HIGH COURT OF MADHYA PRADESH,
BENCH AT INDORE

Case No.	**Cr.A. No.474/2016**
Parties Name	*Sonu Jain* *vs.* *State of M.P.*
Case No.	**Cr.A. No.616/2016**
Parties Name	*Jiwan* *vs.* *State of M.P.*
Case No.	**Cr.A. No.644/2016**
Parties Name	*Santosh* *vs.* *State of M.P.*
Date of Judgment	**06/04/21**
Bench Constituted	**Division Bench:** **Justice Sujoy Paul** **Justice Shailendra Shukla**
Judgment delivered by	**Justice Sujoy Paul**
Whether approved for reporting	Yes
Name of counsels for parties	Shri Virendra Sharma, Advocate for the appellants. Shri A.S Sisodia, Govt. Advocate for the respondent/State.
Law laid down	***Section 302/304 Part-II Indian Penal Code - Single blow**- As a Rule of Thumb, it cannot be said that in no case of single blow or injury, accused cannot be convicted under Section 302 of IPC. In cases of single injury, the facts and circumstances of each case have to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted under Section 302 or under Section 304 Part-II of IPC. ***Section 302 & 304 Part-II of IPC**- The relevant factors on the strength of

which a decision can be taken regarding the offence committed are :-

(a) Motive or previous enmity;
(b) Whether the incident had taken place on the spur of the moment;
(c) The intention/knowledge of the accused while inflicting the blow or injury;
(d) Whether the death ensued instantaneously or the victim died after several days;
(e) The gravity, dimension and nature of injury;
(f) The age and general health condition of the accused;
(g) Whether the injury was caused without premeditation in a sudden fight;
(h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted.
(i) The criminal background and adverse history of the accused;
(j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
(k) Number of other criminal cases pending against the accused;
(l) Incident occurred within the family members or close relations;
(m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These factors are illustrative and not exhaustive in nature. Other relevant factors can also be taken into consideration for deciding appropriate sentence to the accused.

***Section 302 of IPC – Hot altercation took place between deceased and appellants.** - Deceased

slapped appellant Santosh. Appellants left the place of incident. After almost half an hour, the appellants rushed back to the place of quarrel and Santosh with the aid of other appellants, gave single blow to the deceased. Single blow is not outcome of spur of moment.

The nature of injury, the gravity and dimension shows that knife was a deadly weapon otherwise the rib of deceased could not have been cut and injury could not have been so deep to reach upper portion of right lung. Injury was sufficient in ordinary course of nature to cause death.

***Section 300 IPC –** It has five exceptions wherein culpable homicide will not fall within the ambit of murder. Under Exception 1 and injury resulting into death of the person would not be considered as murder when the offender has lost his self-control due to the grave and sudden provocation. This aspect is a question of fact.

***Doctrine of Provocation-** Provocation must be such as temporarily deprives the person provoked of the power of self-control, as a result of which he commits the unlawful act which causes death. The heated altercation and slap on Santosh by the deceased did not have the effect of temporarily depriving him of the power of self-control. The resentment shown by appellants after 25-30 minutes does not have any reasonable relation with nature of provocation. Hence, in our view, crime of murder cannot be reduced to manslaughter. The appellants also acted in a cruel manner which brings their case outside the purview of Exception 4.

	Sudden Altercation – Use of deadly weapon – Intention of appellant.** The single blow by knife was not made during the course of heated altercation. After almost 30 minutes, a knife capable of cutting a rib was used on a part of body which was a vital part. Which shows beyond reasonable doubt the intention of appellants to cause death of the deceased. Since these ingredients are proved beyond reasonable doubt, it is irrelevant whether there was a single blow struck or multiple blows. [(2010) 6 SCC 457 – Arun Raj vs. Union of India*** followed] ***Section 85 of IPC – Drunkenness – is ordinarily neither a defence nor excuse for crime.** Burden is on the defence to establish that degree of intoxication was such because of which they could not prevent themselves from committing the act in question. Intoxication must have been against the will of accused persons or the thing which he was intoxicated was administered to him without his knowledge. ***Murder under the influence of liquor –** *Aristotle* said that a man deserves double punishment because he has doubly offended in being drunk to the evil examples of other and in addition committing the crime of homicide. ***Murder or Manslaughter –** In the facts and circumstances of the case, the size of weapon was immaterial because weapon had the capacity to cause death which is clear from the fact that it had cut a rib of deceased and reached to the right lung of the

