

IN THE HIGH COURT OF MADHYA PRADESH**AT GWALIOR****BEFORE****HON'BLE SHRI JUSTICE ANAND PATHAK****&****HON'BLE SHRI JUSTICE HIRDESH****ON THE 28th OF NOVEMBER, 2024****CRIMINAL APPEAL No. 344 of 2016*****JEETU AND ANOTHER****Versus****THE STATE OF MADHYA PRADESH*****Appearance:**

Shri R.K.Sharma- Learned Senior Counsel assisted by Shri Brajesh Tyagi, Shri Abhijeet Singh Tomar and Ms. Bhavya Sharma- learned Counsel for appellants.

Shri Pooran Kulshrestha- Learned Additional Advocate General for respondent/State.

Shri Prem Singh Bhadauria- Learned counsel for the complainant.

ORDER***Per:Justice Hirdesh :-***

Being dissatisfied with the judgment of conviction and order of sentence dated 10th of March, 2016 passed by Additional Sessions Judge, Lahar, Distinct Bhind (M.P.) in Sessions Trial No.192 of 2015 whereby, the appellants have been convicted under Section 302 of IPC and sentenced to undergo imprisonment for life with fine of Rs.25,000/- each, in default to suffer rigorous imprisonment for two years.

(2) Briefly stated, the prosecution case is that on 09.04.2015, 13th day ritual meals were being served in the house of one Rashik Bihari Kaurav in Village Bidra due to

sad demise of his brother Janak Singh. Uttam Singh Kaurav (since deceased) was sitting in the courtyard of one Sitaram. At that time, everyone was going to attend the said ritual meals. Accused-appellants Jeetu and Awadhesh started quarreling with the relatives of Rakesh Singh Kaurav. Uttam Singh intervened and asked appellants not to indulge in fight on which, accused Jeetu and Awadhesh hurled filthy abuses at him. Thereafter, Jeetu took out his country-made pistol and with an intention to kill, fired at Uttam Singh, hitting his right jaw, as a result of which, Uttam Singh fell down. It is also alleged that accused Awadhesh fired a gunshot on the right hand of Deendayal Kori, who was standing there. After causing gunshot fires, both accused fled away from the spot. Family members of Uttam Singh and Deendayal came on spot and brought Uttam Singh and Deendayal in a tractor to Alampur Police Station from where they were sent to Hospital. Uttam Singh were declared dead by the Doctor while Deendayal Kori was admitted in hospital.

(3) Rakesh Singh Kaurav (PW1), son of deceased Uttam Singh, came to Police Station and reported the incident about the death of deceased Uttam Singh. On the basis of which, Police Station Alampur recorded *Merg* No.04 of 2015 *vide* Ex.P2 u/S 174 of CrPC. FIR *vide* Ex.P1 in Crime No.26 of 2015 was registered for offence punishable under Sections 302, 307/34 of IPC. Matter was investigated. Spot map *vide* Ex.P1 was prepared. *Panchnama* of dead body of deceased was prepared, postmortem was conducted and MLC of injured Deendayal Kori was done. Relevant seizures were made. After completion of investigation and other formalities, police filed Final Report/charge-sheet before the competent Court of criminal jurisdiction.

(4) The Trial Court framed charges. Appellants abjured their guilt and pleaded complete innocence. During trial, prosecution in order to prove its case, examined as many as 15 witnesses. Accused, in order to lead their evidence, examined Manoj Kumar, Mangal Singh, Rashik Bihari Kaurav and Malkhan Singh Kaurav as DW-1

to DW-4.

(5) After conclusion of trial, appreciating the evidence and exhibited documents available on record, learned Trial Court convicted the appellants for commission of offence punishable under Section 302 of IPC and sentenced them accordingly with fine, as stated in Para 1 of this judgment.

(6) Challenging the impugned judgment of conviction and order of sentence, it is submitted on behalf of appellants that learned Trial Court has committed an error in passing the impugned judgment of conviction and order of sentence against the appellants. It is further contended that Deendayal Kori (PW3), who is alleged to be one of eye-witnesses of the incident, did not support the prosecution case.

