

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**DIVISION BENCH : HON'BLE SHRI JUSTICE S. C. SHARMA &
HON'BLE SHRI JUSTICE SHAILENDRA SHUKLA, JJ.****CRIMINAL APPEAL No.484/2007**

1. Shaitanbai W/o Gangaram Kumhar
Age: 45 years, Occupation - Housewife
2. Jagdish S/o Gangaram Kumhar
Age: 25 years, Occupation Agriculturist
Both R/o Village Mohan Barodia
Police Station- Mohan Barodia, District Shajapur

.....Appellants

Vs.

State of Madhya Pradesh
Through Police Station- Mohan Barodia
District Shajapur (M.P.)

.....Respondent

Present :-

Ms. Geetanjali Chourasia, learned counsel for the appellants.

Shri Abhishek Tugnawat, learned Public Prosecutor for the
respondent – State.

J U D G E M E N T

(Delivered at Indore on this 7th day of July, 2020)

Per Shailendra Shukla, J.

The present appeal under Section 374 of the Cr.P.C. has been filed against the judgement of conviction and sentence pronounced by the Sessions Judge, Shajapur in S.T. No.10/2006 vide judgement dated 28.12.2006, whereby each of the appellants have been convicted and sentenced as under :-

S. No.	Conviction under Section	Sentence		
		Imprisonment	Fine Amount	Imprisonment in lieu of fine
1	302/34 of IPC	Life imprisonment	Rs.1,000/-	3 months RI
2	450/34 of IPC	3 years RI	Rs.500/-	1 month RI

2. The prosecution story in short was that on 27.11.2005, Sub-Inspector A. K. Singh (PW-11) of Police Station Barodia, District Shajapur received a telephonic message from Kumer Singh, Sarpanch of Village Lasudiya-Jagmal that a murder had been committed in the village. A. K. Singh (PW-11) arrived at the spot. The witness Jaikunwarbai (PW-9), who is daughter of the deceased Tejubai and who was a married lady, narrated the incident to him and as per her statements on the morning of 27.11.2005, appellant Shaitanbai who lives in neighbourhood and who is aunt of Jaikunwarbai came rushing to the house of Jaikunwarbai who was sitting with her mother Tejubai. Shaitanbai started abusing Tejubai saying that son of Tejubai namely, Mohan had quarrelled with Radheshyam, son of Shaitanbai. At that moment, Jagdish, another son of Shaitanbai also came and started using filthy and abusive language. Tejubai told them not to abuse but Shaitanbai wielding sharp edged weapon daranta and Jagdish wielding a knife entered the house of Tejubai. Shaitanbai inflicted daranta blow on the chest of Tejubai, who started bleeding and fell on the floor. Babitabai, daughter of Tejubai then came to rescue but Jagdish stabbed Babitabai with knife and Babitabai also fell upon Tejubai. Then both mother and son duo lunged forward to attack Jaikunwarbai but she fled from her house and then both the assailants also went away. The information of the incident was given to Mohan, brother of Jaikunwarbai who was working in the field. Mohan came to spot and immediately went to inform Kumer Singh, Sarpanch who in turn made

telephone call to Sub-Inspector A. K. Singh.

3. The Sub-Inspector, after recording Dehati Nalishi, drew Panchnama, spot-map and recorded statements of the witnesses and arrested both the assailants/appellants and on the basis of their memorandum, seized daranta from Shaitanbai and a knife from Jagdish. The blood stained soil was collected from the spot and blood stained clothes of the appellants were also seized. Both these items were sent to FSL. However, FSL report could not be obtained till the conclusion of the trial and pronouncement of judgement.

4. After investigation, charge-sheet was filed and the Trial Court read over the charges under Sections 302/34 and 450/34 of IPC to the appellants. Both of them abjured their guilt and have stated that they have been falsely implicated due to prior enmity.

5. Learned Trial Court went on to examine prosecution witnesses and in all, 11 witnesses were examined and no defence evidence was led and after conclusion of trial, both the appellants have been convicted and sentenced as aforementioned.

