IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 10th OF FEBRUARY, 2026

CRIMINAL APPEAL No. 7834 of 2022

RAVI VALMIK

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Hemant Singh Rana- learned Counsel for appellant.

Shri Rajesh Kumar Shukla- learned Additional Advocate General for respondent-State.

ORDER

Per Justice Hirdesh:

Instead of hearing on **IA No.3062 of 2026,** the third application filed on behalf of appellant- Ravi Valmik for suspension of jail sentence and grant of bail, with the consent of parties, this appeal is heard finally.

2. The instant criminal appeal under Section 372(2) of CrPC has been filed by appellant- Ravi Valmik, against the judgment of conviction and order of sentence dated 21-07-2022 passed by Fourth Additional Sessions Judge, Bhind (hereinafter it would be referred to as "the trial Court") in Sessions Trial No.66 of 2018 whereby, the appellant has been convicted under Section 302 of IPC and sentenced to undergo Life Imprisonment with a fine of Rs.5,000/-; with default stipulation.

3. Prosecution story, in brief, is that on 04.11.2017, Police Post In-charge, Ramkumar Bhagat, at Police Post Machhand, Police Station Raun, District Bhind, received an information regarding burning of a woman, namely, Sushma Valmik in Village Laraul. ASI Ramprakash Parmar was sent to said village and enquired from villagers and specifically from those in *Valmik Mohalla* about the incident. It was found that Sushma had been burned before Diwali. Members of Sushma's maternal side arrived and admitted her in a burnt condition to Burn Unit of a hospital in Gwalior. Sushma was brought by a Dial 100 vehicle to the hospital for treatment. On 05.11.2017, Sushma was admitted to JA Hospital, Gwalior. On 06.11.2017, her Dying Declaration (Exhibit P7) was recorded by Executive Magistrate. In her Dying Declaration, Sushma deposed that on the date of incident, she was scolded by her husband Ravi (present appellant), mother-in-law Rambeti, and sister-in-law Meena for not collecting wood. Sushma deposed that Ravi poured diesel on her and set her on fire, while Rambeti and Meena instigated him to do so.

4. An investigation was conducted. On 23.11.2017, ASI Ramprakash Parmar recorded the statement of brother of Sushma- Majeet Singh, and the information was recorded in *Roznamcha Sanha* No. 59. On the basis of evidence collected and Dying Declaration, an FIR was registered under Section 307 read with Section 34 of IPC at Raun Police Station, vide Crime No.285/2017 on 23.11.2017. During investigation, it was found that on the basis of scolding and instigation, accused Ravi doused Sushma with diesel and set her on fire. Police prepared a spot map and collected various items

from the scene of occurrence, including burnt hair, half-burnt pieces of a saree, and pieces of plastic. Additionally, matches and a plastic bottle containing remnants of diesel were found at the scene of occurrence. A *panchnama* (Exhibit P8) was prepared. On 26.11.2017, Sushma died in hospital due to complications from her burns. The death was reported to Police Station Kampoo, Gwalior, at 6:00 AM, and a merg No.0706/2017 under Section 174 CrPC was recorded at Police Station Kampoo. An inquest was conducted and a Safina form (Exhibit P-7A) was issued on 27.11.2017. The postmortem examination was carried out on the body of deceased at JA Hospital, Gwalior, and a sealed packet containing clothes, viscera, and salt was seized vide Exhibit P15. Thereafter, offence under Section 302 IPC was enhanced.

5. On 27.11.2017, police arrested appellant accused Ravi Valmik, vide arrest memo (Exhibit P9). The police recorded statements of witnesses Santosh and Dinesh on 05.01.2018, who confirmed seeing the victim in a burnt state but did not provide direct evidence how the incident occurred. A seizure panchnama (Exhibit P-6) was prepared on 10.01.2018 after deceased's clothes and viscera were sent for forensic examination. After examining viscera and other physical evidence, a report was sent to Forensic Science Laboratory (FSL). The investigation concluded that the cause of death was consistent with severe burns resulting from being set on fire. On 15.03.2018, charge-sheet was filed in the Court of Judicial Magistrate First Class, Lahar, District Bhind, against accused Ravi Valmik under Section 302 read with Section 34 IPC. The charge sheet showed co-accused Rambeti and

Meena as absconding. On 28.03.2018, the case was committed to Sessions Court for trial. During trial, co-accused Rambeti and Meena were arrested. After completion of investigation, a supplementary charge sheet was filed on 26.09.2018 in the Court of Judicial Magistrate First Class, Lahar. This supplementary charge sheet was also transferred to the Sessions Court.