(7) It is further contended that accused- Awadhesh did not cause any injury to deceased Uttam Singh and he had only caused a simple injury to Deendayal (PW-3) on right hand wrist joint, for which, he was not charged with offence under Section 307 of IPC and in alternative, he was acquitted of offence under Section 307 of IPC read with Section 34 of IPC.

(8) It is also contended that there was no per-concerted plan of accused and all of a sudden, the incident happened. Relying on the judgments of **Gudda & Anr. V. State of M.P. (2007) 3 MPWN 88, Lakshmi Chand & Another V. State of U.P.,AIR 2018 SC 3961, Ishwari Lal Yadav & Another vs. State of Chhattisgarh (2019) 10 SCC 423**, it is contended that although as per allegation of prosecution a specific over act is attributed against accused- Awadhesh for causing injury to Deendayal Kori, but his conviction under Section 302 of IPC simplicitor, is not sustainable in the eyes of law. Either he can be convicted under Section 302 of IPC or with the aid of Section 34 of IPC because the record proves that he was not in the

knowledge that accused Jeetu was having a country made pistol (*katta*) and would cause gunshot fire at deceased Uttam Singh, therefore, he cannot be convicted under Section 302 of IPC or with the aid of Section 34 of IPC.

(9) There was no previous enmity between accused and deceased and in a sudden impulse, accused Jeetu fired gunshot at deceased and he had no common intention to commit murder of deceased and he had fired only one gunshot not taking any undue advantage or acted in any cruel or unusual manner. Therefore, in view of Exception-IV of Section 300 of IPC, no offence under Section 302 of IPC is made out against appellants- accused. Relying on judgment of the Hon'ble Supreme Court in the cases of **Bunnilal Chaudhary Vs. State of Bihar AIR 2006 SC 2531**, **Vineet Kumar Chauhan Vs. State of U.P. AIR 2008 SC 780**, **Manjeet Singh Vs. State of H.P. (2014) 5 SCC 697**, it is contended that Doctor did not opine that the injury sustained by deceased was sufficient to cause death in the ordinary course of nature, therefore, ingredients do not constitute offence of "murder" and at the most, offence false within the category of Section 304 Part II of IPC i.e. "culpable homicide not amounting to murder". It is further contended that both the appellants have already undergone more than 9 years and seven months of jail sentence. On these grounds, it is prayed that the impugned judgment of conviction and order of sentence deserves to be set aside.

(10) On the other hand, Counsel for the State ably assisted Counsel for complainant supported the impugned judgment of conviction and order of sentence. It is submitted that ocular evidence of eye-witnesses are consistent in nature, as well discussed in Paragraphs 12 and 13 of impugned judgment by Trial Court. There was knowledge and common intention on the part of accused Jeetu in causing gunshot fire at deceased Uttam Singh from the point blank range on the spot. There being no infirmity in the impugned judgment of conviction and sentence and the findings

arrived at by the Trial Court do not require any interference by this Court. Hence, prayed for dismissal of this appeal.

(11) Heard counsel for parties at length and perused the record.

(12) The main questions for determination in this appeal are;

(i) Whether the death of deceased was the result of culpable homicide amounting to murder or not ?

(ii) Whether accused were sharing common intention in commission of murder of deceased or not ?

(13) Before advertng to the merits of case, it would be appropriate to throw light on the relevant provisions of Sections 299 and 300 of IPC.

(14) Section 299 of Indian Penal Code 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.”

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 is 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.

(15) In the case of **Arun Nivalaji More vs. State of Maharashtra (2006) 12 SCC 613**, 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 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."

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

“300. Murder-- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

Secondly-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--

Thirdly-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--

Fourthly-- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of

causing death or such injury as aforesaid.”

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

(18) Indian Penal Code recognizes 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 to murder (Section 304 of IPC).

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

(20) There are three species of *mens rea* in culpable homicide. (i) An intention to cause death; (ii) An intention to cause a dangerous injury; (iii) Knowledge that death is likely to happen.