6. In the appeal, it has been mentioned that due to prior enmity, the appellants have been falsely implicated, that independent witnesses have not supported the prosecution story. The statements of witnesses are self-contradictory and there are many important omissions and contradictions which have been overlooked, that medical report also does not corroborate statements of witnesses, that compliance of Section 157 of Cr.P.C. has not been made and the prosecution was unable to prove spot of the incident and on these grounds, acquittal has been sought.

7. The question for consideration before this Court is whether in view of the grounds taken by the appellants, conviction and sentence imposed upon the appellants is liable to be set aside and the appellants deserve to be acquitted?

8. The prosecution has examined eye-witnesses namely, Smt. Jaikunwarbai (PW-9), Dulesingh (PW-2), Shankarlal (PW-3), Sitaram (PW-4) and Smt. Ghisibai (PW-6). However, barring Jaikunwarbai (PW-9), all other eye-witnesses have turned hostile. Jaikunwarbai (PW-9) being the daughter of deceased Tejubai is the interested witness. Hence, her statements need to be appreciated with circumspection.

9. This witness states that about 2 months prior to her deposition at about 8.00 AM in the morning, the witness was at her home and at that time her mother Tejubai, sister-in-law Babitabai, Sandeep, Rachna and Deepak were all present. She states that about a month back her brother Mohan had a quarrel with Radheysham (s/o accused Shaitanbai). She states that Shaitanbai who is her Badi Maa (wife of elder brother of witness's father) came to her house and started abusing Tejubai. At that point of time, Jagdish, son of Shaitanbai also came wielding knife whereas Shaitanbai was wielding daranta. She states that Shaitanbai inserted daranta in the stomach of Tejubai, the witness's mother, then Jagdish also stabbed Babitabai on her chest. Both of them fell down and then her brother Mohan came to the spot and went away to inform Sarpanch. She states that she recorded lodged Exhibit-P/21. She further states that police came and drew spot map, police seized blood stained soil and ordinary soil and exhibited documents on which she appended her thumb impression. She reiterates that incident occurred due to previous incident of assault. Between Mohan, son of deceased Tejubai and Radheshyam.

10. This witness in her cross-examination states that she is married and her husband's village is Khoria – Ema and she had come to her parental house on the occasion of Diwali. She states that after arriving at her parental house, she used to stay for about 8 days. In her cross-examination, she has been asked question relating to the earlier incident. She states that at the time of earlier incident, also she was in

her parental house and the dispute occurred because the irrigation pipe going to her parental agriculture field was severed.

11. Reverting back to the incident which culminated in death of her mother and sister-in-law, she states in para-9 that incident of stabbing took place inside the house. She states that for quite sometime Shaitanbai, wielding daranta in her hand was shouting and abusing Tejubai and due to such shouts the neighbours had gathered and that the incident of stabbing happened when Shaitanbai and Jagdish both entered the house. At first her mother was dealt daranta blow and on hearing her cries, Babitabai came rushing but she was stabbed by Jagdish and when this incident occurred the witness was nearby at a distance not more than one hand. The witness states that there are 3 rooms in house and the incident happened in the first room.

12. Dulesingh (PW-2), Shankarlal (PW-3), Sitaram (PW-4) and Ghisibai (PW-6) have turned hostile. However, they have supported the prosecution story in as much as they stated that they had heard and seen the quarrel taking place. Dulesingh (PW-2) states that while he was going from his house to the tube well and passed by the house of the deceased he heard children crying and then he asked a villager namely, Narayan as to what has happened then Narayan told him that Tejubai has been done to death by Jagdish. He states that Jaikunwarbai told this witness to send Jaikunwarbai uncle from agriculture field. This witness has been declared hostile and denies that he himself had seen stabbing incident. However, this witness admits that quarrel between two families had taken place about 8 to 10 days earlier. He is also the witness of seizure of ordinary and blood soaked soil whose memo is Exhibit-P/2. He is also the witness of Safina form Exhibit-P/3 and Naksha Panchnama of the bodies Exhibit-P/4.

13. Thus, this witness has stated to have heard shouts at the time of incident.

14. Shankarlal (PW-3) also states that he had seen quarrel between the two ladies and that Shaitanbai was having a daranta in her hand and Jagdish was having a knife and both of them have entered the house of the deceased. He is also the witness of Exhibit-P/3 Safina form Exhibit-P/3 as also Exhibit-P/4 and Exhibit-P/6 both Naksha Panchnama of Tejubai and Babitabai. However, in para-11 he admits the suggestion that he had not seen both women quarreling and that when he arrived the incident had already taken place. Thus, there is variations in the cross-examination of this witness from that of examination in chief.

