High Court of Madhya Pradesh
Bench Gwalior
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DB:- Hon'ble Shri G. S. Ahluwalia &
Hon'ble Shri Rajeev Kumar Shrivastava, JJ

CRA No. 37 of 2010

(1) Manoj Singh
Aged 30 years,
S/o. Shri Sardar Singh Rajawat

(2) Upendra Singh
Aged 34 years,
S/o Bal Singh Rajawat Thakur -------Appellants.

(3) Yashpal Singh, aged 43 years,
S/o. Mahaveer Singh Rajawat

(4) Bal Singh, Aged 79 years (dead)
S/o Shri Kataresingh Rajawat Thakur

All are residents of Ahroli, PO Machhand,
P.S.- Raun, District- Bhind (MP)

Vs.

State of Madhya Pradesh -------- Respondent

&

CRA No. 99 of 2010

Umesh Singh
Aged 42 years
S/o Raghuveer Singh Rajawat Thakur,
Resident of Ahroli, PO: Machhand,
Raun, District Bhind (MP)

Vs.

State of Madhya Pradesh -------- Respondent

Shri Prem Singh Bhadoriya, counsel for appellants No.1 and 2 &
Shri Mukesh Kulshrestha, counsel for respondents No.3 in CRA No.37/2010.
Shri Ashok Kumar Jain, counsel for appellant in CRA No.99/2010.
Shri CP Singh, Public Prosecutor for respondent/State in both criminal appeals.

Reserved on : 27/10/2021
Whether approved for reporting : Yes

JUDGMENT
(Delivered on 10/11/2021)

Per Rajeev Kumar Shrivastava, J:-.

This judgment shall govern disposal of **Criminal Appeal No.99/2010** filed by appellant- accused Umesh Singh against the judgment of conviction & sentence dated 22-12-2009 passed by Additional Judge to the Court of 6th Additional Sessions Judge (FTC), Bhind (MP) whereby he has been convicted u/S. 302 IPC and sentenced to undergo Life Imprisonment with fine of Rs.5,000/- and further convicted u/S. 148 IPC and sentenced to undergo one year RI with fine of Rs.1,000/- with default stipulation. **Criminal Appeal No.37/2010** has been filed by appellant No.1 accused Manoj Singh and three others against the same judgment of conviction and sentence whereby they have been convicted u/S. 302/149 IPC and sentenced to undergo Life Imprisonment with fine of Rs.5,000/- each and further convicted u/S. 148 IPC and sentenced to undergo RI of one-one year with fine of Rs.1,000/- each with default stipulation. Since both the criminal appeals have arisen from common judgment of conviction and sentence passed by learned Trial Court, therefore, we have heard both the criminal

appeal together.

(2) From the report dated 20/10/2021 received from the Police Station Raun, District Bhind, it appears that appellant No.4 Bal Singh (in CRA No.37/2010) has died on 24/04/2021, therefore, the appeal filed on behalf of appellant No.4 Bal Singh **stands dismissed as abated.**

(3) Prosecution case, in brief, is that on 17-11-2006 at about 8:30 in the morning, complainant Rahul Singh (PW5), who is the resident of village Ahroli, District Bhind, came out from the shed of his house along with his brother (deceased) Raghvendra Singh. At that time, accused Umesh, who was having a gun, accused Upendra Singh and Manoj Singh, who were having lathi, accused Bal Singh & Yashpal alias Kallu, who were having axe, unanimously reached the house of complainant and caught hold of deceased Raghvendra Singh and took him away towards the field of one Suresh Singh. When complainant Rahul Singh tried to rescue his brother, the accused persons abused in filthy languages and also threatened to kill him. Thereafter, on hearing hue and cry of complainant Rahul Singh, his mother Smt.Vimlesh Devi (PW7) and nephew Shivkaran (PW3) came there. At that time, accused Umesh fired a gunshot at complainant Rahul Singh but it did not hit him. Due to fear, complainant Rahul and his mother Smt. Vimlesh Devi and nephew Shivkaran hidden themselves in the shed of house. All the accused persons took away deceased Raghvendra towards the field of one Suresh Singh and beaten him by means of axe and lathi and also threatened to kill his all family members. Thereafter, accused Umesh Singh fired a

gunshot at deceased Raghvendra as a result of which, he ell down on the ground. Thereafter, all accused persons inflicted injuries on deceased Raghvendra by means of kicks and fists, axe and lathi as a result of which he died on the spot. Thereafter, all the accused persons fled away from place of occurrence. After the incident, the villages also reached the spot.