(21) The fact that the death of a human being is caused is not enough unless one of the mental states 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, ingredients of Section 300 of IPC are also required to be fulfilled for commission of offence of murder.

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

(23) In the matter of **Anda vs. State of Rajasthan reported in 1966 CrLJ 171**, while considering “third” clause of Section 300 of IPC, it has been observed as under :-

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

(24) In the case of **Pulicherla Nagaraju @ Nagaraja vs. State of AP, reported in (2006) 11 SCC 444**, while deciding whether a case falls under Section 302 or 304 Part-I or 304 Part-II, IPC, the Hon'ble Apex Court has held as under:-

“Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part

II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

(25) The Hon'ble Apex Court in the case of **State of Rajasthan v. Kanhaiyalal** reported in **(2019) 5 SCC 639**, has held as under:-

“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.”

(26) Similarly, the Hon'ble Apex Court in the case of **Bunnilal Chaudhary vs. State of Bihar reported in AIR 2006 SC 2531** has held as under:-

"10. We have given our thoughtful and anxious consideration to the rival contentions of the learned counsel. The next question is what is the offence which is brought home to Bunnilal Chaudhary(A-1)? It is not in dispute that the injury inflicted on the left side of the chest of the deceased is single one. On examination, Dr. Vijay Kumar found the injury situated above nipple on the left side of the chest extending 1"x ½" penetrating wound. On dissection, left lung was found penetrated. Dr. Vijay Kumar has not opined that the injury was sufficient in the ordinary course of nature to cause death. That was not even stated to be likely to cause death. No attempt was made by Bunnilal Chaudhary to cause serious injury on any vital part of the body of the deceased. There was no motive or intention of Bunnilal Chaudhary to have murdered Shambhu Raut. Therefore, the question is whether the offence can be said to be covered by Clause (iii) of Section 300 of the IPC.

11. That Section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts:- the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found on the person of Shambhu Raut. But the second part, in our opinion, is not fulfilled because but for the fact that the injury caused had penetrated the lung, death might not have ensued. In other words, looking at the matter objectively, the injury, which Bunnilal Chaudhary intended to cause, did not include specifically the cutting of the left lungs but to wound Shambhu Raut in the neighbourhood of the nipple on left side of chest. Therefore, we are of the opinion that Clause (iii) of Section 300 does not cover the case. Inasmuch as death has been caused,

the matter must still come within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Bunnilal Chaudhary did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Bunnilal Chaudhary. The matter, therefore, comes within the third part. The Act which was done was done with the knowledge that Bunnilal Chaudhary was likely by such act to cause the death of Shambhu Raut. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 IPC as culpable homicide not amounting to murder.

12. We, accordingly, alter the conviction of Bunnilal Chaudhary from Section 302 to Section 304 Part-II, IPC and in lieu of the sentence of imprisonment for life imposed on him, we impose a sentence of rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- with default stipulation of two months simple imprisonment. Criminal Appeal No. 605/2005 preferred by Bunnilal Chaudhary(A-1) is partly allowed to the extent indicated above."

(27) In the instant case, Dr.V.R.Maurya (PW-11) in his statement deposed that on 10th of April, 2015, he was posted as Medical Officer in Community Health Centre, Lahar District Bhind. He conducted postmortem of deceased Uttam Singh. As per his opinion, the death of deceased was due to shock caused by excessive bleeding and failure of respiratory tract due to 313 bore gunshot injury. Death of deceased was within 24 hours of postmortem examination. Death of deceased was homicidal in nature. Postmortem report is Ex.P11. Dr.Maurya, in Para No.2 of his cross-examination, deposed that it is correct to say that sharp-cutting wound cannot

be caused by bullet. The distance from which deceased was shot should be more than 9 feet and if deceased was injured by a bullet, then its distance could be 20-25 feet. Looking to the injuries sustained by deceased, cannot say what was the angle of bullet and whether deceased was shot from front side or back nor can he tell direction of bullet from which side bullet hit the deceased. Dr. Maurya in Para 3 of his cross-examination admitted that there was wound on the jaw of deceased.

