IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 13th TH MAY, 2022

CRIMINAL APPEAL NO. 1043 OF 2011

Between:-

AMRESH SINGH S/O SHRI DIWAN SINGH GURJAR, AGED 35 YEARS, OCCUPATION-KASHATKARI, R/O MUKHARJI NAGAR GWALIOR (MADHYA PRADESH)

…. APPELALNT

(SHRI VINAY KUMAR–ADVOCATE APPOINTED FROM THE PANEL OF LEGAL AID AUTHORITY, GWALIOR)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION BILAUA, DISTRICT GWALIOR (MP)

….RESPONDENT

(BY SHRI C.P. SINGH- PUBLIC PROSECUTOR)

Reserved on : 10th May, 2022
Delivered on : 13th of May, 2022

This appeal coming on for final hearing, ***Hon'ble Shri Justice Rajeev Kumar Shrivastava,*** *passed the following:*

JUDGMENT

Being dissatisfied with the judgment of conviction and sentence dated 03/12/2011 passed by Second Additional Sessions Judge, Dabra District Gwalior (M.P.) in Sessions Trial No.283 of 2009, present criminal appeal under Section 374 of CrPC has been preferred, by which the appellant has been convicted and sentenced as under:-

Offence	**Sentence**
Section 302 of the IPC	Life Imprisonment with fine of Rs. 5,000/-
Section 25 of the Arms Act	Three years RI with fine of Rs.500/-
Section 27 of the Arms Act	Three years RI with fine of Rs. 500/-

All the sentences were directed to run concurrently.

(2) In brief, case of the prosecution is that on 02/06/2009 at about

8.00 pm appellant along with his wife Urmila and two daughters were going in a maruti van. When they reached near Shri Ramsiya Sarkar Ashram, four miscreants reached there, stopped them and started looting the ornaments from Smt. Urmila. When wife of appellant opposed to it, they opened fire on her which resulted into her death. On account of that, FIR was registered in the Crime No. 66/2009 for offence punishable under Section 302 of IPC. Merg was got recorded. During investigation, it was found that alleged offence was committed by appellant. Appellant was made an accused in the case on the basis of memorandum recorded under Section 27 of the Evidence Act. One 315 bore Katta was recovered at the behest of accused. One live cartridge along with 315 bore gun was seized vide Ex.P4 on the basis of memorandum under Section 27 of Evidence Act vide Ex.P8 and the same were sent for forensic examination wherein report has been received that cartridge was used from same Katta. A *Dehati Nalishi* was recorded on the basis of information given by Rajkishore Singh vide Ex.P9. Spot map was prepared vide ExP11. A White coloured Maruti van was seized vide Ex.P13 and

gold ring including other ornaments were seized vide Ex.P14. Postmortem of deceased Smt. Urmila was conducted vide Ex.P20 and the viscera of deceased was collected and the same was sent for chemical examination. The accused was arrested vide Ex.P21. The statement of witnesses were recorded. FIR Ex.P25 was got registered on the basis of merg intimation Ex.P28. After completion of investigation and other formalities, the police filed a charge sheet before the Court concerned from where the case was committed to the Sessions Court for its trial. Charges were framed against the appellant under Section 302 of the IPC and Sections 25 & 27 of the Arms Act.

(3) Statements of the accused were recorded under Section 313 of CrPC and he denied the charges. The appellant abjured his guilt and pleaded his complete innocence. In his defence, appellant did not examine any witness. Prosecution proceeded to examine its witnesses and in all as many as 24 witnesses were examined by prosecution in its support.

(4) Learned Trial Judge, after appreciating the entire evidence led

by Prosecution and relying on the same, found charges against appellant as proved and accordingly, convicted and sentenced him for offences as mentioned above in paragraph (1) of this judgment.

(5) It is contended on behalf of the appellant that the learned Trial Court has committed an error in convicting and sentencing the appellant. The appellant has been wrongly convicted and sentenced on the basis of suspicion although the appellant has not committed any offence. All the prosecution witnesses have turned hostile and there is no specific allegation against appellant. It is further contended that some unknown persons have committed murder of wife of the appellant and at the time of incident, two daughters of appellant were present in the vehicle but they have not been examined by prosecution. In the presence of independent witnesses, there is no recovery of any weapon from the possession of appellant and seized weapon was not sent to ballistic expert. The prosecution has utterly failed to establish the appellant guilty of said offence. Hence, it is prayed that appellant deserves acquittal and impugned judgment deserves to be set aside.

(6) In response, counsel for the State supported the impugned judgment and submitted that there is no infirmity in the impugned judgment and trial Court has not committed any error in convicting and sentencing the appellant for the offences aforesaid. Hence, prayed for dismissal of this appeal.

(7) Before adverting to the merits of case, it would be necessary to dilate on the questions mentioned under for determination of the resent appeal are:-

> (A) As to whether the death of deceased Smt. Urmila was homicidal in nature or not?
>
> (B) As to whether homicidal death is amounting to murder or not?
>
> (C) As to whether aforesaid act was committed by appellant or not ?

(8) On 03-06-2009, Dr.B.S.Tomar (PW18) had conducted postmortem of deceased Smt. Urmila. After receipt of requisition form as well as identification of dead body of deceased, Dr.Tomar (P.W.18) found following injuries on the body of deceased Urmila:-

> "1. Entry wound 1.5 cm over the chest oval shaped

> around 0.8 cm. The entry wound was found 5.5 cm below the manubrium stenis and was having tattooing. The same was also found over the right hand of the deceased. One exit wound was found over back of the deceased. 4th rib was found fractured and general parts were damaged."

This witness has stated that injuries caused were sufficient to cause death in general course of nature. The death was shown due to shock and hemorrhage which was result of aforesaid injury caused by firearm within 6 to 24 hours of examination and was homicidal. Report is Ex.P20.

(9) It would be appropriate to throw light on the relevant provisions of Sections 299 and 300 of Indian Penal Code.

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 me4aning 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 of the deceased 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 had no intention of causing death of deceased is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

(10) 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, 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."

(11) 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."

(12) 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."

(13) 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.

(14) 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."

(15) "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.

(16) 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).

(17) 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.

(18) 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.

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

(20) 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.

(21) 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."

(22) 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."

(23) In the case of **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'."

(24) In the case of **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."

(25) 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."

(26) 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."

(27) 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."

(28) We have heard the learned counsel for the parties at length and perused the impugned record as well as evidence of prosecution witnesses.

(29) Sahab Singh (PW1) in his evidence deposed that in his presence *lash panchnama* of his niece deceased Smt. Urmila was

prepared by police vide Ex.P2 after preparation of safina form Ex.P1. Satyendra (PW2) is the younger sister of deceased Smt. Urmila is also witness of *lash panchnama* of deceased. Both witnesses in their cross-examination deposed that there was a good relationship between appellant and deceased and there is no complaint made by deceased against her husband appellant.

(30) Chandrabhan Singh (PW3) in his evidence deposed after getting information, he reached Gwalior hospital and came to know that some miscreants have caused death of his niece Smt. Urmila by means of firearm. This witness also in his para 3 of his cross-examination supported the same version as narrated by PW1 Sahab Singh and PW2 Satyendra.

(31) PW4 Punjab Singh in his evidence deposed that after getting information from Raju regarding the death of deceased by means of firearm caused by some miscreants, he reached the hospital. Keshav Singh (PW5) is the witness of safina form Ex. P1 and lash panchnama Ex.P2 who deposed that after receipt of information regarding the cause of death of her niece deceased Smt. Urmila, he

reached the hospital and further in para 2 of his examination, he denied that he is giving any false evidence in order to save the accused.

(32) Dharmendra Singh (PW6) who is brother-in-law of appellant accused as well as witness of safina form Ex.P1 and lash panchnama Ex. P2 narrated the same version as given by Keshav Singh (PW5).

(33) Rajkishore (PW7) who is brother-in-law of appellant in his evidence deposed that a phone call was received from the appellant-accused that some miscreants have surrounded them and caused fire at his sister Smt. Urmila as a result of which, she died. After receiving information from the appellant, he reached the hospital and he is the witness of safina form Ex. P1 and *lash panchnama* Ex.P2. This witness in para 2 of his evidence deposed that he was present in his house and at that time, a phone call was received from the mobile phone of the appellant i.e. No. 9893453000 and at the time of phone calling, he heard "*sound of rescue and rescue of both appellant and his sister Urmila*".This witness in his evidence denied

that he is giving any false evidence in order to save the accused. This witness in para 4 of his cross-examination admitted that there was a good relationship between appellant and deceased.

(34) Tahsildar Singh (PW8) denied that in his presence any katta was seized from possession of appellant vide seizure memo Ex.P4. Siyaram (PW9) also denied that in his presence on 03-06-2009 at around 01:00 pm near the house of Diwan Singh Gurjar, one white coloured maruti van bearing registration no. MP07CA 5137 along with wheel-belt &d other articles were seized in his presence vide seizure memo Ex.P13.

(35) Ramlakhan Singh (PW10) is the witness in whose presence ornaments were took out from the body of deceased Smt. Urmila in the hospital vide Ex.P14.

(36) Dharmveer (PW11) in his evidence deposed that he was talking in his mobile on the roof of his house and saw that three miscreants had surrounded a maruti van and had been trying to snatch one person from the car and after some time, he heard sound of gunshot fires.

(37) Ranveer Singh (PW12) in his evidence deposed that on 02-06-2009 a phone call was received by him from Dharmendra, son of his uncle (tau) that some miscreants caught hold of the appellant and thereafter, he went to the but did not find the appellant and the deceased there. Thereafter, he went to the hospital where appellant told him that some miscreants caused fire at Urmila. This witness in para 2 of his statement admitted that when he called the appellant through mobile, at that time, the appellant was telling *''Sonu rescue me''*. After reaching near Shri Ramsiya Sarkar, when he again called the appellant through mobile, the appellant could not tell the place where the incident had taken place and told him to come at the hospital and afterwards, he reached the hospital and found that Urmila has sustained gunshot fire on her chest and she is already dead. At that time, the appellant along with his elder Keshav and father Diwan Singh was present in the hospital and other family members came there later on. This witness in para 3 of his evidence admitted that there was a good relationship between appellant and deceased and when he was in the hospital, his niece Tannu told him

that some miscreants caught hold of them and when Smt. Urmila objected from taking out the ornaments, the miscreants fired at her.

(38) Ramshwar Dayal (PW13) was posted as Head Constable of police station Bilaua, deposed that he had collected viscera of the deceased vide Ex.P17. Sughar Singh (PW14) in his evidence deposed that although he had signed the seizure memo of maruti van but denied that in his presence any seizure memo Ex.P13 was prepared and he is giving any false evidence in order to save the accused.

(39) Kaptan Singh (PW15) in para 2 of his evidence denied that in his presence any proceeding regarding seizure was made. Sattar Singh (PW16) in his deposition deposed that on the date of incident while he was coming from Bhitarwar to Gwalior neither there is any incident had taken place in his presence nor police had interrogated himself. This witness in para 2 of his evidence deposed that after some time, he heard that one lady of maruti van was murdered. His statement ExP18 was recorded by the police.

(40) Virendra Singh (PW17) in his evidence deposed that on the

date of incident while he was returning after darshan of Shithla Mata Mandir, near Turari he saw a maruti van on the way and after passing near about 300 ft of the road, he heard sound of gunshot fires and when he reached near the vehicle, he saw that three miscreants have caught hold of appellant and thereafter, he returned home and after three-four days, he came to know that fire was made with his some relative. This witness in para 3 admitted that at the time of returning from Shithla Mata Mandir, the vehicle was on the road side and three miscreants caught hold of appellant.

(41) The investigating officer JP Dangi (PW19) in his evidence deposed that on 02-06-2009 he was posted as SHO at Police Station Bilaua. He deposed that on the basis of complaint made by Rajkishore, *Dehati Nalishi* was recorded for offence under Section 302 of IPC at Crime No.0/2009 vide Ex.P9. On the basis of dehati nalishi, FIR was lodged at Crime No. 66 of 2009 for offence under Section 302 of IPC. After preparation of safina form vide Ex.P1, on 03-06-2009, *lash panchnama* was prepared by him vide Ex.P2. Spot map was prepared vide Ex.P11. On 07-06-2009, from JA Hospital,

gold ring, mangalsutra, bangles & other ornaments were taken out from the deceased and the same were seized vide Ex.P14. Accused appellant was arrested vide arrest memo Ex.P21 on the basis of memorandum of witnesses Ranvir Singh and Dharmendra. On 05-06-2009, on the basis of memorandum recorded under Section 27 of Evidence Act, katta was seized from bushes near Shri Ramsiya Asharm road wherein accused appellant confessed that he had caused gunshot fire at the deceased by his own Katta and the same was seized vide Ex.P8. This witness further deposed that on 03-06-2009, he had seized maruti van along with one portion of cartridge vide seizure memo Ex.P13. During enquiry, statements of witnesses were also recorded by him.