6. On 15.05.2018, charges were framed against appellant- accused Ravi under Section 302 IPC, and on 23.04.2019, charges were framed against co-accused Rambeti and Meena for offence under Section 302 read with Section 34 IPC. The charges were read out and explained to accused, who denied committing the crime and sought acquittal. During the trial, Ravi and co-accused denied the charges and stated that the victim had set herself on fire due to family dispute. Ravi and other co-accused pleaded that they were falsely implicated and argued that the victim was known to get angry easily, and it was possible that she committed suicide by setting herself on fire. Accused Ravi also pleaded that if he had intended to kill her, he would not have tried to douse the fire by pouring water on her. In defence, co-accused Meena recorded her own statement as DW1 and appellant- accused Ravindra Singh as DW2 in the Court, asserting that they had been falsely implicated. The prosecution, in order to support its evidence, examined as many as 17 witnesses. The trial Court, on the basis of evidence available on record, by acquitting co-accused Rambai alias Rambeti and Meena of charges levelled against them under Section 302 read with Section 34 of IPC, convicted present -appellant Ravi Valmik, vide the impugned judgment under Section 302 IPC for murder of his wife - Sushma, and sentenced him

to Life Imprisonment with fine, as stated above.

7. It is contended on behalf of appellant that the impugned judgment of conviction and the order of sentence passed by the trial court are contrary to law, perverse, and against the evidence available on record. The prosecution has failed to establish the appellant's guilt beyond a reasonable doubt, relying instead on suspicion, conjecture, and a flawed appreciation of circumstantial evidence. The testimonies of prosecution witnesses, specifically PW-1 Santosh Kumar and PW-3 Dinesh, are highly inconsistent, contradictory, and unreliable. Both witnesses explicitly admitted that they did not witness the actual incident and only saw the deceased in a burnt condition after the fire had started. Their testimonies, therefore, cannot be used to attribute criminal liability to the appellant. These witnesses were declared hostile, rendering their statements incapable of forming the sole basis for conviction under Section 302 of the IPC. There are also stark contradictions within the medical evidence regarding the cause of death of the deceased. Dr. Hiralal Manjhi (PW-13) opined that the exact cause of death could only be determined based on other surrounding evidence, rather than solely by autopsy. Another medical opinion attributed the death to cardio-respiratory failure due to burn wounds. The trial Court failed to address these contradictions, which is fatal to the prosecution's case. The testimony of PW-4 Manjeet, the brother of the deceased, indicates that the appellant attempted to douse the fire by pouring water on the deceased immediately after she caught fire. This conduct is absolutely inconsistent with a murderous intent. Furthermore, Manjeet (PW-4) admitted that there

had been no prior complaints of harassment or abuse against the appellant, and that his sister, the deceased Sushma, was short-tempered. This strongly suggests that the injuries may have been self-inflicted in a fit of rage, rather than being the result of a premeditated murder by the appellant.

8. It is further contended that the unexplained delay of nearly a month in registering the FIR casts doubt over the genuineness of the prosecution's story. In the alternative, it is submitted that even if the prosecution's version is taken at face value, a conviction under Section 302 of the IPC is unsustainable. The evidence clearly indicates that the incident was the result of a sudden domestic quarrel and altercation, committed without premeditation and in the heat of passion. The appellant did not take undue advantage, nor did he act in a cruel manner, as evidenced by his efforts to extinguish the fire.

9. It is also contended that even if the prosecution's allegations are accepted in their entirety, the appellant's act falls squarely within the ambit of Exception 4 to Section 300 of the IPC, and at most, the offence, if any, would be made out under either Part I or Part II of Section 304 of IPC. Therefore, the conviction deserves to be modified, and the sentence should be reduced accordingly.