(28) Dr.Kashinath (PW8) in his evidence deposed that on 9th of April, 2015, he was posted as Medical Officer in Primary Health Centre, Alampur. He had conducted medico-legal examination of injured Deendayal Kori *vide* MLC report Ex.P9. As per his opinion, injured Deendayal Kori had sustained gunshot extensive lacerated wound blackening margin of skin and excessive bleeding on right hand wrist joint, caused by firearm gunshot. This witness in Para 2 of his cross-examination admitted that he did not mention nature of injury that was fatal to the injured or simple in nature. Further, this witness in his cross-examination admitted that injury sustained by injured was not on any vital part of his body or life-threatening.

It is apparent from the evidence of Dr. Maurya that cause of death of deceased was homicidal in nature. It is also evident from evidence of Dr. Kashinath that the injury sustained by injured Deendayal Kori is simple in nature and was not on vital part of his body.

(29) Rakesh Singh Kaurav (PW-1) is the son of deceased Uttam Singh as well as is alleged to be an important eye-witness of the incident. In Para-1 of his examination-in-chief, he deposed that on the date of incident i.e. 9th of April, 2015 he had gone to Village Bidra to attend 13th day ritual meals. He was accompanied by Bhagwan Singh, Awadh Kishore Kaurav and Vikas Kaurav. His father Uttam Singh was sitting on the platform. Accused were quarreling with their relatives. When his

father tried to intervene, both accused hurled abuses at his father. Accused Jeetu took out his country-made pistol (*katta*) and fired a bullet with intention to kill his father. Bullet hit his father on the right side of jaw as a result of which his father fell down.

(30) Thereafter, accused Awadhesh fired another bullet which hit Deendayal Kori on his right hand, who was standing near his father. Then, both accused fled away from the spot. His father and Deendayal were lying there. When he looked around, there was no one there. He went to his house and brought a tractor. He along-with Bhagwan Singh, Awadh Kishore Kaurav and Vikas Singh, all together put his father Uttam Singh and Deendayal in a tractor to Alampur Hospital where doctor declared his father dead. Deendayal was admitted in hospital. Thereafter, he went to police station and gave information regarding death of his father Uttam Singh.

(31) The version of this witness is also supported by other witnesses, namely, Bhagwan Singh (PW2), Awadh Kishore (PW-4) and Vikas Singh Kaurav (PW-7) in their evidence. Vikas Singh Kaurav (PW-6) in Para 10 of his cross-examination although deposed that he did not know that Uttam was shot and when second bullet hit Deendayal Kori, a boy standing there said that Uttam was shot and thereafter, he came to know that Uttam was shot but this witness in Para 13 admitted that the shot was fired in front of him and his evidence is supported to the version of above eye-witnesses. Rakesh Singh Kaurav (P.W.1) in Para 17 also denied that accused-appellants have caused death of his father Uttam Singh because of the fact that a case under Section 307 of IPC was going on against his father, uncle Bhagwan Singh and maternal uncle Awadh Kishore.

(32) Deendayal Kori (PW-3) is the injured as well as is alleged to be one of eye-witnesses of incident, in Para-1 of his examination-in-chief, deposed that although

he had seen both accused- appellants at the place of occurrence, but he could not see who had caused fired at his right arm. He do not know who took him to Alampur Hospital because he was fallen due to unconsciousness. Police did not take any statement regarding the incident. This witness further deposed that Uttam Singh had also accompanied him to the hospital to whom Doctor declared dead. This witness in Para 5 of his cross-examination further deposed that accused did not have any quarrel with anyone in his presence. No one was standing near him. When he heard bullet sound being fired, he came to know that bullet had been fired and before that, he was not aware of incident. Further, this witness deposed that after 5-10 minutes, people came at spot and informed that Uttam Singh was shot.