15. Sitaram (PW-4) states that he had seen Shaitanbai abusing wife of Dungaji when he was going to fetch water. However, he denies to have seen the act of stabbing. He is declared hostile but only supports the prosecution story to the extent that Shaitanbai was abusing Tejubai and Babitabai and when he came back he saw Tejubai and Babitabai dead. These statements have not been challenged by the prosecution.

16. Ghisibai (PW-6) has also stated that she saw both the ladies talking with each other when the witnesses had gone out to tie her goat at the well. She further states that when she came back she saw Tejubai and Babitabai both dead near the door of their house and Jaikunwarbai was telling that her mother and sister-in-law have been killed. She has been declared hostile but she denies to have seen the whole incident herself. In her cross-examination, she admits that she did not hear the abuses. However, in her statements she has stated that she had seen both the ladies talking to each other and then Babitabai and Tejubai lying dead has not been challenged in the cross-examination.

17. Thus, it emerges that Jaikunwarbai (PW-9) is the only witness who states that the whole incident occurred between her own eyes. Other eye witnesses support the prosecution story only to the extent that they have seen them quarreling and further that they had seen two ladies namely; Tejubai and Babitabai lying dead but they do not state

that they saw the incident of stab injury.

18. Jaikunwarbai (PW-9) has been tried to be shown as unreliable. She in para-14 admits that walls of the room where the incident took place were splattered with human blood due to the incident. However, in the spot map Exhibit-P/25, there is no mention of any blood on the walls.

19. This discrepancy has been properly dealt with by the Trial Court in para-14 of its judgment. It has been mentioned that although the blood may not have been found on the walls but there was blood lying on the floor of the room which was collected by Investigating Officer and the same has been supported by other witnesses which shows that the incident occurred in the room of the house.

20. It is quite clear that the witnesses referred to earlier have stated that they saw both the ladies inside the room. In Exhibit-P/25, which is spot map, spot 'A' has been shown as the place where the body of Tejubai was lying and spot 'B' is the place where the body of Babita was lying and both the places have been shown to be inside the room. There is nothing in evidence to controvert this position which has emerged.

21. The second aspect on which Jaikunwarbai (PW-9) has been challenged is that in para-6 she states that on the day of incident no food was cooked but Dr. Z. Iqbal (PW-7) who conducted the post-mortem has stated in his examination-in-chief that he had found semi-digested food in the small intestines of both the ladies which shows that they had taken meals sometimes earlier.

22. Regarding this discrepancy, it emerges that the incident occurred between 7:00 AM to 8:00 AM which means that both the ladies may have eaten their breakfast sometimes earlier and when the incident occurred the menfolk of the house had gone to their agricultural field. In the villages people generally tend to consume breakfast early

because the menfolk have to go to their agricultural fields early in the morning. It may be that both the ladies partook of their breakfast which may have been the previous night's left over meal. Thus, the aforesaid discrepancy is explainable. The Trial Court in its judgment has rightly stated that there was no reason to implant Jaikunwarbai (PW-9) who is an eye witness in the incident.

23. If the prosecution wanted to implant the witnesses, it could very well have implanted Mohan the son of Tejubai as an eye-witness. However, Mohan (PW-1) has stated that at the time of incident he was in his agricultural field and at that time Dulesingh came and apprised him about the incident.

24. This witness states that he came running to his house and found his wife Babitabai and mother Tejubai soaked in blood and both had died. His sister Jaikunwarbai was present in the house and other villagers as well who had assembled. Jaikunwarbai told him that at first Shaitanbai struck daranta blow on Tejubai and when Babitabai came to rescue, accused Jagdish inflicted knife injury on her chest. The witness states that he then rushed to inform Sarpanch Kumer Singh and told him to intimate the police station. Regarding the cause of the incident, this witness states that about 15 days before the incident, there was a quarrel between the witness and Radheshyam, who is cousin of the witness and elder brother of accused Jagdish and the quarrel was regarding irrigating the agricultural field. Radheshyam had lodged a report against the witness and the witness has been released on bail. This witness has been asked as to whether he saw accused Shaitanbai and Jagdish himself. He replies in affirmative that he had seen both the accused fleeing from the spot of the incident and Shaitanbai was wielding daranta in her hand and Jagdish was wielding a knife.

25. Although, Jaikunwarbai (PW-9) also states in para-9 that

Mohan had arrived at the scene when Shaitanbai was abusing. However, immediately thereafter, she makes a statement that Mohan arrived at the scene when the whole incident had occurred and then she had narrated the incident to Mohan. Thus, there appears an attempt on the part of Mohan to be an eye-witness who at first is supported by Jaikunwarbai (PW-9) also but she immediately makes a statement to the effect that Mohan came after the incident. It has been found that Mohan (PW-1) has earlier stated in examination-in-chief that Dulesingh had informed him that his wife and mother had already been attacked by accused persons. The witness Jaikunwarbai (PW-9) has also stated in her statement that Mohan came after the incident. Learned Trial Court was absolutely correct in concluding that Mohan was not an eye-witness and came to the spot later on.

26. From the evidence of Mohan (PW-1), it becomes clear that reason for Shaitanbai to quarrel with Tejubai was because of the previous fight between her son Radheshyam and witness Mohan in which Radheshyam lodged a report against him.

27. Regarding proximity of both houses of Shaitanbai and the witness, the witness stated in cross-examination that there is only one wall which exists between two houses. He has been asked as to whether Jaikunwarbai comes to her parents house very often. This witness in para-9 makes exaggerated statement that he knew that murder is going to take place and therefore, he had brought her sister. However, such exaggerated statements can simply be ignored as overzealous person's statement. The parts of the statements of this witness which are reliable are that there was a earlier quarrel between him and Radheshyam, brother of Jadgish and son of Shaitanbai and on the date of the incident, on receiving information, he rushed to the spot, saw his wife and mother already dead and

Jaikunwarbai narrated the sequence of events to him and then he rushed to inform Kumer Singh, Sarpanch.

28. Statement of Mohan that Jaikunwarbai told him that both the ladies were done to death by Shaitanbai and Jagdish are relevant statements under Section 7 of the Evidence Act and would be read against both the accused persons.

29. Kumer Singh (PW-5) states that Mohan came to his house in the morning of 27.11.2005 and told him that her mother and wife had been murdered by Jagdish and her mother Shaitanbai. He has also told him that Shaitanbai was wielding daranta and Jagdish was wielding knife. This witness states that he immediately rushed to the spot with Mohan and saw both the ladies lying there dead thereafter, he went to his house and called up police at Dupada Chowki and also called at police station Mohan Barodia and told that two murders have taken place. Thus, as per this witness, the information was not only narrated to the police chowki but also to police station at Mohan Barodia. As per this witness, at first, police from Dupada Chowki had arrived at the spot and 45 minutes later, police from Mohan Barodia came. He was asked as to why he did not immediately inform the police station even before arriving at the spot. This witness states that he considered it appropriate to inform the police only after arriving at the spot. In his police statement (Exhibit-D/2), there is no mention of this witness being told by Mohan that Shaitanbai was wielding daranta and Jagdish a knife.

30. The reliable part of the evidence of this witness is that Mohan informed him in person about the incident and then this witness came to the spot and from the spot, he called up at police chowki and also at police station. However, what we see in this case is that lodging of report, initiation of investigation was also done by police at police station Mohan Barodia. Jaikunwarbai (PW-9) in para-13

has stated that at first police from police chowki had arrived at but no incident was narrated to them however, she denies that incident was not narrated as it was being considered at that time name of which accused should be taken. Despite the fact that there are some minor inconsistencies in the statement of Jaikunwarbai (PW-9), she is a reliable eye-witness, who was present in the house when the incident occurred. It is found proved that Jaikunwarbai (PW-9) was in the house when the incident had taken place and incident occurred before her own eyes. Her presence at the time of the incident has been affirmed by other witnesses namely, Ghisibai (PW-6), Dulesingh (PW-2) and Sitaram (PW-4). Jaikunwarbai (PW-9) has stated that after witnessing the incident, as accused lunged towards her, she rushed out of the house and hence was saved. Jaikunwarbai (PW-9) is thus a reliable eye-witness. It has already been found proved that Tejubai and Babitabai were killed inside their house. It has further been found proved from the statements of other witnesses and her neighbours that Shaitanbai was seen talking/quarreling with Tejubai prior to the incident. The onus was upon the accused under Section 106 of the Evidence Act to explain how both the ladies were killed.

31. The Investigating Officer A. K. Singh (PW-11) states that on the basis of memorandum of Jagdish, a knife was recovered from Jagdish and on the basis of memorandum of Shaitanbai (Exhibit-P/10), a daranta was recovered from her. The blood stained clothes of Shaitanbai and Jagdish were also seized as per Exhibit-P/13 and P/14. However, these weapons have not been produced before the Court. These articles and the FSL report have not even been produced from the FSL and thus, very vital piece of evidence has been missing in this matter.

32. Learned Trial Court has put the whole blame on the

Investigating Officer and has even suggested departmental action against him. However, perusal of order-sheets does not show any endeavour on the part of the Presiding Officer directing availability of FSL report and the articles. The Presiding Officer very well knew that he was dealing with a very serious case involving double murder. However, order-sheets did not display any concern on the part of the Presiding Officer regarding non-availability of FSL report. Such indifference and apathy on the part of the Presiding Officer is reprehensible and the Presiding Officer deserves to account for such lapse.

33. Although, vital piece of evidence, which is FSL report is not available, it has been found proved that Jaikunwarbai (PW-9) is a reliable eye-witness and also that Shaitanbai had come to the house of Tejubai and was quarreling with her. It has further been found proved that bodies of both ladies were found in the house of Tejubai. This proves that the assailants had attacked Tejubai and Babitabai. There are no injuries on the person of both the accused. The fact that incident occurred inside the house of Tejubai does away with defence of provocation given to the assailants by the deceased ladies. Thus, assailants could not claim the benefit of first Exception of Section 300 of IPC. They have not discharged the onus on them under Section 106 of the Evidence Act.

34. From the evidence of Dr. Z. Iqbal (PW-7), it is clear that only one injury on each of the deceased was found. The witness states that in the post-mortem report of Tejubai, there was only one incised wound on her chest, size - 1 x ½ x 6 cms on the left side between 5th and 6th ribs. The death had occurred due to excessive bleeding resulting stoppage of breathing. As per the witness, injury was sufficient to cause death in the ordinary course of nature, the post-mortem report is Exhibit-P/17. Regarding Babitabai, this witness

states that he had found one injury on the right side of her chest, size – 1 x ½ x 7 cms deep and the death had occurred due to excessive bleeding, the report is Exhibit-P/18. The witness states that both the injuries could have been caused by a knife. In the cross-examination, this witness states that injuries caused were not of such nature which could have caused immediate death and if both had been given treatment, their death could have been prevented.

35. Learned counsel for the appellants has pointed that the death had occurred due to non-availability of medical treatment and the doctor himself states that the injuries were of such nature as would have not caused instant death.

36. A comment needs to be made regarding the submissions of Dr. Z. Iqbal (PW-7) when he says that timely medical intervention would have prevented death. It is seen that after the incident of stabbing occurred, death had taken place within a span of half an hour. By the time, Mohan rushed to the spot, both ladies were already dead. The incident had occurred at about 7.30 AM. Mohan (PW-1) in para-14 of his cross-examination states that he had come out of his house at 7.00 AM and was sitting in his field (gotha) for 10 to 15 minutes when he received the information and as he reached the spot, both ladies were dead. Jaikunwarbai (PW-9) also states that immediately on being attacked, both ladies had fallen down at the spot only. This also shows that blow was also severe that the deceased ladies could not even make an attempt to run. It also shows that the injuries were sufficient in the ordinary course of nature to cause death.

37. The doctor in his examination-in-chief has stated that injuries were such as would cause death in the ordinary course of nature. Such statements attract clause thirdly of Section 300 of IPC showing that culpable homicide amounted to murder. “In the

ordinary course of nature” word would mean that injury is of such nature that death would result without medical intervention. If death results even after medical intervention, then fourthly clause of Section 300 of IPC would be applicable. Section 300 (Fourthly) of IPC reads 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—

(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.

38. It is already seen that above clause would not be applicable in the present case. Thus, statement of Dr. Z. Iqbal (PW-7) would not be read in favour of the accused when he says that death could have been prevented with timely medical intervention. Rather, his statement that injury was sufficient in the ordinary course of nature to cause death is a proper statement and thirdly clause of Section 300 of IPC would be applicable, which means that it was a culpable homicide amounting to murder.

39. Learned counsel for the appellants submits that the doctor has stated that both injuries could have been caused due to knife. He also states that Shaitanbai was not carrying a knife but was carrying a daranta and daranta has neither been produced before this Court nor its FSL report is available and there is a difference between the nature of injuries caused by daranta and knife.

40. This submission was considered. The witness Dr. Z. Iqbal (PW-7) has not been asked in cross-examination as to whether the injury to Tejubai could have been caused by daranta or not. It is clear that daranta and knife, both are sharp edged weapons. It has

also been found proved that evidence of Jaikunwarbai (PW-9) is reliable. It has further been found proved that Shaitanbai herself had come to the house of Tejubai at first and was quarreling with Tejubai for a very long while and she was wielding a daranta. It has also been found proved that only after she attacked Tejubai, Babitabai was attacked by Jagdish when Babitabai tried to rescue her mother-in-law. Other witnesses have also stated to have seen daranta in the hands of Shaitanbai. Hence, it cannot be stated that injury caused to Tejubai could not have been caused by a daranta. Thus, conclusion drawn by the Trial Court that death of Tejubai due to infliction of injury on her with daranta by Shaitanbai does not warrant any intervention.

41. The only question is whether any exception under Section 300 of IPC is applicable or not which would favour the appellants? It has been found that there was no grave and sudden provocation given to Shaitanbai by Tejubai and therefore Exception 1 of Section 300 of IPC would not be applicable. The only question is whether benefit of Exception 4 of Section 300 of IPC can be given to Shaitanbai or not?

Exception 4 of Section 300 of IPC is as under :

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.

42. In order to attract above exception, following ingredients have to be proved :

- a) There was no premeditation.
- b) Fight was sudden
- c) Injury was inflicted in the heat of passion upon sudden quarrel.

d) Offenders did not take undue advantage or acted in cruel or unusual manner.

43. It is found proved that Shaitanbai had herself come to the house of Tejubai with a daranta which rules out that the absence of premeditation. Secondly, it has been found that prior to attacking Tejubai, a quarrel was going on for a long while. Thus, there was no sudden fight and no sudden quarrel. It was also seen that Tejubai was defense-less whereas, Shaitanbai was armed with daranta and there was no attempt on the part of Tejubai to cause any injury to Shaitanbai thus, Shaitanbai had taken undue advantage of the situation. Hence, defence under Exception 4 of Section 300 of IPC would also not be available to Shaitanbai.

44. Learned counsel for the appellants has submitted that only one injury has been caused which does not show intention on the part of Shaitanbai to cause death.

45. Regarding this submission, the Apex Court in the case of **State of Rajasthan vs. Leela Ram @ Leela Dhar, AIR 2019 SC (Supp.) 78** has held that even one injury on the vital part of the body may result in conviction under Section 302 of IPC. As per facts of this case, accused has inflicted axe injury on the skull of the deceased. The doctor had found that injury was so imminently dangerous as in all probability would have caused death. The Apex Court has held that the injury was caused on the vital part, that the deceased was un-armed hence, accused was liable to be convicted under Section 302 of IPC. The Apex Court has also considered whether benefit of Exception 4 of Section 300 of IPC could be afforded to the accused but gave a negative opinion. The High Court in this case had convicted the accused under Section 304-II of IPC instead of Section 302 of IPC. The State had gone in appeal seeking enhancement. Para-13 of the aforesaid judgement of the Apex

