HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
DIVISION BENCH
BEFORE: G.S.AHLUWALIA
AND
RAJEEV KUMAR SHRIVASTAVA, JJ.

Criminal Appeal No.202/2012

1. Gudda @ Lal Sahab S/o Sukhua Jatav
2. Sangram Singh S/o Sukhua Jatav
3. Kutaria S/o Sukhua Jatav
4. Kaptan S/o Sukhua Jatav

All residents of Akai Mahadev, P.S. Badarwas
District Shivpuri (MP)

Versus

State of Madhya Pradesh
Through Police Station Badarwas
District Shivpuri (MP)

Shri S.S. Gautam, Counsel for appellants.
Shri C.P. Singh, Counsel for State.

Reserved on : **10th November, 2021**

Whether approved for reporting: Yes

J U D G M E N T
(Delivered on 24/11/2021)

Per Rajeev Kumar Shrivastava, J.:

1. The instant Criminal Appeal is preferred under Section 374 of CrPC, against the judgment of conviction and sentence dated 8-2-2012 passed by IInd Additional Sessions Judge, District Shivpuri in Sessions Trial No. 63/2011, whereby appellants have been convicted under Sections 302 read with Section 34 of IPC, Section 324 read with Section 34 of IPC and Section 323 read with Section 34 of IPC and sentenced to undergo life

imprisonment with fine of Rs.4000/- each for the offence under Section 302/34 of IPC, in default of payment of fine, to undergo RI for one year each, and for the offence under Section 324/24 of IPC, to undergo 6 months RI each with fine of Rs.700/- each, in default of payment of fine, to undergo RI for one month each, and under Section 323/34 of IPC, to undergo RI for three months each with fine of Rs.300/- each, in default of payment of fine, to undergo rigorous imprisonment of 15 days each. All the sentences were directed to run concurrently.

2. The brief facts of the case are that complainant Rambali Jatav lodged FIR alleging that on 26.01.2011 at around 6.00 pm, he along with Ramveer (deceased) was coming back from their fields to their house and complainant's Bhabhi Rambai was coming after attending the call of nature, when they reached in front of the house of Kutaria, the accused persons Kaptan, Kutaria, Gudda and Sangram, who were armed with *luhangi, axe, lathi* and *farsa* reached there, on that he asked why they had brought their grass, however, all of them attacked him with *luhangi, axe, lathi & farsa.* When Ramveer (deceased) & Rambai tried to save him, all the accused persons attacked upon them with *luhangi, axe* and *farsa* and caused serious injuries to them, as a result of which deceased Ramveer sustained injuries on his head, face and forehead, whereas Rambai also suffered injuries on her right hand with lathi. Thereafter, his father Bhola as well as Devendra & Parbati came to rescue them from the accused persons. The FIR was registered for commission of offence under Sections 307, 324 & 323 of IPC. During the treatment, Ramveer succumbed to his injuries, on that, the offence under Section 302 of IPC was enhanced.

3. After completion of investigation, the charge sheet was filed

for commission of offence under Sections 302, 307, 324, 323 read with Section 34 of IPC. Charges under Sections 302/34, 307/34 (Kaptan u/S 307), 323, 341 & 323/34 IPC were framed against the accused-appellants to which, they pleaded not guilty and claimed trial.

4. In the statements recorded under Section 313 of Cr.P.C. the accused/appellants have stated that in the incident the complainant party was aggressor. They entered into the house of the accused-appellants and caused injuries to them. The accused-appellants were medico-legally examined. Accused-appellants Sangram Singh, Kutaria and Kaptan have taken the plea of alibi.

5. Before the trial Court prosecution examined Rambali (PW-1), Arjun (PW/2), Devendra (PW/3), Bholaram (PW/4), Rambai (PW/5), Dr. R.R. Mathur (PW/6), Dr. Seema Shakya (PW/7), Dr. A.P. Sengar (PW/8), Bharosa Ram (PW/9), Prahlad Singh Patwari (PW/10), Kailash Sharma, ASI (PW/11), Gurubachan Singh, TI (PW/12), Ashok Sharma, Head Constable (PW/13) and accused persons in their defence examined Anita (DW/1) and Kanhaiya (DW/2) and proved the contents of Ex-D-1 to Ex-D-5.