	deceased. None of the exceptions mentioned under Section 300 of IPC are attracted in the instant case. Hence, it's a case of murder and not of manslaughter. ***Indian Evidence Act – Omission/Contradiction-** In *Dehati Nalishi* & FIR, it was not mentioned that deceased was caught hold by two appellants by his hand. However, it was mentioned that he was caught hold of by two appellants. FIR is not an encyclopaedia. In *Dehati Nalishi*/FIR, the expression allegedly used by two appellants was '*Maro Sale ko'* whereas in the statement recorded in the Court, they stated '*Jaan se maar do'*. There was no improvement which introduces a new facet of the case. Every omission is not a contradiction. Minor details which are not indicative in the FIR are later on elaborated in Court, do not justify the criticism that the case originally presented has been abandoned to be substituted by another view. ***Practice and Procedure.** The trial Court after going through the entire evidence formed an opinion about the credibility of witnesses. The appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.
Significant paragraph numbers	**18, 19, 23,24, 25, 26, 27, and 37- 41.**

J U D G M E N T
06.04.2021

Sujoy Paul, J.: These criminal appeals filed under Section 374 of the Cr.P.C are directed against the common judgment passed by learned 10th Sessions Judge, Ujjain in Sessions Trial No.556/14

decided on 23/02/2016.

[2] The appellants are held guilty for the offence under section 302/34 and sentenced to undergo life imprisonment with fine of Rs.5000/- and in default of payment of fine, they shall further undergo five months RI. They are also held guilty for the offence under Section 294 of IPC and sentenced to undergo three months RI with fine of Rs.1000/- and in default of payment of fine, they shall further undergo one month RI.

[3] As per prosecution story, a premises (*Ahata*) is situated at Nayi Sadak, Ujjain wherein liquor was being served to the customers. Deceased Kishore used to sit on the counter of said "*Ahata"*. On 16/08/2014 at around 7 PM, appellants Santosh, Jiwan and Sonu visited the *Ahata* and ordered liquor and other food items. Akash (PW-4) served the food and liquor to them. Since all the accused persons were frequent visitors of *Ahata*, Vinod was acquainted with them. After consuming liquor and finishing the food, appellants approached Kishore Panchal, who was manning the counter. A dispute arose regarding payment because of which altercation took place between Santosh and deceased Kishore. Kishore slapped Santosh. All the accused persons left the place by using filthy language and saying that Kishore will face dire consequences. After 25-30 minutes, all the appellants visited the same *Ahata* and started using abusive language for Kishore Panchal. Jiwan and Sonu caught hold of Kishore and asked Santosh to assault him. In furtherance thereof, Santosh took out

a knife and assaulted Kishore at his right side of the chest. Because of said attack, Kishore fell down. Vinod (PW-3) and Akash (PW-4) witnessed the incident and immediately approached Kishore. All the appellants fled away. Kishore was immediately taken to Govt. Hospital, Ujjain. The doctor declared him as dead.

[4] In turn, Head Constable Dinesh Saxena was informed about the said incident because of which "*Merg* intimation" (Ex.P/20) was recorded. SHO Gopal Parmar (PW-10) visited the place of incident. He also visited Civil Hospital, Ujjain. He came to know from Vinod (PW-3) about the details of incident which were reduced in writing in the shape of "*Dehati Nalishi*" (Ex.P/15). Consequently, Crime No.207/14 in FIR (Ex.P/21) was registered against the appellants.

