of the case it can legitimately be urged that clauses Firstly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to cause death" occurring in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word 'knowledge' is the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in Black's Law Dictionary is as under: -

> "An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact. It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely,

> there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended."

In Blackstone's Criminal Practice the import of the word 'knowledge' has been described as under: -

> "'Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

14. Section 299 of Indian Penal Code runs as under :-

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

15. Section 299 of IPC says, whoever causes death by doing an act with the bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing :

(i) an act with the intention of causing death;
(ii) an act with the intention of causing such

bodily injury as is likely to cause death; or

(iii) an act with the knowledge that it is was likely to cause death.

Without one of these elements, an act, though it may be by its nature criminal and may occasion death, will not amount to the offence of culpable homicide. 'Intent and knowledge' as the ingredients of Section 299 postulate, the existence of a positive mental attitude and the mental condition is the special *mens rea* necessary for the offence. The knowledge of third condition contemplates knowledge of the likelihood of the death of the person. Culpable homicide is of two kinds : one, culpable homicide amounting to murder, and another, culpable homicide not amounting to murder. In the scheme of the Indian Penal Code, culpable homicide is genus and murder is species. All murders are culpable homicide, but not *vice versa*. Generally speaking, culpable homicide *sans* the special characteristics of murder is culpable homicide not amounting to murder. In this section, both the expressions 'intent' and 'knowledge' postulate the existence of a positive mental attitude which is of different degrees.

16. Section 300 of Indian Penal Code runs as under :-

> "300. Murder.-- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--
>
> *Secondly*.-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--
>
> *Thirdly*.-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--
>
> *Fourthly*.-- If the person committing the

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

17. 'Culpable Homicide' is the first kind of unlawful homicide. It is the causding of death by doing ; (i) an act with the intention to cause death; (ii) an act with the intention of causing such bodily injury as is likely to cause death; or, (iii) an act with the knowledge that it was likely to cause death.

18. Indian Penal Code reconizes two kinds of homicides : (1) Culpable homicide, dealt with between Sections 299 and 304 of IPC (2) Not-culpable homicide, dealt with by Section 304-A of IPC. There are two kinds of culpable homicide; (i) Culpable homicide amounting to murder (Section 300 read with Section 302 of IPC), and (ii) Culpable homicide not amounting to murder (Section 304 of IPC).

19. A bare perusal of the section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not the intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e., mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

20. There are three species of mens rea in culpable homicide. (1) An intention to cause death; (2) An intention to cause a dangerous injury; (3) Knowledge that death is likely to

happen.

21. The fact that the death of a human being is caused is not enough unless one of the mental staes mentioned in ingredient of the Section is present. An act is said to cause death results either from the act directly or results from some consequences necessarily or naturally flowing from such act and reasonably contemplated as its result. Nature of offence does not only depend upon the location of injury by the accused, this intention is to be gathered from all facts and circumstances of the case. If injury is on the vital part, i.e., chest or head, according to medical evidence this injury proved fatal. It is relevant to mention here that intention is question of fact which is to be gathered from the act of the party. Along with the aforesaid, ingredient of Section 300 of IPC are also required to be fulfilled for commission of offence of murder.

22. In the scheme of Indian Penal Code, “Culpable homicide” is genus and “murder” is its specie. All “Murder” is “culpable homicide” but not vice versa. Speaking generally 'culpable homicide sans special characteristics of murder' if culpable homicide is not amounting to murder.

23. In **Anda vs. State of Rajasthan [1966 CrLJ 171),** while considering “third” clause of Section 300 of IPC, it has been observed as follows :-

> “It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on sufficiency of injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and causing of such injury was intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant

> factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature."

24. In **Mahesh Balmiki vs. State of M.P. [(2000) 1 SCC 319,** while deciding whether a single blow with a knife on the chest of the deceased would attract Section 302 of IPC, it has been held thus :-

> "There is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had intention to kill the deceased. In any event, he can safely be attributed knowledge that the knife blow given by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

25. In **Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat [(2003) 9 SCC 322**, it has been observed as under :-

> "The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle,

for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on

> account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

26. In **Pulicherla Nagaraju @ Nagaraja vs. State of AP [(2006) 11 SCC 444**, while deciding whether a case falls under Section 302 or 304 Part-I or 304 Part-II, IPC, it was held thus :-

> "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 a 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 pre-meditation. 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 pre- meditation; (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."

27. In **Sangapagu Anjaiah v. State of A.P. (2010) 9 SCC 799**, Hon'ble Apex Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus:

> "16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased."