6. Learned trial Court after appreciation of evidence available on record convicted and sentenced the appellants as under :-

Name of accused	Section	Punishment	Fine	In default, punishment
Kaptan	302/34 IPC	Rigorous Imprisonment for life	4000/-	One year RI
	324 IPC	6 months RI	700/-	One Months RI
	323/34 of IPC	3 months RI	300/-	15 days RI
Kutaria	302/34 IPC	Rigorous Imprisonment for	4000/-	One year RI

		life		
	324/34 IPC	6 months RI	700/-	One Months RI
	323/34 of IPC	3 months RI	300/-	15 days RI
Sangram	302/34 IPC	Rigorous Imprisonment for life	4000/-	One year RI
	324/34 IPC	6 months RI	700/-	One Months RI
	323/34 of IPC	3 months RI	300/-	15 days RI
Gudda	302/34 IPC	Rigorous Imprisonment for life	4000/-	One year RI
	324/34 IPC	6 months RI	700/-	One Months RI
	323 of IPC	3 months RI	300/-	15 days RI

7. The grounds raised in this appeal are that the evidence of the prosecution witnesses are highly interested, partisaned and inimical to the appellants. There are material contradictions and omissions in the statements of the prosecution witnesses. The judgment of conviction and order of sentence is bad in law, illegal, arbitrary and against the settled principle of law which deserves to be quashed. Further submitted that in the statement recorded under Section 313 of Cr.P.C. accused Gudda stated that Rambali, deceased Ramveer, Bholaram and Arjun forcibly entered in his house and asked him that his son had taken away grass from their fields. On denial to aforesaid the accused persons caused various injuries to him. A cross- case was also registered for commission of offence under Sections 452, 324, 323, 506-B read with Section 34 of IPC wherein the accused persons were also injured. Further

submitted that the complainant party was aggressor as accused/appellants Gudda, Sangram and Anita had also sustained injuries, therefore, the act done by the present appellants is fully covered with the provisions of right of private defence. The case is the result of sudden and grave provocation which was caused by the complainant party of this case, therefore, the appellants could not be convicted under Section 302 of IPC.

8. Learned counsel for the appellants have also raised the ground that the prosecution witnesses have changed the place of occurrence which is fatal to the prosecution case. As the complainant party was aggressor, therefore, the act done by the accused/appellants were covered under the provisions of right of private defence. As the incident was started on aggression of complainants of this case, therefore, no case is made out under Section 300 of IPC. The incident took place on account of sudden heat of passion and the blows were not repeated, therefore, no case is made out under Section 302 of IPC. Existence of previous animosity was there. Hence, prayed to set aside the impugned judgment of conviction and sentence and to acquit the accused/appellants.

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

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

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

> "(i) Whether deceased Ramveer was died in the incident?

(ii) Whether, the death of deceased Ramveer was homicidal in nature?

(iii) Whether, the death of deceased Ramveer was culpable homicide amounting to murder ?

(iv) Whether, the accused appellants caused injuries to deceased Ramveer, Rambali and Rambai with the intention to cause their death ?

(v) Whether, the aforesaid acts were done in furtherance of common intention ?

(vi) Whether accused persons caused simple injuries to Bholaram?

12. Before considering the merits of the case, it would be appropriate to throw light on the relevant provisions of law.

(i) **Section 96 of IPC** runs as under :-

> "**96. Things done in private defence.--** Nothing is an offence which is done in the exercise of the right of private defence."

(ii) **Section 97 of IPC** runs as under :-

> "**97. Right of private defence of the body and of property.--** Every person has a right, subject to the restrictions contained in section 99, to defend--
>
> First,-- His own body, and the body of any other person, against any offence affecting the human body;
>
> Secondly.--The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery,

mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass."

(iii) **Section 99 of IPC** runs as under :-

"**99. Acts against which there is no right of private defence**.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe,

that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded."

(iv) **Section 100 of IPC** runs as under :-

"100. When the right of private defence of the body extends to causing death.— The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape; Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly.—An act of throwing or administering acid or an attempt to throw or administer

acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act."

13. In the present case, relevant section relating to private defence runs as under :

> " **Section 101. When such right extends to causing any harm other than death**.-- If the offence be not of any of the description enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does not extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death."

14. **Section 8 of the Indian Evidence Act, 1872** runs as under :-

> "8. Motive, preparation and previous or subsequent conduct.--Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
>
> The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.
>
> *Explanation* 1. -- The word conduct in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.
>
> *Explanation* 2. -- When the conduct of any person is relevant, any statement made to

> him or in his presence and hearing, which affects such conduct, is relevant."

15. **Section 34 of Indian Penal Code** runs as under :-

> **"34.-- Acts done by several persons in furtherance of common intention.--** When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.**"**

16. Section 34 of the Indian Penal Code recognises the principle of vacarious liability in criminal jurisprudence. A bare reading of this Section shows that the Section could be dissected as follows :

> (a) Criminal act is done by more than one person;
> (b) Such act is done in furtherance of the common intention;
> (c) Each of such persons is liable for that act in the same manner as if it was done by him alone.

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34 of IPC. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the criminal act and common intention are proved then by fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 I.P.C., must be done by more than one person. The emphasis in this part of the Section is on the word 'done'. It only flows from this that before a person can be convicted by following the provisions of Section 34 of IPC, that person must have done something along with other persons. Some individual participation in the commission of the

criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 of IPC must, therefore, be a participant in the joint act which is the result of their combined activity. The Section does not envisage a separate act by all of the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 of IPC shall be rendered infructuous.

17. Section 34 of IPC is intended to meet a situation wherein all the co-accused have also done something to constitute the commission of a criminal act. Even the concept of presence of the co-accused at the scene is not a necessary requirement to attract Section 34 e.g., the co-accused can remain a little away and supply weapons to the participating accused can inflict injuries on the targeted person. Another illustration, with advancement of electronic equipment can be etched like this; One of such persons in furtherance of the common intention, overseeing the actions from a distance through binoculars can give instructions to the other accused through mobile phones as to how effectively the common intention can be implemented. The act mentioned in Section 34 I.P.C., need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act e.g., a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the Section. But if no such act is done by a person, even if he has common

intention with the others for the accomplishment of the crime, Section 34 I.P.C., cannot be invoked for convicting that person. This Section deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for 'that act' and 'the act' in the latter part of the Section must include the whole action covered by 'a criminal act' in the first part, because they refer to it. This Section refers to cases in which several persons both intend to do and do an act. It does not refer to cases where several persons intended to an act and some one or more of them do an entirely different act.

18. In **Suresh Sankharam Nangare vs. State of Maharashtra [2012 (9) SCALE 345]**, it has been held that "if common intention is proved but no overt act is attributed to the individual accused, section 34 of the Code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, section 34 cannot be involved. In other words, it requires a pre-arranged plan and pre-supposes prior concert, therefore, there must be prior meeting of minds."

19. In **Shyamal Ghosh vs. State of West Bengal [AIR 2012 SC 3539]**, it is observed that " Common intention means a pre-oriented plan and acting in pursuance to the plan, thus common intention must exist prior to the commission of the act in a point of time."

20. In **Mrinal Das vs. State of Tripura [AIR 2011 SC 3753]**, it is held that "the burden lies on prosecution to prove that actual participation of more than one person for commission of criminal act was done in furtherance of common intention at a

prior concert."

21. In **Ramashish Yadav v. State of Bihar [AIR 1999 SC 1083]**, it is observed that "it requires a pre-arranged plan and pre-supposes prior concert therefore there must be prior meeting of mind. It can also be developed at the spur of moment but there must be pre-arrangement or premeditated concert."

22. Mainly two elements are necessary to fulfill the requirements of Section 34 of IPC. One is that the person must be present on the scene of occurrence and second is that there must be a prior concert or a pre-arranged plan. Unless these two conditions are fulfilled, a person cannot be held guilty of an offence by the operation of Section 34 of IPC. Kindly see, **Bijay Singh v. State of M.B. [1956 CrLJ 897]**.

23. In a murder case a few accused persons were sought to be roped by Section 34 I.P.C. It was found that one of the accused persons alone inflicted injuries on the deceased and the participation of the other accused persons was disbelieved. The person who alone inflicted injuries was held liable for murder and others were acquitted. Kindly see, **Hem Raj vs. Delhi (Administration) [AIR 1990 SC 2252]**.

24. In **Dashrathlal v. State of Gujarat [1979 CrLJ 1078 (SC)]**, it has been observed that "by merely accompanying the accused one does not become liable for the crime committed by the accused within the meaning of Section 34 I.P.C."

25. In **Rajagopalswamy Konar vs. State of Tamil Nadu [1994 CrLJ 2195 (SC)]**, there was land dispute between the members of a family, as a result of which deceased persons were attacked by the accused persons, in which one accused stabbed both the deceased persons and other caused simple injuries with a

stick. It was held that the conviction of both the accused under Section 34 read with Section 302 IPC was not proper. Other accused was convicted under Section 324 of IPC.

26. In **Sheikh Nabab v. State of Maharashtra [1993 CrLJ 43(SC)]**, it is observed that "the overtact on the part of accused could not be proved and it was held that the order of the conviction was not proper."

27. Now, we come to the provisions of Sections 299 and 300 of Indian Penal Code.

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

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

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

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

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

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

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

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

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

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

> "The prosecution must prove the following facts before it can bring a case under S. 300 "Thirdly"; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type, just described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under S. 300 "Thirdly". It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (there is no real distinction between the two), or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death."

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

> **"11. First it has to be seen whether the offence falls within the ambit of Section 299**

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

(i) with the intention of causing death; or

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

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

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

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

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

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

> "An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact. It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence

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

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

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

32. 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.”

33. 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.

34. 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."

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

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

37. 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.

38. 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.

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

40. 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.

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

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

> sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature."

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

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

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

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

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

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

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

> "Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be

> gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

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

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

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

> "7.3 In Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155] this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.
>
> 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."

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

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

therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

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

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

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

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

17. … It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it

> turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

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

49. 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."

50. 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.

51. 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.

52. 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".

53. 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.

54. 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.

55. 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.

56. 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.

57. 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. "

58. 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.

59. Considering the arguments advanced by the learned counsel for the appellants as well as on analysing the evidence of prosecution, it is evident that in order to substantiate the death of deceased Ramveer, prosecution has examined ASI Kailash Sharma (PW/11), who stated that on 26.01.2011 Constable Raghuveer Singh informed about the death of Ramveer and on that basis, the inquest report (Ex-P/3) under Section 174 of Cr.P.C. was registered and thereafter, FIR was lodged. Investigation was handed over to Gurubachan Singh (PW/12). During investigation, Safina Form (Ex-P/1) and Panchayatnama (Ex.P/2) were prepared and the dead body of deceased Ramveer was sent for postmortem vide requisition letter (Ex-P/8A) to CHC-Badarwas.

60. Dr. A.P. Sengar, Medical Officer (PW/8) has deposed in his statement that on 26.1.2011 Constable Gaya Prasad brought deceased Ramveer S/o Bholaram who was medico-legally examined by him and found following injuries on his person:-

1. Incised wound 3 cm/1 cm bone deep on the mid parietal region of scalp, from which blood was oozing out.
2. One incised wound 4x1/2 cm bone deep in the mid parietal region of scalp.
3. One incised wound 2x1 bone deep in the mid parietal region of scalp, from which blood was oozing out.
4. One contusion 6x4 cm on the back.

This witness has also opined that the injuries No.1 to 3 were caused with sharp weapon, whereas, the injury No.4 caused with hard and blunt object. MLC (Ex-P/5) was prepared. He has also stated that the person brought for medico legal examination was unconscious and he was referred to Civil Hospital Shivpuri for

further treatment and X-Ray. This witness has stated that he conducted postmortem of deceased Ramveer. On external examination, he found that the body of deceased was lying supine position. Body was average built and was warm. Mouth was open, eyes were semi-closed, pupils were fixed and were not reacting to light. He found following injuries over the dead body of the deceased:-

1. incised wound, 3 cmx1 cm bone deep on the mid parietal region of scalp from which blood was oozing out.
2. one incised wound 4x1/2 cm bone deep in the mid parietal region of scalp.
3. one incised wound 2x1 bone deep in the mid parietal region of scalp, from which blood was oozing out.
4. Contusion 6 cmx3 cm on fronto Nasal area.
5. One contusion 6x 4 cm on the back.

This witness has also deposed that blood stained safi and blood stained bandage was wrapped on scalp. All the aforesaid injuries were antimortem in nature. Parietal bone was fractured from right side and left side and frontal bone was also fractured. Sub dural hematoma and extra dural hematoma was present. Lungs were congested and both the chambers of heart were filled with blood. Stomach was empty and small intestine was containing some fluid and large intestine was having facial matter & gases. Spleen, kidneys & liver were congested & healthy. Urinary bladder was empty and the nose bone was also fractured. This witness has opined that injuries No.1 to 3 were likely to be caused by sharp weapon and were sufficient to cause death. Injuries No. 4 & 5 were caused by hard and blunt object. He handed over the blood stained safi and bandage to the Constable. He has further deposed that death occurred as the deceased had gone in “comma” and the nature of death was homicidal. The death was within six hours

prior to the postmortem. Postmortem report is (Ex.P-8). This witness has accepted in his cross-examination that weapons were not shown to him but has categorically testified in para No. 4 of his cross-examination that injuries No. 1 to 3 may be caused with a weapon having “edge” about 4 cm and the condition of Ramveer was very serious. Therefore, abiding by the duties assigned to a doctor he referred the patient for further treatment. Deceased Ramveer was immediately sent to Civil Hospital Shivpuri for further treatment. From the deposition of Dr. A.P. Sengar (PW/8) it is very well proved that deceased Ramveer S/o Bhola Ram sustained incised wound on the head and contusion on nose/forehead & back. Besides that, the nasal bone and parietal bone were fractured and injuries No. 1 to 3 were sufficient to cause death.