(33) From the evidence of witness Deendayal Kori (PW3), there appears some contradictions and omissions in his evidence as he did not fully support prosecution version. Although he is alleged to be one of eye-witnesses of the incident subjected to medical examination, but opinion of Dr. Kashinath (PW-8) shows that no vital injury was sustained by injured Deendayal Kori on his body. On going through the medical evidence as well as the evidence of witnesses, it appears that accused Awadhesh was not having any knowledge that accused Jeetu was having a country-made pistol (*Katta*) and would cause gunshot fire at Uttam Singh, resulting into his death. There is no specific overt act attributed against accused Awadhesh for causing injury to deceased for which, the trial Court has already been acquitted him of charge under Section 307 and in the alternative, Section 307 read with Section 34 of IPC. The record does not show that there was any intention of accused Awadhesh to commit murder of deceased Uttam Singh and in absence of any evidence of common intention, he is entitled to be acquitted of charge under Section 302 of IPC.

(34) Accordingly, criminal appeal so far as it relates to accused- Awadhesh is **allowed** and the impugned judgment of conviction and order of sentence dated

10.03.2016 passed by Additional Sessions Judge, Lahar, Distinct Bhind (M.P.) in Sessions Trial No.192/2015 is **set aside**. Since accused Awadhesh is reported to be on bail and his jail sentence has already been suspended by coordinate Bench of this Court *vide* order dated 20th of September 2019, therefore, his bail bonds and surety bonds stand **discharged**.

(35) Reverting to the factual matrix in hand, as noted above, it stands proved that there being a direct causal connection between hitting of bullet on the jaw of deceased Uttam Singh fired by accused- Jeetu resulting into his death. However, having regard to the facts and circumstances of the case, briefly enumerated above, particularly manner in which accused Jeetu fired gunshot, in our view, he could not be attributed *mens rea* requisite for bringing the case under Clause (3) of Section 300 of IPC. Admittedly, there was no enmity between the parties and there is no allegation that before the date of occurrence, there was any premeditation or pre-concerted plan. A sudden quarrel took place between both the accused with the relatives of one Rakesh Singh Kaurav upon which, deceased Uttam Singh tried to intervene, on account of hurling abusive languages, accused- Jeetu took out his country-made pistol (*Katta*) and started firing, which caused injury to deceased Uttam Singh on his right jaw. In fact, accused Jeetu did not engage initially and directly with deceased. When deceased intervened in the quarrel, then only Jeetu gave his attention over deceased. At the most, it cannot be said that he had knowledge that use of such country-made pistol (*katta*) is likely to cause death of deceased Uttam Singh and as such, offence would fall within the third Clause of Section 299 of IPC. In the considered opinion of this Court, offence committed by accused Jeetu was only culpable homicide not amounting to murder.

(36) The evidence available on record indicates that case of accused Jeetu falls within the offence punishable under Section 304 Part II of the IPC. Therefore, this

Court instead of convicting accused Jeetu under Section 302 of the IPC, this Court finds it apposite to convict him under Section 304 Part II of the IPC. As regard sentence, accused Jeetu has already suffered sentence of nine years and seven months, therefore, it would be sufficient to impose sentence on accused- Jeetu as already undergone by him i.e. nine years and seven months by maintaining the fine amount of Rs.25,000/- awarded by learned Trial Court and in default of payment of fine, a further rigorous imprisonment of six months.

(37) Accordingly, criminal appeal so far as it relates to accused- Jeetu stands **allowed in part** by setting aside the impugned judgment of conviction and order of sentence dated 10.03.2016 passed by Additional Sessions Judge, Lahar, District Bhind (M.P.) in Sessions Trial No.192/2015 for commission of offence under Section 302 of IPC and instead, he is convicted under Section 304 Part II of IPC and sentenced to the period already undergone by him i.e. nine years seven months. The fine amount of Rs.25,000/- as awarded by Trial Court stands maintained. In default of payment of fine, accused Jeetu shall have to undergo further rigorous imprisonment of six months. **Accused- Jeetu** is reported to be in jail. Concerned Jail Authority is directed to release accused- Jeetu immediately.

(38) A copy of this judgment along-with record be sent to concerned Trial Court for necessary information, so also a copy of this judgment be forwarded to concerned Jail Authority for information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE