IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
DB :- HON'BLE JUSTICE ANAND PATHAK &
HON'BLE JUSTICE HIRDESH, JJ

ON THE 05TH OF SEPTEMBER, 2024

CRIMINAL APPEAL 871 OF 2015
PURAN
Versus
THE STATE OF MADHYA PRADESH

***Appearance**:*
Shri Ashok Kumar Jain- learned Counsel for appellant.
Shri Naval Kishor Gupta- learned Public Prosecutor for respondent/ State.

JUDEMENT

As per Justice Hirdesh, J:-

Today, this case is listed for hearing on **IA No.18790 of 2024,** fifth repeat application under Section 389(1) of Criminal Procedure Code, 1973 moved on behalf of appellant- Puran Yadav for suspension of jail sentence and grant of bail on the ground of period of custody as he has already suffered more than 10 years of incarceration, but with the consent of parties, this Court deems it proper to hear this appeal finally.

(2) The instant Criminal Appeal under Section 374(2) of Criminal Procedure Code,1973 is preferred by appellant- Puran Yadav from Jail challenging the impugned judgment of conviction and order of sentence dated 03-08-2015 passed by learned Sessions Judge, Shivpuri (MP) in Sessions Trial No.177 of 2014 whereby the appellant has been convicted for offence punishable u/S 302 of IPC and sentenced to undergo for life imprisonment with fine of Rs.6,000/- and in default of payment of fine amount, rigorous imprisonment for one year.

(3) Case of the prosecution, in brief, is that in the night of 30-04-2014,

Suresh (since deceased) was sleeping in the hut *(gainth)* with his uncle Gole (PW-2) and brother Mohar Singh (PW-1) in Village Kakrai. Around 02:00 in the night, accused Puran (appellant) opened the door*(tata)* and came there with an *axe* in his hand. Mohar Singh and others saw him coming there. Accused assaulted Suresh on his neck by means of *axe* and fled from there, due to which Suresh died on spot. Mohar Singh (brother of deceased) lodged a *Dehati Nalisi* at PS Bairad, District Shivpuri around 05:00 in the morning. On such allegations, PS Bairad registered Crime No.141 of 2014 against appellant for offence punishable under Section 302 of IPC. *Naksha Panchnama* was prepared *vide* Ex.P3. Dead body of deceased- Suresh was sent for Postmortem which was conducted by Dr.A.K. Maurya (PW-9) who proved Postmortem Report Ex.P9. Blood-stained and plain soil as well as other articles were seized. Statements of witnesses were recorded. Appellant was arrested *vide* arrest memo Ex.P5. Pursuant to memorandum of appellant, an *axe* and other articles were also seized *vide* Ex.P7 and Ex.P8 and the same were sent to FSL. After completion of investigation and other formalities, charge-sheet was filed before the competent Court of Criminal jurisdiction and in turn, the case was committed to the Sessions Court for its trial, in which the appellant accused abjured his guilt and entered into defence, by stating that he has not committed any offence and has falsely been implicated.

(4) In order to bring home the offence, prosecution examined as many as twelve witnesses and brought on record the relevant documents. Defence has examined none and not exhibited any document in order to prove its case.

(5) The Trial Court, after appreciation of oral and documentary evidence on record, convicted the appellant for offence punishable under Section 302 of IPC and sentenced as above against which the present appeal has been preferred.

(6) Counsel for appellant submits that the impugned judgment passed by learned Trial Court is bad in law and contrary to the facts and evidence of the

case. The evidence led by prosecution witnesses suffer from serious infirmities. The learned Trial Court has committed an error in relying upon evidence of Mohar Singh (PW-1), Gole (PW-2), Matadin (PW3) and Seema (PW-7). All these witnesses are relatives and interested witnesses, therefore, their evidence is unreliable. Learned Counsel further contends that some unknown person has committed murder of deceased and appellant has falsely been implicated due to election rivalry. On the date of alleged incident, appellant was not present on spot, but in his in-laws' house. Although Gole (PW-2) and brother Mohar Singh (PW-1) brother and uncle of deceased were sleeping near deceased at the time of incident, but no one resisted the accused nor did anyone try to save the deceased. Alleged incident had taken place in the dark and it was not possible to see the accused. Learned Counsel further contends that there is a delay of more than five months in recording the evidence of prosecution witnesses which is fatal to the case of prosecution. Therefore, the prosecution story appears to be doubtful and appellant deserves to be acquitted by setting aside the impugned judgment.

(7) On the other hand, learned Counsel appearing for respondent/State supported the impugned judgment and submitted that Mohar Singh (PW-1), Gole (PW-2) and Matadin (PW-3) are eye-witnesses of the incident who in their evidence, stated that accused had assaulted Suresh by means of *axe* on his neck in front of them in mid-night in which, they could not protect the deceased and the accused/appellant ran away from place of occurrence with *axe* after commission of crime. Prosecution evidence is duly supported by medical evidence. The death of deceased was homicidal in nature which has been answered by learned trial Court in affirmative relying upon postmortem report (Ex.P9) proved by Dr.A.K.Maurya (PW9) which is a finding of fact based on evidence available on record. It is neither perverse nor contrary to the record. There is no infirmity in the impugned judgment. Hence, he prayed for dismissal of appeal.

(8) Now, the points for consideration before this Court are; (i) whether the finding of the Trial Court on conviction and sentence of appellant under Section 302 of IPC is erroneous in the eyes of law and facts?

First question arises as to whether the death of of deceased is homicidal or not?

Anand Rai (PW-10), who was posted as Station House Officer at PS Bairad in his examination-in-chief, deposed that on 30-04-2014, he had registered *Rojnamcha Sanha* around 04:10 pm on the information received from Village Chowkidar (Kotwar)- Ajay Pal telephonically. He was informed that accused had killed Suresh with an *axe.* Thereafter, he had written *Dehati Nalisi* (Ex.P1) as per information given by Mohar Singh and had gone to the place of incident where he prepared *Panchanama* of dead body of deceased- Suresh in the presence of witnesses vide Ex.P3 and found marks of cut wound caused by sharp edged object. Spot map was prepared by him in the presence of Mohar Singh *vide* Ex.P4. Thereafter, dead body of deceased- Suresh was sent for postmortem.

Dr. A.K. Maurya (PW-9), in his examination-in-chief, deposed that on 30-04-2014, he was posted as Medical Officer at Primary Health Centre, Bairad, District Shivpuri. He had conducted postmortem of deceased- Suresh and found following injuries on the person of deceased:-

> "An incised chop wound size 6 cm x 4cm x 4.5 deep with clean cut margin and horizontal direction which was deep situated in the middle of left side of the neck. On dissecting the neck, muscles, fibers and large blood vessels of the neck were cut on the left side."

As per opinion of Dr. Maurya, due to these cuts, there was excessive internal and external bleeding and the windpipe was also cut on the left side of the neck. Ante-mortem injury was found on the body of deceased- Suresh, caused by sharp edged object*(axe)*. Suresh died within 24 hours prior to autopsy. Death of deceased was homicidal in nature. Postmortem report is Ex.P9.

On perusal of evidence of these prosecution witnesses, *Lash Panchnama* as well as postmortem report Ex.P9 and taking into consideration the fact that there is no substantial cross-examination by defence, it is clearly proved that the death of deceased was homicidal in nature.

The next point for determination is as to whether appellant had caused death of deceased- Suresh by assaulting him with an axe (Kulhadi) ?

At the outset, statements of Mohar Singh (PW-1), Gole (PW-2), Matadin (PW-3) and Seema (PW-7) are required to be enunciated.

Mohar Singh (PW-1) who had lodged *Dehati Nalisi* (Ex.P1), in his examination-in-chief, deposed that deceased- Suresh was his brother. On the date of incident, he was sleeping in his hut (*gainth*). At that time, his uncle Gole and brothers- Matadin and Suresh were also sleeping near him. Around 1:30 in the night, accused/appellant- Puran came there and assaulted his brother Suresh with *axe* on his neck. His brother Suresh writhed in pain and screamed. Hearing his shouts, he, his uncle Gole and Matadin woke up. They tried to catch the accused, but accused ran away with *axe.* His brother Suresh died after an hour. He informed about the incident to his brother-Ajay Pal, *Chowkidar*(Kotwar) who reported the above incident to PS Bairad. The police reached the spot around 4:00-5:00 in the night. He narrated the entire incident on the basis of which Police recorded *dehati nalisi* (Ex.P1).

Gole (PW-2), who is uncle of the deceased and Matadin (PW-3), who is brother of deceased- Suresh also vindicated the prosecution story in the same way in their examination-in-chief as stated by Mohar Singh (PW-1) in his examination-in-chief.

Seema (PW-7), who is daughter of deceased, in her examination-in-chief, stated that she was sleeping near her father. Around 1:30 in the night, appellant came and assaulted her father with an *axe* on his neck. After this, she screamed for her uncle Mohar Singh (PW-1) and uncle *(tau)* Gole (PW-2). Thereafter, all the family members woke up. She saw that accused was

standing near the hut armed with an *axe* and thereafter, he ran away from there.

It is contention of learned Counsel for appellant that there was no independent witness of the incident. It is only vindicated by the relatives of deceased and there are so many omissions and contradictions in their evidence.

With regard to these aspects, in the case of **Chauda Vs. State of Madhya Pradesh, 2019 ILR M.P. 471,** the Division Bench of this Court held as under:-

> "The appellants failed to rebut their testimony which was quite natural and without any material contradiction and omission, the conviction can be based on the testimony of close relatives/interested witnesses. There is no material contradiction or omission between testimony of eye-witnesses and medical evidence which must be relied upon. In this case it is held that if interested / relative witnesses are reliable, then these evidence are not discarded merely on this ground."

Further, in the matter of **Smt. Dalbir Kaur Vs. State of Punjab, 1977 AIR 472,** the Hon'ble Apex Court has made following observation:-

> "Interested witnesses are related witnesses and they are natural witnesses. They are not interested witnesses and their testimony can be relied upon."

In the case of **Arjun Singh Vs. State of Chhattisgarh, 2017 Vol.2 MPLJ Cr. 305,** the Hon'ble Apex Court also observed that the evidence of related witnesses has the evidentiary value, Court has to scrutinize the evidences with care in each and every case is a rule of prudence and a rule of law. Facts of witnesses being related to victim or deceased are not by itself discredit evidence.

Also, in the matter of **altu Ghosh Vs. State of West Bengal, AIR (2019) SC 1058,** the Hon'ble Apex Court has observed as under:-

> "(a) This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to

> prior enmity or other reasons, and thus has a motive to falsely implicate the accused.
>
> (b) Actually in many cases, it is often that the offence is witnessed by a close relative of the victim / deceased, whose presence on the spot of the incident would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested."

On perusal of evidence of Mohar Singh (PW-1), Gole (PW-2) and Matadin (PW-3), it was found that they were suggested on behalf of defence that the alleged incident happened in the dark and it was not possible to recognize the accused, but all the witnesses were substantially intact and unshattered in their cross-examination. They denied the suggestions given by defence. Further, these witnesses in their cross-examination clarified that there was light of bulb near the hut where the deceased was sleeping and they saw the appellant/accused.

The next contention of learned counsel for appellant that there are so many contradictions and omissions in the evidence of Mohar Singh (PW-1), Gole (PW-2) and Matadin (PW-3). Since, they are interested and related witnesses, therefore, their evidence is not reliable, even in the wake of the fact that their statements were recorded after five months of the incident.

On perusal of evidence of Mohar Singh (PW-1), Gole (PW-2) and Matadin (PW-3), it was found that the alleged incident had taken place on 30-04-2014 and they were examined after five months of the incident i.e. in the month of September, 2014. Although there are some minor omissions and contradictions in their evidence, but they cannot be discarded only on this sole ground. So, in view of aforesaid discussion, in the opinion of this Court, minor contradictions and omissions shall not affect the substantial part of evidence of witnesses as they have unrebutted substantially in each and every part of their evidence which is duly supported by medical evidence. In this regard, in the case of **Ramni alias Rameshwar Vs. State of MP (1999) 2 JLJ 354,** it has been held as under:-

> "**24.** When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well-tutored can successfully make his testimony totally non-discrepant. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serous a view to be adopted on mere variation falling in narration of an incident (either as between the evidence of two witnessed or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

Learned Counsel for appellant further contends that evidence of Seema (PW-7), who is daughter of deceased- Suresh, is not reliable as none of witnesses, namely, Mohar Singh (PW-1), Gole (PW-2) and Matadin (PW-3) has stated that at the time of incident, Seema (PW7)was also sleeping near her father (deceased) at the time of incident.

On perusal of evidence of Seema (PW-7), it appears that although there is minor contradiction between her police statement and Court statement recorded under Section 164 of CrPC (Ex.D2) yet she in her evidence has fairly stated that she was sleeping near her father. When the accused came and assaulted on the neck of her father, she shouted for her uncle and uncle *(tau)*. In her Court statement Ex.D2, there is no mention that she woke up to drink water nor had she made any statement to this effect in her examination-in-chief. She has also clarified that her house and hut *(gainth)* are at a distance of about 10-15 steps. Therefore, evidence of this witness does not appear to be unnatural and doubtful.

In Ex.P4, Investigating Officer- Anand Rai (PW-10) has specifically mentioned about the details of crime. In Serial No.1 of Ex.P4, it has been clearly mentioned that deceased- Suresh was found lying dead on the cot. It is true that it was not mentioned that from which place, Mohar Singh (PW-1) had seen the incident but it is not a major defect.

In case of murder regarding faulty investigation, the Hon'ble Apex Court

in the case of **Dhanraj Singh alias Shera and Others vs. State of Punjab AIR 2004 SC 1920,** held that in the case of a defective investigation, the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to plying into the hand of the Investigating Officer if the investigation is designedly defective. When the direct testimony of eye-witnesses corroborated by the medical evidence fully establishes the prosecution version failure or omission or negligence on the part of the Investigating Officer cannot affect credibility of the prosecution version.

Learned Counsel for the appellant also contends that there was delay of near about five months in recording the evidence of witnesses by Investigating Officer.

On perusal of evidence of Investigating Officer- Anand Rai (PW-10), it appears that not a single question was put before him during trial as to why he had taken the evidence of prosecution witnesses with delay.

Considering the evidence of Anand Rai (PW-10), it was found that no prejudice has been caused to the appellant. Therefore, submission of counsel for appellant has no substance in this regard.

Learned counsel for appellant further contends that there is no motive of appellant to cause death of deceased and prosecution has utterly failed to prove the motive of appellant for commission of offence.

On perusal of evidence of prosecution witnesses, it is crystal clear that appellant/accused had asked for bullock-cart and when deceased- Suresh denied for the same, the accused/appellant committed the alleged incident. However, the witnesses in their evidence admitted that they did not inform the police about the refusal of deceased to give the bullock cart to the accused. Otherwise, it was a normal thing in which no person would have even thought that accused would cause death of deceased over such a trivial matter. Therefore, not informing the police about this matter earlier is not a laxity. The

prosecution case is based on direct evidence, hence, the absence of motive is not of any special importance and nor can the prosecution evidence be considered unreliable. Therefore, the argument of learned Counsel for appellant is bereft of substance.

Learned Counsel for appellant further contends that police seized *axe* vide seizure memo Ex.P7 in which it was not mentioned that blood was found on *axe* but in the FSL report, human blood was found on the seized *ax*e which creates doubt on the veracity of seizure memo Ex.P7.

It is true that according to seizure memo Ex.P7, there is no mention that blood was found on *axe* but in the FSL report, human blood was found. The same will not render any assistance to appellant as all the witnesses have elaborately supported the prosecution case.

On perusal of cross-examination of Anand Rai (PW-10), it was found that a suggestion was given by accused/defence to him that the accused was not present in his village at the time of incident but he was at his in-laws' house in village Gehloi. As regards *plea of alibi*, it should be proved by defence evidence but during trial under Section 313 of CrPC the appellant/accused did not take this defence evidence. Even, no question was asked in this regard to any witness other than Investigating Officer. Therefore, the possibility of accused being at some other place at the time of incident or the incident being committed by some other person is proved to be completely baseless. Judgment passed by Hon'ble Apex Court in the matter of **State of Maharashtra Vs. Narsingrao Gangaram Pimple, (1984) 1 SCC 446** is worth relied on, wherein it has been held that it is well established that *plea of alibi* must be proved with certainty so as to completely exclude the possibility of presence of person concerned at the place of occurrence.

On going through the record of the trial Court as well as in view of the aforesaid decision of the Apex Court, it is clear that *plea of alibi* which has been taken by the appellant was not proved and possibility of his presence at

the place of occurrence cannot be excluded. Thus, this plea has no substance and hence, cannot be accepted.

In the alternative, learned Counsel for appellant submits that even if prosecution story is accepted in its entirety, it is assumed that appellant had no intention to cause death of the deceased, therefore, at the most, offence falls within the purview of Section 304 Part II IPC instead of Section 302 of IPC.

Before adverting to the above proposition, it would be appropriate to throw light on the interpretation of relevant provisions of Sections 299 and 300 of IPC in the light of judgment of Hon'ble Apex Court. In the case of **Arun Nivalaji More vs. State of Maharashtra, reported in (2006) 12 SCC 613**, the Hon'ble Supreme Court 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 300 IPC, 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."

In the above context, lets now see to Section 299 of Indian Penal Code which runs as under:-

> "**299. Culpable homicide** -- Whoever 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."

Thus, section 299 of IPC lays down culpable homicide as 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.

Section 300 of Indian Penal Code is also relevant in the present context, which 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."

Indian Penal Code 1860 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. Likewise, 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).

A bare perusal of the said Section makes it clear like a day light that the

first and the second clauses of the section 299 IPC refers 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.

Apart from that 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. 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 299 IPC 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 caused on the person of the deceased by the accused, the intention is to be gathered from all facts and circumstances of the case, like if injury is on the vital part, i.e., chest or head etc. and as per the medical evidence that injury had 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.

(9) Considering the aforesaid verdict of the Hon'ble Apex Court and provisions of Sections 299 and 300 of IPC as well as considering the nature of injury caused to the deceased, it was found that appellant had caused injury on the vital part of deceased i.e. neck by means of *axe* which is a sharp-edged object. Thus, the prosecution was within its four-corners thereby was able to prove the offence beyond reasonable doubt and as per medical evidence, the death of deceased was homicidal in nature which was caused by means of *axe* and ocular evidence is fully corroborated by medical evidence. Therefore, it is

crystal clear that the appellant intended to commit the murder of deceased-Suresh.

(10) After going through the entire facts and circumstances of the case and looking to the fact that the prosecution witnesses have fully supported the prosecution evidence and their evidence are duly supported or corroborated by medical evidence, the learned trial Court has not committed any error in convicting and sentencing the present appellant-accused for offence punishable under Section 302 of IPC.

(11) In view of above discussion, the impugned judgment of conviction and order of sentence dated 03-08-2015 passed by learned Sessions Judge, Shivpuri (MP) in Sessions Trial No.177 of 2014 deserves to be and is hereby **upheld.** This appeal being *sans* substratum, is hereby **dismissed.**

Let a copy of this judgment along with record be sent to the trial Court concerned for necessary information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

MKB