61. Dr. A.P. Sengar (PW.8) has further deposed that Rambali S/o Bhola Ram was also brought by Constable Gaya Prasad for medico-legally examination and he found following injuries on his person:-

1. Incised wound 4x2x1 cm on the mid parietal region.
2. Abrasion 4 cmx3cm on the right side of illac crust.

This witness has also opined that the injury No. 1 was caused by sharp cutting weapon and injury No. 2 was caused by blunt object. He prepared MLC (Ex.P-6) qua those injuries and it is also stated that injuries were likely to be suffered within 24 hours of the examination.

62. Dr. Seema Shakya (PW/7) has stated that she was posted as Medical Officer at CHC-Badarwas on 26.01.2011. She did medico-legally examination of Rambai w/o deceased Ramveer. Rambai was brought by Constable Gaya Prasad. On examination,

she found a contusion 2x3 cm on the 1/3 part of right arm below the elbow. She further deposed that the injury was simple in nature and was likely to be suffered within 10 hours of her examination. The MLC is (Ex-P/4) and in her cross-examination she has deposed that such injuries can be sustained by hard object.

63. Dr. R.R. Mathur (PW/6) has stated that he was posted in CHC-Badarwas as Medical Officer on 27.01.2011. He medico-legally examined Bhola Ram at about 2.30 pm and found the following injuries on his person:-

1. Abrasion with dry blood 1/2x1/2 cm on between the thumb and index finger of right hand.
2. Three abrasions 1/2x1/2 cm with dry blood on the forehead.

He has deposed that all the above injuries were caused by hard and blunt object within 36 hours of examination. The MLC is Ex.P-3 qua those injuries. This witness has admitted that such injuries could be caused to a person while passing near the bushes.

64. Now it has to be seen, whether the death of Ramveer was culpable homicide amounting to murder or not and whether the aforesaid act was done by the accused/appellants in furtherance of common intention.

65. Prosecution examined Rambali Jatav (PW-1), Rambai (PW/5), Arjun Singh (PW/2), Devendra (PW/3) as eyewitnesses to the occurrence. Rambali Jatav (PW/1) has stated that on 26.01.2011 at about 6:00 am, he along with his brother Ramveer (deceased) was coming back to their house, when they reached near Tiraha, accused Sangram Singh, Gudda, Kutaria and Kaptan met them. Gudda and Sangram Singh were taking away the bundle of grass from their “Ghera”. He further deposed that Sangram was having farsa, Gudda was having lathi, Kaptan and Kutaria were having luhangi and axe respectively. On that, he asked Sangram &

Gudda, why they had taken away their bundle of grass from their Ghera. On that, Sangram and Gudda told that they had taken away their own bundle of grass and at the same moment, accused Sangram Singh struck a farsa blow on his head to kill him. Accused Gudda also gave lathi blow on his back. When Ramveer tried to save him, Kutaria hit Ramveer on his head with axe which caused injuries to Ramveer. Thereafter, Sangram also hit deceased Ramveer with farsa on his head and Gudda gave lathi blow on his left shoulder. This witness has further deposed that when his Bhabhi Rambai came back after attending the natures call she tried to intervene, the accused Gudda who caused injuries on her right arm by means of lathi. On account of that, Devendra called Arjun. Then Arjun and Rajendra came on the spot. Thereafter, accused fled away from the spot. Bhola Ram, who is the father of Rambali also reached there. Victims were brought for their treatment. MLC was done and thereafter Ramveer was referred to civil hospital Shivpuri where he died on the way.

66. The statements given by Dr. A.P. Senger (PW/8) and Dr. Seema Shakya (PW7) corroborate the testimonies of Rambali (PW/1) and Rambai (PW/5). Rambali Jatav (PW/1) is natural witness in the present case as he came on the spot incidentally. It is also relevant to mention here that the time of incident is morning at around 6:00 which is normal time for the villagers to attend the call of nature. Rambai was also injured in the case as she was trying to intervene. The testimonies of aforesaid eyewitnesses remained consistent, cogent and convincing throughout, despite filibustering cross-examination and they have categorically stated that all the accused persons were armed with weapons and attacked upon Rambali and Ramveer, as a result of which, Ramveer had sustained serious injuries on his head, which

succumbed him into death.

67. Arjun (PW/2) has deposed in his statement that on 26.01.2011 at about 6:00-6:30 AM when he was calling upon the school children, in meantime, Devendra (PW/3) called upon and told him that Kutaria, Kaptan, Gudda & Sangram Singh were beating Ramveer and Rambali. So he rushed towards the spot and found that the aforesaid accused persons armed with *farsa, axe, luhangi* and *lathi* respectively and were beating Ramveer and Rambali. When he was about 20 kadam away from the spot, the accused-appellants fled away from the place of incident. This witness has also stated that he along with Rajendra and his father Bhola Ram reached at the spot, where he saw injuries on the person of Ramveer and Rambai. Inquest report (Ex-P/1) and Naksha Panchayatnama (ExP/2) were prepared by the police. This witness has proved the aforesaid exhibits.

68. Devendra (PW/3) has stated in his statement that on the date and time of incident, he was going to attend the call of nature. When he reached near a Tiraha, he saw the incident. However, the evidence of this witness is not worthy of credit rather it appears that this witness was introduced later on being close relative of the complainant party. His conduct was unnatural as he has not stated anything that he neither had tried to intervene nor he had taken away the injured to the hospital. But the aforesaid conduct of this witness has not affected the prosecution case adversely.

69. Prosecution witnesses have tried to establish the presence of Bhola Ram (PW/4) by saying that he was also beaten by the accused-appellants during the incident but there is contradiction on the point of injuries caused to Bhola Ram as one prosecution witness Rambai (PW/5) had stated that Gudda had given lathi blow to her father-in-law on his arm, but Bhola Ram (PW/4)

himself has stated that Gudda had given two blows to him, one on his head and another on his arm. Again this contradiction being minor, has no adverse effect. Furthermore, Dr. R.R. Mathur (PW/8) who examined Bhola Ram has stated that no corresponding injuries were found on the person of Bhola Ram.

70. ASI Kailash Sharma (PW/11) stated that on 26.01.2011 he was posted as Head Constable and a report was made by Rambali Jatav (PW/1) regarding the incident. He further deposed that Constable Raghuveer Singh informed about the death of Ramveer and on that basis, the inquest report under Section 174 of Cr.P.C. was registered and thereafter, FIR was lodged. Investigation was handed over to Gurubachan Singh (PW/12). He further deposed that he sent Ramveer & Rambali for medico-legal examination and on 27.01.2011, injured Bholaram was also sent for medico-legal examination.

71. Gurubachan Singh, I.O.(PW/12) stated that on 26.01.2011 Investigation was handed over to him. In the presence of Rambali (PW/1), he prepared the spot map (Ex.P/25). He further stated that the blood stained soil (Art.-A5) and simple soil (Art.-A6) were seized vide seizure memo (Ex.P/21) from the spot. His statement was also corroborated by Bharosa Ram (PW/9). He further stated that on 26.01.2011 and on 27.01.2011 the statements of witnesses were recorded and thereafter, all the accused persons were arrested vide arrest memos. (Ex.P-9, Ex-P/11 and Ex.P/12). During interrogation, Gudda and Sangram made a disclosure statement (Ex-P/13) and (Ex.P/14). He further stated that on the same date, Kutaria also made disclosure statement about axe (Ex.P/16). Gurubachan Singh, I.O. further stated that on the same date he seized *lathi, axe* and *farsa* from the possession of accused Gudda, Kutaria and Sangram from their Khaprail. The seizure memos (Ex-

P/17, Ex-P/18) & Ex.P/19) were prepared respectively and same were signed by him. Similar statement was made by Bharosa Ram (PW/9) but it was argued on behalf of the defence that Bharosa Ram (PW/9) was closely related to Rambali (PW/1) as he was brother-in-law of Rambali (PW/1). But during cross-examination, his statement could not be impeached and he remained consistent throughout.

72. It is settled law that merely because the witnesses may be related to the victim or the complainant, their testimonies may not be rejected. There is no legal canon that only unrelated witnesses shall be considered credible. On the contrary, we are of the view that it is not natural for the related witness to implicate a person falsely leaving aside the actual culprit. It is pertinent to note that only interested witnesses want to see the real culprit is brought to book. In this regard, Hon'ble Supreme Court in the case of **Jayabalan v. UT of Pondicherry, (2010) 1 SCC 199,** has held in the following manner:

> "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

73. In another Judgment by Hon'ble Supreme Court in the case of **Seeman v. State, (2005) 11 SCC 142**, following has been

observed:

> "4. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinising the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. 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."

74. In another Judgment by Hon'ble Supreme Court in the case of **Jodhan v. State of M.P.**, **(2015) 11 SCC 52**, it has been observed that: -

> "28. Tested on the backdrop of the aforesaid enunciation of law, we are unable to accept the submission of the learned counsel for the appellant that the High Court has fallen into error by placing reliance on the evidence of the said prosecution witnesses. The submission that when other witnesses have turned hostile, the version of these witnesses also should have been discredited does not commend acceptance, for there is no rule of evidence that the testimony of the interested witnesses is to be rejected solely because other independent witnesses who have been cited by the

prosecution have turned hostile. Additionally, we may note with profit that these witnesses had sustained injuries and their evidence as we find is cogent and reliable. A testimony of an injured witness stands on a higher pedestal than other witnesses. In Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] , it has been observed that: (SCC p. 271, para 28)

> "28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."

It has been also reiterated that convincing evidence is required to discredit an injured witness. Be it stated, the opinion was expressed by placing reliance upon Ramlagan Singh v. State of Bihar [Ramlagan Singh v. State of Bihar, (1973) 3 SCC 881 : 1973 SCC (Cri) 563] , Malkhan Singh v. State of U.P. [Malkhan Singh v. State of U.P., (1975) 3 SCC 311 : 1974 SCC (Cri) 919] , Vishnu v. State of Rajasthan [Vishnu v. State of Rajasthan, (2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , Balraje v. State of Maharashtra [Balraje v. State of Maharashtra, (2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] .

29. From the aforesaid summarisation of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for

> rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence. Thus perceived, we really do not find any substance in the submission of the learned counsel for the appellant that the evidence of the injured witnesses have been appositely discarded being treated as untrustworthy by the learned trial Judge."

75. Gurubachan Singh (PW/12) deposed that the accused Kaptan Singh was arrested on 6.2.2011 vide arrest memo (Ex-P/10). Kaptan Singh stated about Luhangi during interrogation vide disclosure statement Ex.P/15. This witness stated that he seized one luhangi (Art.A4) & lathi from *Khaprail* of Kaptan Singh vide seizure memo Ex-P-20. Aforesaid statement was also fully corroborated by Bharosa Ram (PW/9). Although Kaptan Singh and Bharosa Ram were cross-examined, but their testimonies could not be impeached. He further deposed that the aforesaid Articles A-1 to A-6 were sent to FSL for examination vide requisition letter (Ex.P/26) however, vide FSL report Ex-P/27, blood group could not be extracted from the aforesaid articles. But on Art.A, the blood strains were dis-integrated, whereas on articles C & F, the quantity of blood was insufficient.

76. Learned counsel for the defence has argued that the prosecution witnesses in their statements have changed the place of occurrence.

77. From the perusal of spot map Ex-P/25, it is apparent that the place of incident is around 20-25 ft. away from No.8 *Jhopda* and if for the sake of argument, the place of incident is changed by some feet that is not material as prosecution witnesses have supported the prosecution version in detail. Furthermore, prosecution witness

Prahlad Singh, Patwari (PW/10) has deposed in his statement that on 7.2.2011, he prepared the spot map (Ex.P/22) on the direction of the Tahsildar and the place of incident was shown with “red cross”. Though, during cross-examination, he could not disclose the exact measurement of the particular portion shown in the spot map, therefore, it seems that he did not prepare the said site plan after visiting the spot. But, the investigation officer Gurubachan Singh (PW/12) had prepared a rough site plan (Ex.P/25) and in the said site plan, the measurement has been duly given by him where the place of occurrence has been shown as “Tiraha” and remaining areas are also shown accurately, therefore, it cannot be said that place of incident has been changed, rather it appears to be natural that while Rambali and Ramveer might be coming from their farm towards their house (which leads from point-1 to point-2 as shown in site plan (Ex-P-25) they had to pass in front of Jhopda of Kutaria and Sangram.

78. Accused-appellants have taken the defence of plea of alibi. Again this defence has no base as all the prosecution witnesses categorically stated that on the date of occurrence the accused persons were present on the place of incident. Furthermore, no substantial evidence has been led to prove this fact by defence.

79. Learned counsel for the appellants further submitted that the complainant party was aggressor as accused Gudda, Sangram, Anita had also sustained injuries and injuries were not explained, therefore, no case is made out under Section 300 of IPC.

80. It is settled principle of law that number of injuries is not always a safe criterion. This is not the universal rule that whenever the injuries are found over the body of the accused persons, a presumption must necessarily be raised that the accused persons had sustained injuries in exercise of the right of private defence.

The defence is required to establish that the injuries so caused on the accused probabilities the version of right of private defence. Non-explanation of injuries sustained by the accused at the time of occurrence or in the course of altercation is a very important circumstance and mere non-explanation of injuries by the prosecution may not affect the prosecution case always. This principle applies to the cases where the injuries sustained by the accused persons are minor and superficial.

81. Similarly, in the present case, the injuries found over the person of accused/appellants were minor and superficial, therefore, it was not required to be explained by the prosecution. Furthermore, a plea of right of private defence cannot be based on surmises and conjectures. The entire incident must be examined with care and caution and viewed in its proper settings.

82. Section 97 IPC deals with the subject matter of right of private defence. The plea of right of private defence comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and this right of private defence may be exercised in the case of any offence affecting the human body and offfences relating to property i.e. theft, robbery, mischief or criminal trespass and attempt to commit such offences. Section 99 of IPC imposes certain limitations upon the right of private defence. Sections 96 and 98 of IPC give a right of private defence against certain offences and acts. Section 99 of IPC controls the right of private defence contained in Sections 96 to 98 and 100 to 106 IPC. Right of private defence extends to voluntarily causing of death if the accused shows that there are circumstances giving rise to reasonable apprehension that death or grievous hurt would otherwise be likely to be caused to him. The burden lies on the accused to show that there were circumstances in which he had a

right of private defence which extended to causing of death.

83. Section 102 deals with commencement and continuance of the right of private defence of body while Section 105 of IPC deals with commencement and continuance of the right of private defence of property. These rights commence, as soon as a reasonable apprehension of danger to the body or property arises from an attempt, or from threat to commit an offence, although the offence may not have been actually committed but this right of private defence continues so long as the reasonable apprehension of the danger to the body continues. In ***Jai Dev v. State of Punjab (AIR 1963 SC 612),*** it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence. The above position was highlighted in ***Rizan and Another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, Chhattisgarh (2003 (2) SCC 661), and Sucha Singh and Anr. v. State of Punjab (2003 (7) SCC 643).***

84. In the present case the statement of Rambali (PW/1) has been corroborated by the medical evidence of Dr. A.P. Sengar (PW/8). The weapons were also recovered from the possession of the accused/appellants. As observed in the judgment passed in ***Hare Krishna Singh and others v. State of Bihar (AIR 1988 SC 863),*** it is not an invariable rule that the prosecution is required to explain the injuries sustained by the accused persons in the same occurrence, if the witnesses examined on behalf of the prosecution are believed by the Court and guilt is proved beyond reasonable doubt, the question of obligation of prosecution to explain injuries sustained by the accused persons will not arise. It is more so when the injuries are simple or superficial in nature.

85. Learned counsel for the defence has also argued that attribution of particular injury to a specific victims are not mentioned in the FIR. This argument has no force, as the condition of deceased Ramveer was very critical and in such a situation, FIR was lodged, therefore, it would not had been possible to narrate the entire sequence of incident.

86. Learned counsel for the defence has also argued that the incident took place as a result of sudden and grave provocation and there was no premeditation.

87. Again, this argument has no force as Exception 4 to Section 300 of IPC does not apply and there was no evidence that the incident took place as there was total deprivation of self-control or started under the heat of passion. Furthermore, in the present case, there was no any provocation which resulted to deprive the appellants from self-control.

88. Learned counsel for the appellants has also argued that there was previous enmity between the appellants and the complainant party on account of eve teasing of wife of Rambali by Gudda and qua that case was pending as such, they have been falsely implicated. It is true that Rambali Jatav has supported aforesaid version in his statement and admitted that the incident stated to have been happened about five years back. But in the present case the injuries were caused by means of deadly weapons and due to the injuries caused, the deceased died and the *modus operandi* of the accused/appellants was extremely cruel. Therefore, the aforesaid defence has no force and the defence witnesses are not reliable. Hence, the case is proved under Section 302 of IPC.

89. On the basis of above, we are of the opinion that there was prior meeting of minds and the injuries were caused by deadly weapons in furtherance of common intention which resulted into

death of Ramveer and the defence raised by accused have no force, therefore, the appellants are liable for the commission of said offences. The accused/appellants acted in furtherance of common intention and intentionally committed murder of Ramveer and also voluntarily caused simple injuries to Rambali and Rambai, therefore, in the light of the aforesaid discussion, the one and only inevitable conclusion is that the prosecution succeeded in proving its case beyond shadow of doubt that the accused/appellants had committed the alleged offences.

90. Hence, the appeal filed by the appellants Gudda @ Lal Sahab, Sangram Singh, Kutaria and Kaptan being **Cri.Appeal No.202/2012** is hereby dismissed and their conviction and sentence are affirmed.

91. Appellant No. 1 Gudda @ Lal Sahab and appellant No. 4 Kaptan are on bail after suspending their jail sentence by this Court, therefore, their bail bonds are cancelled and they are directed to immediately surrender before the trial Court to serve out their remaining jail sentence.

92. As per report dated 9.8.2021 received from Superintendent, Central Jail, Gwalior, Appellant No.2 Sangram Singh and appellant No.3 Kutaria are in jail but they have been released on parole. Trial Court is directed to take steps to ensure the custody of the appellants to serve out their remaining sentence.

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

(G.S.Ahluwalia)	**(Rajeev Kumar Shrivastava)**
Judge	Judge

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