Court is of specific relevance, which reads as under :-

13. The High Court has, in our view, proceeded entirely on the basis of surmise in opining that the death was caused without pre-meditation and on the spur of the moment. In arriving at that inference, the High Court has evidently ignored the evidence, bearing upon the nature of the incident, the consistent account that it was the respondent who had inflicted the blow, the weapon of offence and the vital part of the body on which the injury was inflicted. The fact that the co-accused, Rajesh and Jagdish, have been acquitted by the Trial Court, is in our view no reason to doubt the testimony of all the eye-witnesses which implicated the respondent. The death was attributable to the assault by the respondent on the deceased, during the course of the incident. Having regard to the above facts and circumstances of the case, it is evident that the injury which was caused to the deceased was [within the meaning of Section 300 (Fourthly)] of a nature that the person committing the act knew that it was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

46. The only difference in the Apex Court judgement and the present case is that in the Apex Court judgement, Section 300 (Fourthly) of IPC was applicable whereas, in the present case, Section 300 (Thirdly) of IPC applies and in both instances, culpable homicide would be amounting to murder. As far as accused Jagdish is concerned, same reasoning would apply as has been applied in the case of Shaitanbai. There was no reason for him to get provoked. It was his mother Shaitanbai who had first attacked Tejubai and Babitabai had only rushed to rescue her mother-in-law and at that point of time, Jagdish inflicted single knife injury on her vital part resulting in her death. The provisions of Section 300 (Thirdly) of IPC would apply in his case as well.

47. After duly considering the evidence, it is proved beyond reasonable doubt that appellants – Shaitanbai and Jagdish were liable to be convicted for causing murder of Tejubai and Babitabai

and their conviction under Sections 302/34 and 450/34 of IPC by the Trial Court was appropriate. The sentences which have been imposed upon the appellants are also affirmed as being appropriate. The conclusion drawn by the Trial Court needs no intervention. Consequently, present criminal appeal stands dismissed.

48. A copy of this order along with the record of the Trial Court be sent back to the Trial Court for perusal and compliance.

(S. C. SHARMA)
JUDGE

(SHAIENDRA SHUKLA)
JUDGE

gp/ss/arun

THE HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**BEFORE DIVISION BENCH: HON'BLE JUSTICE SHRI S. C. SHARMA & HON'BLE JUSTICE SHRI SHAILENDRA SHUKLA, JJ.**

Case No.	:	Criminal Appeal No.484/2007
Parties name	:	Shaitanbai & another vs. State of M. P.
Date of Judgement	:	07/07/20
Bench constituted of	:	Hon'ble Justice Shri S. C. Sharma & Hon'ble Justice Shri Shailendra Shukla, JJ.
Judgement delivered by	:	Hon'ble Justice Shri Shailendra Shukla, J.
Whether approved for reporting	:	Yes
Name of counsels for the parties	:	Ms. Geetanjali Chourasia, learned counsel for the appellants. Shri Abhishek Tugnawat, learned Public Prosecutor for the respondent – State.
Law laid down	:	<p>(1) Applicability of Section 300 (Thirdly) and Section 300 (Fourthly) of IPC</p> <p>Doctor states that the injuries were sufficient in ordinary course of nature to cause death but also states that lives of the two ladies could have been prevented if timely medical help would have been made available.</p> <p>Held, “the words in the ordinary course of nature” would mean that the injuries were of such nature that death would result in the ordinary course without medical intervention. If, death would result even after medical intervention, then Section 300 (Fourthly) of IPC would be applicable.</p> <p>(2) Only one injury found on each of the two persons who were killed may also result in conviction under Section 302 of IPC.</p> <p>Doctor submitting that injuries were of such nature which were sufficient in the ordinary course of nature to cause death.</p> <p>Held, that the presence of only one injury on the body may also result in conviction under Section 302 of IPC. Apex Court judgement of</p>

	<p>State of Rajasthan vs. Leela Ram @ Leela Dhar, AIR 2019 SC (Supp.) 78 followed.</p> <p>(3) Non-availability of FSL report – Duty of Presiding Officer.</p> <p>The Presiding Officer cannot simply blame the Investigating Officer for not making available FSL report. The order-sheets do not display endeavour on the part of the Presiding Officer directing availability of FSL report and the seized articles.</p> <p>Held, such indifference and apathy on the part of the Presiding Officer is reprehensible and the Presiding Officer deserves to account for such lapse.</p>
Significant paragraph numbers	: (1) 34, 35, 36 & 37 (2) 45 (3) 32

(S. C. SHARMA)
JUDGE

(SHAIENDRA SHUKLA)
JUDGE