[5] During the investigation, Gopal Parmar (PW-10) prepared the "*panchnama"* of dead body. Postmortem was conducted. Spot map was prepared. Appellants were arrested. From the spot, bloodstained cotton, plain cotton and an old cycle of Santosh were recovered. The appellants were interrogated and their memorandum statements were recorded. During investigation, the bloodstained knife and clothes were recovered from appellants. In turn, said knife and bloodstained clothes were sent to FSL. Report of FSL was also obtained.

[6] After completion of investigation, challan was filed. The matter was ultimately committed to the Court of Additional Sessions Judge for trial.

[7] The appellants abjured the guilt. In their statements recorded

under Section 313 of Cr.P.C. they stated that they have been falsely implicated and they are innocent. In support of their stand, Jitendra Lashkari (DW-1) was examined.

[8] The Court below framed three issues and after recording the evidence and hearing the arguments, passed the impugned judgment whereby appellants were held guilty for committing offence under Sections 302/34 and 294 of IPC.

[9] Shri Virendra Sharma, learned counsel for the appellants urged that necessary ingredients for attracting Section 302 of IPC are missing against appellant Santosh. To elaborate, it is submitted that there was no previous enmity between appellants and deceased Kishore Panchal. It was deceased, who slapped Santosh because of which said incident had taken place. The size of the knife was 4 & 1/2" only. Knife has a plastic handle. This knife cannot be said to be a deadly weapon. Appellant Santosh caused only one injury on the deceased. The appellants were under the influence of liquor. Hence, Court below committed an error in holding the appellants as guilty for committing offence under Section 302 of IPC. In the facts and circumstances of this case, at best Section 304 Part-II of IPC is attracted. In support of this submission, he placed reliance on ***(2017) 3 SCC 247-(Arjun & Anr. vs. State of Chhatisgarh), 2018 (3) MPLJ Criminal 23 - Manoj @ Bablu vs. State of MP*** and ***2019 SCC OnLine SC 1104-Khuman Singh vs. State of MP.***

[10] By taking this Court to the *Dehati Nalishi* and FIR (Ex.P/15),

learned counsel for the appellants strenuously urged that complainant stated while recording *dehati nalishi*/FIR that appellants Jiwan and Sonu caught hold of Kishore Panchal and Santosh gave the knife blow on him. It was pointed out that in the *Dehati Nalishi*/FIR, there is no specific mention that Kishore's hands were caught hold by appellant Jiwan and Sonu whereas in their Court statement, the witnesses have improved their stand by deposing that Kishore's hands were caught hold by Sonu and Jiwan. This, as per appellants' counsel, it is a clear improvement which makes the statement of witness as unreliable. Similarly, it is urged that in the FIR and *Dehati Nalishi*, it was reported that appellants Sonu and Jiwan asked Santosh "*maar sale ko*" whereas in the Court statement Vinod Panwar (PW-3) deposed that Sonu and Jiwan asked Santosh "*jaanse maar do*". This is also a clear improvement and Court below has not taken note of omission of relevant words in the *Dehati Nalishi*/FIR.

[11] Shri AS Sisodia, learned Govt. Counsel supported the impugned judgment.

[12] The parties confined their arguments to the extent indicated above.

[13] We have bestowed our anxious consideration on rival contentions and perused the record.

[14] The Court below after recording the prosecution story and relevant documents which were gathered during investigation referred the statement of Dr. BB Purohit (PW-2), who conducted the

postmortem of deceased Kishore. As per his statement, the Court below recorded a finding that the deceased was a healthy and robust male, aged about 50 years. His clothes were bloodstained. On the right side of chest, 2" below clavicle bone and sternal bone a wound of spindle size was found. The size of wound was 1 ½" long X ½" wide and its depth was up to chest cavity. The sides of wound were clean cut and regular. Wound gaping was available and clotted blood was found on the wound. It was found that third rib of right side of chest was cut by a sharp edged weapon. The doctor opined that death was homicidal in nature. The injury was caused by a sharp edged weapon like knife. The blow was very intensive because of which third rib was cut and the upper portion of right lung was also injured. In other words, the injury was caused even to the lung tissues which were sufficient for causing death. In the opinion of Dr. BB Purohit (PW-2), the reason of death was excessive bleeding and shock because of injury caused to vital organ namely right lung and the rib. He further deposed that injury caused was possible from the knife seized from Santosh.

[15] The Court below found that eye witnesses Vinod (PW-3) and Akash (PW-4) supported the prosecution story. Human blood was found on the knife recovered from appellant Santosh.

[16] The report of laboratory Ex.P/24 was considered by the Court below. As per this report (Ex.P/24), on the trouser of Santosh and deceased Kishore Panchal, bloodstains were found which were of 'A'

group. The bloodstains of same blood group were found in the clothes of Jiwan and Santosh. The blood of same blood group was found on the knife (Article F) which was recovered from Santosh. Similarly, in the T-shirt of Jiwan and Santosh, human blood was found. They have not given any explanation about human blood found on their clothes. The Court below after considering judgments of Supreme Court and this Court opined that it was obligatory on the part of appellants to explain regarding existence of human blood on their clothes.

[17] The Court below opined that the incident of quarrel was not that grave because of which appellant could have used a deadly weapon (knife) to assault Kishore Panchal. With the aid of Section 34 of IPC, appellants Sonu and Jiwan were also held guilty because they caught hold of deceased and appellant Santosh assaulted him by a deadly weapon.

[18] On several occasion, a question came up for consideration before Supreme Court whether single blow inflicted can be reason to attract Section 302 of IPC. [See ***Gokul Parashram Patil v. State of Maharashtra (1981) 3 SCC 331***, ***Gulshan Vs. State of Punjab (1990 Supp. SCC 682***, ***Sreedharan Vs. State of Kerala (1992) Supp. 3 SCC 21, Guljar Hussain Vs. State of U.P. (1993) Supp. 1 SCC 554***, ***Balaur Singh Vs. State of Punjab (1997) SCC (Cri) 408*** and ***Mahesh Vs. State of M.P. (1996) 10 SCC 668***]. In ***Gurmukh Singh Vs. State of Haryana (2009) 15 SCC 635*** it was held that as a rule of thumb it cannot be said that in no case of single blow or injury,

accused can be convicted u/S.302 of IPC. In cases of single injury, the fact and circumstances of each case have to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted u/S.302 of IPC or u/S.304 Part II of IPC. The Apex Court laid down relevant factors on the strength of which said decision was required to be taken which reads as under:-

> "(a) Motive or previous enmity;
> (b) Whether the incident had taken place on the spur of the moment;
> (c) The intention/knowledge of the accused while inflicting the blow or injury;
> (d) Whether the death ensued instantaneously or the victim died after several days;
> (e) The gravity, dimension and nature of injury;
> (f) The age and general health condition of the accused;
> (g) Whether the injury was caused without premeditation in a sudden fight;
> (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted.
> (i) The criminal background and adverse history of the accused;
> (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
> (k) Number of other criminal cases pending against the accused;
> (l) Incident occurred within the family members or close relations;
> (m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?"

[19] These factors are illustrative and not exhaustive in nature. Other relevant factors can also be taken into consideration while granting an appropriate sentence to the accused.

[20] As noticed, much emphasis is laid by learned counsel for appellants that appellants have no previous enmity with the deceased. Incident took place because of sudden quarrel. The weapon/knife is having plastic handle and its size was 4 ½" only. The appellants were under the influence of liquor and, therefore, no case u/S.302 of IPC is made out.

[21] No previous enmity prior to the date of incident between appellants and deceased could be established. The pivotal question is whether the incident of knife blow had taken place on the spur of moment. The factual matrix of the present case shows that there was some altercation between the deceased and Santosh. However, during this altercation, the knife blow was not made. Indeed appellants left the place of quarrel and came back after 25-30 minutes. Appellant Santosh was armed with a sharp cutting weapon namely knife. In the case of ***Khuman Singh*** and ***Arjun*** (supra), the Supreme Court took note of the fact that the blow was made during quarrel between the parties. As noticed, in the instant case, during hot altercation which took place between deceased and Santosh, the incident of assault did not take place. After almost half an hour, the appellants rushed back to the place of quarrel and then Santosh with the aid of other appellants gave single blow to the deceased. Thus, judgment of ***Arjun*** and ***Khumansingh*** (supra) have no application in the peculiar facts and circumstances of this case. Interestingly, in both the cases namely ***Khuman Singh*** and ***Arjun*** (supra), the Apex Court considered

Exception 4 appended to Section 300 IPC and opined that to invoke this Exception, four requirements must be satisfied, namely; (i) there was a sudden fight; (ii) there was no premeditation; (iii) act was done in a heat of passion and; (iv) assailant had not taken any undue advantage or acted in a cruel manner.

[22] In the case of ***Manoj @ Bablu*** (supra), the division bench of this court converted the offence u/S.302 IPC to Sec. 304-II of IPC. In the said case, the appellant and deceased Mahavir had no previous enmity. One gun shot was fired by appellant at deceased Mahavir on his shoulder resulting into his death because of excessive bleeding. Since appellant was found to be in a bad mood, without any intention to cause death of Mahavir, he had only knowledge that firing of gun shot may cause his death, this Court converted the offence from Sec.302 to 304-II of IPC. Shri Sharma, learned counsel for appellant placed heavy reliance on this judgment. This point raised by appellants counsel needs serious consideration.

[23] At the cost of repetition, in our view, the incident had not taken place on the spur of moment. On the contrary, after almost a gap of half an hour, the deceased was subjected to injury. The gravity, dimension and nature of injury shows that the knife used in commission of crime was a deadly weapon otherwise the rib could not have been cut and injury could not have been so deep to reach upper portion of right lung. It was also clearly established that injury inflicted on Kishore was sufficient in the ordinary course of nature to

cause death. In this backdrop, it is to be seen whether offence committed attracts Sec.302 of IPC or 304-II of IPC.

[24] Section 300 IPC have five Exceptions wherein the culpable homicide will not fall within the ambit of *murder.* Under *Exception 1* an injury resulting into death of the person would not be considered as murder *when the offender has lost his self control due to the grave and sudden provocation*. The provision, in no uncertain terms, makes it clear by way of *explanation* provided that what would constitute grave and sudden provocation, which would be enough to prevent the offence from amounting to murder, *is a question of fact*. Provocation is an external stimulus which can result into loss of self control. Such provocation and resulted reaction needs to be measured from the attended circumstances. The provocation must be such as will upset not merely a hasty, hot tempered and hyper sensitive person, but also a person with calm nature and ordinary sense. What is sought by the law by creating the Exception is that to take into consideration situations wherein a person with *normal behaviour* reacting to given incidence of provocation. Thus, the protection extended by Exception is to the normal person acting normally in the given situation. [See. ***Arun Raj Vs. Union of India (2010) 6 SCC 457 (para16***)].

[25] The scope of 'doctrine of provocation' were stated by *Viscount Simon* in ***Mancini Vs. Director of Public Prosecutions 1941(3) All E.R 272 (HL)***. It was held as under:-

"It is not all provocation that will reduce the crime of

murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death. … The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in *R.* v. *Lesbini* [(1914) 3 KB 1116 (CCA)] , so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance (*a*) to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (*b*) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

(emphasis supplied)

[26] This view of ***Viscount Simon*** *(supra)* was quoted with profit by Supreme Court in ***Arun Raj*** (supra). Reference may be made to relevant paragraphs which read as under:-

"**18.** It is, therefore, important in the case at hand to consider the reasonable relationship of the action of the appellant of stabbing the deceased, to the provocation by the deceased in the form of abusing the appellant. At this stage, it would be useful to recall the relevant chain of events in brief to judge whether there was sufficient provocation and the criteria under the provision are satisfied to bring the offence under Exception 1. As is already stated, on the previous night of the incidence, there was an altercation between the appellant and the deceased, as the deceased had abused the appellant.

22. The first ingredient is easily solved by referring to the weapon used by the appellant to strike a knife-blow to the deceased. The appellant in this instance has used a kitchen knife. A kitchen knife with sharp edges is a dangerous weapon and it is very obvious that the appellant was aware that the use of such a weapon can cause death or serious bodily injury, that is, likely to cause death. As far as the sec-

ond ingredient is concerned, the learned counsel for the appellant contended that the fact that there was one single blow struck, proves that there was no intention to cause death.

23. In support of the plea, reliance is placed on the decisions of this Court in *Bhera* v. *State of Rajasthan* [(2000) 10 SCC 225 : 2000 SCC (Cri) 1230], *Kunhayippu* v. *State of Kerala*[(2000) 10 SCC 307: 2000 SCC (Cri) 1374], *Masumsha Hasanasha Musalman* v. *State of Maharashtra* [(2000) 3 SCC 557 : 2000 SCC (Cri) 722], *Guljar Hussain* v. *State of U.P.* [1993 Supp (1) SCC 554: 1993 SCC (Cri) 354],*K. Ramakrishnan Unnithan* v. *State of Kerala*[(1999) 3 SCC 309: 1999 SCC (Cri) 410], *Pappu* v. *State of M.P.* [(2006) 7 SCC 391: (2006) 3 SCC (Cri) 283] and *Muthu* v. *State* [(2009) 17 SCC 433: (2007) 12 Scale 795]. A brief perusal of all these cases would reveal that in all these cases there was a sudden and instantaneous altercation which led to the accused inflicting a single blow to the deceased with a sharp weapon. Hence, there has been conviction under Section 304 Part II as delivering a single blow with a sharp weapon in a sudden fight would not point towards intention to cause death. These cases are clearly distinguishable from the case at hand, purely on the basis of facts.

24. In the present case, there has been **no sudden altercation** which ensued between the appellant and the deceased. The deceased called the appellant "gandu" following which there was a heated exchange of words between the two, the day before the murder. The next day, however, the appellant concealed a kitchen knife in his lungi and went towards the cot of the deceased and struck the deceased a blow on the right side of the chest while the deceased was sleeping. The fact that the appellant waited till the next day, went on to procure a deadly weapon like a kitchen knife and then proceeded to strike a blow on the chest of the appellant when he was sleeping, points unerringly towards due deliberation on the part of the appellant to avenge his humiliation at the hands of the deceased. The nature of the weapon used and the part of the body where the blow was struck, which was a vital part of the body helps in proving beyond reasonable doubt the **intention of the appellant** to cause the death of the deceased. Once these ingredients are proved, **it is**

irrelevant whether there was a single blow struck or multiple blows."

(emphasis supplied)

[27] In para 23 of the judgment of ***Arun Ra***j (supra), the Apex Court took note of its previous judgments wherein single blow was made because of sudden and instantaneous altercation which led to the accused inflicting a single blow to the deceased. In cases where single blow is not made during the sudden altercation, but it is given after some time with a deadly weapon, the Apex Court opined that even use of kitchen knife for single blow clearly shows that it was used in a calculated manner to avenge his humiliation at the hands of deceased. After taking note of nature of weapon used on the vital part of body where blow was made shows the intention of appellant to cause the death of deceased. If we apply the *doctrine of provocation* aforesaid in the instant case, it will be clear that there was no such altercation because of which a normal man can loose his ordinary sense.

[28] The application of *doctrine of provocation* shows that Exception to Sec.300 is available to the normal person behaving normally in a given situation. His blow after almost half an hour from altercation, by no stretch of imagination can be said to be covered by any of the *Exceptions* mentioned u/S.300 of IPC. In other words, heated altercation and slap on Santosh by the deceased didn't have the effect of temporarily depriving him of the power of self control. The resentment shown by appellants after half an hour does

not have any reasonable relation with nature of provocation. Hence in our view, crime of murder cannot be reduced to manslaughter. Apart from this appellants definitely acted in a cruel manner which deprives them from taking shelter of *Exception* 4. In this backdrop, it is totally immaterial whether appellant Santosh gave single blow or multiple blows. The 'doctrine of provocation' was not considered in the case of ***Manoj @ Bablu*** (supra) and, therefore, said judgment is distinguishable and cannot be pressed into service in the factual matrix of the present case.

[29] Interference of this Court is also prayed for on the ground that the appellants were under the influence of liquor at the time of incident. This point also requires serious consideration. In ***Rex* v. *Meakin*** [(1836) 173 ER 131 : 7 Car & P. 295] *Baron Alderson* referred to the nature of the instrument as an element to be taken in presuming the intention in these words:

> *"However, with regard to the intention, drunkenness may perhaps be adverted to according to the nature of the instrument used. If a man uses a stick, you would not infer a malicious intent so strongly against him, if drunk, when he made an intemperate use of it, as he would if he had used a different kind of weapon; but where a dangerous instrument is used, which, if used, must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party."*
>
> (emphasis supplied)

[30] Patteson J., observed in ***Regina* v. *Cruse and Mary his wife*** [(1838) 173 ER 610: 8 Car.] which is as under:

> *"It appears that both these persons were drunk,*

> *and although drunkenness is no excuse for any crime whatever, yet it is often of very great importance in cases where it is a question of intention. A person may be so drunk as to be utterly unable to form any intention at all, and yet he may be guilty of very great violence."*
>
> (emphasis supplied)

[31] Coleridge J., in ***Reg.*** **v.** ***Monk house*** [(1849) 4 Cox CC 55], which is as under:

> *"Drunkenness is ordinarily neither a defence nor excuse for crime, and where it is available as a partial answer to a charge, it rests on the prisoner to prove it, and it is not enough that he was excited or rendered more irritable, unless the intoxication was such as to prevent his restraining himself from committing the act in question, or to take away from him the power of forming any specific intention. Such a state of drunkenness may no doubt exist."*
>
> (emphasis supplied)

[32] A plain reading of the judgment in ***Monk house*** (supra), makes it clear that burden was on the defence to establish/prove that the degree of intoxication was such because of which they could not prevent themselves from committing the act in question.

[33] Interestingly, the Apex Court in AIR 1956 SC 488 (***Basdev Vs. State of Pepsu***) considered Section 86 of IPC and did not accept the excuse and incapacity of the accused on the ground that he was under influence of liquor. It was held that such incapacity as would have been available to the accused as a defence and so the law presumes that he intended the natural and probable consequences of his act. Since accused had failed to prove such incapacity, the Court came to hold that he intended to inflect bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary

course of nature to cause death.

[34] Section 85 of Indian Penal Code was again considered by the Apex Court in 2006 (13) SCC 116 (***Bablu Vs. State of Rajasthan***) and the Apex Court held as under:

> *"11. Section 85 IPC deals with act of a person incapable of judgment by reason of intoxication caused against his will. As the heading of the provision itself shows, intoxication must have been against his will and/or the thing with which he was intoxicated was administered to him without his knowledge. There is no specific plea taken in the present case about intoxicant having administered without the appellant's knowledge. The expression "without his knowledge" simply means an ignorance of the fact that what is being administered to him is or contains or is mixed with an intoxicant."*
>
> (emphasis supplied)

[35] A Division Bench of this Court in AIR 1960 MP 242 (***Jethuram Shukhra Nagbanshi Vs. State of M.P.***) has also considered Section 85 IPC. The Division Bench quoted the Great Philosopher **Aristotle** who said that such a man deserves double punishment, because he has doubly offended, viz in being drunk to the evil example of others, and in committing the crime of homicide. And this act is said to be done ignoranter, for that he is the cause of his own ignorance: and so the diversity appears between a thing done *ex ignorantia*, and *ignoranter.*

[36] In the case of ***Jethuram Sukhra Nagbanshi*** (supra), the Division Bench further held that the act of drinking was his own act for which the immediate force was his own free will. The act of persuasion could not and did not make the act of drinking the act of anybody else than the doer's. But if a person were put in fear of

immediate physical danger and then made to drink, the act cannot be said to be his. Similarly, when he is bound hand and foot and then the intoxicant is literally poured down his throat, the mere reflex act of swallowing cannot make the drinking of the intoxicant his own act performed out of his own free will.

[37] If the evidence on record is examined on the anvil of principles laid down in the said judgments, it will be clear that the defence has not discharged the burden to show that the incapacity of the appellants because of intoxication is of that degree where they can claim any benefit. It cannot be forgotten that the drinking is purely their own act and they cannot be permitted to take advantage of their own wrong. Thus, we do not see any merit in this contention.

[38] Argument of Shri Sharma that in the *dehati nalishi* and FIR, it was not stated that appellants Jiwan and Soni caught hold of hands of deceased. It was also not stated therein that these appellants instigated appellant Santosh to kill the deceased by using the expression "*maaro sale ko"*. In *Dehati nalishi* and FIR it is mentioned that Jiwan and Sonu caught hold of Kishore Panchal. PW.3 Vinod Panwar and PW.4 Akash Bunkar have deposed that Sonu and Jiwan caught hold of hand of deceased. Whether this difference is so fatal which makes the evidence unreliable is the next question. Similarly, the nature of phrase used by appellants Sonu and Jiwan while instigating Santosh is also pointed out to show that it amounts to serious omission on the part of the prosecution. We do not see any

merit in this contention. In ***State of M.P. Vs. Chaakki Lal (2019) 12 SCC 326*** it was poignantly held that FIR is not an encyclopedia which is expected to contain all the minute details of the prosecution case, it may be sufficient if the broad facts of prosecution case are stated in the FIR. In ***State of M.P. Vs. Mansingh (2003) 10 SCC 414*** it was held as under:-

> "9. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle."
>
> (emphasis supplied)

[39] The so called improvement do not, in any way, introduced a new facet of the case. Every omission is not a contradiction. Minor details which are not indicative in the first FIR are lateron elaborated in Court, do not justify the criticism that the case originally presented has been abandoned to be substituted by another view. [See ***Sunil Kumar Vs. State (Govt. of NCT of Delhi) (2003) 11 SCC 367]***.

[40] Reference may be made to ***Sunil Kumar Shambhudayal Gupta (Dr.) Vs. State of Maharashtra (2010) 13 SCC 657*** wherein it was held as under:-

> "30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide *State* v. *Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152].)"
>
> (emphasis supplied)

[41] In view of these authoritative pronouncements, we are unable to hold that aforesaid variation in *dehati nalishi*/FIR and Court statements are so grave which makes the prosecution evidence as brittle and untrustworthy.

[42] In view of foregoing analysis, in our view, the prosecution has established its case before Court below beyond reasonable doubt. The Court below has appreciated the evidence on permissible parameters. We find no illegality on the strength of which interference can be made. The appeals fail and are hereby **dismissed**.

(Sujoy Paul)
Judge

(Shailendra Shukla)
Judge

vm/soumya