28. In **State of Rajasthan v. Kanhaiyalal (2019) 5 SCC 639,** this it has been held as follows:

> "7.3 In Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155] this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.
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> 7.4 In Ashokkumar Magabhai Vankar [Ashokkumar Magabhai Vankar v. State of Gujarat, (2011) 10 SCC 604 : (2012) 1 SCC (Cri) 397] , the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.
>
> 7.5 A similar view is taken by this Court in the recent decision in Leela Ram (supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single

blow, whether case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 21 as under: (SCC para 21)

> "21. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner."

29. In the case of **Bavisetti Kameswara Rao v. State of A.P. (2008) 15 SCC 725** , it is observed in paragraphs 13 and 14 as under:

> "13. It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the

learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

14. In State of Karnataka v. Vedanayagam [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury. However, after a detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the decision in Virsa Singh vs. State of Punjab [AIR 1958 SC 465] , the Court set aside the acquittal under Section 302 IPC and convicted the accused for that offence. The Court (in Vedanayagam case [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] , SCC p. 330, para 4) relied on the observation by Bose, J. in Virsa Singh case [AIR 1958 SC 465] to suggest that: (Virsa Singh case [AIR 1958 SC 465], AIR p. 468, para 16)

> "16. With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."

The further observation in the above case were: **(Virsa Singh case [AIR 1958 SC 465]** , AIR p. 468, paras 16 & 17)

> "16. 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. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.
>
> 17. … It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear

> that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

30. In the light of above annunciation of law laid down by Hon'ble Apex Court, the evidence available on record in the present case is considered.

31. From perusal of the record, it is evident that Dr. M.M.Shakya (PW-10), has stated in his statement that on 28.10.2000, he was posted as Assistant Surgeon in Primary Health Centre, Tharet. On that day, Yangveer Bahadur, Constable No.93 of Police Station Godan, had brought dead body of deceased Brijrani, wife of Late Moongaram Jatav for postmortem. He conducted post-mortem and found following injury on the body of deceased Brijrani vide postmortem report (Ex.P/14) :-

> **External Examination : Lacerated wound on right temporal parietal region of head, size 6/1-2cm x 2/1-2cm x 2cm skull bone fractured in pieces at the site of the injury through which brain matter came out. This injury is ante-mortem in nature.**

32. This witness has also stated in his statement that on the same day the aforesaid constable had also brought dead body of deceased Chandni, daughter of Pahalwan for postmortem. He conducted post-mortem and found following injury on the body of deceased Chandni vide postmortem report (Ex.P/15) :-

> **External Examination : Lacerated wound size 6cm x 2cm x 2cm bone deep. Fracture of the occipital bone on right side and**

bone broken in pieces, through which brain matter came out. This injury is ante-mortem in nature.

Dr. M.M.Shakya has stated in his statement that the cause of death of deceased Brijrani and Chandni was head injury, which resulted into coma and deceased died. The injuries caused were dangerous to life and death of deceased Brijrani and Chandi was homicidal and injuries were sufficient to cause death of Brijrani and Chandni.

33. In the present case, FIR (Ex.P/1) has been lodged by Atar Singh (PW-1) on 28.10.2000, immediately after the incident. Atar Singh was informed by Laxman Jatav, who informed that Battu etc. were quarrelling with Pahalwan. He reached the spot and saw that his mother Brijrani was dead and Chandni was lying injured. Both were having head injuries. On the spot Battu Jatav and Shobharam Jatav were found present armed with lathi. It is also mentioned in the FIR (Ex.P/1) that Battu and Shobharam Jatav committed murder of Brijrani and Chandni. Laxman Jatav has not been examined before the trial Court.

34. Atar Singh (PW-1) in para 1 of his examination-in-chief has stated that at the time of death of his mother he was in his another house where one old man reached and informed that Battu, Shobharam and Pahalwan were quarrelling. He has further stated that when he reached at the place of incident, he saw that Kishori, Diwan, Dayaram, Chatur Singh and Devi Singh were present at the place of incident. He has also stated that when he reached on the spot, Shobharam, Battu and Pahalwan were not present amongst the persons, who were quarrelling with his mother. He has further stated that he lodged FIR (Ex.P/1) and proved his signature on the FIR.

35. This witness has stated in para 2 of his cross-examination that "मैंने आरोपी द्वारा माँ एवं बेटी को मारते हुये नहीं देखा था। मुझे किशोरी, चतुरसिंह, देवीसिंह, दिमान ने बताया था कि शोभाराम व बट्टू ने मेरी माँ व लड़की को मारा है यही रिपोर्ट मैंने थाने में लिखाई थी।" That means, this witness has specifically stated that he had not seen the incident, rather he was told by Kishori, Chatursingh, Devi Singh and Diwan that murder was committed by Shobharam and Battu. As per the evidence of Atar Singh (PW-1), prosecution witnesses Kishori, Chatursingh, Devisingh and Diwan are the eye-witnesses. The evidence of Atar Singh (PW-1) is hearsay evidence and is not admissible.

36. Diman (PW-4) has stated in his statement that Pahalwan had caused injuries over the head of Saajrani. On account of that Saajrani fell down but this witness has not stated anything about causing injury to Chandni. In para 3 of his statement, this witness has stated that Pahalwan had caused injury to Saajrani over her head by lathi. He has also specifically stated that Pahalwan had not caused injury to Saajrani by luhangi.

37. During investigation, the Investigating Officer S.D.Nayar (B. Shyam Das Nayar) (PW-11) has stated in para 3 of his statement that he had seized one luhangi from the room of Pahalwan Singh vide Ex.P/12 and Ex.P/11 is the memorandum of accused Pahalwan. Therefore, the contradiction came in the evidence of prosecution witnesses is fatal to the prosecution case.

38. Chatur Singh (PW-5), Kishori (PW-7) and Dev Singh (PW-9) are said to be eye-witnesses but they have not supported the prosecution case. They were declared hostile.

39. There is material contradiction and omission in the statements of prosecution witnesses Battu (PW-2), Shobharam (PW-3) and Dayaram (PW-6), which is fatal to the prosecution

case.

40. Rajaram (PW-8) has denied the arrest of accused Pahalwan. This witness was declared hostile as he had not supported the prosecution case.

41. Kailash (PW-14) has stated that one luhangi was seized from accused Pahalwan. Dr. M.M.Shakya (PW-10) has stated in his statement that as per Exts. P/14 & P/15, head injuries found were caused by lathi. This fact again creates suspicion on the prosecution case.

42. In the present case FIR (Ex.P/1) has been lodged by Atar Singh (PW-1), wherein he has specifically mentioned that "offence was committed by Battu Jatav and Shobharam". On perusal of prosecution evidence it is apparent that Investigating Officer S.D.Nayar (PW-11) had seized luhangi from the house of accused Pahalwan. The doctor, who conducted post-mortem, had opined that the injuries were caused by lathi. No lathi was seized from the possession of present appellant/accused Pahalwan. Despite the aforesaid, accused Pahalwan was charge sheeted by the Investigating Officer. This is completely astonishing.

43. Prosecution has failed to examine the informant of this case. Atar Singh (PW-1) and the accused Pahalwan are real brothers. It is apparent from the record that there was dispute in relation to possession of recently purchased Bakhar (house) between Atar Singh and Pahalwan Singh. Atar Singh (PW-1) has admitted in his cross-examination that he along with Pahalwan had purchased one Bakhar (house) from Dr. Santram Sironiya. The aforesaid Bakhar (house) was in possession of Battu and Shobharam. Two days prior to the incident Battu and Shobharam had quarelled with Pahalwan. He has also admitted that

consideration amount Rs.12000/- was handed over to him by Pahalwan. Therefore, there was no motive of commission of offence by the present appellant rather the story developed by the prosecution indicates that the Investigating Officer had intentionally fabricated the prosecution story by implicating present appellant Pahalwan as accused, despite the fact that FIR was lodged against Battu and Shobharam. Therefore, we hereby direct the Deputy Inspector General of Police concerned to enquire into the matter and take necessary action against Investigating Officer S.D.Nayar in the light of the judgment passed by Hon'ble Apex Court in **Ankush Maruti Shinde vs. State of Maharashtra reported in 2019 SCC OnLine SC 317.**

44. In **Ankush Maruti Shinde (supra),** Hon'ble Apex Court has observed as under:-

> "On the culmination of a criminal case in acquittal, the concerned investigating/ prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government, to formulate a procedure for taking action against all erring investi-

> gating/prosecuting officials/ officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."
>
> Murder and rape is indeed a reprehensive act and every perpetrator should be punished. Therefore, considering the observations made by this Court in the case of Kishanbhai (supra), referred to hereinabove, we direct the Chief Secretary, Home Department, State of Maharashtra to look into the matter and identify such erring officers/officials responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, real culprits are out of the clutches of law and because of whose lapses the case has resulted into acquittal in a case where five persons were killed brutally and one lady was subjected to even rape."

45. As observed above by Hon'ble Apex Court in aforesaid judgment, we reiterate and hereby direct that on culmination of a criminal case in acquittal, the concerned investigating / prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official

concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability.

46. At this juncture, we also feel to express for the requirement of some software based investigation system available through app and the app should be made available to every Investigating Officer through his mobile phone for the purpose of particular investigation. The software shall be prepared in accordance with law as well as in accordance with judicial pronouncement. During investigation the software should reflect location excess of the investigating officer along with time of investigation in progress. The server should be connected with server of Police Headquarter. The superior authorities of police department should supervise the investigation through the software/app. After filing of charge sheet the concerned Judge/Magistrate should be provided excess of aforesaid investigation through software. This way the investigation and trial will be synchronizeed. It is true, investigation and trial are totally separate jurisdiction. Whenever exercise of power under Section 165 of Evidence Act is required to be done during the course of trial, this excess will help the Judge/Magistrate to make assure the actual facts during exercising power under Section 165 of Evidence Act. Chief Secretary, Home Department, State of Madhya Pradesh and Director General of Police, State of Madhya Pradesh are hereby expected to take necessary action in this regard.

47. In the present case, despite the fact that FIR was lodged against Shobharam and Battu Jatav, the Investigating Officer S.D.Nayer molded the investigation and implicated present accused Pahalwan Singh, who is the son of one deceased and father of another deceased. The prosecution has failed to prove

motive in the case, rather motive of Battu and Shobharam is reflected as they were in possession over the land purchased by complainant Atar Singh and accused/appellant Pahalwan Singh.

48. Therefore, we direct the Chief Secretary, Home Department, State of Madhya Pradesh, to enquire into the matter and take departmental action against erring officers/officials, if those officers/officials are still in service. The aforesaid direction shall be given effect to within a period of two months from today.

49. In the light of the aforesaid direction, we also direct that under Section 173 (8) of CrPC investigation be done against Battu Jatav and Shobharam Jatav so that real culprits should not go unpunished in a crime in which two persons have died.

50. Resultantly, the appeal filed by appellant Pahalwan Singh @ Chimme is hereby allowed and appellant Pahalwan Singh @ Chimme is hereby acquitted of the charges under Section 302 of IPC (on two counts) for committing murder of Brijrani and Chandni. The impugned judgment of conviction and sentence passed by the trial Court is hereby set aside.

51. The appellant has suffered incarceration for a total period of almost six years on account of his false implication. Now the question for consideration is as to whether appellant's honorable acquittal is sufficient or his illegal custody on account of false evidence is liable to be compensated?

52. There is no provision in Cr.P.C. for grant of compensation to an accused, who was apparently implicated falsely due to ill designs of the witnesses. However, Article 21 of the Constitution of India provides as under :

> **"21. Protection of life and personal liberty**.—No person shall be deprived of his life or personal liberty except according to

procedure established by law.

53. The Supreme Court in exercise of its power under Article 142 of Constitution of India has awarded compensation to the accused persons who were falsely implicated and had suffered jail sentence on account of their false implication. In the case of **Ankush Maruti Shinde Vs. State of Maharashtra** reported in **(2019) 15 SCC 470** the Supreme Court has held as under :

> "15.....Their family members have also suffered. Therefore, in the facts and circumstances of the case, and in exercise of our powers under Article 142 of the Constitution of India, we direct the State of Maharashtra to pay a sum of Rs 5,00,000 to each of the accused by way of compensation, to be deposited by the State with the learned Sessions Court within a period of four weeks from today and on such deposit, the same be paid to the accused concerned on proper identification. The learned Sessions Court is directed to see that the said amount shall be used for their rehabilitation. At the cost of the repetition, it is observed that the aforesaid compensation is awarded to the accused and in the peculiar facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India."

54. In case of violation of Fundamental Rights, the Constitutional Courts can award monetary compensation. The Supreme Court in the case of **State of Gujarat v. Islamic Relief Committee of Gujarat,** reported in **(2018) 13 SCC 687** has held as under :

> **28.** In *Hindustan Paper Corpn. Ltd.*, the Court was considering whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could have directed payment of interest by

way of compensation. The issue before the Court pertained to an order by which the Division Bench of the Calcutta High Court directed the appellant before this Court to refund the amount advanced to it with 12% p.a. interest to the respondents. The factual matrix in the said case was that the Ministry of Human Resource Development, Department of Education, Government of India floated a scheme purported to be for securing equitable distribution of white printing paper. The said scheme had certain relevant features. Pursuant to the scheme, the respondents allegedly placed orders for supply of white paper upon the appellant therein which the appellant Corporation could not supply. The learned Single Judge by ex parte order had directed the Corporation to take immediate steps for release of white concessional paper to the respondents wherefor allegedly the advance money had already been accepted by them. The application for recall was dismissed. In appeal, the Division Bench noted the contention of the appellant and took into account that the appellant had already refunded the large amount to the allottees without any interest subsequent to the discontinuation of the scheme. However, it held that by such act it could not absolve the Corporation from the liability to compensate the respondents in cash if not in kind in consideration of their default and accordingly it directed for payment of interest at 12% p.a. The three-Judge Bench observed that the scheme in question did not have the force of law and even if it did, a writ of mandamus could not have been issued by directing grant of compensation. In that context, the Court ruled: (SCC p. 216, para 8)

> "*8.* … Public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental

> right of a citizen under Article 21 of the Constitution is violated and not otherwise. It is not every violation of the provisions of the Constitution or a statute which would enable the court to direct grant of compensation. The power of the court of judicial review to grant compensation in public law remedy is limited. The instant case is not one which would attract invocation of the said rule. It is not the case of the respondents herein that by reason of acts of commission and omission on the part of the appellant herein the fundamental right of the respondents under Article 21 of the Constitution has been violated."

55. Considering the observations made in the aforesaid judgment, we find that the fact regarding grant of compensation depends upon the facts of each case. The power of the Court of judicial review to grant compensation in public law is limited. The aforesaid proposition of law is undisputed.

56. In ***Rabindra Nath Ghosal***, the assail was to the order of the learned Single Judge whereby he had directed the University of Calcutta to pay to the appellant before him Rs 60,000 as monetary compensation and damages. The Division Bench overturned the same by holding that in the facts of the case compensation should have been awarded but the proper course should have been to leave the parties to agitate their grievances before the civil court. This Court referred to the decision in *Common Cause* and adverted to the concept of public law remedy and opined: (*Rabindra Nath Ghosal case*, SCC p. 483, para 8)

> "*8.* … A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is undoubtedly an

> acknowledged remedy for protection and enforcement of such right and such a claim based on strict liability made by resorting to a constitutional remedy, provided for the enforcement of fundamental right is distinct from, and in addition to the remedy in private law for damages for the tort, as was held by this Court in *Nilabati Behera*."

And again: (SCC p. 483, para 9)

> "*9.* The courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

57. The Supreme Court in the case of **S. Nambi Narayanan Vs. Siby Mathews** reported in **(2018) 10 SCC 804** has held as under :

> **34.** As stated earlier, the entire prosecution initiated by the State Police was malicious and it has caused tremendous harassment and immeasurable anguish to the appellant. It is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State Police was dealing with an extremely sensitive case and after arresting the appellant and some others, the State, on its own, transferred the case to the Central Bureau of Investigation. After comprehensive enquiry, the closure report was filed. An argument has been advanced by the learned counsel for the State of Kerala as well as by the other respondents that the fault should be found with CBI but not with the State Police, for it had transferred the case to CBI. The said submission is to be noted only to be rejected. The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardised as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity.

58. From the aforesaid analysis, it can be stated with certitude that the fundamental right of the appellant under Article 21 has been gravely affected. In this context, we may refer with profit how this Court had condemned the excessive use of force by

the police. In *Delhi Judicial Service Assn.* v. *State of Gujarat*, it said: (SCC pp. 454-55, para 39)

> "*39*. … The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police … [and it] must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated."

59. In the present case, we have already come to a conclusion that in fact, the appellant has suffered aforesaid incarceration without any justified cause thereby his fundamental right has been infringed, which is guaranteed under Article 21 of the Constitution of India. Therefore, we hereby direct the State Government to pay Rs.2,00,000/- (Rupees Two Lacs) to appellant Pahalwan Singh by way of compensation on account of violation of his fundamental right. The compensation amount shall be paid within a period of one month from today and the State shall file

the receipt of payment of compensation amount before the Principal Registrar of this Court within a period of 45 days from today. The State Govt. shall be free to recover the compensation amount from the salary/pension of Investigating Officer S.D.Nayar (B. Shyam Das Nayar) (P.W.11) and may also recover from Battu Jatav (P.W.2) and Shobha Ram (P.W.3) as arrears of land revenue.

60. Further, the appellant shall be free to institute civil suit against Battu Jatav (P.W.2), Shobha Ram (P.W.3) and S.D.Nayar (B. Shyam Das Nayar) (P.W.11) for further compensation. If the civil suit is filed, then the compensation awarded by this Court shall **not** be liable to be adjusted.

61. As per report dated 9.8.2021 received from Superintendent, Central Jail, Gwalior Appellant Pahalwan Singh is in jail but he has been released on parole for 90 days w.e.f. 13.7.2021. He be released forthwith if not required in any other case.

Let a copy of this judgment along with record of the trial Court be sent back immediately.

(G.S.Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

(Yog)