(4) On the basis of information received from complainant Rahul Singh (PW5), Inspector L.P. Chanderiya (PW14) reached the spot and recorded Dehati Nalishi. On the basis of Dehati Nalishi (Ex.P17), an FIR (Ex. P14) was lodged. The dead body of deceased Raghvendra was sent for postmortem in which, the cause of death of deceased was homicidal in nature and excessive bleeding from gunshot injuries sustained by him. On lodging the Dehati Nalishi, criminal case was triggered and set in motion. The investigating officer prepared spot map, seized blood-stained clothes as well as ordinary soil and blood stained soil, arrested the accused persons and seized the weapons from the accused persons as per their memorandum.

(5) After completion of investigation, charge-sheet under Sections 302,307,147,148,149, 201 PC and Section 25/27 of the Arms Act was filed before the Court of JMFC, Lahar, District Bhind from where case committed to the Court of Session. Charges under Sections 148, 302 in the alternative Section 302/149, 307 in the alternative 307/149 of IPC were framed against accused Umesh while charges under Section 148, 302/149 and 307/149 of IPC were framed against rest of the accused persons.

(6) U/S. 313 of CrPC statements were recorded. In order to lead defence

evidence, accused persons abjured guilty and pleaded complete innocence and requested for the trial. In their plea of defence, all the accused persons pleaded that they have falsely been implicated in the case. In support of their defence, they examined one witness, namely, Balwan Singh (DW1) so as to prove the fact that they have falsely been implicated.

(7) In order to bring home the charges, prosecution in support of its case has examined as many as 14 witnesses i.e. PW1 Pooran Singh, PW2 Harnam Singh, PW3 Shivkaran, PW4 Raisingh, PW5 Rahul Singh, PW6 Raju Singh Rajawat, PW7 Smt. Vimlesh, PW8 Dr. Dinesh Kumar Gupta, PW9 Ramadhar Sharma, PW10 Hariram Dohare, PW11 Birendra Kumar Gupta, PW12 Mool Singh, PW13 R. Bhavesh Dixit and PW14 L.P Chanderiya.

(8) Learned trial Court, after appreciating and marshalling oral and documentary evidence placed on record passed impugned judgment of conviction and sentence against appellants- accused as stated in paragraph 1 of this judgment.

(9) Challenging the impugned judgment of conviction and sentence, it is submitted by learned Counsel for the appellants- accused that looking to the quality of the evidence which has been adduced by prosecution, it cannot be said that accused had caused firearm injuries upon the deceased resulting into his death. By inviting our attention to the testimony of defence evidence Balwan Singh (DW1), it has been contended that the entire case of prosecution rests upon heavy doubt. It is further submitted that PW5 Rahul Singh and PW7 Smt. Vimlesh are the relative witnesses and, therefore, their

evidence is not reliable because after the incident they directly went to Raja Saheb, Machhand but did not go to police station for lodging the report and the incident took place from a distance of 1.5 km. from the house of complainant and there is no eye-witness to the incident. It is further submitted that there is a delay in lodging FIR as the incident took place at about 08:30 in the morning but the report was lodged at about 11:30 am. There is delay of near about two and half hours. It is further submitted that some unknown persons have committed murder of deceased and the appellants- accused have been falsely implicated. In this manner, the appeals filed by appellants-accused assailing their conviction and sentence deserve to be set aside and it has been prayed that by allowing the appeals, the appellants-accused be acquitted from all the charges levelled against them.

(10) On the other hand, learned counsel for the State supported the impugned judgment of conviction and sentence and submitted that prosecution has taken pains to examine as many as 14 witnesses, out of them PW5 Rahul Singh and PW7 Smt. Vimlesh in singular voice had deposed that it was the appellants-accused who took away deceased Raghvendra towards the field of one Suresh Singh and caused fire upon him and inflicted injuries by deadly weapons resulting into his death. The evidence of aforesaid two eye-witnesses are fully corroborated by medical report and PM report in which gunshot injuries were found on the person of deceased Raghvendra and, therefore, there is no infirmity in the judgment of conviction and sentence passed by the learned trial Court and the learned Trial Court did not err in convicting and sentencing the accused for the alleged offences as

indicated above.

(11) The questions for determination of both the appeals are:-

(I) Whether the death of deceased Raghvendra was homicidal in nature?

(II) Whether offence falls within the purview of **"murder"** and **"attempt to murder"** whether accused can be convicted u/S. 302 or 307 IPC**?**

(III) Whether the aforesaid acts were done in fulfilling the common object?

(12) It would be appropriate to throw light on the relevant provisions of Sections 299 & 300 of IPC.

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 Shivprasad. So, clause Secondly of Section 300 IPC will also not apply."

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 contentions advanced in the present case and which are frequently advanced that the accused- appellants had no intention of causing death of deceased Sheoprasad (Shivprsasad) is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

(13) The scope and ambit of clause Thirdly of Section 300 IPC was considered by the Supreme Court in the decision in **Virsa Singh vs. State of Punjab** reported in **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."

(14) In the case of **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."

(15) 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.”

(16) 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.

(17) 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."

(18) "Culpable Homicide" is the first kind of unlawful homicide. It is the causing 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.

(19) Indian Penal Code recognizes two kinds of homicide :(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).

(20) 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.

(21) 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.

(22) The fact that the death of a human being is caused is not enough unless one of the mental sates 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.

(23) 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.

(24) In the case of **Anda vs. State of Rajasthan** reported in **1966 CrLJ 171,** while considering “third” clause of Section 300 of IPC, it has been

observed as under:-

> "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."

(25) In the case of **Mahesh Balmiki vs. State of M.P.** reported in **(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."

(26) In the case of **Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat** reported in **(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'."

(27) In the case of **Pulicherla Nagaraju @ Nagaraja vs. State of AP** reported in **(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."

(28) In the case of **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."

(29) In the case of **State of Rajasthan v. Kanhaiyalal** reported in **(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.
>
> **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."

(30) In the case of **Bavisetti Kameswara Rao v. State of A.P.** reported in **(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 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."
>
> 1.

(31) Section 307 of IPC runs as under:-

> **"Attempt to murder.** - Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned."

(32) In the case of **Bakshish Singh vs. State,** reported in **AIR 1952 Pepsul38,** it is observed that if a man commits an act with such intention and knowledge and under such circumstances that if death had been caused the offence would have amounted to murder and the act itself is of such a nature as would have caused death in the usual course of the events but for something beyond his control which prevented that result his act would be

punishable as an attempt to murder.

(33) In the case of **Hari Singh vs. Sukhbir Singh & Others,** reported in **(1988) 4 SCC 551**, the Supreme Court held that while examining whether a case of commission of offence under Section 307 IPC IPC is made out, the Court is required to see, whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of 'attempt to murder'. Under Section 307, the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner, in which, it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. The state of mind of the accused has to be established from surrounding circumstances and the motive would be relevant circumstance. Where the evidence is not sufficient to establish with certainty, existence of all requisite intention or knowledge of the accused, there can be no conviction under Section 307 IPC. The evidence on record, nature of injuries, if examined in the light of the aforesaid principle laid down by the Apex Court, it is difficult to hold that the appellants arrived in the house of the victim, Maikulal with an intention to cause death.

(34) The essential ingredients required to be proved in the case of an offence under Section 307 of IPC are :-

> (i) that the death of a human being was attempted;
> (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
> (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:
> (a) the accused knew to be likely to cause death; or
> (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b)such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury. The first part makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years. The second part makes such an act punishable with imprisonment for life if hurt is caused thereby. Thus even if the act does not cause any injury, it is punishable with imprisonment up to 10 years. If it does cause an injury and thereafter hurt, it is punishable with imprisonment for life".

(35) For holding guilty under Section 307 of IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not essential that the injury actually caused to the victim should be sufficient under ordinary circumstances to cause the death of the person assaulted. The Court has to see that whether the act, irrespective of its result, was done with the intention or knowledge and

under circumstances mentioned in the section. It is sufficient in law, if there is intention coupled with some overt act in execution thereof. It must be noted that Section 307 IPC provides for imprisonment for life if the act causes 'hurt'. It does not require that the hurt should be grievous or of any particular degree. The intention to cause death is clearly attributable to the accused since the victim was strangulated after throwing a telephone wire around his neck and telling him he should die. In order to amount to an attempt to murder, the act attempted must be such that if not prevented or intercepted, it would be sufficient to cause death of the victim.

(36) In the case of **Uttam Ghosh vs. State, 1995 Cr.L.J. 4079 (Cal),** it is held that similarly the accused was arrested for shooting of a professor in Amritsar and a pistol made in USA was recovered from his possession and on the basis of evidence on records he was convicted by the designated Court under Section 307 but on appeal High Court set aside his conviction on the ground that the accused was arrested on 25 November whereas his arrest was shown to have taken place on 6 December. Supreme Court also confirmed the verdict of the High Court and held that since appellant had been arrested prior to 6 December, his conviction was not sustainable. Where from the injuries caused intention or knowledge to cause death could not be inferred, it was held that conviction of the accused shall be altered from Section 307 to one under Section 324 and others would be held liable under Section 323. Here even benefits of probation were not given to the accused as he had assaulted the victim indiscriminately at a lonely place. The accused in a case before Supreme Court had due to political rivalry aimed

the dagger blow at the head of the victim whose hand was severed from the wrist when he tried to ward off blow by raising his hands. It was held that conviction under Section 307 was proper as severity of blow was sufficient to spell out the murderous intent of the accused. Similarly where accused had fired a single shot injuring the victim due to previous enmity between them, it was held that the accused was guilty under Section 307 and was not entitled to the benefits of doubts on the ground that the other accused were already acquitted.

(37) In the case of **Mohindar Singh vs. State of Punjab,** reported in **AIR 1960 Punj 135,** it is observed that the offence of attempt to commit murder punishable under Section 307 IPC is constituted by the concurrence of *mens rea* followed by an *actus reus.* An intent *per-se* is not an attempt. It implies purpose and attempt is an actual effort made in execution of the purpose. From the steps directed towards the objective sought, the criminal intent must be logically inferable. The attempt for purposes of Section 307 IPC should stem from a specific intention to commit murder, and this blameworthy condition of mind may be gathered from direct or circumstantial evidence, including the conduct of the accused. Apart from the necessary *mens rea*, the *actus reus* must be more than a preliminary preparation. The means must be apparently, though not really suitable, so that they can be adapted to the designed purpose.

(38) In the case of **Kanbi Nagji Kala vs. State,** reported in **1956 Cr.L.J. 1439 (Sau),** it is held that when the *mens re*a, which is essential to the offence of murder, was absent and where the weapons used by the accused

were ordinary agricultural implements and did not necessarily indicate a deliberate intention to cause death or fatal injuries, conviction under Section 307 was held not sustainable. In that case four boys took their cattle for grazing; but the cattle strayed into the adjoining field of the accused and were committing mischief. The accused attempted to take them to pound but was obstructed by the boys resulting in a scuffle and some of the boys were seriously injured by sharp cutting weapons. The High Court ruled out the plea of self defence on the part of the accused but at the same time acquitted the accused of the charge under Section 307 IPC for absence of *mens rea,* the accused using only sharp cutting agricultural implements used ordinarily by cultivators.

(39) In the case of **Abdul Wahid vs. State of U.P.,** reported in **1980 CrLJ (NOC) 77 (All),** it was held as follows:-

> "Under Section 307 IPC what the Court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of 'attempt to murder'. Under Section 307 IPC the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. To constitute an offence under Section 307 IPC the intention or knowledge must be such as is necessary to constitute murder. The intention is to be gathered from the nature of the weapon used and the parts of the body where the injuries are inflicted and no conviction is legally permissible unless the prosecution proves the ingredients of Section 300 IPC of which intention or knowledge play a vital role. "

(40) Intent which is a state of mind can never be precisely proved by direct evidence as a fact: it can only be deduced or inferred from other facts. Some relevant considerations are :(1) the nature of weapon used; (2) the place where injuries were inflicted; (3) the nature of the injury caused; (4) the opportunity available which the accused gets. The Court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that Section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Therefore, the intention is to be gathered from all the circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

(41) Section 149 of Indian Penal Code runs as under :-

> "**149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--** If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

There are two essential elements covering the act under Section 149 of Indian Penal Code, which are as under:-

> "(i) The assembly should consist of at least five persons; and
> (ii) They should have a common object to commit an offence or achieve any one of the objects enumerated therein."

(42) For recording a conclusion that a person is guilty of any offence under

Section 149 of IPC, it must be proved that such person is a member of an "unlawful assembly" consisting of not less than five persons irrespective of the fact whether the identity of each one of the five persons is proved or not. If that fact is proved, the next step of inquiry is whether the common object of the unlawful assembly is one of the five enumerated objects specified under Section 141 of IPC.

(43) The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of overt acts committed by such individual members of the assembly is not permissible.

(44) In the case of **Dani Singh v. State of Bihar** reported in (**2004) 13 SCC 203,** the Hon'ble Apex Court has observed as under :-

> "The emphasis in Section 149 IPC is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was

> likely to commit any of the acts which fall within the purview of Section 141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 has to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly."

(45) In the case of **Mahadev Sharma v. State of Bihar** reported in **(1966) 1 SCR 18**, the Hon'ble Apex Court has discussed about applicability of Section 149 of IPC and observed as under :-

> "The fallacy in the cases which hold that a charge under Section 147 is compulsory arises because they overlook that the ingredients of Section 143 are implied in Section 147 and the ingredients of Section 147 are implied when a charge under Section 149 is included. An examination of Section 141 shows that the common object which renders an assembly unlawful may involve the use of criminal force or show of criminal force, the commission of mischief or criminal trespass or other offence, or resistance to the execution of any law or of any legal process. Offenses under Sections 143 and 147 must always

> he present when the charge is laid for an offence like murder with the aid of Section 149, but the other two charges need not be framed -separately unless it is sought to secure a conviction under them. It is thus that Section 143 is not used when the charge is under Section 147 or Section 148, and Section 147 is not used when the charge is under Section 148. Section 147 may be dispensed with when the charge is under Section 149 read with an offence under the Indian Penal Code."

(46) It is relevant to mention here that if all the necessary ingredients are present in a case when charges were framed under Section 149 of IPC, each member of unlawful assembly shall be held liable. The condition precedent is that the prosecution proves the existence of unlawful assembly with a common object, which is the offence.

(47) In the case of **Kuldip Yadav vs. State of Bihar reported in (2011) 5 SCC 324**, it is held that a clear finding regarding nature of the common object of the assembly must be given and the evidence discussed must show not only the common object, but also that the object was unlawful, before recording a conviction under Section 149 of IPC. Foremost essential ingredient of Section 141 of IPC must be established.

(48) We have heard learned counsel for both sides and perused the materials available on record and also gone through the evidence of following prosecution witnesses:-

(49) The evidence of PW1 Pooran Singh, PW2 Harnam Singh, PW3 Shivkaran, PW4 Raisingh, and PW6 Raju Singh Rajawat were recorded before the trial Court and they have not supported the prosecution case and have turned hostile, but not fatal to prosecution case.

(50) PW/5 Rahul Singh, who is the brother of deceased Raghvendra, in his

evidence deposed that on 17-11-2006 at about 8:30 in the morning, he along with his brother Raghvendra came out from the shed of their house for tying cows. At that time, accused Umesh, Manoj, Upendra, Bal Singh and Kallu reached there. Accused Umesh was having a gun, accused Manoj was having a lathi, accused Upendra was having a lathi, accused Bal Singh and Kallu were having axe reached there and thereafter, all of them caught hold of his brother Raghvendra and brought him towards the field of one Suresh Singh. On hearing hue and cry, he went for rescue. At that time, accused Umesh fired a gunshot and threatened to kill him. In the field, accused Manoj inflicted injury at deceased Raghvendra by means of lathi, accused Upendra inflicted injury by means of lathi on his leg and chest. Accused Bal Singh inflicted injury by means of axe on the head, chest and neck of deceased. This witness further deposed that on reaching his mother from the backside, all the accused persons fled away from place of occurrence. This witness further stated that after the incident, they came to Raja of Machhand, who asked to lodge the FIR after arrival of his father. This witness in paragraphs 5 and 6 of cross-examination deposed that there was no previous dispute with accused persons. This witness further stated that he could not say as to whether any case is going on against his father Mool Singh in regard to murder of Raghuveer Singh, father of accused Umesh. This witness in paragraph 8 of his cross-examination admitted that after the incident he had quickly informed his father on telephone about 8:30 in the morning and thereafter, his father directly came to Raja Saheb of Machhand. This witness in paragraph 11 of cross-examination admitted that at the time

of preparation of spot map Ext.P18, it was mentioned by him that mustard crops were standing in the field of one Suresh Singh. This witness in paragraph 20 of his cross-examination denied that the deceased Raghvendra had gone to the field of Suresh Singh for attending the call of nature and some unknown persons had committed murder of Raghvendra. This witness further denied that there was any previous enmity with accused persons.

(51) PW7 Smt.Vimlesh Devi who is the mother of the deceased supported the same version as narrated by her son Rahul Singh (PW5). She in paragraph 5 of her cross-examination admitted that after giving information to her husband by his son Rahul Singh, FIR has been lodged. This witness in paragraph 15 denied that her son deceased Raghvendra had gone to the field for attending the call of nature. This witness further admitted that no case regarding murder of father of accused Umesh is going on against her husband.

(52) PW8 Dr. Dinesh Kumar Gupta in his evidence deposed that on 17-11-2006, he was posted as Medical Officer in Health Centre, Lahar District Bhind. At the time of postmortem examination of the deceased, he found following injuries:-

> 1. An incised wound elipticle in shape 3"x1/2 x Tracheal and oesophageal deep situated over middle of neck below Adams on Ant aspect. Horizontally placed more on left side. Bleeding and clotted blood seen in side and outside the caramel.
> 2. Deep abression 4"x1/2" size. Transverse in direction over neck in left side.
> 3. Abression 4 cm x 1 cm size over chest in lower part.
> 4. Entrance wound 2 cm x 2 cm size round in shape over right hand on palmar aspect 3 cm below from base of Index finger margins of wound black in color. Color of

> abression and tattooing present over margins of wound. Wound track deep. Track directed upward. On dissection of wound found that Damage of sub cut tissue, ons, tenden and continue with Exit wound injury No. 5 clotted blood seen inside and outside the wound. Margins of wound inverted.
> 5. Exit wound- margins of wound everted size 2/3 cm size situated over dorsal aspect of right hand in center wound. Track deep continue with the entrance wound Injury No. 4 Track goes downward in direction. Clotted blood seen inside the wound.
> 6. Entrance wound 3x2.5 cm size situated over flexor aspect of Right Arm 4 cm above from Elbow joint. Margins of wound inverted. Tattooing and Blackening present over margins of wound. Track of the wound directed upward and medially to wound. The Axilla on dissection of wound found that Track goes from Axilla to past centre of Right Lung and then track goes up to the. After Rupure of left lung upto the lat. aspect of left side of chest wall. Bullet found from left side of chest on lat. aspect in 9th & 10th IOS. Bullet (metal) taken out Bullet damage all anatomical structure found in track. Clotted blood over wound seen inside the track.

(53). It is also submitted by PW/8 Dr. Dinesh Kumar Gupta that in internal examination following status was found:-

> Brain marrow, neck trachea were without blood. Right and left lobs of lungs were damaged and blood was found in the lungs cavity. Both the chambers of heart were vacant. No food was found inside of small intestine and large intestine. There was no blood found inside of liver, spleen and kidney. Urinary bladder was empty and respiratory organs were healthy.

In my opinion, the cause of death was syncope due to injuries caused on lungs. The death was within 6 to 24 hours of postmortem. Injury No. 1 caused by sharp cutting object. Injury No. 2 and 3 were caused by hard and blunt object. Injury No. 4, 5 and 6 were caused by gunshot. Postmortem report is Ex-P/22.

In cross-examination, this witness has admitted that there is no injury of

deadly weapons on the body of the deceased. Even, there is no injury on the chest of deceased and on the forehead of deceased of deadly weapon and on the leg and back of the deceased.

(54) PW9 Ramadhar Sharma who is Patwari of Halka No.20 of Tehsil Mehona deposed that he has prepared *Najri Naksha re*garding murder of the deceased Raghvendra vide Ext.P-23 carrying his signature from "A to A". This witness in his cross-examination further admitted that at the time of preparation of *Najri Naksha,* the Kotwar of village had gone along with him to the spot.

(55) PW10 Hariram Dohare in his evidence deposed that on 20-11-2006 he was posted as ASI in Police Station Raun. He had received case diary of Crime No.218 of 2006 ad conducted further inviestigation. This witness deposed that on the said date i.e. 20-11-2006 he had arrested accused Bal Singh from Village Machhand vide arrest memo Ext.P4 carrying his signature from "B to B". At the time of recording memorandum of accused Bal Singh, he has seized an axe from the possession of accused Bal Singh which was kept in his house and his statement under Section 27 of Evidence Act was recorded. At the time of preparation of seizure memo, witness Mool Chandra remained present who is the father of deceased. The rest of evidence of this witness remained unchanged. PW11 Birendra Kumar Gupta who is the Head Constable Police Station, Raun supported version as narrated by PW10 Hari Ram Dohare, Assistant Sub-Inspector.

(56) PW12 Mool Singh who is the father of deceased in his evidence deposed that his son Rahul had informed about the incident committed by

accused persons. After the incident firstly, he had gone to Raja Saheb of Machhand and thereafter, report was lodged. This witness deposed that in his presence, police had seized blood-stained soil vide Ext.P27. This witness in Paragraph 10 of his cross-examination admitted that his son Rahul Singh had narrated the incident and which weapons were used by accused persons for commission of murder of his deceased Raghvendra Singh.This witness in Paragraph 14 of his cross-examination denied that some unknown persons had committed murder of his son when he had gone for attending the call of nature to the field of one Suresh Singh.

(57) PW-13 Bhavesh Dixit who is the police witness has supported the same version as narrated by other police witnesses as well as Investigating Officer. PW14 L.P. Chanderiya Investigating Officer. This witness in his evidence deposed that on 17-11-2016, he was posted at Police Station, Raun, District, Bhind and during the investigation, he had arrested accused persons and recorded their statements under Section 27 of Evidence Act This witness further denied that the information regarding aforesaid incident was not received at Police Station, Raun and he has no knowledge about the murder of deceased and on the advice of Raja Saheb of Machand, the report has been lodged. This witness in Paragraph 11 of his cross-examination admitted that although he could not record the Rojnamcha Sanha after receiving information by mobile at Police Station, Raun but on receiving information, he quickly reached the spot along with the police force. Rest of the evidence of this witness in his cross-examination remained unchanged.

(58) So far as the argument advanced by the learned counsel for the

accused that all the relevant witnesses are relative witnesses and the credibility of these witnesses cannot be believed is concerned, there is no force in the said argument. The Hon'ble Apex Court in the case of **Harbeer Singh Vs. Sheeshpal and others,** reported in **(2016) 16 SCC 418** has held as under :-

> **"18.** Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony was not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.
>
> **19.** In *Darya Singh* v. *State of Punjab*, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)
>
> "*6*. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. … But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. … If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinized."
>
> **20.** However, we do not wish to emphasize that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement.

> **21.** Further, in *Raghubir Singh* v. *State of U.P.*, it has been held that: (SCC p. 84, para 10)
>
> "*10.* … the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. … In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind."

Thus, it is clear that although the evidence of related witnesses cannot be discarded/disbelieved on this sole ground but their evidence must be examined very carefully and all infirmities must be taken into consideration.

(59) So far as the arguments advanced learned Counsel for the appellants that there is a delay in lodging the FIR is concerned, from the evidence available on record, it is clear that due to fear, complainant party initially went to Raja Saheb of Machhand and thereafter, after returning back of father of the deceased, a report was lodged. Therefore, the delay of near about three hours in lodging the report is not fatal to the prosecution case. The Hon'ble Apex Court in the case of **State of Himachaal Paradesh vs. Gian Chand,** reported in **AIR 2001 SC 2075 and Tara Chand and Others vs. State of Punjab,** reported in **AIR 1991 SC63** has held that delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to

satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

(60). From the evidence of eye-witnesses, Raghul Singh and Smt, Vimlesh Devi, it is clear that due to fear, they immediately rushed to the house of Raja Saheb of Machhand in order to save themselves and thereafter, after arrival of the father of deceased, they were compelled to immediately rush to police station for lodging the FIR. The prosecution has satisfactorily proved that the accused used the firearms to cause injuries to the deceased. Thus, considering the prosecution case, the evidence adduced and attending circumstances, it cannot be said that any failure of justice or illegality has been taken place so as to warrant interference by this Court.