10. On the other hand, learned counsel for the respondent, supporting the impugned judgment of conviction and the order of sentence, submitted that the conviction of the appellant recorded by the trial court is based on solid evidence, including the victim’s dying declaration, the testimony of

witnesses, and the medical report, all of which implicate the appellant. The delay in filing the FIR and minor contradictions in witness statements do not weaken the prosecution's case. It is further submitted that no leniency should be shown by converting the offence to one under Section 304, either Part I or Part II of the IPC, considering the nature of the offence and the manner in which it was allegedly committed by the appellant. Hence, the counsel prayed for the dismissal of this appeal.

11. We have heard learned Counsel for the parties and perused the record.

12. The first question for determination is whether death of deceased-Sushma was caused by burn injuries or not?

13. According to the statement of Manjeet Singh (PW4), Sushma's brother, he was informed over the phone by his father-in-law about Sushma's burns. Upon receiving the information, Manjeet, along with his four brothers, went to Sushma’s in-laws' house in Laraul, where they found her in a severely burnt condition. Manjeet immediately contacted emergency services by dialing 100 and arranged for a Government vehicle to take her to Bhind Hospital, from where she was transferred to JA Hospital, Gwalior. Despite medical intervention, Sushma succumbed to her injuries after a month of treatment. The statements of other witnesses corroborate Manjeet's account. Ajit (PW5) deposed that he had accompanied Manjeet to the site and Sushma was found in a burnt condition. Similarly, Santosh Kumar (PW1) and Dinesh (PW2) also deposed that they saw Sushma with burns.

14. Dr. Pravesh Sharma (PW17), posted at JA Hospital, Gwalior, stated that Sushma was admitted on 6th November 2017 in a burnt condition. He found her unconscious at the time of admission but capable of making a statement.

15. Dying declaration of Sushma was recorded in the presence of Executive Magistrate, which was crucial in confirming the nature of injuries sustained. According to Ravinandan Tiwari (PW.8), the Executive Magistrate, the Dying declaration of Sushma was recorded on the same day, which corroborated the presence of burn injuries on her body.

16. Ramkumar Bhagat (PW.12), Sub-Inspector at Machhand Police Post, deposed that on 23rd November 2017, a spot inspection was conducted, and items such as half-burnt hair, pieces of a burnt saree, matchsticks, and a piece of cloth smelling of diesel were seized from backyard of house where the incident occurred. The FSL report (Exhibit C-2) confirmed presence of traces of diesel on burnt saree, suggesting that fire may have been caused using a flammable substance. This seizure and forensic report provide significant evidence linking the injuries to burns.

17. Dr. Hiralal Manjhi (PW.13), who conducted autopsy, stated that upon examining the body, he found second and third-degree burns on the chest, abdomen, neck, and back, indicating extensive burn injuries. The autopsy report (Exhibit P13) confirmed that the cause of death was cardiac and respiratory failure due to infected burn wounds and resulting deformities. The injuries were categorized as infected second and third-degree burns,

which ultimately led to Sushma's death. The report further indicated that the injuries were sustained several hours before death, corroborating the time-frame of the incident. Further, items such as a sealed bundle of deceased's clothes, viscera samples, and other materials for chemical analysis, were seized as part of investigation. The Dying Declaration recorded by Executive Magistrate on 6th November 2017 (Exhibit P7) and First Information Report (Exhibit P-11) clearly indicate that Sushma's death was caused by burn injuries. The involvement of a flammable substance like diesel and extensive burn injuries observed during postmortem examination further support the theory that the death of deceased Sushma was caused by burning.

18. On the basis of aforesaid evidence including witnesses testimonies, medical and forensic reports, and postmortem examination, it is clear that the cause of death of deceased was due to burn injuries.

19. The moot question is whether death of Sushma was caused by appellant or not ?

20. The present case is based on Dying Declaration.

21. A dying declaration is an important piece of evidence under Section 32 of Indian Evidence Act, 1872. This provision allows for the admission of a statement made by a person who is dead regarding cause of death or the circumstances leading to it, provided he or she was conscious and capable of making his or her statement. The rationale behind this rule is that a person in the face of death is unlikely to lie. The dying declaration must pass the test of reliability, and if it is trustworthy, it can be treated as

evidence even in the absence of other corroborative proof.

22. The Hon'ble Apex Court in the matter of **Naeem Vs. State of U.P. 2024 SCC Online SC 237** has laid down certain factors to be taken into consideration while resting the conviction of the accused on the basis of Dying Declaration as under:-

> "**22.**(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
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> (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
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> (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
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> (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
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> (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
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> (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
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> (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
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> (viii) Even if it is a brief statement, it is not to be discarded.
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> (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
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> (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

23. Ravinandan Tiwari (PW-8), Executive Magistrate, recorded the dying declaration of deceased- Sushma vide Exhibit P7 at JA Hospital, Gwalior, on 6th of November, 2017, after she was admitted with burn

injuries. In her statement, Sushma accused her husband- appellant Ravi of setting her on fire after an argument. This witness signed parts A to A of declaration, while deceased Sushma's thumb impression was placed on parts "B to B", and Dr. Pravesh Sharma (PW17) added a note on parts "C to C". This witness further deposed that on 27th of November, he had also prepared panchayatnama after Sushma's death, confirming that she died due to burns and recommending a postmortem. During cross-examination, he confirmed that statement was read to Sushma, her thumb impression was taken by doctor, and there was no mention of dispute's details in declaration. He denied claims that Sushma couldn't give a thumb impression or that her statement wasn't read out to her.

24. Deceased in her Dying Declaration (Ex.P7) deposed that " घटना लगभग 8-9 सितंबर की है, घर में मेरे और मेरे पति के बीच सुबह करीब 8 बजे विवाद हुआ। विवाद में मेरे पति ने मुझ पर प्लास्टिक की कट्टी से डीजल छिड़क दिया और कहा कि आज मैं तुझे जलाकर जेल चला जाऊँगा।

25. So, in the light of provisions of Dying Declaration, so also in the light of decision of Hon'ble Apex Court in the case of **Naeem (supra),** the Dying Declaration of deceased recorded by Executive Magistrate vide Ex.P7 is reliable and credible. It is found proved that death of deceased was caused due to pouring diesel by her husband appellant and setting her on fire.

26. On the basis of dying declaration Ex.P8 and witnesses testimonies, it is clear that Ravi's actions were reckless, but not premeditated. He poured diesel on Sushma and set her on fire, knowing that such actions could cause

serious harm or death, but without the specific intention to kill her. The fact that Ravi immediately poured water on his wife Sushma to extinguish the flames further indicates a lack of "murderous intent." However, he certainly possessed the "knowledge" that his actions would likely result in death.

27. Another question for determination is whether **appellant's action constitutes murder under Section 302 IPC or culpable homicide not amounting to murder under Section 304 Part II IPC or not?**

28. Section 302 of Indian Penal Code (IPC) defines murder as the intentional killing of a person, either with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death. For a conviction under Section 302, there must be premeditation or intent to kill.

29. Section 304 Part II IPC deals with culpable homicide not amounting to murder. This Section applies when a person causes death without premeditation but with the knowledge that the action is likely to cause death or serious harm. In this case, the act does not require an intent to kill but involves recklessness and a disregard for the likelihood of causing death.

30. Provisions of Section 300, Exception 4 of IPC reads as under:-

> **"Exception 4**: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken

undue advantage or acted in a cruel or unusual manner. For an offence to be downgraded from Section 302 to Section 304, four requirements must be satisfied:

(i) The act was committed during a sudden fight.
(ii) There was no premeditation.
(iii) The act was done in the heat of passion.
(iv) The assailant did not take undue advantage or act in a cruel or unusual manner.

Furthermore, Section 304 is divided into two parts:-

Part I: If the act is done with the intention of causing death or such bodily injury as is likely to cause death.

Part II: If the act is done with the knowledge that it is likely to cause death, but without any intention to cause death."

31. The Hon'ble Supreme Court has held in **Gurpal Singh v. State of Punjab, AIR 2017 SC 471. Para 10** of the judgment reads thus: -

> "10. However, in the singular facts of the case and noticing in particular, the progression of events culminating in the tragic incident, we are inclined to reduce the sentence awarded to him. Incidentally, the occurrence is of the year 2004 and meanwhile twelve years have elapsed. Further, having regard to the root cause of the incident and the events that sequentially unfolded thereafter, we are of the comprehension that the appellant was overpowered by an uncontrollable fit of anger so much so that he was deprived of his power of self-control and being drawn in a web of action reflexes, fired at the deceased and the injured, who were within his sight. The facts do not commend to conclude that the appellant had the intention of eliminating any one of those fired at, though he had the knowledge of the likely fatal consequences thereof. Be that as it may, on an overall consideration of the fact situation and also the time lag in between, we are of the view that the conviction of the appellant ought to be moderated to one under Sections 304 Part 1 IPC and 307 IPC. Further, considering the facts of the case in particular, according to us, it would meet the ends of justice, if the sentence for the offences is reduced to the period already undergone. We order accordingly."

32. The Hon'ble Supreme Court in the case of **Arjun & Another v.**

The State of Chhattisgarh AIR 2017 SC 1150 held as under: -

> "20. To invoke this exception (4), the requirements that are to be fulfilled have been laid down by this Court in **Surinder Kumar v. Union Territory of Chandigarh (1989) 2 SCC 217 : (AIR 1989 SC 1094, Para 6)**, it has been explained as under:-
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> "7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly...."

33. Further in the case of **Arumugam v. State, Represented by Inspector of Police, Tamil Nadu, (2008) 15 SCC 590** in support of the proposition of law that under what circumstances exception (4) to Section 300 IPC can be invoked if death is caused, it has been explained as under:

> " 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 Penal Code, 1860. 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 had 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'."

34. The Hon'ble Supreme Court has laid down in **Prabhakar Vithal Gholve v. State of Maharashtra, AIR 2016 SC 2292** that if the assault on deceased could be said to be on account of the sudden fight without premeditation, in heat of passion and upon a sudden quarrel, Conviction of the appellant cannot be sustained under Section 302 of IPC and altered to one under Section 304 Part-I of IPC.

35. In **Sikandar Ali v. State of Maharashtra, AIR 2017 SC 2614,** the Court altered the conviction under Section 302 IPC to one under Section 304 Part II IPC in the following circumstances: -

> "7. We have no doubt about the complicity of all the accused in the homicide of Sarfraj. A-1 attacked the deceased with the knife and caused injury on his neck which resulted in his death. The other accused assisted him in committing the crime by holding the hands of the deceased. However, the only question that falls for our consideration is whether the accused are liable to be punished for an offence under Section 302 IPC. After considering the submissions made by the counsel for the Appellants and scrutinising the material on record, we are of the opinion that the accused are not liable to be convicted under Section 302 IPC. We are convinced that there was neither prior concert nor common intention to commit a murder. During the course of their business activity the accused reached the dhaba where the deceased was present. An altercation took place during the discussion they were having behind the dhaba. That led to a sudden fight during which A-1 attacked the deceased with a knife. Exception 4 to Section 300 is applicable to the facts of this case. As we are convinced that the accused are responsible for the death of Sarfraj, we are of the opinion that they are liable for conviction under Section 304 part II of the IPC. We are informed that A- 1 has undergone a sentence of seven years and that A-2 to A-4 have undergone four years of imprisonment. We modify the judgment of the High Court converting the conviction of the accused from Section 302 to Section 304 part II of the IPC sentencing them to the period already undergone. They shall be released forthwith."

36. In the case of **Premchand v. The State of Maharashtra (Criminal Appeal No. 211 of 2023) 2023 (2) S.C.R. 119,** the Apex Court has recently held, as under :-

> "24. Exception 4 to section 300, IPC ordains that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. The explanation thereto clarifies that it is immaterial in such cases which party offers the provocation or commits the first assault. Four requirements must be satisfied to invoke this exception, viz. (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel or unusual manner.
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> 25. Taking an overall view of the matter, we are inclined to the opinion that the appellant was entitled to the benefit of Exception 4 to section 300, IPC."

37. The Hon'ble Apex Court laid down in **Madhavan & Others v. State of Tamil Nadu AIR 2017 SC 3847** that: -

> "8. Notably, the High Court has not considered the issue of quantum of sentence at all, but mechanically proceeded to affirm the sentence awarded by the Trial Court. From the factual position, which has emerged from the record, it is noticed that there was a preexisting property dispute between the two families. The incident in question happened all of a sudden without any premeditation after PW1 questioned the appellants about their behaviour. It was a free fight between the two family members. Both sides suffered injuries during the altercation. The fatal injury caused to Periyasamy was by the use of thadi (wooden log) which was easily available on the spot. The appellants, on their own, immediately reported the matter to the local police alleging that the complainant party was the aggressor. No antecedent or involvement in any other criminal case has been reported against the appellants. Taking oral view of the matter, therefore, we find force in the argument of the appellants that the quantum of sentence is excessive."

38. In **Chand Khan v. The State of Madhya Pradesh, 2006 (3) M.P.L.J. 549,** the Division Bench of this Court has also converted the conviction of

the appellant in attaining facts and circumstances of the case. Para – 10 & 11 of the judgment are relevant which read thus: -

> "10. If the present case is considered in the light of the aforesaid decisions of the Supreme Court, it would show that the appellants caused single injury on the head of the deceased by farsa, which is a sharp edged weapon, but unfortunately Aziz Khan (PW-11) and Ishaq Khan (PW-13) have stated that he gave lathi blow on the head of the deceased. Even after considering this contradictory evidence it has to be taken into consideration that it is a case of single farsa blow inflicted by only appellant Chandkhan and appellant Naseem inflicted only lathi blow on the nonvital part of the body and in the absence of this evidence that the injury no.(i) was sufficient to cause death in the ordinary course of nature and also looking to the various other circumstances like that the accused as well as the deceased are close relatives and the deceased was a person of criminal background and the incident started because of the abuses made first by the deceased himself, we find that the case will not fall within the purview of section 300, Indian Penal Code but it will fall under section 304 Part II, culpable homicide not amounting to murder. 11. Consequently, appeal is partly allowed. Conviction of appellants under section 302/34 Indian Penal Code, is set aside and instead they are convicted under section 304 part II, Indian Penal Code, ...…"

39. In the case of **Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770,** the Supreme Court of India has held as under:-

> "10. On behalf of the appellant it was contended that the appellant's case fell within Exception 4 to Section 300 IPC which reads as under:-
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> Exception 4.Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.
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> 11. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons:
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> 11.1. Firstly, because even according to the prosecution version,

there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their jaggery crop in their field at around 10 p.m. when their dog started barking at the appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head.

11.2. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation to deprive him of the benefit of Exception 4.

11.3. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 IPC."

40. After thorough evaluation of facts and circumstances of case, and the available evidence, including Dying Declaration (Ex.P7), this Court concludes that the incident was the unfortunate result of a sudden domestic argument. There is no evidence of prior hatred or premeditated intent to kill. The appellant was overwhelmed by a fit of anger, which caused him to lose self-control. Consequently, the conviction for murder under Section 302 of IPC cannot stand. The appellant’s actions are appropriately classified as "culpable homicide not amounting to murder under Section 304 Part II of the

IPC", as they were reckless and lacked any intention to kill. The Dying Declaration, corroborated by other evidence, confirms Ravi's reckless conduct.

41. Therefore, in light of the aforementioned judgments, the charge against appellant- accused Ravi is modified from murder to culpable homicide. Accordingly, the instant criminal appeal is **partly allowed**. The Trial Court's findings are revised to reflect a conviction under Section 304 Part II of IPC instead of Section 302 of IPC. The sentence of Life Imprisonment is reduced to Ten Years of rigorous imprisonment. The fine imposed by learned Trial Court remains unchanged. The appellant shall be released if he has completed ten years' jail sentence (including remission), has paid the fine, and is not required to remain incarcerated for any other case.

42. A copy of this judgment, along with record, be sent back to Trial Court and a copy of this judgment be sent to relevant jail authorities for information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

MKB