(42) Ramvaran Verma (PW20) in his evidence deposed that on 2-07-2009 he was posted at Police Line Gwalior on the post of Mohrairr and he had examined the seized gun. Report is Ex. P22. At the time of examination, he found that said 315 single barrel country-made katta is in running condition.

(43) Akhilesh Bhargav (PW21) who is the Senior Scientist Officer

posted at FSL, Sagar, Gwalior, proved the FSL report Ex.P23. R.K.Jain (PW22) who was posted as SDM, Gwalior on 8-7-2009 in his evidence deposed that on the basis of case diary and seized weapon produced before him, an order of framing charge was passed vide Ex.24. Raju Ahirwar (PW23) who was posted as Head Constable (Writer) at Police Station Bilaua in his evidence deposed that on 03-06-2009 on the basis of Dehati Nalishi, he had registered FIR Ex.P25 and merg intimation Ex.26 was also recorded. On 11-06-2009, CD and ML Mobile Unit were produced by constable Ajay Bahadur and its seizure memo was prepared vide Ex.P27. Similarly, DS Gautam (PW24) who was posted as Police Sub-Inspector at Police Station Kampoo in his deposition stated that on 2-06-2009 he had recorded merg no.09/2009 u/S 174 CrPC on receiving information from one Keshav Singh vide Ex.P28.

(44) On going through evidence of aforesaid witnesses, it appears that there is sufficient evidence against the appellant. It is well established principle of law "*res ipsa loquitur"* means *"the things speaks for itself"*. The present case requires consideration in the

light of above settled principle law.

(45) As per postmortem report Ex.P20, which is found proved by Dr. BS Tomar (PW18) wherein, the doctor has observed that an entry wound size of 1.5 cm was present over the chest oval shaped around 0.8 cm on the body of deceased. The entry wound was found 5.5 cm below the manubrium stenis and was having tattooing. The same was also found over the right hand of the deceased. One exit wound was also found over the back of deceased. The 4th rib of deceased was found fractured and general parts were damaged.

(46) It is also come on record that the appellant took the deceased from her parental home, who was his wife and stated travelling along with her in a maruti van and immediately after that of incident took place. There is sufficient evidence of "*last seen together*". The appellant remained failed to explain the aforesaid situation. Furthermore, despite being husband of deceased wife, the appellant had remained absent while preparing *lash panchnama* Ex.P2 and was also not present in the hospital while his wife was brought there for postmortem. Even after conduction of postmortem, he had not

received the dead body of his wife deceased, rather other persons were made available there to whom the dead body of deceased was handed over. The appellant had also not participated in the cremation of his wife deceased.

(47) Therefore, such conduct and *modus operandi* on the part of the appellant is fully admissible as per provisions of Section 8 of Evidence Act; and is sufficient to hold the appellant-accused guilty of committing the offence. Despite above evidence, the firearm was seized as per his memorandum under Section 27 of Evidence Act from the place as per his disclosure. The FSL report is fully established the implication of appellant- accused as the said report says that the cartridge was used by the same firearm seized at the behest of appellant. This connecting circumstantial evidence is enough to hold the appellant guilty of alleged offence.

(48) Accordingly, we are of the considered opinion that the learned Trial Court has not committed any illegality and has rightly passed the impugned judgment against appellant. Hence, the present appeal being devoid of merits, is hereby **dismissed.**

(49) As a result, the judgment of conviction and sentence dated 03/12/2011 passed by Second Additional Sessions Judge, Dabra District Gwalior (M.P.) in Sessions Trial No.283 of 2009 is hereby **affirmed.**

(50) Since the appellant is stated to be in jail, therefore, he shall remain in jail to serve out the remaining jail sentence.

A copy of this judgment be sent to the jail authorities concerned as well as a copy of this judgment along with record be sent to the trial Court concerned for information and compliance.

(G. S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

Prachi