(61) It is true that although PW1 Pooran Singh, PW2 Harnam Singh, PW3 Shivkaran Singh, PW4 Rai Singh & PW-6 Rajusingh Rajawat have not supported the prosecution story and have turned hostile, but it is settled-principle of law that the quality of evidence of prosecution witnesses has to be considered not the quantity. In the present case, PW5 Rahul Singh who is the brother of deceased and PW7 Smt.Vimlesh Devi who is the mother of the deceased, are the eye-witnesses to the alleged incident, and have specifically supported the prosecution evidence and their evidence remained unchanged in their cross-examination. The nature of injuries found over the body of deceased were fully corroborated by medical evidence and Dr.

Dinesh Kumar Gupta PW18 has specifically opined that cause of death of the deceased was homicidal in nature as there was excessive bleeding due to gunshot injuries sustained by the deceased.

(62) In the present case, it is apparent that all accused persons reached the house of complainant and took away deceased Raghvendra towards the field of one Suresh Singh and thereafter, committed his murder in the field. The deceased was aged about 17 years of age. Eye-witnesses to the alleged incident, namely, PW5 Rahul Singh brother of the deceased and PW7 Smt. Vimlesh Devi, the mother of the deceased have fully supported prosecution case. Although there is some contradiction and omission in their statements but it is not fatal to prosecution case. Although they are the relative witnesses, but their evidence could not be disbelieved as their oral evidence is fully supported by medical evidence and other circumstantial evidence.

(63) As discussed above, the evidence of the eye-witnesses is fully supported by medical evidence. The fire arms as well as other deadly weapons which were seized from the possession of accused. The eye-witnesses Rahul Singh PW5 and Smt. Vimlesh Devi PW7 to the incident have fully supported prosecution case.

(64) On the basis of evidence on record, we find that the accused persons in furtherance of their common object took away the deceased Raghvendra Singh towards the field of one Suresh Singh and they committed murder of the deceased by means of firearms and other deadly weapons.

(65) By examining from different angles of the examination-in-chief as well as the cross-examination of eye-witnesses to the alleged incident, we

find that their evidence is clear, cogent and trustworthy and every time, they have stated that the accused persons took away the deceased towards the field of one Suresh and committed his murder by means of firearms and deadly weapons. The testimony of eye-witnesses is fully corroborated by medical evidence. Although, other eye-witnesses namely, PW1 Pooran Singh, PW2 Harnam Singh, PW3 Shivkaran Singh PW4 Rai Singh and PW6 Rajusingh Rajawat have not supported prosecution case but since there is clear, cogent and trustworthy evidence of the eyewitnesses to the incident, therefore, the case of prosecution has been emphatically proved from their testimony. On going through the testimony of aforesaid doctor as well as the postmortem report of the deceased, we find that the deceased died due to excessive bleeding and cause of death of deceased was homicidal in nature. We have also gone through the reasoning assigned by the learned trial Court convicting appellants-accused and the same has been arrived at after marshalling and appreciating the evidence correctly. Thus, we hereby extend our stamp of approval to those reasoning and uphold the finding of the learned trial Court that accused have committed offence as aforesaid and the same is hereby affirmed.

(66) As a consequence thereof, impugned judgment of conviction and sentence dated 22-12-2009 passed by Additional Judge to the Court of 6th Additional Sessions Judge (FTC) in Sessions Trial No.155/2007 is hereby affirmed. Both the criminal appeals **fail and stand dismissed.**

(67) The appellants who are on bail, are directed to surrender immediately before the trial Court for serving remaining part of their jail sentence. The

accused who are in jail be intimated about the outcome of their appeals through the Jail Superintendent concerned. A copy of this order along with record of trial Court be also sent back to the trial Court for information and compliance.

(G. S.Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

MKB

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